DECLARATION OF INDEPENDENCE

In Congress, July 4, 1776. THE UNANIMOUS DECLARATION OF THE THIRTEEN UNITED STATES OF AMERICA.

When, in the course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the powers of the earth, the separate and equal station to which the laws of nature and nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

We hold these truths to be self-evident: - that all men are created equal; that they are endowed by their Creator with certain unalienable rights; that among these are life, liberty, and the pursuit of happiness. That to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed; that whenever any form of government becomes destructive of these ends it is the right of the people to alter or abolish it, and to institute a new government, laying its foundation on such principles, and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness. Prudence, indeed, will dictate that governments long established should not be changed for light and transient causes; and accordingly all experience hath shown that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But when a long train of abuses and usurpations, pursuing invariably the same object, evinces a design to reduce them under absolute despotism, it is their right, it is their duty, to throw off such government and to provide new guards for their future security. Such has been the patient sufferance of these colonies, and such is now the necessity which constrains them to alter their former systems of government. The history of the present King of Great Britain is a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute tyranny over these states. To prove this, let facts be submitted to a candid world:

He has refused his assent to laws the most wholesome and necessary for the public good.

He has forbidden his governors to pass laws of immediate and pressing importance, unless suspended in their operation, till his assent should be obtained; and when so suspended he has utterly neglected to attend to them. He has refused to pass other laws for the accommodation of large districts of people, unless those people would relinquish the right of representation in the legislature - a right inestimable to them and formidable to tyrants only.

He has called together legislative bodies at places unusual, uncomfortable, and distant from the depository of their public records, for the

sole purpose of fatiguing them into a compliance with his measures.

He has dissolved representative houses repeatedly, for opposing, with manly firmness, his invasions on the rights of the people.

He has refused, for a long time after such dissolutions, to cause others to be elected; whereby the legislative powers, incapable of annihilation, have returned to the people at large for their exercise, the state remaining, in the meantime, exposed to all the dangers of invasions from without, and convulsions within.

He has endeavored to prevent the population of these states; for that purpose obstructing the laws for naturalization of foreigners; refusing to pass others to encourage their migration hither, and raising the conditions of new appropriations of land.

He has obstructed the administration of justice by refusing his assent to laws establishing judiciary powers.

He has made judges dependent on his will alone for the tenure of their offices, and the amount and payment of their salaries.

He has erected a multitude of new offices, and sent hither swarms of officers, to harass our people and eat out their substance.

He has kept among us, in times of peace, standing armies, without the consent of our legislatures.

He has affected to render the military independent of, and superior to, the civil power.

He has combined with others to subject us to a jurisdiction foreign to our constitution, and unacknowledged by our laws; giving his assent to their acts of pretended legislation.

For quartering large bodies of armed troops amongst us;

For protecting them, by a mock trial, from punishment for any murders which they should commit on the inhabitants of these states;

For cutting off our trade with all parts of the world;

For imposing taxes on us without our consent;

For depriving us, in many cases, of the benefits of trial by jury;

For transporting us beyond the seas to be tried for pretended offenses;

For abolishing the free system of English laws, in a neighboring province, establishing therein an arbitrary government, and enlarging its boundaries, so as to render it at once an example and fit instrument for introducing the same absolute rule into these colonies;

For taking away our charters, abolishing our most valuable laws, and altering, fundamentally, the forms of our government;

For suspending our own legislature, and declaring themselves invested with power to legislate for us in all cases whatsoever;

He has abdicated government here, by declaring us out of his protection, and waging war against us.

He has plundered our seas, ravaged our coasts, burnt our towns and destroyed the lives of our people.

He is at this time transporting large armies of foreign mercenaries to complete the works of death, desolation and tyranny, already begun with

circumstances of cruelty and perfidy, scarcely paralleled in the most barbarous ages, and totally unworthy the head of a civilized nation.

He has constrained our fellow-citizens, taken captive on the high seas, to bear arms against their country, to become the executioners of their friends and bretheren, or to fall themselves by their hands.

He has excited domestic insurrection amongst us, and has endeavored to bring on the inhabitants of our frontiers the merciless Indian savages, whose known rule of warfare is an undistinguished destruction of all ages, sexes and conditions.

In every stage of these oppressions we have petitioned for redress in the most humble terms; our repeated petitions have been answered only by repeated injury. A prince whose character is thus marked by every act which may define a tyrant, is unfit to be the ruler of a free people.

Nor have we been wanting in attentions to our British brethren. We have warned them, from time to time, of attempts by their legislature to extend an unwarrantable jurisdiction over us. We have reminded them of the circumstances of our emigration and settlement here. We have appealed to their native justice and magnanimity, and we have conjured them by the ties of our common kindred to disavow these usurpations, which would inevitably interrupt our connections and correspondence. They, too, have been deaf to the voice of justice and consanguinity. We must, therefore, acquiesce in the necessity which denounces our separation, and hold them, as we hold the rest of mankind - enemies in war; in peace, friends.

We, therefore, the representatives of the United States of America, in general congress assembled, appealing to the supreme judge of the world for the rectitude of our intentions, do, in the name, and by the authority of the good people of these colonies, solemnly publish and declare, that these United Colonies are, and of right ought to be, free and independent states; that they are absolved from all allegiance to the British crown, and that all political connection between them and the state of Great Britain is, and ought to be, totally dissolved; and that, as free and independent states, they have full power to levy war, conclude peace, contract alliances, establish commerce, and to do all other acts and things which independent states may of right do. And for the support of this declaration, with a firm reliance on the protection of Divine Providence, we mutually pledge to each other our lives, our fortunes, and our sacred honor.

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Editor's note: (1) This version of the Constitution of the United States of America is a continuation of a format for printing the Constitution that was initiated in 1908 by a commissioner appointed by the supreme court of the state of Colorado. This version contains a table of contents, changes in spelling and capitalization, caption headings, editor's notes, and an index. Additionally, the brackets in article I, section 2, clause (3) on page 11 indicate that the language contained therein was superseded or modified by amendments (see section 2 of the fourteenth amendment on page 21 and the sixteenth amendment on page 21); the brackets in article I, section 3, clauses (1) and (2) on page 11 indicate that the language contained therein is superseded or modified by the seventeenth amendment on page 22; and the brackets in article II, section 1, clause (3) on page 14 indicate that the language contained therein is superseded by the twelfth amendment on page 20. The reader should also note that provisions in article I, section 4, clause (2) on page 12 are superseded or modified by the twentieth amendment on page 22.

(2) The twenty-seven articles of amendment to the Constitution of the United States of America, including the Bill of Rights, are numbered and titled in this publication as "articles", rather than individual "amendments" to the Constitution. This practice is based on the language used in the original proposals to amend the Constitution by the addition of articles of amendment, as well as on the official revised version of the Constitution of the United States

which the 108th Congress of the United States ordered printed in 2003. That version of the Constitution provides that the "articles [are] in addition to, and amendment of, the constitution of the United States of America, proposed by Congress, and ratified by the legislatures of the several states, pursuant to the fifth article of the original Constitution." [See United States House of Representatives Document 108-95.] The practice of calling the articles of amendment "articles" is also consistent with, and even predates, the version of the Constitution commissioned by the Colorado Supreme Court in 1908, and dates as far back as the 1861 publication of the state's laws. However, recent trends in the publication of the articles of amendment to the Constitution may use the common term "amendments" rather than "articles".

Cross references: For the literal print of the Constitution of the United States of America, as contained in Senate Document No. 92-82 printed by the United States Government Printing Office, 1973, see pages x to xxxiii of the bound 1980 Replacement Volume 1A to the 1973 Colorado Revised Statutes.

Preamble

We, the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defense, promote the general welfare and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution of the United States of America.

ARTICLE I

The Legislative Department

§ **1. Vestment of legislative power.** All legislative powers herein granted shall be vested in a congress of the United States, which shall consist of a senate and house of representatives.

§ **2. House of representatives - qualifications of electors.** (1) The house of representatives shall be composed of members chosen every second year, by the people of the several states; and the electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislature.

(2) **Qualifications of representative.** No person shall be a representative who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state in which he shall be chosen.

(3) **Apportionment of representatives and taxes.** [Representatives and direct taxes shall be apportioned among the several states which may be included within this union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all other persons.] The actual enumeration shall be made within three years after the first meeting of the congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of representatives shall not exceed one for every thirty thousand, but each state shall have at least one representative; and until such enumeration shall be made, the state of New Hampshire shall be entitled to choose three; Massachusetts, eight; Rhode Island and Providence Plantations, one; Connecticut, five; New York, six; New Jersey, four; Pennsylvania, eight; Delaware, one; Maryland, six; Virginia, ten; North Carolina, five; South Carolina, five; and Georgia, three.

(4) **Vacancies in representation - how filled.** When vacancies happen in the representation from any state, the executive authority thereof shall issue writs of election to fill such vacancies.

(5) **Speaker - officers - impeachment.** The house of representatives shall choose their speaker and other officers; and shall have the sole power of impeachment.

§ **3. Two senators from each state - how chosen.** (1) [The senate of the United States shall be composed of two senators from each state, chosen by the legislature thereof, for six years, and each senator shall have one vote.]

(2) **Classification of senators - vacancies.** Immediately after they shall be assembled, in consequence of the first election, they shall be divided, as equally as may be, into three classes. The seats of the senators of the first class shall be vacated at the expiration of the second year; of the second class, at the expiration of the fourth year; and of the third class, at the expiration of the sixth year; so that one-third may be chosen every second year; [and if vacancies happen by resignation or otherwise during the recess of the legislature of any state, the executive thereof may make temporary appointments until the next meeting of the legislature, which shall then fill such vacancies.]

(3) **Qualification of senators.** No person shall be a senator who shall not have attained the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state for which he shall be chosen.

(4) **President of senate.** The vice-president of the United States shall be president of the senate; but shall have no vote unless they be equally divided.

(5) **Officers of senate, how chosen.** The senate shall choose their other officers, and also a president pro tempore, in the absence of the vice-president, or when he shall exercise the office of president of the United States.

(6) **Senate to try impeachments.** The senate shall have the sole power to try all impeachments. When sitting for that purpose they shall be on oath or affirmation. When the president of the United States is tried, the chief justice shall preside; and no person shall be convicted without the concurrence of two-thirds of the members present.

(7) **Extent of judgment in impeachment.** Judgment, in cases of impeachment, shall not extend further than to removal from office and disqualification to hold and enjoy any office of honor, trust or profit under the United States; but the party convicted shall, nevertheless, be liable and subject to indictment, trial, judgment, and punishment, according to law.

§ **4. Election of senators and representatives.** (1) The times, places and manner of holding elections for senators and representatives shall be prescribed in each state, by the legislature thereof, but the congress may at any

time, by law, make or alter such regulations, except as to the places of choosing senators.

(2) **Congress shall assemble annually.** The congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.

§ **5. Membership - quorum.** (1) Each house shall be the judge of the elections, returns, and qualifications of its own members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner and under such penalties as each house may provide.

(2) **Rules - punishment - expulsion.** Each house may determine the rules of its proceedings, punish its members for disorderly behavior, and, with a concurrence of two-thirds, expel a member.

(3) **Keep journal - yeas and nays.** Each house shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may, in their judgment, require secrecy; and the yeas and nays of the members of either house, on any question, shall, at the desire of one-fifth of those present, be entered on the journal.

(4) **Adjournment.** Neither house, during the session of congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting.

§ **6. Compensation - privileges.** (1) The senators and representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the treasury of the United States. They shall, in all cases, except treason, felony, and breach of the peace, be privileged from arrest during their attendance at the session of their respective houses, and in going to and returning from the same, and for any speech or debate in either house they shall not be questioned in any other place.

(2) **Members precluded from holding office.** No senator or representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased, during such time; and no person holding any office under the United States shall be a member of either house during his continuance in office.

§ **7. Revenue bills.** (1) All bills for raising revenue shall originate in the house of representatives; but the senate may propose or concur with amendments, as on other bills.

(2) **Bills presented to president - veto - return.** Every bill which shall have passed the house of representatives and the senate, shall, before it become a law, be presented to the president of the United States; if he approve, he shall sign it; but if not, he shall return it, with his objections, to that house in which it shall have originated, who shall enter the objections, at large, on their journal, and proceed to reconsider it. If, after such reconsideration, two-thirds of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and, if approved by two-thirds of that house, it shall become a law. But in all such cases the votes of both houses shall be determined by yeas and nays; and the names of persons voting for and against the bill shall be entered on the journal of each house respectively. If any bill shall not be returned by the president within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the congress, by their adjournment, prevent its return; in which case it shall not be a law.

(3) **Orders - resolutions - presented to president.** Every order, resolution or vote, to which the concurrence of the senate and house of representatives may be necessary (except on a question of adjournment) shall be presented to the president of the United States; and, before the same shall take effect, shall be approved by him, or being disapproved by him shall be repassed by two-thirds of the senate and house of representatives, according to the rules and limitations prescribed in the case of a bill.

§ **8. Powers of congress.** The congress shall have power:

(1) To lay and collect taxes, duties, imposts and excises; to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts and excises shall be uniform throughout the United States.

(2) To borrow money on the credit of the United States.

(3) To regulate commerce with foreign nations, and among the several states, and with the Indian tribes.

(4) To establish an uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States.

(5) To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures.

(6) To provide for the punishment of counterfeiting the securities and current coin of the United States.

(7) To establish post offices and post roads.

(8) To promote the progress of science and useful arts, by securing, for limited times, to authors and inventors, the exclusive right to their respective writings and discoveries.

(9) To constitute tribunals, inferior to the supreme court.

(10) To define and punish piracies and felonies committed on the high seas and offenses against the law of nations.

(11) To declare war, grant letters of marque and reprisal, and make

rules concerning captures on land and water.

(12) To raise and support armies; but no appropriation of money to that use shall be for a longer term than two years.

(13) To provide and maintain a navy.

(14) To make rules for the government and regulation of the land and naval forces.

(15) To provide for calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasions.

(16) To provide for organizing, arming and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the states respectively the appointment of the officers, and the authority of training the militia according to the discipline prescribed by congress.

(17) To exercise exclusive legislation in all cases whatsoever over such district (not exceeding ten miles square) as may by cession of particular states, and the acceptance of congress, become the seat of the government of the United States, and to exercise like authority over all places purchased, by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dockyards and other needful buildings; and:

(18) To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this constitution in the government of the United States, or in any department or officer thereof.

§ **9. Slave trade.** (1) The migration or importation of such persons as any of the states now existing shall think proper to admit shall not be prohibited by the congress prior to the year one thousand eight hundred and eight, but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.

(2) **Habeas corpus.** The privilege of the writ of habeas corpus shall not be suspended, unless when, in cases of rebellion or invasion, the public safety may require it.

(3) **Attainder - ex post facto laws.** No bill of attainder or ex post facto law shall be passed.

(4) **Capitation tax.** No capitation or other direct tax shall be laid, unless in proportion to the census or enumeration hereinbefore directed to be taken.

(5) **Export duties - preference to ports.** No tax or duty shall be laid on articles exported from any state. No preference shall be given by any regulation of commerce or revenue to the ports of one state over those of another; nor shall vessels bound to or from one state be obliged to enter, clear, or pay duties in another.

(6) **Appropriations - statement and account.** No money shall be drawn from the treasury but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

(7) **Nobility - presents from foreign powers.** No title of nobility shall be granted by the United States, and no person holding any office of profit or trust under them shall, without the consent of congress, accept any present, emolument, office, or title, of any kind whatever, from any king, prince, or foreign state.

§ **10. Powers denied individual states.** (1) No state shall enter into any treaty, alliance or confederation; grant letters of marque or reprisal; coin money; emit bills of credit; make anything but gold and silver coin a tender in payment of debts; pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts, or grant any title of nobility.

(2) **Powers denied individual states except by consent of congress.** No state shall, without the consent of congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the net produce of all duties and imposts, laid by any state on imports or exports, shall be for the use of the treasury of the United States; and all such laws shall be subject to the revision and control of the congress. No state shall, without the consent of congress, lay any duty of tonnage, keep troops or ships of war in time of peace, enter into any agreement or compact with another state, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.

ARTICLE II
The Executive Department

§ **1. President and vice-president.** (1) The executive power shall be vested in a president of the United States of America. He shall hold his office during the term of four years, and, together with the vice-president, chosen for the same term, be elected as follows:

(2) **Electors.** Each state shall appoint, in such manner as the legislature thereof may direct, a number of electors equal to the whole number of senators and representatives to which the state may be entitled in the congress; but no senator or representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

(3) **Vote of electors.** [The electors shall meet in their respective states, and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same state with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each; which list they shall sign

and certify, and transmit sealed to the seat of the government of the United States, directed to the president of the senate. The president of the senate shall, in the presence of the senate and house of representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the president, if such number be a majority of the whole number of electors appointed; and if there be more than one who have such majority, and have an equal number of votes, then the house of representatives shall immediately choose, by ballot, one of them for president, and if no person have a majority, then from the five highest on the list the said house shall, in like manner, choose the president. But in choosing the president, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. In every case after the choice of the president the person having the greatest number of votes of the electors shall be the vice-president. But if there should remain two or more who have equal votes, the senate shall choose from them, by ballot, the vice-president.]

(4) **Election day.** The congress may determine the time of choosing the electors, and the day on which they shall give their votes, which day shall be the same throughout the United States.

(5) **Qualification of president.** No person except a natural-born citizen, or a citizen of the United States at the time of the adoption of this constitution, shall be eligible to the office of president; neither shall any person be eligible to that office who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States.

(6) **Vacancy in office of president - succession.** In case of the removal of the president from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the vice-president, and the congress may by law provide for the case of removal, death, resignation, or inability, both of the president and vice-president, declaring what officer shall then act as president, and such officer shall act accordingly, until the disability be removed, or a president shall be elected.

(7) **Compensation of president.** The president shall, at stated times, receive for his services a compensation, which shall neither be increased nor diminished during the period for which he shall have been elected, and he shall not receive, within that period, any other emolument from the United States, or any of them.

(8) **Oath of president.** Before he enter on the execution of his office, he shall take the following oath or affirmation:

(9) **Form of oath.** "I do solemnly swear (or affirm) that I will

faithfully execute the office of president of the United States, and will, to the best of my ability, preserve, protect, and defend the constitution of the United States."

§ **2. Powers of president.** (1) The president shall be commander-in-chief of the army and navy of the United States, and of the militia of the several states, when called into the actual service of the United States. He may require the opinion in writing of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices; and he shall have power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment.

(2) **Treaties - appointments.** He shall have power, by and with the advice and consent of the senate, to make treaties, provided two-thirds of the senators present concur; and he shall nominate, and, by and with the advice and consent of the senate, shall appoint ambassadors, other public ministers and consuls, judges of the supreme court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law: But the congress may, by law, vest the appointment of such inferior officers as they may think proper, in the president alone, in the courts of law, or in the heads of departments.

(3) **President to fill vacancies.** The president shall have power to fill up all vacancies that may happen during the recess of the senate, by granting commissions, which shall expire at the end of their next session.

§ **3. Duties of president.** He shall, from time to time, give to the congress information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient. He may, on extraordinary occasions, convene both houses, or either of them, and in case of disagreement between them, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper. He shall receive ambassadors and other public ministers. He shall take care that the laws be faithfully executed; and shall commission all the officers of the United States.

§ **4. Impeachment.** The president and vice-president, and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.

ARTICLE III

The Judicial Department

§ **1. Judiciary - tenure - compensation.** The judicial power of the United States shall be vested in one supreme court, and in such inferior courts as the congress may, from time to time, ordain and establish.

The judges, both of the supreme court and inferior courts, shall hold

their offices during good behavior, and shall, at stated times, receive for their services a compensation, which shall not be diminished during their continuance in office.

§ **2. Jurisdiction.** (1) The judicial power shall extend to all cases in law and equity arising under this constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases affecting ambassadors, other public ministers and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more states; between a state and citizens of another state; between citizens of different states; between citizens of the same state, claiming lands under grants of different states; and between a state or the citizens thereof and foreign states, citizens, or subjects.

(2) **Jurisdiction of supreme court.** In all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be party, the supreme court shall have original jurisdiction. In all other cases before mentioned the supreme court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations, as the congress shall make.

(3) **Trial by jury - venue.** The trial of all crimes, except in cases of impeachment, shall be by a jury; and such trial shall be held in the state where the said crime shall have been committed; but when not committed within any state, the trial shall be at such place or places as the congress may by law have directed.

§ **3. Treason.** (1) Treason against the United States shall consist only in levying war against them, or in adhering to their enemies; giving them aid and comfort. No person shall be convicted of treason, unless on the testimony of two witnesses to the same overt act, or on confession in open court.

(2) **Punishment for treason.** The congress shall have power to declare the punishment of treason; but no attainder of treason shall work corruption of blood or forfeiture, except during the life of the person attainted.

ARTICLE IV
States and Territories

§ **1. Public acts, records and proceedings of states.** Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state. And the congress may, by general laws, prescribe the manner in which such acts, records and proceedings shall be proved, and the effect thereof.

§ **2. Equality of privileges.** (1) The citizens of each state shall be

entitled to all privileges and immunities of citizens in the several states.

(2) **Fugitives from justice.** A person charged in any state with treason, felony or other crime, who shall flee from justice, and be found in another state, shall, on demand of the executive authority of the state from which he fled, be delivered up, to be removed to the state having jurisdiction of the crime.

(3) **Fugitives from service.** No person held to service or labor in one state, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due.

§ **3. Admission of new states.** (1) New states may be admitted by the congress into this Union; but no new state shall be formed or erected within the jurisdiction of any other state, nor any state be formed by the junction of two or more states, or parts of states, without the consent of the legislatures of the states concerned, as well as of the congress.

(2) **Power of congress over territories.** The congress shall have power to dispose of, and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this constitution shall be so construed as to prejudice any claims of the United States, or of any particular state.

§ **4. Republican form of government - protection of states.** The United States shall guarantee to every state in this Union a republican form of government, and shall protect each of them against invasion; and on application of the legislature or of the executive (when the legislature cannot be convened) against domestic violence.

ARTICLE V
Amendments to Constitution

Amendments to constitution. The congress, whenever two-thirds of both houses shall deem it necessary, shall propose amendments to this constitution, or, on the application of the legislatures of two-thirds of the several states, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this constitution, when ratified by the legislatures of three-fourths of the several states, or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the congress: Provided, That no amendment, which may be made prior to the year one thousand eight hundred and eight, shall in any manner affect the first and fourth clauses of the ninth section of the first article; and that no state, without its consent, shall be deprived of its equal suffrage in the senate.

ARTICLE VI
Miscellaneous Provisions

(1) **Debts prior to constitution.** All debts contracted, and engagements entered into, before the adoption of this constitution, shall be as valid against the United States, under this constitution, as under the confederation.

(2) **Supremacy of constitution, treaties and laws.** This constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby; anything in the constitution or laws of any state to the contrary notwithstanding.

(3) **Oath to support constitution.** The senators and representatives beforementioned, and the members of the several legislatures, and all executive and judicial officers, both of the United States and of the several states, shall be bound, by oath or affirmation, to support this constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

ARTICLE VII
Ratification

Ratification. The ratification of the conventions of nine states shall be sufficient for the establishment of this constitution between states so ratifying the same.

Done in Convention, By the unanimous consent of the states present, the seventeenth day of September, in the year of our Lord one thousand seven hundred and eighty-seven, and of the independence of the United States of America the twelfth.

In Witness Whereof, We have hereunto subscribed our names:
GEO. WASHINGTON, *President, and Deputy from Virginia*

New Hampshire:
John Langdon,
Nicholas Gilman.
Connecticut:
Wm. Samuel Johnson,
Roger Sherman.
New York:
Alexander Hamilton.
New Jersey:
William Livingston,
David Brearley,
William Paterson,
Jonathan Dayton.
Pennsylvania:
Benjamin Franklin,
Thomas Mifflin,
Robert Morris,
George Clymer,

Thomas Fitzsimons,
Jared Ingersoll,
James Wilson,
Gouverneur Morris.

Massachusetts:
Nathaniel Gorham,
Rufus King.

Delaware:
Geo. Read,
Gunning Bedford, Jr.
John Dickinson,
Richard Bassett,
Jacob Broom.

Maryland:
James McHenry,
Daniel of St. Thomas Jenifer,
Daniel Carroll.

Virginia:
John Blair,
James Madison, Jr.

North Carolina:
William Blount,
Richard Dobbs Speight,
Hugh Williamson.

South Carolina:
John Rutledge,
C. Cotesworth Pinckney,
Charles Pinckney,
Pierce Butler.

Georgia:
William Few,
Abraham Baldwin.

Attest: WILLIAM JACKSON, *Secretary.*

AMENDMENTS TO THE CONSTITUTION OF THE UNITED STATES

ARTICLE I

Freedom of religion, speech and press - right of petition. Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble and to petition the government for a redress of grievances.

ARTICLE II

Right of arms. A well regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed.

ARTICLE III

Quartering of troops. No soldier shall, in time of peace, be quartered in any house without the consent of the owner; nor in time of war, but in a manner to be prescribed by law.

ARTICLE IV

Searches and seizures regulated. The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated; and no warrant shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

ARTICLE V

Grand jury - indictment - jeopardy - process of law - taking property for public use. No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service, in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled, in any criminal case, to be a witness against himself; nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

ARTICLE VI

Rights of accused. In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial by an impartial jury of the state and district

wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor; and to have the assistance of counsel for his defense.

ARTICLE VII

Jury trial in civil actions. In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved; and no fact tried by a jury shall be otherwise re-examined in any court of the United States than according to the rules of the common law.

ARTICLE VIII

Excessive bail, fines or punishments. Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

ARTICLE IX

Reserved rights. The enumeration in the constitution of certain rights shall not be construed to deny or disparage others retained by the people.

ARTICLE X

Reserved powers. The powers not delegated to the United States by the constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.

ARTICLE XI

States may not be sued by individual. The judicial power of the United States shall not be construed to extend to any suit in law or equity commenced or prosecuted against one of the United States by citizens of another state, or by citizens or subjects of any foreign state.

ARTICLE XII

Mode of electing president and vice-president. The electors shall meet in their respective states and vote by ballot for president and vice-president, one of whom at least shall not be an inhabitant of the same state as themselves; they shall name in their ballots the person voted for as president; and in distinct ballots the person voted for as vice-president; and they shall make distinct lists of all persons voted for as president, and of all persons voted for as vice-president, and of the number of votes for each, which lists they shall sign

and certify, and transmit sealed to the seat of government of the United States, directed to the president of the senate; the president of the senate shall, in the presence of the senate and house of representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes for president shall be the president, if such number be a majority of the whole number of electors appointed; and if no person have such majority, then from the persons having the highest numbers, not exceeding three, on the list of those voted for as president, the house of representatives shall choose immediately, by ballot, the president. But in choosing the president, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. And if the house of representatives shall not choose a president whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the vice-president shall act as president, as in the case of death or other constitutional disability of the president. The person having the greatest number of votes as vice-president shall be vice-president, if such number be a majority of the whole number of electors appointed; and if no person have a majority, then from the two highest numbers on the list the senate shall choose the vice-president; a quorum for the purpose shall consist of two-thirds of the whole number of senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of president, shall be eligible to that of vice-president of the United States.

ARTICLE XIII

§ **1. Slavery prohibited.** Neither slavery nor involuntary servitude, except as a punishment for crime, whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

§ **2. Enforcement of article.** Congress shall have power to enforce this article by appropriate legislation.

ARTICLE XIV

§ **1. Citizenship defined - privileges of citizens.** All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

§ **2. Apportionment of representatives among states.** Representatives shall be apportioned among the several states according to their respective numbers, counting the whole number of persons in each state,

excluding Indians not taxed. But when the right to vote at any election for the choice of electors for president and vice-president of the United States, representatives in congress, the executive and judicial officers of a state, or the members of the legislature thereof, is denied to any of the male inhabitants of such state, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such state.

§ **3. Disability to hold office in certain cases.** No person shall be a senator or representative in Congress, or elector of president or vice-president, or hold any office, civil or military, under the United States, or under any state, who, having previously taken an oath as a member of congress, or as an officer of the United States, or as a member of any state legislature, or as an executive or judicial officer of any state, to support the constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But congress may, by a vote of two-thirds of each house, remove such disability.

§ **4. Validity of public debt.** The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any state shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave, but all such debts, obligations and claims shall be held illegal and void.

§ **5. Enforcement of article.** The congress shall have power to enforce, by appropriate legislation, the provisions of this article.

ARTICLE XV

§ **1. Right of suffrage.** The right of citizens of the United States to vote shall not be denied or abridged by the United States, or by any state on account of race, color or previous condition of servitude.

§ **2. Enforcement of article.** Congress shall have power to enforce this article by appropriate legislation.

ARTICLE XVI

Income tax. The congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several states, and without regard to any census or enumeration.

ARTICLE XVII

(1) **Election of senators by people.** The senate of the United States shall be composed of two senators from each state, elected by the people thereof, for six years; and each senator shall have one vote. The electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislatures.

(2) **Filling of vacancies.** When vacancies happen in the representation of any state in the senate, the executive authority of such state shall issue writs of election to fill such vacancies: provided, that the legislature of any state may empower the executive thereof to make temporary appointments until the people fill the vacancies by election as the legislature may direct.

(3) **Existing terms not affected.** This amendment shall not be so construed as to affect the election or term of any senator chosen before it becomes valid as part of the constitution.

ARTICLE XVIII

§ **1. Prohibition of intoxicating liquors.** After one year from the ratification of this article the manufacture, sale, or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States and all territory subject to the jurisdiction thereof for beverage purposes is hereby prohibited.

§ **2. Enforcement of article.** The congress and the several states shall have concurrent power to enforce this article by appropriate legislation.

§ **3. Ratification.** This article shall be inoperative unless it shall have been ratified as an amendment to the constitution by the legislatures of the several states, as provided in the constitution, within seven years from the date of the submission hereof to the states by the congress. (Repealed: See Article XXI.)

ARTICLE XIX

§ **1. Extending right of suffrage to women.** The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of sex.

§ **2. Enforcement of article.** Congress shall have the power to enforce this article by appropriate legislation.

ARTICLE XX

§ **1. Beginning of terms of president, vice-president, senators and**

representatives. The terms of the president and vice-president shall end at noon on the 20th day of January, and the terms of senators and representatives at noon on the third day of January, of the years in which such terms would have ended if this article had not been ratified; and the terms of their successors shall then begin.

§ **2. Assembly of congress.** The congress shall assemble at least once in every year, and such meeting shall begin at noon on the third day of January, unless they shall by law appoint a different day.

§ **3. Death of president.** If, at the time fixed for the beginning of the term of the president, the president elect shall have died, the vice-president elect shall become president. If a president shall not have been chosen before the time fixed for the beginning of his term, or if the president elect shall have failed to qualify, then the vice-president elect shall act as president until a president shall have qualified; and the congress may by law provide for the case wherein neither a president elect nor a vice-president elect shall have qualified, declaring who shall then act as president, or the manner in which one who is to act shall be selected, and such person shall act accordingly until a president or vice-president shall have qualified.

§ **4. Death of persons from whom successor chosen.** The congress may by law provide for the case of the death of any of the persons from whom the house of representatives may choose a president whenever the right of choice shall have devolved upon them, and for the case of the death of any of the persons from whom the senate may choose a vice-president whenever the right of choice shall have devolved upon them.

§ **5. Effective date.** Sections 1 and 2 shall take effect on the fifteenth day of October following the ratification of this article.

§ **6. Ratification.** This article shall be inoperative unless it shall have been ratified as an amendment to the constitution by the legislatures of three-fourths of the several states within seven years from the date of its submission.

ARTICLE XXI

§ **1. Repeal of eighteenth amendment.** The eighteenth article of amendment to the constitution of the United States is hereby repealed.

§ **2. Transportation in violation of state laws prohibited.** The transportation or importation into any state, territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited.

§ **3. Ratification.** This article shall be inoperative unless it shall have been ratified as an amendment to the constitution by conventions in the several states, as provided in the constitution, within seven years from the date of the submission hereof to the states by the congress.

ARTICLE XXII

§ **1. Limitation upon terms of president.** No person shall be elected to the office of the president more than twice, and no person who has held the office of president, or acted as president, for more than two years of a term to which some other person was elected shall be elected to the office of the president more than once. But this article shall not apply to any person holding the office of president when this article was proposed by the congress, and shall not prevent any person who may be holding the office of president, or acting as president, during the term within which this article becomes operative from holding the office of president or acting as president during the remainder of such term.

§ **2. Ratification.** This article shall be inoperative unless it shall have been ratified as an amendment to the constitution by the legislatures of three-fourths of the several states within seven years from the date of its submission to the states by the congress.

ARTICLE XXIII

§ 1. The District constituting the seat of Government of the United States shall appoint in such manner as the Congress may direct:

A number of electors of president and vice-president equal to the whole number of senators and representatives in Congress to which the District would be entitled if it were a State, but in no event more than the least populous State; they shall be in addition to those appointed by the States, but they shall be considered, for the purposes of the election of President and Vice-President, to be electors appointed by a State; and they shall meet in the District and perform such duties as provided by the twelfth article of amendment.

§ 2. The Congress shall have power to enforce this article by appropriate legislation.

Editor's note: Passed by Congress, June 16, 1960; certificate of validity filed April 3, 1961.

ARTICLE XXIV
Qualifications of Electors; Poll Tax

§ 1. The right of citizens of the United States to vote in any primary or other election for President or Vice President, for electors for President or Vice President, or for Senator or Representative in Congress, shall not be denied or

abridged by the United States or any State by reason of failure to pay any poll tax or other tax.

§ 2. The Congress shall have power to enforce this article by appropriate legislation.

Editor's note: Passed by Congress, August 27, 1962; certificate of validity filed February 5, 1964.

ARTICLE XXV
Succession to Presidency and Vice Presidency; Disability of President

§ 1. In case of the removal of the President from office or of his death or resignation, the Vice President shall become President.

§ 2. Whenever there is a vacancy in the office of the Vice President, the President shall nominate a Vice President who shall take office upon confirmation by a majority vote of both Houses of Congress.

§ 3. Whenever the President transmits to the President pro tempore of the Senate and the Speaker of the House of Representatives his written declaration that he is unable to discharge the powers and duties of his office, and until he transmits to them a written declaration to the contrary, such powers and duties shall be discharged by the Vice President as Acting President.

§ 4. Whenever the Vice President and a majority of either the principal officers of the executive departments or of such other body as Congress may by law provide, transmit to the President pro tempore of the Senate and the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office, the Vice President shall immediately assume the powers and duties of the office as Acting President.

Thereafter, when the President transmits to the President pro tempore of the Senate and the Speaker of the House of Representatives his written declaration that no inability exists, he shall resume the powers and duties of his office unless the Vice President and a majority of either the principal officers of the executive department or of such other body as Congress may by law provide, transmit within four days to the President pro tempore of the Senate and the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office. Thereupon Congress shall decide the issue, assembling within forty-eight hours for that purpose if not in session. If the Congress, within twenty-one days after receipt of the latter written declaration, or, if Congress is not in session, within twenty-one days after Congress is required to assemble, determines by two-thirds vote of both Houses that the President in unable to discharge the powers and duties of his office, the Vice President shall continue to discharge the same as Acting President; otherwise, the President shall resume the powers and duties of his office.

Editor's note: This article was ratified by Colorado on February 3, 1966, and by three-fourths of the state on February 23, 1967.

ARTICLE XXVI
Right to Vote; Citizens Eighteen Years of Age or Older

§ 1. The right of citizens of the United States, who are eighteen years of age or older, to vote shall not be denied or abridged by the United States or by any State on account of age.

§ 2. The Congress shall have power to enforce this article by appropriate legislation.

Editor's note: This article was ratified by the thirty-eighth state on June 30, 1971.

ARTICLE XXVII
Effective Date for Variance in the Compensation of Senators and Representatives

No law, varying the compensation for the services of the Senators and Representatives, shall take effect, until an election of Representatives shall have intervened.

Editor's note: This article was ratified by the Fifty-fourth General Assembly of the state of Colorado at its Second Regular Session in 1984 (see L. 84, pp. 1151-52) and by the thirty-eighth state, Michigan, on May 7, 1992.

ENABLING ACT

Editor's note: The following act of March 3, 1875, is found at 18 Stat. 474.

AN ACT TO ENABLE THE PEOPLE OF COLORADO TO FORM A CONSTITUTION AND STATE GOVERNMENT, AND FOR THE ADMISSION OF THE SAID STATE INTO THE UNION ON AN EQUAL FOOTING WITH THE ORIGINAL STATES.

Be it enacted by the senate and house of representatives of the United States of America in congress assembled:

§ 1. Authority to form state. That the inhabitants of the territory of Colorado included in the boundaries hereinafter designated, be, and they are hereby authorized to form for themselves, out of said territory, a state government, with the name of the state of Colorado; which state, when formed, shall be admitted into the Union upon an equal footing with the original states in all respects whatsoever, as hereinafter provided.

ANNOTATION

Applied in State, Dept. of Natural Res. v. Southwestern Colo. Water Conservation Dist., 671 P.2d 1294 (Colo. 1983).

§ 2. Boundaries. That the said state of Colorado shall consist of all the territory included within the following boundaries, to-wit: commencing on the thirty-seventh parallel of north latitude where the twenty-fifth meridian of longitude west from Washington crosses the same; thence north, on same meridian, to the forty-first parallel of north latitude; thence along said parallel west to the thirty-second meridian of longitude west from Washington; thence south on said meridian, to the thirty-seventh parallel of north latitude; thence along said thirty-seventh parallel of north latitude to the place of beginning.

§ 3. Convention - election - apportionment - proclamation. That all persons qualified by law to vote for representatives to the general assembly of said territory, at the date of the passage of this act, shall be qualified to be elected, and they are hereby authorized to vote for and choose representatives to form a convention, under such rules and regulations as the governor of said territory, the chief justice, and the United States attorney thereof may prescribe; and also to vote upon the acceptance or rejection of such constitution as may be formed by said convention, under such rules and regulations as said convention may prescribe; and the aforesaid representatives to form the aforesaid convention shall be apportioned among the several counties in said territory in proportion to the vote polled in each of said counties at the last general election as near as may be; and said apportionment shall be made for said territory by the governor, United States district attorney, and chief justice thereof, or any two of them; and the governor of said territory shall, by proclamation, order an election of the representatives aforesaid, to be held throughout the territory at such time

as shall be fixed by the governor, chief justice and United States attorney, or any two of them; which proclamation shall be issued within ninety days next after the first day of September, eighteen hundred and seventy-five, and at least thirty days prior to the time of said election; and such election shall be conducted in the same manner as is prescribed by the laws of said territory regulating elections therein, for members of the house of representatives; and the number of members to said convention shall be the same as now constitutes both branches of the legislature of the aforesaid territory.

§ 4. Constitutional convention - requirements of constitution. That the members of the convention thus elected shall meet at the capital of said territory, on a day to be fixed by said governor, chief justice, and United States attorney, not more than sixty days subsequent to the day of election, which time of meeting shall be contained in the aforesaid proclamation mentioned in the third section of this act, and after organization, shall declare, on behalf of the people of said territory, that they adopt the constitution of the United States; whereupon the said convention shall be and is hereby authorized to form a constitution and state government for said territory; provided, that the constitution shall be republican in form, and make no distinction in civil or political rights on account of race or color, except Indians not taxed, and not be repugnant to the constitution of the United States and the principles of the declaration of independence; and, provided further, that said convention shall provide by an ordinance irrevocable without the consent of the United States and the people of said state; first, that perfect toleration of religious sentiment shall be secured, and no inhabitant of said state shall ever be molested in person or property, on account of his or her mode of religious worship; secondly, that the people inhabiting said territory do agree and declare that they forever disclaim all right and title to the unappropriated public lands lying within said territory, and that the same shall be and remain at the sole and entire disposition of the United States; and that the lands belonging to citizens of the United States residing without said state shall never be taxed higher than the lands belonging to residents thereof, and that no taxes shall be imposed by the state on lands or property therein belonging to, or which may hereafter be purchased by the United States.

ANNOTATION

Law reviews. For article, "Civil Rights in Colorado", see 46 Den. L.J. 181 (1969).

This act insured a republican form of government. Colorado's enabling act, approved by the federal government when Colorado acquired statehood, insured that the state would have a republican form of government. City & County of Denver v. Sweet, 138 Colo. 41, 329 P.2d 441 (1958).

Constitutional amendment held not obnoxious to section. A constitutional amendment consolidating a city and county government into one and providing that the people of the city and county shall adopt a charter which shall provide for the election or appointment of all officers of the city and county and shall designate the officers who shall perform the acts and duties required by the constitution and general laws to be done by county

officers, and provides that the citizens of the city and county shall have exclusive power to adopt or to amend their charter or to adopt any measure as provided in the amendment, does not exempt a portion of the state from the provisions of the constitution and general laws of the state, and is not obnoxious to this section which requires the constitution to be republican in form and not repugnant to the constitution of the United States. People ex rel. Elder v. Sours, 31 Colo. 369, 74 P. 167 (1903); People ex rel. Miller v. Johnson, 34 Colo. 143, 86 P. 233 (1905).

State authority to adopt own water use system. Federal statutes, as interpreted by the United States supreme court, recognize Colorado's authority to adopt its own system for the use of all waters within the state in accordance with the needs of its citizens, subject to the prohibitions against interference with federal reserved rights, with interstate commerce, and with the navigability of any navigable waters. State, Dept. of Natural Res. v. Southwestern Colo. Water Conservation Dist., 671 P.2d 1294 (Colo. 1983).

§ 5. Adoption of constitution - president to proclaim. That in case the constitution and state government shall be formed for the people of said territory of Colorado, in compliance with the provisions of this act, said convention forming the same shall provide by ordinance for submitting said constitution to the people of said state for their ratification or rejection, at an election to be held at such time, in the month of July, eighteen hundred and seventy-six, and at such places and under such regulations as may be prescribed by said convention, at which election the lawful voters of said new state shall vote directly for or against the proposed constitution; and the returns of said election shall be made to the acting governor of the territory, who, with the chief justice and United States attorney of said territory, or any two of them, shall canvass the same; and if a majority of the legal votes shall be cast for said constitution in said proposed state, the said acting governor shall certify the same to the president of the United States, together with a copy of said constitution and ordinances, whereupon it shall be the duty of the president of the United States to issue his proclamation declaring the state admitted into the Union on an equal footing with the original states, without any further action whatever on the part of Congress.

ANNOTATION

Applied in State, Dept. of Natural Res. v. Southwestern Colo. Water Conservation Dist., 671 P.2d 1294 (Colo. 1983).

§ 6. One representative - officers - election. That until the next general census said state shall be entitled to one representative in the house of representatives of the United States, which representative, together with the governor and state and other officers provided for in said constitution, shall be elected on a day subsequent to the adoption of the constitution, and to be fixed by said constitutional convention; and until said state officers are elected and qualified under the provisions of the constitution, the territorial officers shall continue to discharge the duties of their respective offices.

§ 7. School lands. The sections numbered sixteen and thirty-six in every township, and where such sections have been sold or otherwise disposed of by any act of congress, other lands equivalent thereto in legal sub-divisions of not more than one quarter-section, and as contiguous as may be, are hereby granted to said state for the support of common schools.

Cross references: For grants of land by the United States to the states in aid of common or public schools; extension to those mineral in character; and effect of leases, see 43 U.S.C. sec. 870.

ANNOTATION

Law reviews. For article, "The 'New' Colorado State Land Board", see 78 Den. U. L. Rev. 347 (2001).

The specific language in § 14 gives enough import to the general language in this section to create a trust. Branson Sch. Dist. RE-82 v. Romer, 958 F. Supp. 1501 (D. Colo. 1997), aff'd, 161 F.3d 619 (10th Cir. 1998).

Colorado has an obligation enforceable under the supremacy clause to act as trustee for the school lands granted under the Colorado Enabling Act for the benefit of the public schools. Branson Sch. Dist. RE-82 v. Romer, 958 F. Supp. 1501 (D. Colo. 1997), aff'd, 161 F.3d 619 (10th Cir. 1998).

This section creates a trust, the beneficiaries of which are the public schools, not the public at large. Brotman v. East Lake Creek Ranch L.L.P., 31 P.3d 886 (Colo. 2001).

Lands not subject to assessment by special improvement district. Land placed in perpetual public trust pursuant to this section, and subject to the restrictions imposed under §§ 3 and 5 of art. IX, Colo. Const., is not subject to assessment by a special improvement district created in a municipality. People ex rel. Dunbar v. City of Littleton, 183 Colo. 195, 515 P.2d 1121 (1973).

Since assessment constitutes diversion of school funds. Lands granted by the federal government to states for school purposes are exempt from special assessments upon one of three overlapping reasons, the essence of which is that enforcement of the assessments against either the land or its proceeds would be a diversion of school funds in violation of either: (1) the act of congress granting the land to the state for school purposes; (2) state constitutional provisions making such land part of the state school fund and declaring that the principal must remain inviolate; and (3) the fact that the state holds such lands in trust for the purpose of the grant. People ex rel. Dunbar v. City of Littleton, 183 Colo. 195, 515 P.2d 1121 (1973).

Act authorizing acceptance of certificates of indebtedness in payment for state lands. Where an act provides for the payment for lands purchased from the state by certificates issued for the construction of a ditch, the act would necessarily result in diverting these lands and the proceeds thereof from the use and benefit of the respective objects for which the grants were made, such as schools, public buildings, etc., and the act is unconstitutional and void insofar as it authorizes the state to accept the certificates issued, in payment for state lands. In re Canal Certificates, 19 Colo. 63, 34 P. 274 (1893).

Applied in Farmers' High Line Canal & Reservoir Co. v. Moon, 22 Colo. 560, 45 P. 437 (1896).

§ 8. Land for public buildings. That, provided the state of Colorado shall be admitted into the Union in accordance with the foregoing provisions of this act, fifty entire sections of the unappropriated public lands within said state, to be selected and located by direction of the legislature thereof, and with the approval of the president, on or before the first day of January, eighteen hundred and seventy-eight, shall be and are hereby granted, in legal sub-divisions of not less than one quarter-section, to said state for the purpose of erecting public buildings at the capital of said state, for legislative and judicial purposes, in such manner as the legislature shall prescribe.

ANNOTATION

Law reviews. For article, "The 'New' Colorado State Land Board", see 78 Den. U. L. Rev. 347 (2001).

Act authorizing acceptance of certificates of indebtedness in payment for state lands. In re Canal Certificates, 19 Colo. 63, 34 P. 274 (1893).

Applied in In re Internal Imp. Fund, 24 Colo. 247, 48 P. 807 (1897).

§ 9. Land for penitentiary. That fifty other entire sections of land as aforesaid, to be selected and located and with the approval as aforesaid, in legal sub-divisions as aforesaid, shall be, and they are hereby granted, to said state for the purpose of erecting a suitable building for a penitentiary or state prison in the manner aforesaid.

ANNOTATION

Law reviews. For article, "The 'New' Colorado State Land Board", see 78 Den. U. L. Rev. 347 (2001).

Act authorizing acceptance of certificates of indebtedness in payment for state lands. In re Canal Certificates, 19 Colo. 63, 34 P. 274 (1893).

Applied in In re Internal Imp. Fund, 24 Colo. 247, 48 P. 807 (1897).

§ 10. Land for university. That seventy-two other sections of land shall be set apart and reserved for the use and support of a state university, to be selected and approved in manner as aforesaid, and to be appropriated and applied as the legislature of said state may prescribe for the purpose named and for no other purpose.

ANNOTATION

Law reviews. For article, "The 'New' Colorado State Land Board", see 78 Den. U. L. Rev. 347 (2001).

Act authorizing acceptance of certificates of indebtedness in payment for state lands. In re Canal Certificates, 19 Colo. 63, 34 P. 274 (1893).

Applied in In re Internal Imp. Fund, 24 Colo. 247, 48 P. 807 (1897).

§ 11. Salt springs. That all salt springs within said state not exceeding twelve in number, with six sections of land adjoining, and as contiguous as may

be to each, shall be granted to said state for its use, the said land to be selected by the governor of said state within two years after the admission of the state, and when so selected to be used and disposed of on such terms, conditions and regulations as the legislature shall direct; provided, that no salt springs or lands, the right whereof is now vested in any individual or individuals, or which hereafter shall be confirmed or adjudged to any individual or individuals, shall by this act be granted to said state.

ANNOTATION

Law reviews. For article, "The 'New' Colorado State Land Board", see 78 Den. U. L. Rev. 347 (2001).

§ 12. Sale of agricultural lands. That five per centum of the proceeds of the sales of agricultural public lands lying within said state, which shall be sold by the United States subsequent to the admission of said state into the Union, after deducting all the expenses incident to the same, shall be paid to the said state for the purpose of making such internal improvements within said state as the legislature thereof may direct; provided, that this section shall not apply to any lands disposed of under the homestead laws of the United States, or to any lands now or hereafter reserved for public or other uses.

ANNOTATION

Law reviews. For article, "The 'New' Colorado State Land Board", see 78 Den. U. L. Rev. 347 (2001).

This section places no limit upon the power of the general assembly over the fund for internal improvements, except that it shall be used for the purpose of internal improvement within the state. In re Senate Resolution, 12 Colo. 287, 21 P. 484 (1888).

Meaning of "internal improvements". Internal improvements, within the meaning of this section, must be improvements located within the state; they must be improvements of a fixed and permanent nature, as improvements of real property; and, furthermore, they must be such improvements as are designed and intended for the benefit of the public. In re Internal Imps., 18 Colo. 317, 32 P. 611 (1893).

Public reservoirs are "internal improvements". Public reservoirs for the storage of water for irrigation and domestic uses are internal improvements, and the general assembly may lawfully make appropriations from such fund for such purposes. In re Senate Resolution, 12 Colo. 287, 21 P. 484 (1889).

Activities not deemed "internal improvements". Appropriations from the fund for transient objects, such as personalty, as well as appropriations to promote private or individual enterprises, would be contrary to the intention of the general government as donor of the fund; and no part of such fund can be lawfully appropriated to defray the current expenses of carrying on state institutions. In re Internal Imps., 18 Colo. 317, 32 P. 611 (1893).

The phrase "internal improvement", as used in this section, does not include public buildings, such as asylums, state houses, universities, or any other public buildings of like character. The fund created by the proceeds derived under this section cannot be applied to the construction of

such buildings. In re Internal Imp. Fund, 24 Colo. 247, 48 P. 807 (1897).

§ 13. Unexpended balance of appropriations. That any balance of the appropriations for the legislative expenses of said territory of Colorado remaining unexpended, shall be applied to and used for defraying the expenses of said convention, and for the payment of the members thereof, under the same rules and regulations and rates as are now provided by law for the payment of the territorial legislature.

§ 14. School lands - how sold. That the two sections of land in each township herein granted for the support of common schools shall be disposed of only at public sale and at a price not less than two dollars and fifty cents per acre, the proceeds to constitute a permanent school fund, the interest of which to be expended in the support of common schools.

Cross references: For grants of land by the United States to the states in aid of common or public schools; extension to those mineral in character; and effect of leases, see 43 U.S.C. sec. 870.

ANNOTATION

This section creates an enforceable trust. Branson Sch. Dist. RE-82 v. Romer, 958 F. Supp. 1501 (D. Colo. 1997), aff'd, 161 F.3d 619 (10th Cir. 1998).

The specific language in this section gives enough import to the general language in § 7 to create a trust. Branson Sch. Dist. RE-82 v. Romer, 958 F. Supp. 1501 (D. Colo. 1997), aff'd, 161 F.3d 619 (10th Cir. 1998).

Colorado has an obligation enforceable under the supremacy clause to act as trustee for the school lands granted under the Colorado Enabling Act for the benefit of the public schools. Branson Sch. Dist. RE-82 v. Romer, 958 F. Supp. 1501 (D. Colo. 1997), aff'd, 161 F.3d 619 (10th Cir. 1998).

§ 15. Mineral lands excepted. That all mineral lands shall be excepted from the operation and grants of this act.

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Preamble

We, the people of Colorado, with profound reverence for the Supreme Ruler of the Universe, in order to form a more independent and perfect government; establish justice; insure tranquillity; provide for the common defense; promote the general welfare and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this constitution for the "State of Colorado".

ANNOTATION

Law reviews. For article, "A New or Revised Constitution of Colorado", see 11 Dicta 303 (1934). For article, "State Constitutions and Individual Rights: The Case for Judicial Restraint", see 63 Den. U. L. Rev. 85 (1986).

Constitution does not forbid creation or abolition of rights. The constitution does not forbid the creation of new rights, or the abolition of old ones recognized by the common law, to attain a permissible legislative object. Vogts v. Guerrette, 142 Colo. 527, 351 P.2d 851 (1960).

Construction of statute to avoid constitutional conflict. Where an act of the general assembly is susceptible of different constructions, one of which would offend against the constitution, it is the duty of the courts to adopt that construction which will avoid constitutional conflict. Lowen v. Hilton, 142 Colo. 200, 351 P.2d 881 (1960); Colorado Ass'n of Pub. Employees v. Lamm, 677 P.2d 1350 (Colo. 1984).

Boundary line established between Colorado and New Mexico. New Mexico v. Colorado, 267 U.S. 30, 45 S. Ct. 202, 69 L. Ed. 499 (1925).

ARTICLE I
Boundaries

The boundaries of the state of Colorado shall be as follows: Commencing on the thirty-seventh parallel of north latitude, where the twenty-fifth meridian of longitude west from Washington crosses the same; thence north, on said meridian, to the forty-first parallel of north latitude; thence along said parallel, west, to the thirty-second meridian of longitude west from Washington; thence south, on said meridian, to the thirty-seventh parallel of north latitude; thence along said thirty-seventh parallel of north latitude to the place of beginning.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 28.

Editor's note: As a result of a survey that was performed in the 1800's, the actual boundaries of the state of Colorado differ from the legal description of the boundaries in Article I of the state constitution. However, the United States Supreme Court held in *New Mexico v. Colorado*, 267 U.S. 30, 45 S. Ct. 202, 69 L.Ed. 499 (1925) that the boundary line marked by a surveyor in the 1800's will not be disturbed on the theory that it does not coincide with the 37th parallel of north latitude described as the common boundary under Acts of Congress and the state's constitutions.

ARTICLE II
Bill of Rights

Editor's note: In Medina v. People, 154 Colo. 4, 387 P.2d 733 (1963), cert. denied, 379 U.S. 848, 85 S. Ct. 88, 13 L. Ed. 2d 52 (1964), the Colorado supreme court held that the bill of rights is self-executing; the rights therein recognized or established by the constitution do not depend upon legislative action in order to become operative.

Law reviews: For article, "A New or Revised Constitution of Colorado", see 11 Dicta 303 (1934); for article, "Criminal Procedure in Colorado - A Summary, and Recommendations for Improvement", see 22 Rocky Mt. L. Rev. 221 (1950); for article, "Constitutional Law", which discusses recent Tenth Circuit decisions dealing with questions of constitutional law, see 63 Den. U. L. Rev. 247 (1986); for article, "Constitutional Law", which discusses recent Tenth Circuit decisions dealing with standards applied to constitutional law, see 65 Den. U. L. Rev. 499 (1988); for a discussion of recent Tenth Circuit decisions dealing with constitutional law, see 66 Den. U. L. Rev. 695 (1989); for a discussion of recent Tenth Circuit decisions dealing with constitutional laws, see 67 Den. U. L. Rev. 653 (1990); for article, "The Colorado Constitution in the New Century", see 78 U. Colo. L. Rev. 1265 (2007).

In order to assert our rights, acknowledge our duties, and proclaim the principles upon which our government is founded, we declare:

Section 1. Vestment of political power. All political power is vested in and derived from the people; all government, of right, originates from the people, is founded upon their will only, and is instituted solely for the good of the whole.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 28.

ANNOTATION

Law reviews. For article, "Civil Rights in Colorado", see 46 Den. L.J. 181 (1969).

All governmental departments must answer to the people. It is well that all departments give pause, that they may not offend. All must answer to the people, in and from whom, as specifically set forth in this section, all political power is invested and derived. Hudson v. Annear, 101 Colo. 551, 75 P.2d 587 (1938).

People's right to legislate reserved. By § 1 of art. V, Colo. Const., the people have reserved for themselves the right to legislate. McKee v. City of Louisville, 200 Colo. 525, 616 P.2d 969 (1980).

Initiative deemed aspect of people's political power. Under the Colorado constitution, all political power is vested in the people and derives from them, and an aspect of that power is the initiative, which is the power reserved by the people to themselves to propose laws by petition and to enact or reject them at the polls independent of the general assembly. Colo. Project-Common Cause v. Anderson, 178 Colo. 1, 495 P.2d 220 (1972).

Power of initiative is fundamental right. McKee v. City of Louisville, 200 Colo. 525, 616 P.2d 969 (1980).

Courts may not interfere with exercise of right of initiative by declaring unconstitutional or invalid a proposed measure before the process

has run its course and the measure is actually adopted. McKee v. City of Louisville, 200 Colo. 525, 616 P.2d 969 (1980).

And governmental officials have no power to prohibit exercise of initiative by prematurely passing upon the substantive merits of an initiated measure. McKee v. City of Louisville, 200 Colo. 525, 616 P.2d 969 (1980).

Right of initiative pertains to any measure, whether constitutional or legislative, and, in the case of municipalities, it encompasses legislation of every character. McKee v. City of Louisville, 200 Colo. 525, 616 P.2d 969 (1980).

But the people have no power to adopt an initiated reapportionment bill. Armstrong v. Mitten, 95 Colo. 425, 37 P.2d 757 (1934).

For court's refusal to construe this section more broadly than similar provisions in U.S. Constitution, see MacGuire v. Houston, 717 P.2d 948 (Colo. 1986).

Applied in In re Morgan, 26 Colo. 415, 58 P. 1071 (1899); People ex rel. Johnson v. Earl, 42 Colo. 238, 94 P. 294 (1908); People ex rel. Tate v. Prevost, 55 Colo. 199, 134 P. 129 (1913); White v. Ainsworth, 62 Colo. 513, 163 P. 959 (1917); People ex rel. Miller v. Higgins, 69 Colo. 79, 168 P. 740 (1917); City & County of Denver v. Mountain States Tel. & Tel. Co., 67 Colo. 225, 184 P. 604 (1919); People in Interest of Baby Girl D., 44 Colo. App. 192, 610 P.2d 1086 (1980).

Section 2. People may alter or abolish form of government - proviso. The people of this state have the sole and exclusive right of governing themselves, as a free, sovereign and independent state; and to alter and abolish their constitution and form of government whenever they may deem it necessary to their safety and happiness, provided, such change be not repugnant to the constitution of the United States.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 29.

ANNOTATION

Equal protection clause not designed to protect state instrumentalities from people's right under section. The equal protection clause of the fourteenth amendment was not designed to protect state instrumentalities such as municipalities and counties against state action, much less against the constitutional right of the people to alter and abolish their constitution and form of government whenever they may deem it necessary to their safety and happiness. Bd. of County Comm'rs v. City & County of Denver, 150 Colo. 198, 372 P.2d 152 (1962), appeal dismissed, 372 U.S. 226, 83 S. Ct. 679, 9 L. Ed. 2d 714 (1963).

Applied in Post Printing & Publishing Co. v. Shafroth, 53 Colo. 129, 124 P. 176 (1912); People ex rel. Carlson v. City Council, 60 Colo. 370, 153 P. 690 (1915); City & County of Denver v. Mountain States Tel. & Tel. Co., 67 Colo. 225, 184 P. 604 (1919); People ex rel. Dalrymple v. Stong, 67 Colo. 599, 189 P. 27 (1920); In re Estate of Novitt, 37 Colo. App. 524, 549 P.2d 805 (1976).

Section 3. Inalienable rights. All persons have certain natural, essential and inalienable rights, among which may be reckoned the right of enjoying and defending their lives and liberties; of acquiring, possessing and protecting property; and of seeking and obtaining their safety and happiness.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 29.

Cross references: For the guarantee of judicial process for protection of inalienable rights, see § 25 of this article.

ANNOTATION

Law reviews. For article, "By Leave of Court First Had", see 8 Dicta 10 (1931). For article, "Legality of the Denver Housing Authority", see 12 Rocky Mt. L. Rev. 30 (1939). For note, "Colorado's Maximum Recovery for Wrongful Death v. the Constitution", see 38 Dicta 237 (1961). For comment on People v. Nothaus appearing below, see 34 Rocky Mt. L. Rev. 252 (1962). For article, "One Year Review of Torts", see 40 Den. L. Ctr. J. 160 (1963). For article, "Fair Housing in Colorado", see 42 Den. L. Ctr. J. 1 (1965). For comment on City of Colorado Springs v. Kitty Hawk Dev. Co. appearing below, see 37 U. Colo. L. Rev. 303 (1965). For comment, "Bowers v. Hardwick: The Supreme Court Closes the Door on the Right to Privacy and Opens the Door to the Bedroom", see 64 Den. U. L. Rev. 599 (1988). For article, "Vested Property Rights in Colorado: The Legislature Rushes in Where . . . .", see 66 Den. U. L. Rev. 31 (1988). For article, "Drug Testing of Student Athletes: Some Contract and Tort Implications", see 67 Den. U. L. Rev. 279 (1990). For article, "State Constitutional Privacy Rights Post Webster -- Broader Protection Against Abortion Restrictions?", see 67 Den. U. L. Rev. 401 (1990).

Constitutions recognize natural rights. The constitutions of the state and the nation recognize unenumerated rights of natural endowment. Colo. Anti-Discrimination Comm'n v. Case, 151 Colo. 235, 380 P.2d 34 (1962).

Source of natural rights. All men have rights which have their origin as natural rights independent of any express provision of law; constitutional provisions are not the sources of these rights. Colo. Anti-Discrimination Comm'n v. Case, 151 Colo. 235, 380 P.2d 34 (1962).

Rights granted by constitution apply to minors as well as adults. In re Hartley, 886 P.2d 665 (Colo. 1994).

Limitations may be placed upon an inalienable or inherent right if the limitation is based upon a proper exercise of the police power. People v. Brown, 174 Colo. 513, 485 P.2d 500 (1971), appeal dismissed, 404 U.S. 1007, 92 S. Ct. 671, 30 L. Ed. 2d 656 (1972).

Constitutionally protected rights in property are subject to regulation by a proper exercise of the police power of the state. Colo. Anti-Discrimination Comm'n v. Case, 151 Colo. 235, 380 P.2d 34 (1962).

A vested interest on the ground of conditions once obtained cannot be asserted against the proper exercise of the police power. Colby v. Bd. of Adjustment, 81 Colo. 344, 255 P. 443 (1927).

An individual's right to use the public highways of this state is an adjunct of the constitutional right to acquire, possess, and protect property, yet such a right may be limited by a proper exercise of the police power of the state based upon a reasonable relationship to the public health, safety, and welfare. People v. Brown, 174 Colo. 513, 485 P.2d 500 (1971), appeal dismissed, 404 U.S. 1007, 92 S. Ct. 671, 30 L. Ed. 2d 656 (1972).

An individual's right to use of the public highways of the state is an adjunct of the constitutional right to acquire, possess, and protect property; and, therefore, the general assembly, in the exercise of the police power of the state, may limit this right of a citizen to operate a motor vehicle on the public

highways. Cave v. Colo. Dept. of Rev., 31 Colo. App. 185, 501 P.2d 479 (1972).

There is no constitutionally guaranteed illimitable right to drive upon highways as the right to drive may be regulated by the lawful exercise of the police power in the interest of the public health, safety, and welfare. Campbell v. State, 176 Colo. 202, 491 P.2d 1385 (1971).

But such limitations must be necessary for public welfare. One of the essential elements of property is the right to its unrestricted use and enjoyment, and that use cannot be interfered with beyond what is necessary to provide for the welfare and general security of the public. Wright v. City of Littleton, 174 Colo. 318, 483 P.2d 953 (1971).

Exercise of police power extends to so dealing with conditions when they arise as to promote the general welfare of the people. Colby v. Bd. of Adjustment, 81 Colo. 344, 255 P. 443 (1927).

And reasonable. There are certain "essential attributes of property" which cannot be unreasonably infringed upon by legislative action. Colo. Anti-Discrimination Comm'n v. Case, 151 Colo. 235, 380 P.2d 34 (1962).

The regulation and control of traffic upon the public highways is a matter which has a definite relationship to the public safety, and the general assembly has authority to establish reasonable standards of fitness and competence to drive a motor vehicle which a citizen must possess before he drives a car upon the public highway. People v. Nothaus, 147 Colo. 210, 363 P.2d 180 (1961).

Municipal zoning ordinances are constitutional in principle as a valid exercise of the police power when reasonably related to public health, safety, morals, or general welfare. Wright v. City of Littleton, 174 Colo. 318, 483 P.2d 953 (1971).

Limitation may be judicial. It is the solemn responsibility of the judiciary to fashion a remedy for the violation of a right which is truly "inalienable" in the event that no remedy has been provided by legislative enactment. Colo. Anti-Discrimination Comm'n v. Case, 151 Colo. 235, 380 P.2d 34 (1962).

Absent legislative action, judicial control may be imposed to protect a citizen from what might develop upon its facts to be an unconstitutional invasion of his right of privacy. Davidson v. Dill, 180 Colo. 123, 503 P.2d 157 (1972).

Term "property" includes right to make full use of property. The term "property", within the meaning of the due process clause, includes the right to make full use of the property which one has the inalienable right to acquire. People v. Nothaus, 147 Colo. 210, 363 P.2d 180 (1961).

Motor vehicle is property and a person cannot be deprived of property without due process of law. People v. Nothaus, 147 Colo. 210, 363 P.2d 180 (1961).

Right to return of fingerprints and photographs upon acquittal. The right of an individual, absent a compelling showing of necessity by the government, to the return of his fingerprints and photographs, upon an acquittal, is a fundamental right implicit in the concept of ordered liberty. Davidson v. Dill, 180 Colo. 123, 503 P.2d 157 (1972).

Right to practice learned profession is "valuable right". Prouty v. Heron, 127 Colo. 168, 255 P.2d 755 (1953).

And cannot be denied without notice and hearing. Where the state confers a license upon an individual to practice a profession, trade, or occupation, such license becomes a valuable personal right which cannot be denied or abridged in

any manner except after due notice and a fair and impartial hearing before an unbiased tribunal. Prouty v. Heron, 127 Colo. 168, 255 P.2d 755 (1953).

Pursuit of any legitimate trade or business is protected right. The right to pursue any legitimate trade, occupation, or business is a natural, essential, and inalienable right, and is protected by our constitution. Olin Mathieson Chem. Corp. v. Francis, 134 Colo. 160, 301 P.2d 139 (1956).

But not right to conduct business inimical to public morals. This section does not confer upon the citizen a constitutional right to conduct a business which may be inimical to the public morals, such as the use of pinball machines as gambling devices. Bunzel v. City of Golden, 150 Colo. 276, 372 P.2d 161 (1962).

Ample evidence of defendants' mistreatment and neglect of cattle supported trial court's decision to permanently enjoin defendants from owning, managing, controlling, or otherwise possessing livestock. The permanent injunction was not overly broad in light of the undisputed facts. Nor did the injunction violate defendants' due process rights under the state's constitution and the United States constitution because the injunction served the legitimate public interest of protecting livestock from mistreatment and neglect. Stulp v. Schuman, 2012 COA 144, __ P.3d __.

Commercial door-to-door solicitation. A ban on commercial door-to-door solicitation does not unconstitutionally prohibit legitimate business interests. May v. People, 636 P.2d 672 (Colo. 1981).

Right to use roads and highways. Every citizen has an inalienable right to make use of the public highways of the state; every citizen has full freedom to travel from place to place in the enjoyment of life and liberty. People v. Nothaus, 147 Colo. 210, 363 P.2d 180 (1961).

Every citizen has the right to go freely on the streets at any hour of the day or night, provided he is there for a legitimate purpose, such as any legitimate business or pleasure. Dominguez v. City & County of Denver, 147 Colo. 233, 363 P.2d 661 (1961).

Not unlimited. There is no constitutionally guaranteed illimitable right to drive upon highways. People v. Brown, 174 Colo. 513, 485 P.2d 500 (1971), appeal dismissed, 404 U.S. 1007, 92 S. Ct. 671, 30 L. Ed. 2d 656 (1972) (upholding constitutionality of implied consent law).

Although no revocation of right to drive without notice or opportunity to be heard. When a citizen meets reasonable standards of fitness and competence to drive a motor vehicle, he has a right to continue in the full enjoyment of that right until by due process of law it is established that by reason of abuse or other just cause it is reasonably necessary in the interest of the public safety to deprive him of the right; such action cannot be taken without notice to the party affected and without an opportunity for him to be heard on the question of whether sufficient grounds exist to warrant a revocation of his right to drive a motor vehicle upon the highways of the state. People v. Nothaus, 147 Colo. 210, 363 P.2d 180 (1961).

It is not an invasion of privacy to remind one of his obligations be they legal or moral. Tollefson v. Safeway Stores, Inc., 142 Colo. 442, 351 P.2d 274 (1960).

Unless accompanied by harassment, etc. The right to privacy is not invaded when debtor or debtor's employer is reminded of debtor's obligation, unless accompanied by a campaign of continuous harassment or an attempt to vilify or expose employee to public ridicule or lose his employment. Tollefson v. Safeway Stores, Inc., 142 Colo. 442, 351 P.2d

274 (1960).

Right to acquire a home unfettered by discrimination. As an unenumerated inalienable right, a man has the right to acquire one of the necessities of life, a home for himself and those dependent upon him, unfettered by discrimination against him on account of his race, creed, or color. Colo. Anti-Discrimination Comm'n v. Case, 151 Colo. 235, 380 P.2d 34 (1962).

Natural parent's rights not violated in stepparent adoption. Requiring only a showing that the natural parent has failed without cause to provide reasonable support for a child for one year or more when termination of a natural parent's rights is sought in a stepparent adoption does not violate the natural parent's constitutional rights. Buder v. Reynolds, 175 Colo. 28, 486 P.2d 432 (1971).

Right to choose family relationship is liberty interest protected by the constitution. In re Hartley, 886 P.2d 665 (Colo. 1994).

Child's liberty interest in family relationships adequately protected through guardian ad litem. In re Hartley, 886 P.2d 665 (Colo. 1994).

Freedom of movement of juvenile not fundamental right. Juvenile's liberty interest in freedom of movement is not a fundamental right and ordinance prohibiting loitering by juveniles does not unconstitutionally infringe upon liberty interest where ordinance was narrowly drawn and state interests justified juvenile curfew. People in Interest of J.M., 768 P.2d 219 (Colo. 1989).

There was no violation of the right guaranteed by this section due to the murder of a woman by her husband in a county justice center. Duong v. Arapahoe County Comm'rs, 837 P.2d 226 (Colo. App. 1992).

Section concerns only rights existing under substantive law. This section and sections 6 and 25 of this article relating to inalienable rights and the guarantee of judicial process for the protection thereof concern only rights existing under the substantive law. Faber v. State, 143 Colo. 240, 353 P.2d 609 (1960), criticized, Evans v. Bd. of County Comm'rs, 174 Colo. 97, 482 P.2d 968 (1971).

And not violated by rule of governmental immunity. This section and sections 6 and 25 of this article are not violated by application of the rule that the state and its instrumentalities are not liable in tort actions. Faber v. State, 143 Colo. 240, 353 P.2d 609(1960), criticized, Evans v. Bd. of County Comm'rs, 174 Colo. 97, 482 P.2d 968 (1971).

Applied in Strickler v. City of Colo. Springs, 16 Colo. 61, 26 P. 313 (1891); Robertson v. People , 20 Colo. 279, 38 P. 326 (1894); In re Morgan, 26 Colo. 415, 58 P. 1071 (1899); Shapter v. Pillar, 28 Colo. 209, 63 P. 302 (1900); Bland v. People, 32 Colo. 319, 76 P. 359 (1904); Willison v. Cooke, 54 Colo. 320, 130 P. 828 (1913); Rhinehart v. Denver & R.G.R.R., 61 Colo. 369, 158 P. 149 (1916); City of Delta v. Charlesworth, 64 Colo. 216, 170 P. 965 (1918); People v. Sandy, 70 Colo. 558, 203 P. 671 (1922); Warner v. People, 71 Colo. 559, 208 P. 459 (1922); Milliken v. O'Meara, 74 Colo. 475, 222 P. 1116 (1924); Averch v. City & County of Denver, 78 Colo. 246, 242 P. 47 (1925); Driverless Car Co. v. Armstrong, 91 Colo. 334, 14 P.2d 1098 (1932); In re Interrogatories of Governor, 97 Colo. 587, 52 P.2d 663 (1936); S.H. Kress & Co. v. Johnson, 16 F. Supp. 5 (D. Colo. 1936); Pub. Utils. Comm'n v. Manley, 99 Colo. 153, 60 P.2d 913 (1936); Rinn v. Bedford, 102 Colo. 475, 84 P.2d 827 (1938); Rosenbaum v. City & County of Denver, 102 Colo. 530, 81 P.2d 760 (1938); Smith Bros. Cleaners & Dyers v. People ex rel. Rogers, 108 Colo. 449, 119 P.2d 623 (1941); Potter v.

Armstrong, 110 Colo. 198, 132 P.2d 788 (1942); Jackson v. City of Glenwood Springs, 122 Colo. 323, 221 P.2d 1083 (1950); Vogts v. Guerrette, 142 Colo. 527, 351 P.2d 851 (1960); City of Colo. Springs v. Kitty Hawk Dev. Co., 154 Colo. 535, 392 P.2d 467 (1964); Wigington v. State Home & Training Sch., 175 Colo. 159, 486 P.2d 417 (1971); People in Interest of T.F.B., 199 Colo. 474, 610 P.2d 501 (1980); People in Interest of Baby Girl D., 44 Colo. App. 192, 610 P.2d 1086 (1980); Martinez v. Winner, 548 F. Supp. 278 (D. Colo. 1982); Allstate v. Feghali, 814 P.2d 863 (Colo. 1991)

Section 4. Religious freedom. The free exercise and enjoyment of religious profession and worship, without discrimination, shall forever hereafter be guaranteed; and no person shall be denied any civil or political right, privilege or capacity, on account of his opinions concerning religion; but the liberty of conscience hereby secured shall not be construed to dispense with oaths or affirmations, excuse acts of licentiousness or justify practices inconsistent with the good order, peace or safety of the state. No person shall be required to attend or support any ministry or place of worship, religious sect or denomination against his consent. Nor shall any preference be given by law to any religious denomination or mode of worship.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 29.

Cross references: For separation of church and state in education, see §§ 7 and 8 of article IX of this constitution.

ANNOTATION

Law reviews. For article, "Legality of the Denver Housing Authority", see 12 Rocky Mt. L. Rev. 30 (1939). For article, "Fearing Hell as Essential to Validity of Affidavit", see 18 Dicta 144 (1941). For note, "Impeachment of Non-Religious Witnesses", see 13 Rocky Mt. L. Rev. 336 (1941). For article, "The Right to Practice Law As Dependent on Fear of Hell", see 19 Dicta 206 (1942). For comment, "Mueller v. Allen: Clarifying or Confusing Establishment Clause Analysis of State Aid to Public Schools?", see 61 Den. L.J. 877 (1984). For article, "Constitutional Law", which discusses Tenth Circuit decisions dealing with freedom of religion, see 62 Den. U. L. Rev. 98 (1985). For article, "Constitutional Law", which discusses Tenth Circuit decisions dealing with freedom of religion, see 63 Den. U. L. Rev. 247 (1986). For article, "Pronouncements of the U. S. Supreme Court Relating to the Criminal Law Field: 1985-1986", which discusses a case relating to the establishment clause and vocational aid, see 15 Colo. Law. 1558 (1986). For article, "Fundamentalist Christians, the Public Schools and the Religion Clauses", see 66 Den. U. L. Rev. 289 (1989).

Purpose of provision. One of the main evils that the federal and state constitutional religion clauses seek to prevent is the oppression that a sectarian majority may visit upon citizens with unpopular beliefs. Conrad v. City & County of Denver, 656 P.2d 662 (Colo. 1982).

Construction in light of conditions prevailing when section framed. The language in this section must be construed in light of conditions prevailing at the time it was framed and in the practice, usage and understanding of that time. People ex rel. Vollmar v. Stanley, 81 Colo. 276, 255 P. 610 (1927); Americans United

for Separation of Church & State Fund, Inc. v. State, 648 P.2d 1072 (Colo. 1982).

With each clause construed separately. Each clause of this section and §§ 7 and 8 of art. IX, Colo. Const. must be construed separately. People ex rel. Vollmar v. Stanley, 81 Colo. 276, 255 P. 610 (1927).

Restriction under this section should not be greater than under federal constitution. Since it is the duty of the state courts to uphold and support the constitution of the United States, as construed by the highest judicial tribunal of the country, the state supreme court should not construe the state constitutional guarantee of religious freedom as permitting a restriction on the free exercise of religion that would be contrary to the federal constitution as so interpreted, unless required by the plain language thereof so to do. Zavilla v. Masse, 112 Colo. 183, 147 P.2d 823 (1944).

Similarity to federal constitution. Although the provisions of this section are considerably more specific than the establishment clause of the first amendment, they embody the same values of free exercise and governmental noninvolvement secured by the religious clauses of the first amendment. Americans United for Separation of Church & State Fund, Inc. v. State, 648 P.2d 1072 (Colo. 1982); Conrad v. City & County of Denver, 656 P.2d 662 (Colo. 1982).

However, determination of the first amendment challenge will not necessarily be dispositive of the state constitutional question. Conrad v. City & County of Denver, 656 P.2d 662 (Colo. 1982).

State must justify infringements on free exercise. When regulating religious conduct the state may be challenged to justify its infringement of the totally free exercise of religion. Pillar of Fire v. Denver Urban Renewal Auth., 181 Colo. 411, 509 P.2d 1250 (1973).

State burden on free exercise of religion. Should the state burden the free exercise of religion, it must do so in the least restrictive available way to achieve a compelling state interest. The tension between economic considerations and the United States Constitution first amendment rights must be resolved in favor of the latter. Engraff v. Indus. Comm'n, 678 P.2d 564 (Colo. App. 1983).

The application of § 8-73-108 of the Colorado Employment Security Act unduly restricted claimant's free exercise of religion. Engraff v. Indus. Comm'n, 678 P.2d 564 (Colo. App. 1983).

To merit protection of free exercise clause, religious belief must be sincerely held and must be rooted in religious beliefs and not in purely secular philosophical concerns. In re Hoyt, 742 P.2d 963 (Colo. App. 1987).

Trier of fact may determine whether belief is sincerely held as a religious belief without violating the first amendment and trial court properly found that child support obligor's refusal to disclose social security number to potential employers was not sincerely held as a religious belief. In re Hoyt, 742 P.2d 963 (Colo. App. 1987).

Free exercise clause of the first amendment did not provide defense to church counselor in tort action by minor for inappropriate touching during counseling session nor did it prohibit the admission of certain testimony where minister failed to assert a sincere religious belief for his use of therapeutic massage with counselees. Bear Valley Church of Christ v. DeBose, 928 P.2d 1315 (Colo. 1996).

First amendment's free exercise clause is not violated when liability is imposed on church counselor based on sufficient evidence that counselor touched minor counselee

inappropriately for personal purposes, as opposed to religious purposes. DeBose v. Bear Valley Church of Christ, 890 P.2d 214 (Colo. App. 1994), rev'd on other grounds, 928 P.2d 1315 (Colo. 1996).

For standing to enforce rights under this provision, see Conrad v. City & County of Denver, 656 P.2d 662 (Colo. 1982).

Plaintiffs in this state benefit from a relatively broad definition of standing, unlike the narrower federal test. To have either taxpayer or general standing in this state, the plaintiff must show that he or she has suffered (1) an injury-in-fact to (2) a legally protected interest. To assess the injury-in-fact, the courts accept a plaintiff's allegations set forth in the complaint as true. The injury may be tangible or intangible. The second prong -- a legally protected interest -- is an exercise in judicial restraint, intended to promote judicial efficiency and economy. Taxpayers may bring a claim that proclamations of a day of prayer issued by governors from 2004 to 2009 violate the preference clause. Freedom from Religion Found., Inc. v. Hickenlooper, 2012 COA 81, __ P.3d __.

Preference clause prohibits any preferential treatment. While a preference may survive a federal establishment clause challenge if justified by, and closely tailored to the furtherance of, a compelling governmental interest, the preference clause in this provision flatly prohibits any preferential treatment cognizable under the Colorado Constitution. Conrad v. City & County of Denver, 656 P.2d 662 (Colo. 1982).

The establishment clause of the federal constitution, as interpreted by the supreme court and applied to the state through the fourteenth amendment, prohibits a government from aiding or preferring all religions, not just from preferring one religion or sect over another. Freedom from Religion Found. v. State, 872 P.2d 1256 (Colo. App. 1993), rev'd on other grounds, 898 P.2d 1013 (Colo. 1995).

Three-pronged test for determining whether government action towards religion is within the permitted boundaries of the establishment clause neutrality: (1) The statute must have a secular legislative purpose; (2) its principal or primary effect must be one that neither advances nor inhibits religion; and (3) the statute must not foster an excessive government entanglement with religion. Young Life v. Division of Emp. & Training, 650 P.2d 515 (Colo. 1982); Freedom from Religion Found. v. State, 872 P.2d 1256 (Colo. App. 1993), rev'd on other grounds, 898 P.2d 1013 (Colo. 1995); Catholic Health Initiatives Colo. v. City of Pueblo, 207 P.3d 812 (Colo. 2009).

The first two parts of the three-pronged test have undergone some clarification as a result of the supreme court's decision in Lynch v. Donnelly, 465 U.S. 668, 104 S. Ct. 1355, 79 L. Ed. 2d 604 (1984). This involves further analysis of whether a government's actions can be interpreted as endorsement or disapproval of religion, considering two factors: (1) What message did the government intend to convey; and (2) what message do the government's actions actually convey to a reasonable person. Both the intended and actual message must be secular to pass constitutional muster. Freedom from Religion Found. v. State, 872 P.2d 1256 (Colo. App. 1993), rev'd on other grounds, 898 P.2d 1013 (Colo. 1995).

Proclamations of a day of prayer issued by governors from 2004 to 2009 violate the preference clause because the predominant purpose of these proclamations is to advance religion and they thus constitute preferential treatment to religion in general. Looking through the eyes of a reasonable observer, the

proclamations have the primary effect of promoting religion because they send the unequivocal message that the governor endorses the religious expressions embodied therein and thus promotes religion over nonreligion. Freedom from Religion Found., Inc. v. Hickenlooper, 2012 COA 81, __ P.3d __.

Tax incentives that inure only to the benefit of religious organizations solely by virtue of their religious nature violate the establishment clause. Catholic Health Initiatives Colo. v. City of Pueblo, 207 P.3d 812 (Colo. 2009).

The first amendment of the federal constitution requires Colorado courts to resolve church property disputes by applying "neutral principles of law", independent of ecclesiastical doctrine, while respecting the free exercise rights of members of a religious association. Wolf v. Rose Hill Cemetery Ass'n, 832 P.2d 1007 (Colo. App. 1991).

Church property is private property which can be taken by eminent domain for paramount public use. Pillar of Fire v. Denver Urban Renewal Auth., 181 Colo. 411, 509 P.2d 1250 (1973).

Balancing of governmental and church rights. In condemnation proceedings the right of a church to retain its property must be balanced against the governmental authority inherent in urban renewal planning. Pillar of Fire v. Denver Urban Renewal Auth., 181 Colo. 411, 509 P.2d 1250 (1973); Order of Friars Minor of Province of Most Holy Name v. Denver Urban Renewal Auth., 186 Colo. 367, 527 P.2d 804 (1974).

And condemnation only if substantial public interest. Only after a hearing and upon finding that there is a substantial public interest involved which cannot be accomplished through any other reasonable means can the court proceed with condemnation of church property. Order of Friars Minor of Province of Most Holy Name v. Denver Urban Renewal Auth., 186 Colo. 367, 527 P.2d 804 (1974).

Urban renewal is substantial state interest that can justify taking property dedicated to religious uses. Pillar of Fire v. Denver Urban Renewal Auth., 181 Colo. 411, 509 P.2d 1250 (1973).

Use of public funds to support religion. This provision prohibits the use of public funds for the support or preference of one religion to the exclusion of all others. Conrad v. City & County of Denver, 656 P.2d 662 (Colo. 1982).

City and county officials entitled to qualified immunity in 42 U.S.C. § 1983 suit alleging that their holding of catholic services at a state park and using state funds for papal visit constituted the promotion of religion. Freedom from Religion Found. v. Romer, 921 P.2d 84 (Colo. App. 1996).

Police, sanitation, and related public services to support participants' rights to free speech or the free exercise of religion are legitimate functions of government. Freedom from Religion Found. v. Romer, 921 P.2d 84 (Colo. App. 1996).

Zoning regulations precluding construction of church building in agricultural zone did not deny due process to the church or regulate religious beliefs of the church. Messiah Baptist Church v. County of Jefferson, Colo., 697 F. Supp. 396 (D. Colo. 1987), aff'd, 859 F.2d 820 (10th Cir. 1988), cert. denied, 490 U.S. 1005, 109 S. Ct. 1638, 104 L. Ed. 2d 154 (1989).

"Place of worship", as used in this section, means a place set apart for such use. People ex rel. Vollmar v. Stanley, 81 Colo. 276, 255 P. 610 (1927).

School house is not "place of worship". People ex rel. Vollmar v. Stanley, 81 Colo. 276, 255 P. 610

(1927).

"Preference". That clause in this section reading, "nor shall any preference be given by law to any religious denomination or mode of worship", refers only to legislation for the benefit of a denomination or mode of worship. People ex rel. Vollmar v. Stanley, 81 Colo. 276, 255 P. 610 (1927); overruled to the extent that it is inconsistent with the establishment clause standards set forth in Abington Sch. Dist. v. Schempp (374 U.S. 203, 83 S. Ct. 1560, 10 L. Ed. 2d 844 (1963)), Conrad v. City & County of Denver, 656 P.2d 662 (Colo. 1982).

Nativity scene on city and county building did not violate preference clause of this section where purpose was secular, the primary effect of display was not to advance religion, and there was no evidence of extensive government entanglement with religion. Conrad v. Denver, 724 P.2d 1309 (Colo. 1986).

If an admittedly religious symbol is maintained on public property, such maintenance will be considered an endorsement of the religious theme of the symbol unless it is displayed in association with other, secular symbols or figures from which an overall secular message can be discerned by the reasonable observer. Allegheny County v. Greater Pittsburgh ACLU, 492 U.S. 573, 109 S. Ct. 3086, 106 L. Ed. 2d 472 (1989).

Content and setting of ten commandments monument neutralize its religious character so that it neither endorses nor disapproves of religion. State v. Freedom from Religion Found., 898 P.2d 1013 (Colo. 1995), cert. denied, 516 U.S. 1111, 116 S. Ct. 909, 133 L. Ed. 2d 841 (1996).

It would be inappropriate to credit religious involvement by the state in every message of historical or solemn significance in which religious precepts may be attributed to words and symbols. State v. Freedom from Religion Found., 898 P.2d 1013 (Colo. 1995), cert. denied, 516 U.S. 1111, 116 S. Ct. 909, 133 L. Ed. 2d 841 (1996).

Reading of Bible in public schools does not constitute preference to a religious denomination contrary to this section. People ex rel. Vollmar v. Stanley, 81 Colo. 276, 255 P. 610 (1927), overruled to the extent that it is inconsistent with the establishment clause standards set forth in Abington Sch. Dist. v. Schempp, (374 U.S. 203, 83 S. Ct. 1560, 10 L. Ed. 2d 844 (1963)), Conrad v. City & County of Denver, 656 P.2d 662 (Colo. 1982).

Educational grant program not compulsory support for sectarian institution. An educational grant program, available to students at both public and private institutions, does not amount to a form of compulsory support for sectarian institutions. Americans United for Separation of Church & State Fund, Inc. v. State, 648 P.2d 1072 (Colo. 1982).

Public improvements may be required of church. The requirement that a church construct, pay for, and dedicate public improvements, necessitated by its expansion, is not a violation of freedom of religion guaranteed by the constitution. Bethlehem Evangelical Lutheran Church v. City of Lakewood, 626 P.2d 668 (Colo. 1981).

Employment. No person may constitutionally be put in the dilemma of choosing between employment and religion. Pinsker v. Joint Dist. No. 28J, 554 F. Supp. 1049 (D. Colo. 1983).

Decisions by church judicatory and its officials concerning the essential qualifications of clergy, although affecting civil rights, must be accepted as conclusive. Van Osdol v. Vogt, 892 P.2d 402 (Colo. App. 1994), aff'd, 908 P.2d 1122 (Colo. 1996).

Court lacks subject matter

jurisdiction over minister's claim against church for compensation not paid where resolution of the claim would require the court to determine whether the minister adequately performed his ecclesiastical duties. Jones v. Crestview S. Baptist Church, 192 P.3d 571 (Colo. App. 2008).

First amendment interests in protecting the sanctity of church decisions with regard to one of its ministers prohibits review by secular court in intentional tort action. Van Osdol v. Vogt, 892 P.2d 402 (Colo. App. 1994), aff'd, 908 P.2d 1122 (Colo. 1996).

Medical treatment of minor not prohibited. An interpretation of § 19-1-114 to allow conventional medical treatment of a minor does not violate the free exercise of religion clauses of the first amendment of the United States Constitution or of this section. People in Interest of D.L.E., 645 P.2d 271 (Colo. 1982).

The right to practice religion freely does not include the right or liberty to expose the community or a child to ill health or death. People in Interest of D.L.E., 645 P.2d 271 (Colo. 1982).

Valid and neutral law of general applicability which prohibits unlicensed legal representation does not impermissibly impinge upon right to free exercise of religion. People v. LaPorte Church of Christ, 830 P.2d 1150 (Colo. App. 1992).

Application of neutral principles analysis to resolve ownership dispute of local church's property did not preclude court from considering documents that intertwined religious concepts with matters otherwise relevant to dispute as long as court deferred to church's authoritative resolution of any doctrinal issue necessarily involved in interpreting or applying provisions of such documents. Bishop and Diocese of Colo. v. Mote, 716 P.2d 85 (Colo. 1986), cert. denied, 479 U.S. 826, 107 S. Ct. 102, 93 L. Ed. 2d 52 (1986).

The first amendment's establishment clause does not prohibit liability of a church counselor and the counselor's church based on conduct occurring during counseling sessions. DeBose v. Bear Valley Church of Christ, 890 P.2d 214 (Colo. App. 1994), rev'd on other grounds, 928 P.2d 1315 (Colo. 1996).

Although civil courts of this country have accepted jurisdiction to resolve, by applying equitable principles, burial and reinterment disputes which have traditionally been resolved by ecclesiastical courts, their authority is limited by the establishment clause of the first amendment. Wolf v. Rose Hill Cemetery Ass'n, 832 P.2d 1007 (Colo. App. 1991).

Consistent with the first and fourteenth amendments, civil courts have properly resolved church property disputes by applying "neutral principles of law", independent of ecclesiastical doctrine, while respecting the free exercise rights of members of a religious association. Accordingly, where trial court's holdings were erroneously based on the resolution of conflicting theological principles inconsistent with the establishment clause, the judgment entered could not stand. Wolf v. Rose Hill Cemetery Ass'n, 832 P.2d 1007 (Colo. App. 1991).

Upon determining trust was not imposed on disputed church property for benefit of national or state church organizations, court must inquire further regarding decision-making procedures concerning use of church property by local church as long as such inquiry does not require resolutions of disputed issues of religious doctrine. Bishop and Diocese of Colo. v. Mote, 716 P.2d 85 (Colo. 1986), cert. denied, 479 U.S. 826, 107 S. Ct. 102, 93 L. Ed. 2d 52 (1986).

First amendment to U.S.

Constitution does not grant religious organizations absolute immunity from tort liability. Liability can attach for breach of fiduciary duty, negligent hiring, and supervision. Application of a secular standard to secular conduct that is tortious is not prohibited by the Constitution. If facts do not require interpreting or weighing church doctrine and neutral principles of law can be applied, first amendment is not a defense. Moses v. Diocese of Colo., 863 P.2d 310 (Colo. 1993), cert. denied, 511 U.S. 1137, 114 S. Ct. 2153, 128 L. Ed. 2d 880 (1994).

For considerations when court is called upon to balance religious beliefs and the best interests of the child in custody disputes, see In re Short, 698 P.2d 1310 (Colo. 1985).

Order of district court expressly allowing noncustodial grandparent to take children to church, contrary to wishes of custodial parent, is unconstitutional. Absent evidence of risk to child's physical or mental health, right of custodial parent to determine child's religious training may not be infringed, even if parent chooses to provide no religious instruction at all. In re Oswald, 847 P.2d 251 (Colo. App. 1993).

Permanent orders restriction on religious upbringing of minor child in dissolution of marriage unconstitutional. Permanent orders in a dissolution of marriage action that adopted the special advocate's recommendation to place a restriction on the mother's right to influence her child's upbringing, absent a finding of substantial harm to the child, violate the mother's constitutional right to free exercise of religion. In re McSoud, 131 P.3d 1208 (Colo. App. 2006).

Absent a clear showing of substantial harm to the child, a parent who does not have decision-making authority with respect to religion nevertheless retains a constitutional right to educate the child in that parent's religion. However, harm to the child will be found if one parent disparages the other parent's religion, thus justifying a limitation on that parent's right to religious education of the child. In re McSoud, 131 P.3d 1208 (Colo. App. 2006).

In the absence of a demonstrated harm to the child, the best interests of the child standard is insufficient to serve as a compelling state interest that overrules the parents' fundamental rights to freedom of religion. In re McSoud, 131 P.3d 1208 (Colo. App. 2006).

"Joint selection of schools" provisions in separation agreement is unenforceable because it forces the court to determine the abstract propriety of sending child to a school of a particular religion, a determination which would be repugnant to the free exercise clauses of both the United States and Colorado constitutions. Griffin v. Griffin, 699 P.2d 407 (Colo. 1985).

Applied in Smith v. People, 51 Colo. 270, 117 P. 612 (1911); City of Delta v. Charlesworth, 64 Colo. 216, 170 P. 965 (1918); People in Interest of D.L.E., 200 Colo. 244, 614 P.2d 873 (1980).

Section 5. Freedom of elections. All elections shall be free and open; and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 29.
Cross references: For suffrage and elections, see article VII of this

constitution.

ANNOTATION

This section means that every qualified elector shall have an equal right to cast a ballot for the person of his own selection, and that no act shall be done by any power, civil or military, to prevent it. Such is the mandate and spirit of the constitution, and it thereby vests in the elector a constitutional right of which he cannot lawfully be deprived by any governmental power. Littlejohn v. People, 52 Colo. 217, 121 P. 159 (1912).

Right to vote deemed fundamental right. The right to vote is at the core of our constitutional system and is a fundamental right of every citizen. Jarmel v. Putnam, 179 Colo. 215, 499 P.2d 603 (1972).

Right to vote is a fundamental right of the first order guaranteed by the federal constitution and this section of the Colorado Constitution. Meyer v. Lamm, 846 P.2d 862 (Colo. 1993).

And there must be no discrimination between citizens with respect to that right, even as to a recent arrival, except for a compelling state interest which cannot be reasonably protected in any other way. Jarmel v. Putnam, 179 Colo. 215, 499 P.2d 603 (1972).

A state's regulatory interests will generally justify reasonable, nondiscriminatory restrictions on the rights of voters. Bruce v. City of Colo. Springs, 971 P.2d 679 (Colo. App. 1998).

General assembly may reasonably restrict, but cannot deny, right to vote. While it cannot be questioned that the general assembly has the power to prescribe reasonable restrictions under which the right to vote may be exercised, nevertheless, such restrictions must be in the nature of regulations and cannot extend to the denial of the franchise itself. Littlejohn v. People, 52 Colo. 217, 121 P. 159 (1912).

Nor unnecessarily impede free exercise. The general assembly has no constitutional power to restrain or abridge the right, or unnecessarily to impede its free exercise. Under the pretense of regulation the right of suffrage must be left untrammeled by any provisions or even rules of evidence that may injuriously or necessarily impair it, and so the citizen cannot forfeit the right except by his own neglect or by such peculiar accidents as are not attributable to the law itself. Littlejohn v. People, 52 Colo. 217, 121 P. 159 (1912).

Test for inclusion of legislation within inhibition of section. The test is whether the effect of the legislation is to deny the franchise, or render its exercise so difficult and inconvenient as to amount to a denial. If the elector is deterred from the exercise of his free will by means of any influence whatever, although there be neither violence nor physical coercion, it is not "the free exercise of the right of suffrage", and comes clearly within the inhibition of this section. Littlejohn v. People, 52 Colo. 217, 121 P. 159 (1912).

The Mail Ballot Election Act is constitutional because there is a compelling state interest in encouraging increased voter participation and mail ballot elections serve to meet that interest. Bruce v. City of Colo. Springs, 971 P.2d 679 (Colo. App. 1998).

In determining the constitutionality of ballot access restrictions, the court will balance the injury to the individual as a result of such restrictions against the precise interests of the state in imposing such restrictions. Colo. Libertarian Party v. Sec'y of State, 817 P.2d 998 (Colo. 1991), cert. denied, 503 U.S. 985, 112 S. Ct. 1670, 118 L. Ed. 2d 390 (1992);

Brown v. Davidson, 192 P.3d 415 (Colo. App. 2006).

If a restriction of rights is severe, it may be upheld only if it is narrowly tailored to advance a compelling state interest. If a restriction is reasonable and nondiscriminatory, however, the state's important regulatory interests are generally sufficient to justify the restriction. Brown v. Davidson, 192 P.3d 415 (Colo. App. 2006).

Threats, force, etc. not essential for intimidation of voter. Neither threats, force nor actual bodily hurt or restraint is essential to make out a case of intimidation of the voter. The constitutional provision and the spirit of our institutions demand that the mind of the electors shall be free to exercise the elective franchise as the individual voters may see fit. Neelley v. Farr, 61 Colo. 485, 158 P. 458 (1916).

Intimidation by private or public interests. There can be no free and open election in precincts where the legitimate activity of a political organization is interfered with and its members excluded either by private interests or public agencies, or by the cooperation of both. Neelley v. Farr, 61 Colo. 485, 158 P. 458 (1916).

Municipal charter amendment held prohibited by section. Where a purported amendment of a municipal charter makes no provision for the exercise of the right of a qualified elector to cast a ballot for a person of his own selection guaranteed by the state constitution and in fact strips the electorate of it, its submission constitutes an attempt to exercise a power not conferred by art. XX, Colo. Const., but expressly prohibited by § 1 of art. VII, Colo. Const., and this section. People ex rel. Walker v. Stapleton, 79 Colo. 629, 247 P. 1062 (1926).

But not restraint on county clerk from certifying fraudulent registration lists. The granting of an injunction to restrain a county clerk from certifying fraudulent and fictitious registration lists to the election judges does not violate this section. Aichele v. People ex rel. Lowry, 40 Colo. 482, 90 P. 1122 (1907).

The one-year unaffiliation requirement of § 1-4-801 does not unconstitutionally restrict access to the ballot because it is necessary to preserve the integrity of Colorado's balloting process and it does not unnecessarily or unfairly impinge on a prospective candidate's right of access to the ballot. Colo. Libertarian Party v. Sec'y of State, 817 P.2d 998 (Colo. 1991), cert. denied, 503 U.S. 985, 112 S. Ct. 1670, 118 L. Ed. 2d 390 (1992).

For discussion of standard of review to be applied to restrictions on the freedom of association, see MacGuire v. Houston, 717 P.2d 948 (Colo. 1986).

For court's refusal to construe this section more broadly than similar provisions in U.S. Constitution, see MacGuire v. Houston, 717 P.2d 948 (Colo. 1986).

Applied in People ex rel. Miller v. Tool, 35 Colo. 225, 86 P. 224, (1905); Spelts v. Klausing, 649 P.2d 303 (Colo. 1982); Lujan v. Colo. State Bd. of Educ., 649 P.2d 1005 (Colo. 1982).

Section 6. Equality of justice. Courts of justice shall be open to every person, and a speedy remedy afforded for every injury to person, property or character; and right and justice should be administered without sale, denial or delay.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 29.
Cross references: For rights of a defendant in criminal prosecutions, see § 16

of this article; for limitation for commencing criminal proceedings, see § 16-5-401; for deferred prosecution, see § 18-1.3-101.

ANNOTATION

Law reviews. For article, "Martial Law in Colorado", see 5 Den. B. Ass'n Rec. 4 (Feb. 1928). For article, "Pre-Trial in Colorado in Words and at Work", see 27 Dicta 157 (1950). For article, "The System for Administration of Justice in Colorado", see 28 Rocky Mt. L. Rev. 299 (1956). For note, "Colorado's Maximum Recovery for Wrongful Death v. the Constitution", see 38 Dicta 237 (1961). For article, "One Year Review of Civil Procedure and Appeals", see 40 Den. L. Ctr. J. 66 (1963). For article, "One Year Review of Torts", see 40 Den. L. Ctr. J. 160 (1963). For article, "The Problem of Delay in the Colorado Court of Appeals", see 58 Den. L.J. 1 (1980). For article, "The Federal Due Process and Equal Protection Rights of Non-Indian Civil Litigants in Tribal Courts After Santa Clara Pueblo v. Martinez", see 62 Den. U. L. Rev. 761 (1985). For article, "Constitutional Challenges to Tort Reform: Equal Protection and State Constitutions", see 64 Den. U. L. Rev. 719 (1988). For articles, "Civil Rights" and "Constitutional Law", which discuss Tenth Circuit decisions dealing with equal protection, see 67 Den. U. L. Rev. 639 and 653 (1990). For comment, "Dazed and Confused in Colorado: The Relationship Among Malicious Prosecution, Abuse of Process, and the Noerr-Pennington Doctrine", see 67 U. Colo. L. Rev. 675 (1996). For article, "Motions in Forma Pauperis: The First Step in Access to Justice", see 28 Colo. Law. 29 (April 1999).

The constitutional right to access to the courts does not create a substantive right, rather it provides a procedural right to a judicial remedy whenever the general assembly creates a substantive right under Colorado law. Simon v. State Compensation Ins. Auth., 903 P.2d 1139 (Colo. App. 1994), rev'd on other grounds, 946 P.2d 1298 (Colo. 1997); Sealock v. Colo., 218 F.3d 1205 (10th Cir. 2000); Alexander v. Indus. Claim Appeals Office, 42 P.3d 46 (Colo. App. 2001).

Application of section. This section applies only to injuries which result from a breach of a legal duty or an invasion or infringement upon a legal right. Goldberg v. Musim, 162 Colo. 461, 427 P.2d 698 (1967).

There can be no legal claim for damages to the person or property of anyone except as it follows from the breach of a legal duty. Vogts v. Guerrette, 142 Colo. 527, 351 P.2d 851 (1960); Goldberg v. Musim, 162 Colo. 461, 427 P.2d 698 (1967).

For any act of another which constitutes an injurious invasion of any right of the individual which is recognized by or founded upon any applicable principle of law, statutory or common, the courts shall be open to him and he shall have remedy, by due course of law. Goldberg v. Musim, 162 Colo. 461, 427 P.2d 698 (1967).

The administration of justice cannot be equated with affluence. Williams v. District Court, 160 Colo. 348, 417 P.2d 496 (1966); Almarez v. Carpenter, 173 Colo. 284, 477 P.2d 792 (1970).

The role of advocacy demands that counsel devote his sole attention and energies to asserting his client's cause, leaving to his adversary the corresponding obligation, inherent in the Anglo-American adversary system of jurisprudence, of asserting the cause of the opposition. "Screening" procedures, whereby counsel is appointed to determine whether reversible error occurred at trial, have been subjected to scrutiny by the United States supreme court, and have been found to be incompatible

with the constitutional requirement that the criminal defendant asserting his appellate rights be accorded the equal protection of the law despite his financial condition. Cruz v. Patterson, 253 F. Supp. 805 (D. Colo.), aff'd, 363 F.2d 879 (10th Cir.), cert. denied, 385 U.S. 975, 87 S. Ct. 501, 17 L. Ed. 2d 438 (1966).

But absolute equality between parties cannot be obtained. Neither the courts nor the legislatures can devise rules to bring the parties to an absolute status of equality before the trial starts. Almarez v. Carpenter, 173 Colo. 284, 477 P.2d 792 (1970).

Discriminatory composition of jury denies equal protection. The systematic exclusion from a jury panel of persons with Spanish sounding names, despite the appearance of qualified persons of such descent on the tax rolls of a county, amounts to denial of equal protection of the law and a conviction in such circumstances cannot stand. Montoya v. People, 141 Colo. 9, 345 P.2d 1062 (1959).

Question of whether a party has established a prima facie case of racial discrimination during the jury selection process is a matter of law to which an appellate court should apply a de novo standard of review. Valdez v. People, 966 P.2d 587 (Colo. 1998).

But not discretionary imposition of sentence. The imposition of a criminal sentence in each individual case requires the exercise of judicial judgment, and it includes consideration of mitigating and aggravating circumstances and includes the power to impose an indeterminate sentence, the right to suspend sentence, or the discretion to grant probation in appropriate cases. The exercise of this discretionary power does not deny an accused equal protection of the law. People v. Mieyr, 176 Colo. 90, 489 P.2d 327 (1971); People v. Jenkins, 180 Colo. 35, 501 P.2d 742 (1972).

Challenges for cause in civil actions. Parties to civil and criminal lawsuits are not similarly situated and therefore civil defendant could not maintain an equal protection challenge to jury selection because Colorado criminal procedure statutes permit a challenge for cause based on the fact that a prospective juror was a lawyer while civil procedure statutes do not. Faucett v. Hamill, 815 P.2d 989 (Colo. App. 1991).

Where the Colorado mandatory arbitration act provides for de novo review of the decision by the district court, the right of access to courts is not denied. Firelock Inc. v. District Court, 776 P.2d 1090 (Colo. 1989).

Mandatory, binding arbitration under the "no fault" motor vehicle insurance law does not violate right of access to the judicial process. State Farm v. Broadnax, 827 P.2d 531 (Colo. 1992) (decided under law in effect prior to 1991 amendment to § 10-4-708 (1.5)).

Where the prevailing party is required to improve his position by ten percent to cover the cost of arbitration, the court held that the requirement does not place an unreasonable burden on the right of access to the courts. Firelock Inc. v. District Court, 776 P.2d 1090 (Colo. 1989).

Where clause of an uninsured motorist policy permits either party to demand trial on merits after the completion of arbitration if amount awarded exceeds specified amount, clause violates public policy favoring fair, adequate, and timely resolution of uninsured motorist claims. Huizar v. Allstate Ins. Co., 952 P.2d 342 (Colo. 1998).

Discretion of attorney general as to initiating court action. So long as the attorney general does not unreasonably abuse his discretion, his right to decide between accepting an assurance of discontinuance or

initiating a court action will not be overturned on equal protection grounds. People ex rel. Dunbar v. Gym of Am., Inc., 177 Colo. 97, 493 P.2d 660 (1972).

The fact that an accused who possessed and also used a narcotic could be prosecuted for either offense or both does not alone affect the constitutional validity of the statute since a single transaction may violate more than one statutory provision, and perpetrate separate offenses. The decision to proceed under either is traditionally the state's and the fact that a prosecutor has the discretion to prosecute under one or both of two distinct offenses, which arise from a single transaction, does not constitute a denial of equal protection of the laws. People v. McKenzie, 169 Colo. 521, 458 P.2d 232 (1969).

Limitation on power to exclude resident plaintiffs from court system. A provision such as this section limits very stringently the power to exclude resident plaintiffs from our court system where jurisdiction has otherwise been properly established. McDonnell-Douglas Corp. v. Lohn, 192 Colo. 200, 557 P.2d 373 (1976).

Except in the most unusual circumstances, the choice of a Colorado forum by a resident plaintiff will not be disturbed and the factors of inconvenience and expense considered by the trial court do not constitute "unusual circumstances" sufficient to deprive a resident plaintiff of his chosen forum. Casey v. Truss, 720 P.2d 985 (Colo. App. 1986).

Insurance company is entitled to same fair trial as individual. Nat'l Sur. Co. v. Morlan, 91 Colo. 164, 13 P.2d 260 (1932).

Incorporated Indian tribe rendered amenable to state courts. By adopting incorporation under federal law and consenting to sue and be sued in courts of competent jurisdiction within the United States, an Indian tribe rendered itself amenable to the courts of the state of Colorado in any action of which the state courts may take cognizance. It has recourse to the state courts for the protection of its own rights and is answerable in said courts to those who assert claims against it. Martinez v. S. Ute Tribe, 150 Colo. 504, 374 P.2d 691 (1962).

Change of venue. While the power of a Colorado court to dismiss an action on the basis of forum non conveniens is severely limited, a Colorado court is not powerless to grant a motion to change venue to another judicial district within the state merely because the action has been commenced by a Colorado resident in a Colorado court. Rather, motions to change venue are to be resolved within the framework of C.R.C.P. 98. State Dept. of Hwys. v. District Court, 635 P.2d 889 (Colo. 1981).

Wife may sue husband or third person for personal injuries inflicted upon her. In this state a wife is a person independent of the husband, and this section guarantees her a remedy for every personal injury without making any exception as to the person inflicting the injury, who may be her husband or a third person. Rains v. Rains, 97 Colo. 19, 46 P.2d 740 (1935).

There was no violation of the right guaranteed by this section due to the murder of a woman by her husband in a county justice center. Duong v. Arapahoe County Comm'rs, 837 P.2d 226 (Colo. App. 1992).

Mental patient who voluntarily works in state hospital and is not paid for services is not unconstitutionally denied equal protection of the laws. In re Estate of Buzzelle v. Colo. State Hosp., 176 Colo. 554, 491 P.2d 1369 (1971).

Person maliciously prosecuted as insane cannot be deprived of judicial remedy. A person maliciously wronged by others who conspire to prosecute him as an insane

person without probable cause cannot be deprived of a judicial remedy for the wrong. Lowen v. Hilton, 142 Colo. 200, 351 P.2d 881 (1960).

The word "injury" implies the doing of some act which constitutes an invasion of a legal right. Goldberg v. Musim, 162 Colo. 461, 427 P.2d 698 (1967).

Benefit of claim cannot be denied because of absence of remedy. When a duty has been breached producing a legal claim for damages, such claimant cannot be denied the benefit of his claim for the absence of a remedy. Vogts v. Guerrette, 142 Colo. 527, 351 P.2d 851 (1960); Goldberg v. Musim, 162 Colo. 461, 427 P.2d 698 (1967).

Section does not undertake to preserve existing duties against legislative change before a breach of such duty occurs. Vogts v. Guerrette, 142 Colo. 527, 351 P.2d 851 (1960).

Nor existing rights. This section does not prevent the general assembly from changing a law which creates a right. O'Quinn v. Walt Disney Prods., Inc., 177 Colo. 190, 493 P.2d 344 (1972); Norsby v. Jensen, 916 P.2d 555 (Colo. App. 1995); Sealock v. Colo., 218 F.3d 1205 (10th Cir. 2000).

This section contains no provision preserving the common-law right of action for injury to person or property. Vogts v. Guerrette, 142 Colo. 527, 351 P.2d 851 (1960).

Nor existing remedies. This section does not preserve preexisting common-law remedies from legislative change. Shoemaker v. Mountain States Tel. & Tel. Co., 38 Colo. App. 321, 559 P.2d 721 (1976); Norsby v. Jensen, 916 P.2d 555 (Colo. App. 1995); Sealock v. Colo., 218 F.3d 1205 (10th Cir. 2000).

Rather, section provides that if right accrues, courts will be available to effectuate it. This section simply provides that if a right does accrue under the law, the courts will be available to effectuate such right. O'Quinn v. Walt Disney Prods., Inc., 177 Colo. 190, 493 P.2d 344 (1972); Williams v. White Mountain Const. Co., 749 P.2d 423 (Colo. 1988); Norsby v. Jensen, 916 P.2d 555 (Colo. App. 1995).

Section concerns only rights existing under substantive law. This section and sections 3 and 25 of this article, relating to inalienable rights and the guarantee of judicial process for the protection thereof, concern only rights existing under the substantive law. Faber v. State, 143 Colo. 240, 353 P.2d 609 (1960), criticized, Evans v. Bd. of County Comm'rs, 174 Colo. 97, 482 P.2d 968 (1971).

Right to access to courts created by this section is a procedural right to a judicial remedy. Access is guaranteed when a person has a substantive right under Colorado law. This section does not create a substantive right to access. In re Hartley, 886 P.2d 665 (Colo. 1994).

This and similar constitutional provisions are mandates to judiciary rather than to legislatures. Goldberg v. Musim, 162 Colo. 461, 427 P.2d 698 (1967).

Free access to courts subject to efficient administration of justice. In a proper case the right of free access to the courts must yield to the rights of others and the efficient administration of justice. People v. Spencer, 185 Colo. 377, 524 P.2d 1084 (1974).

But does not include right to impede normal functioning of judicial processes, nor does it include the right to abuse judicial processes in order to harass others. People v. Spencer, 185 Colo. 377, 524 P.2d 1084 (1974); Bd. of County Comm'rs v. Barday, 197 Colo. 519, 594 P.2d 1057 (1979).

Right of access to courts not to be abused. Every person has an undisputed right of access to the Colorado courts of justice but this right may not be abused. People v. Dunlap,

623 P.2d 408 (Colo. 1981); Bd. of County Comm'rs v. Howard, 640 P.2d 1128 (Colo.), appeal dismissed, 456 U.S. 968, 102 S. Ct. 2228, 72 L. Ed. 2d 841 (1982); Protect Our Mountain v. District Court, 677 P.2d 1361 (Colo. 1984).

Denial of access does not violate the right of access to courts under this section if the party's claims are not based on a substantive right or cause of action under Colorado law. Luebke v. Luebke, 143 P.3d 1088 (Colo. App. 2006).

Right of access to courts not abridged by limitation on right of recovery. Where one statute creates liability on part of state for negligence of highway worker who dislodged boulder which rolled down a hill and into a tour bus and injured and killed passengers and another statute limits recovery to a certain dollar amount, claimant has access to courts and this section is not violated. State v. DeFoor, 824 P.2d 783 (Colo. 1992).

Instituting 162 separate legal proceedings, most of which were dismissed for lack of legal merit, was abuse of the judicial system and the court was warranted in enjoining respondents from continuing to appear pro se in any state court. Bd. of County Comm'rs of Morgan County v. Winslow, 862 P.2d 921 (Colo. 1993).

Indigent person may not be enjoined from proceeding pro se because doing so would have the effect of depriving him of the right of access to the courts of this state. Accordingly, person who continually abused the judicial process was permitted to proceed pro se in pending or future litigation, but only if he first obtains the permission of the court in which he intends to file the action. Karr v. Williams, 50 P.3d 910 (Colo. 2002).

This section does not purport to control the scope or substance of remedies afforded to Colorado litigants. State v. DeFoor, 824 P.2d 783 (Colo. 1992).

This constitutional provision does not prohibit the application of the doctrine of forum non conveniens when none of the parties involved are residents of the state and the cause of action arose beyond the borders of the state. PMI Mortg. Ins. v. Deseret Fed. Sav. & L., 757 P.2d 1156 (Colo. App. 1988).

Section 13-16-103 aids in administering justice "without sale". Section 13-16-103, authorizing courts to waive payment of costs by poor persons, aids in administering justice "without sale". Almarez v. Carpenter, 173 Colo. 284, 477 P.2d 792 (1970).

It is duty of prosecutor and trial judge to secure and protect the defendant's right to a speedy trial. People v. Chavez, 779 P.2d 375 (Colo. 1989).

Right to speedy trial attaches with filing of a formal charge. People v. Chavez, 779 P.2d 375 (Colo. 1989).

Burden is upon defendant to establish denial of speedy trial in violation of the statute or rule or that denial of his constitutional right to a speedy trial requires dismissal. Saiz v. District Court, 189 Colo. 555, 542 P.2d 1293 (1975); People v. Chavez, 779 P.2d 375 (Colo. 1989).

Ad hoc balancing test used to determine whether right to speedy trial has been denied. People v. Spencer, 512 P.2d 260 (Colo. 1973); People v. Small, 631 P.2d 148 (Colo. 1981); People v. Chavez, 779 P.2d 375 (Colo. 1989).

The test includes four factors: The length of the delay, the reason for the delay, the defendant's assertion or demand for a speedy trial, and the prejudice to the defendant. People v. Spencer, 512 P.2d 260 (Colo. 1973); People v. Small, 631 P.2d 148 (Colo. 1981); People v. Chavez, 779 P.2d 375 (Colo. 1989).

When defendant not denied right to speedy trial. Where a

defendant is informed against immediately following his arrest, the amount of his bail is fixed, and he is tried, convicted, and sentenced in the same term of the district court, the contention that he was denied his right to a speedy trial is without merit. Day v. People, 152 Colo. 152, 381 P.2d 10, cert. denied, 375 U.S. 864, 84 S. Ct. 134, 11 L. Ed. 2d 90 (1963).

Where the trial court found that defendant insisted on new counsel and the change of counsel caused the delay, the continuance was properly charged to defendant, the speedy trial deadline was properly extended, and defendant's speedy trial rights were not violated. People v. Yascavage, 80 P.3d 899 (Colo. App. 2003), aff'd on other grounds, 101 P.3d 1090 (Colo. 2004).

Effect of delay on court. This section does not divest the trial court of jurisdiction to render a decision or affect the validity of the judgment rendered solely because of a lengthy delay between trial and judgment. Uptime Corp. v. Colo. Research Corp., 161 Colo. 87, 420 P.2d 232 (1966).

Denying an indigent plaintiff access to obtain legislatively provided appellate review could undermine the right of access to judicial processes established in furtherance of this section. Bell v. Simpson, 918 P.2d 1123 (Colo. 1996).

There is no constitutional right under the Colorado constitution to a jury trial in civil actions. Faucett v. Hamill, 815 P.2d 989 (Colo. App. 1991).

The statutory employer provisions of the Workers' Compensation Act do not violate the constitutional right of access to the courts, where at the time of plaintiff's injury, the statutory provision was in existence, and plaintiff accrued no rights to sue. Curtiss v. GSX Corp. of Colo., 774 P.2d 873 (Colo. 1989).

Judicial review need not be a de novo review, and an appellate court may give deference to the findings of an administrative agency and still be in compliance with the constitutional open access guarantees. Sears v. Romer, 928 P.2d 745 (Colo. App. 1996).

Limiting review of workers' compensation case denied by industrial claim appeals office to certiorari is unconstitutional denial of access to the courts. Allison v. Indus. Claim Appeals Office, 884 P.2d 1113 (Colo. 1994).

Outfitters and Guides Act satisfies the access to the courts requirements by entitling parties to judicial review of the merits of an administrative agency's decision that affects their substantive statutory rights. Sears v. Romer, 928 P.2d 745 (Colo. App. 1996).

As commissioner's order was subject to review, applicants were not denied access to the courts guaranteed by the state constitution. D & B Enters., Inc. v. Comm'r of Ins., 919 P.2d 935 (Colo. App. 1996).

Standard for consideration of motion to dismiss claim for abuse of process based on first amendment right to petition. Trial court should consider whether the petitioning activities on the part of the party being sued for abuse of process were not immunized from liability by the first amendment because: (1) Those activities are devoid of factual support or, if supportable in fact, have no cognizable basis in law; (2) the primary purpose of the petitioning activities is to harass the other party or to effectuate some other improper objective; and (3) those petitioning activities have the capacity to have an adverse effect on a legal interest of the other party. Protect Our Mountain v. District Court, 677 P.2d 1361 (Colo. 1984); Scott v. Hern, 216 F.3d 897 (10th Cir. 2000).

Standard extended to case under C.R.C.P. 106 (a)(2) in Concerned Members v. District Court, 713 P.2d

923 (Colo. 1986); Ware v. McCutchen, 784 P.2d 846 (Colo. App. 1989).

Standard for consideration of motion to dismiss claim of libel based on first amendment right to petition. C.R.C.P. 106 complaint, along with any other related material released to the media, must be shown to have been a defamatory publication made with actual malice, i.e., knowledge that the allegations in the complaint were false or were made with reckless disregard of whether they were false. Concerned Members v. District Court, 713 P.2d 923 (Colo. 1986).

And abuse may be enjoined. Where necessary to stop abuse of the judicial process, the supreme court has the power to enjoin a person from proceeding pro se in any litigation in state courts and administrative agencies. Bd. of County Comm'rs v. Howard, 640 P.2d 1128 (Colo.), appeal dismissed, 456 U.S. 968, 102 S. Ct. 2228, 72 L. Ed. 2d 841 (1982).

Lack of equal opportunity to recover attorneys' fees does not deny initial access to the courts. Torres v. Portillo, 638 P.2d 274 (Colo. 1981).

Imperfect classifications and the attorneys' fees cap under § 13-17-203 do not violate the equal protection guarantee or equal access to the courts. Buckley Powder Co. v. Colo., 70 P.3d 547 (Colo. App. 2002).

Exemption from an award of costs for governmental entities in C.R.C.P. 54(d) does not violate a fundamental right of access to the courts for non-governmental entities. County of Broomfield v. Farmers Reservoir, 239 P.3d 1270 (Colo. 2010).

Three-year statute of limitations in § 33-44-111 of the Ski Safety Act based on reasonable grounds and therefore does not violate this section. Schafer v. Aspen Skiing Corp., 742 F.2d 580 (10th Cir. 1984).

Two-year limitation in § 13-80-102 does not deny right of access to courts. Rather, it requires vested right to be pursued in a timely manner. Dove v. Delgado, 808 P.2d 1270 (Colo. 1991).

Constitutionality of damage limitations. The provisions of § 13-21-102.5 (3) limiting the amount recoverable for noneconomic damages does not violate equal protection or due process under either the state or federal constitutions or access to the courts under this constitutional provision. Scharrel v. Wal-Mart Stores, Inc., 949 P.2d 89 (Colo. App. 1997).

Dram shop liability statute does not limit access to courts in violation of this section. Sigman v. Seafood Ltd. P'ship I, 817 P.2d 527 (Colo. 1991); Estate of Stevenson v. Hollywood Bar, 832 P.2d 718 (Colo. 1992).

Speeding classification reasonably related to legitimate governmental purpose. Decision to treat higher rates of speeding as more serious making them criminal acts is within legislature's discretion and does not create a suspect class or infringe on a fundamental right. Drawing a distinction based on speed is rationally related to legislative purpose of safety and fuel conservation. People v. Lewis, 745 P.2d 668 (Colo. 1987).

Even though differences between first and second degree assault vary only in degree, the classification does not violate the equal protection clause. People v. Johnson, 923 P.2d 342 (Colo. App. 1996).

Consenting adults, solely by virtue of their adulthood and consent, do not have a protected privacy or associational right to engage in any type of sexual behavior of their choice under any circumstances. Ferguson v. People, 824 P.2d 803 (Colo. 1992).

Section 18-3-405.5 making sexual contact between patient and psychotherapist illegal even if patient consents does not violate this section. Ferguson v. People, 824 P.2d 803

(Colo. 1992).

Defendant's argument that he was denied access to the courts because county jail authorities refused to provide postage for his legal correspondence was unfounded where defendant was unable to show he was precluded from presenting any particular argument and where sheriff had agreed to supply postage whenever defendant was unable to purchase his own, defendant had money in his account, and defendant had an outside funding source. Moody v. Corsentino, 843 P.2d 1355 (Colo. 1993).

When an inmate has sufficient funds in his account to pay for filing fees in a civil action and the court denies a filing fee waiver pursuant to § 13-17.5-103, it is not an unconstitutional denial of the inmate's right of access to the courts. Collins v. Jaquez, 15 P.3d 299 (Colo. App. 2000).

Although there may have been some inadequacies in the jail library facilities, the court protected defendant's right to meaningful court access by allowing defendant use of the courthouse library, by providing copies of procedural rules, and by granting him extensions of time to research and prepare arguments. Moody v. Corsentino, 843 P.2d 1355 (Colo. 1993).

Restriction on photocopying privileges of inmate who is otherwise able to write by hand does not violate the right of access to courts. Negron v. Golder, 111 P.3d 538 (Colo. App. 2004).

Father who was restricted from filing a prospective motion to modify parenting time pending completion of sex offender treatment was not denied access to the courts because compliance with the treatment was within father's control. People ex rel. A.R.D., 43 P.3d 632 (Colo. App. 2001).

Evidence held insufficient to show denial of equal protection. Harrison v. City and County of Denver, 175 Colo. 249, 487 P.2d 373 (1971).

Applied in Pacific Mut. Life Ins. Co. v. Van Fleet, 47 Colo. 401, 107 P. 1087 (1910); Post Printing & Publ'g Co. v. Shafroth, 53 Colo. 129, 124 P. 176 (1912); Winchester v. Walker, 59 Colo. 17, 147 P. 343 (1915); Williams v. Hankins, 79 Colo. 237, 245 P. 483 (1926); Yampa Valley Coal Co. v. Velotta, 83 Colo. 235, 263 P. 717 (1928); Duncan v. People ex rel. Moser, 89 Colo. 149, 299 P. 1060 (1931); Froid v. Knowles, 95 Colo. 223, 36 P.2d 156 (1934); Gray v. Blight, 112 F.2d 696 (10th Cir. 1940); Medina v. People, 154 Colo. 4, 387 P.2d 733 (1963); Ferguson v. People, 160 Colo. 389, 417 P.2d 768 (1966); Finn v. Indus. Comm'n, 165 Colo. 106, 437 P.2d 542 (1968); Aylor v. Aylor, 173 Colo. 294, 478 P.2d 302 (1970); Smaldone v. People, 173 Colo. 385, 479 P.2d 973 (1971); Wigington v. State Home & Training Sch., 175 Colo. 159, 486 P.2d 417 (1971); Taylor v. People, 176 Colo. 316, 490 P.2d 292 (1971); People v. Moreno, 176 Colo. 488, 491 P.2d 575 (1971); Bd. of County Comm'rs v. Thompson, 177 Colo. 277, 493 P.2d 1358 (1972); In re People in Interest of L.B., 179 Colo. 11, 498 P.2d 1157 (1972); Lancaster v. C.F. & I. Steel Corp., 190 Colo. 463, 548 P.2d 914 (1976); Hackbart v. Cincinnati Bengals, Inc., 601 F.2d 516 (10th Cir. 1979); People v. Childs, 199 Colo. 436, 610 P.2d 101 (1980); People in Interest of Baby Girl D., 44 Colo. App. 192, 610 P.2d 1086 (1980); Kandt v. Evans, 645 P.2d 1300 (Colo. 1982); Hurricane v. Kanover, Ltd., 651 P.2d 1281 (Colo. 1982); Yarbro v. Hilton Hotels Corp., 655 P.2d 822 (Colo. 1982); Martinez v. Kirbens, 710 P.2d 1138 (Colo. App. 1985).

Section 7. Security of person and property - searches - seizures -

warrants. The people shall be secure in their persons, papers, homes and effects, from unreasonable searches and seizures; and no warrant to search any place or seize any person or things shall issue without describing the place to be searched, or the person or thing to be seized, as near as may be, nor without probable cause, supported by oath or affirmation reduced to writing.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 29.

Cross references: For a warrant or summons upon a felony complaint, see Crim. P. 4; for a warrant or summons upon a misdemeanor or petty offense complaint, see Crim. P. 4.1; for issuance of arrest warrant without information or complaint, see § 16-3-108; for search warrants and seizures, see part 3 of article 3 of title 16; for arrest warrant issued upon an indictment, information, or complaint, see § 16-5-205 (2) and (3); for suppression of evidence unlawfully seized, see Crim. P. 41(e).

ANNOTATION

I. GENERAL CONSIDERATION.

Law reviews. For article, "By Leave of Court First Had", see 8 Dicta 10 (May 1931). For article, "By Leave of Court First Had", see 8 Dicta 14 (June 1931). For article, "One Year Review of Civil Procedure and Appeals", see 37 Dicta 21 (1960). For article, "Local Responsibility for Improvement of Search and Seizure Practices", see 34 Rocky Mt. L. Rev. 150 (1962). For note, "One Year Review of Constitutional Law", see 41 Den. L. Ctr. J. 77 (1964). For note, "Search and Seizure Since Mapp", see 36 U. Colo. L. Rev. 391 (1964). For comment, "Reporter's Privilege: Pankratz v. District Court", see 58 Den. L.J. 681 (1981). For article, "Good-Faith Exception to the Exclusionary Rule: The Fourth Amendment is Not a Technicality", see 11 Colo. Law. 704 (1982). For article, "Incriminating Evidence: What to do With a Hot Potato", see 11 Colo. Law. 880 (1982). For article, "Attacking the Seizure -- Over-coming Good Faith", see 11 Colo. Law. 2395 (1982). For comment, "Privacy Rights v. Law Enforcement Difficulties: The Clash of Competing Interests in New York v. Belton", see 59 Den. L.J. 793 (1982). For article, "Warrant Requirement -- The Burger Court Approach", see 53 U. Colo. L. Rev. 691 (1982). For note, "The Colorado Statutory Good-Faith Exception to the Exclusionary Rule: A Step Too Far", see 53 U. Colo. L. Rev. 809 (1982). For comment, "Colorado's Approach to Searches and Seizures in Law Offices", see 54 U. Colo. L. Rev. 571 (1983). For article, "Search Warrants, Hearsay and Probable Cause -- The Supreme Court Rewrites the Rules", see 12 Colo. Law 1250 (1983). For casenote, "People v. Sporleder: Privacy Expectations Under the Colorado Constitution", see 55 U. Colo. L. Rev. 593 (1984). For article, "Criminal Procedure", which discusses a Tenth Circuit decision dealing with

searches, see 61 Den. L.J. 281 (1984). For article, "The Demise of the Aguilar-Spinelli Rule: A Case of Faulty Reception", see 61 Den. L. J. 431 (1984). For comment, "The Good Faith Exception: The Seventh Circuit Limits the Exclusionary Rule in the Administrative Contest", see 61 Den. L.J. 597 (1984). For article, "Veracity Challenges in Colorado: A Primer", see 14 Colo. Law. 227 (1985). For article, "Consent Searches: A Brief Review", see 14 Colo. Law. 795 (1985). For article, "United States v. Leon and Its Ramifications", see 56 U. Colo. L. Rev. 247 (1985). For article, "Criminal Procedure", which discusses Tenth Circuit decisions dealing with searches, see 62 Den. U. L. Rev. 159 (1985). For article, "People v. Mitchell: The Good Faith Exception in Colorado", see 62 Den. U. L. Rev. 841 (1985). For article, "Balancing Investigative Powers and Privacy Rights", see 14 Colo. Law. 947 (1985). For article, "Miranda Rights in a Terry Stop: The Implications of People v. Johnson", see 63 Den. U. L. Rev. 109 (1986). For article, "Criminal Procedure", which discusses Tenth Circuit decisions dealing with searches and seizures, see 63 Den. U. L. Rev. 343 (1986). For article, "Pronouncements of the U. S. Supreme Court Relating to the Criminal Law Field: 1985-1986", which discusses cases relating to warrant requirements and protection from searches, see 15 Colo. Law. 1564 and 1566 (1986). For comment, "The Constitutionality of Drunk Driving Roadblocks", see 58 U. Colo. L. Rev. 109 (1986-87). For comment, "The New Federalism Gone Awry: A Comment on People v. Oates", see 58 U. Colo. L. Rev. 125 (1986-87). For article, "Administrative Law", which discusses Tenth Circuit decisions dealing with administrative searches and seizures, see 64 Den. U. L. Rev. 105 (1987). For article, "Constitutional Law", which discusses a Tenth Circuit decision dealing with rights to privacy regarding credit reporting, see 64 Den. U. L. Rev. 216 (1987). For article, "Criminal Procedure", which discusses Tenth Circuit decisions dealing with searches, see 64 Den. U. L. Rev. 261 (1987). For article, "Logical Fallacies and the Supreme Court", see 59 U. Colo. L. Rev. 741 (1988). For article, "Criminal Procedure", which discusses Tenth Circuit decisions dealing with unreasonable searches and seizures, see 65 Den. U. L. Rev. 535 (1988). For article, "Urine Trouble: Unregulated Drug-Use Testing and the Right to Privacy", see 17 Colo. Law. 1309 (1988). For a discussion of Tenth Circuit decisions dealing with criminal procedure and search and seizure, see 66 Den. U. L. Rev. 739 and 813 (1989). For note, "Testing Government Employees for Drug Use: The United States Supreme Court Approves", see 67 Den. U.L. Rev. 91 (1990). For comment, "Fourth Amendment Protection in the School Environment: The Colorado Supreme Court's Application of the Reasonable Suspicion Standard in State v. P.E.A.", 61 U. Colo. L. Rev. 153 (1990). For articles, "Civil Rights", "Constitutional Law", "Criminal Procedure", and "Search and Seizure", which discuss Tenth Circuit decisions dealing with searches and seizures, see 67 Den. U. L. Rev. 639, 653, 701, and 765 (1990). For article, "The Use of Drug-Sniffing Dogs in Criminal Prosecutions", see 19 Colo. Law. 2429 (1990). For article, "Roadside Sobriety Checkpoints in Colorado", see 20 Colo. Law. 897 (1991). For article, "The Exigent Circumstances Exception to the Warrant Requirement", see 20 Colo. Law. 1167 (1991). For article, "The Police Have Become Our Nosy Neighbors: Florida v. Riley and Other Supreme Court Deviations From Katz", see 62 U. Colo. L. Rev. 407 (1991). For article, "The Consent Exception to the Warrant Requirement", see 23 Colo. Law. 2105 (1994). For article, "The Execution of Search Warrants", see 27

Colo. Law. 33 (April 1998). For article, "The Inevitable Discovery Exception to the Exclusionary Rule", see 28 Colo. Law. 61 (June 1999). For article, "House Bill 1114: Eliminating Biased Policing", see 31 Colo. Law. 127 (July 2002). For comment, "Begging to Defer: Lessons in Judicial Federalism from Colorado Search-and-Seizure Jurisprudence", see 76 U. Colo. L. Rev. 865 (2005).

Annotator's note. For further annotations concerning warrantless arrests, see § 16-3-102. For further annotations concerning search and seizure, see part 3 of article 3 of title 16 and Crim. P. 41.

This section is even more restrictive than fourth amendment to the United States Constitution as it provides that probable cause must be supported by oath or affirmation reduced to writing. Hernandez v. People, 153 Colo. 316, 385 P.2d 996 (1963); People v. Baird, 172 Colo. 112, 470 P.2d 20 (1970); People v. Brethauer, 174 Colo. 29, 482 P.2d 369 (1971); People ex rel. Orcutt v. Instantwhip Denver, Inc., 176 Colo. 396, 490 P.2d 940 (1971).

The Colorado proscription against unreasonable searches and seizures protects a greater range of privacy interests than does its federal counterpart. People v. Oates, 698 P.2d 811 (Colo. 1985).

In some instances this section may protect against invasions that the federal constitution would not protect. Derdeyn v. Univ. of Colo., 832 P.2d 1031 (Colo. App. 1991).

With respect to fourth amendment issues, the Colorado and United States Constitutions are co-extensive and Colorado courts will follow federal precedent as well as Colorado precedent. People v. Rodriguez, 945 P.2d 1351 (Colo. 1997); Eddie's Leaf Spring v. PUC, 218 P.3d 326 (Colo. 2009).

Issue may not be raised for first time on appeal. A contention that this section affords broader protection than does its federal counterpart will not be addressed for the first time on appeal. People v. Oynes, 920 P.2d 880 (Colo. App. 1996).

In the absence of a clear statement by the trial court that a suppression ruling is grounded on the Colorado Constitution, as opposed to the United States Constitution, the presumption is that a trial court relied on federal constitutional law in reaching its decision. Where trial court did not so specify, sole issue on appeal was whether the fourth amendment required suppression of evidence. People v. Olivas, 859 P.2d 211 (Colo. 1993).

Two-step inquiry required when an individual challenges as a search a governmental investigative activity that involves an intrusion into that person's privacy: (1) Was the intrusion a search and (2) if so, was it a reasonable search? People v. Santistevan, 715 P.2d 792 (Colo. 1986); People v. Wieser, 796 P.2d 982 (Colo. 1990).

This section protects individuals in the security of their homes. People v. Henry, 173 Colo. 523, 482 P.2d 357 (1971).

The fourth amendment protects individuals from unreasonable governmental intrusion provided that they have a reasonable expectation of privacy. Casados v. City and County of Denver, 832 P.2d 1048 (Colo. App. 1992), rev'd on other grounds, 862 U.S. 908, cert. denied, 511 P.2d 1005 (Colo. 1993), 114 S. Ct. 1372, 128 L. Ed. 2d 48 (1994).

The touchstone of fourth amendment analysis is whether a person has a "constitutionally protected reasonable expectation of privacy" in the area or item searched or seized. That determination requires the court to ascertain whether an individual has exhibited a subjective expectation of privacy in the particular place or object

in question and whether that subjective expectation is one society recognizes as reasonable. The existence of a legitimate expectation of privacy must be determined after examining all the facts and circumstances in each particular case. Hoffman v. People, 780 P.2d 471 (Colo. 1989); People v. Wimer, 799 P.2d 436 (Colo. App. 1990), cert. denied, 809 P.2d 998 (Colo. 1991).

Protection of reasonable expectation of privacy. The constitutional prohibitions against unreasonable searches and seizures protect those who have a reasonable expectation of privacy. People v. Gallegos, 179 Colo. 211, 499 P.2d 315 (1972); People v. Harfmann, 38 Colo. App. 19, 555 P.2d 187 (1976); People v. Lee, 93 P.3d 544 (Colo. App. 2003).

Where the area of a search was a place where the owner had a reasonable expectation of privacy, then it was a constitutionally protected area where warrantless intrusions are forbidden under the federal and state constitutions. People v. Weisenberger, 183 Colo. 353, 516 P.2d 1128 (1973).

Any governmental action intruding upon an activity or area in which one holds a legitimate expectation of privacy is a "search" that calls into play the protections of the Colorado Constitution. People v. Oates, 698 P.2d 811 (Colo. 1985); People v. Wieser, 796 P.2d 982 (Colo. 1990).

The protections of this section are limited by reasonable expectations of privacy; that is, expectations which the law is prepared to recognize as legitimate. People v. Velasquez, 641 P.2d 943 (Colo.), appeal dismissed, 459 U.S. 805, 103 S. Ct. 28, 74 L. Ed. 2d 43 (1982), reh'g denied, 459 U.S. 1138, 103 S. Ct. 774, 74 L. Ed. 2d 986 (1983).

Whether an expectation of privacy is "legitimate" is determined by a two-part inquiry: Whether one actually expects that the area or activity subjected to governmental intrusion would remain free of such intrusion, and whether that expectation is one that society is prepared to recognize as reasonable. People v. Oates, 698 P.2d 811 (Colo. 1985); People v. Shorty, 731 P.2d 679 (Colo. 1987); People v. Wimer, 799 P.2d 436 (Colo. App. 1990), cert. denied, 809 P.2d 998 (Colo. 1991); People v. Hillman, 821 P.2d 884 (Colo. App. 1991).

Legitimate expectation of privacy is one that society considers reasonable and whether such legitimate expectation exists is determined after all facts and circumstances of a particular case are examined. People v. Wieser, 796 P.2d 982 (Colo. 1990); People v. Dunkin, 888 P.2d 305 (Colo. App. 1994).

Where, as a result of government surveillance practice, amount of privacy and freedom remaining to citizens would be diminished to a compass inconsistent with aims of a free and open society, court may require regulations of the government practice by means of a warrant. People v. Oates, 698 P.2d 811 (Colo. 1985).

Whether an expectation of privacy is legitimate depends on objective factors, not the subjective intent of the individual. People v. Rowe, 837 P.2d 260 (Colo. App. 1992).

Determination of expectation of privacy. Whether an expectation of privacy exists is to be resolved by consideration of the totality of the circumstances with respect to the relationship between the person challenging the search and the area searched. People v. Savage, 630 P.2d 1070 (Colo. 1981).

In determining the measure of constitutional protection under this section, the proper inquiry is not whether an individual defendant subjectively expected his ostensible accomplice in crime to preserve the confidentiality of their encounter and conversation; rather, the proper inquiry

is whether the defendant's expectation of confidentiality was constitutionally justified. People v. Velasquez, 641 P.2d 943 (Colo.), appeal dismissed, 459 U.S. 805, 103 S. Ct. 28, 74 L. Ed. 2d 43 (1982), reh'g denied, 459 U.S. 1138, 103 S. Ct. 774, 74 L. Ed. 2d 986 (1983).

When reviewing trial court's suppression ruling, appellate court may only properly consider evidence presented at the suppression hearing and not the evidence and testimony subsequently presented at trial. Moody v. People, 159 P.3d 611 (Colo. 2007).

No objective expectation of privacy in statements not spoken in English. Defendant undertook the risk that he would be understood when he exposed his Spanish language conversation to police officer in interrogation room. Defendant had no reasonable expectation of privacy in those statements even though the statements were recorded without his knowledge. People v. Zamora, 220 P.3d 996 (Colo. App. 2009).

Owner of sealed knapsack. Where owner clearly had an expectation of privacy with regard to his sealed knapsack it was sufficient to invoke constitutional protection against unreasonable police intrusion. People v. Counterman, 192 Colo. 152, 556 P.2d 481 (1976).

And tenants in condominium. When tenants in a condominium are entitled to and do believe that their rental has not been exhausted, they possess a sufficient proprietary interest to afford them a reasonable expectation of privacy against a warrantless police intrusion. People v. Bement, 193 Colo. 435, 567 P.2d 382 (1977).

The renter of a hotel or motel room has a legitimate expectation of privacy for the room and its contents during the period of the rental. Stoner v. California, 376 U.S. 483, 84 S. Ct. 889, 11 L. Ed. 2d 856 (1964); People v. Montoya, 914 P.2d 491 (Colo. App. 1995); People v. Lewis, 975 P.2d 160 (Colo. 1999).

Defendant had no reasonable expectation of privacy in, and therefore no standing to challenge entry to, a motel room where the entry was pursuant to the motel's established and posted policy pertaining to check-out time at the end of the rental period, there was no established policy of allowing any grace period giving defendant a reasonable expectation that he would be allowed to remain beyond the check-out time, and the rental period had expired because no one had requested permission for an overtime stay and none had been authorized. People v. Montoya, 914 P.2d 491 (Colo. App. 1995).

Defendant has a reasonable expectation of privacy in a tent used for habitation when camping on unimproved and unused land that is not fenced or posted against trespassing. People v. Schafer, 946 P.2d 938 (Colo. 1997).

Pockets of person's clothing are areas to which a justifiable expectation of privacy attaches. People v. Casias, 193 Colo. 66, 563 P.2d 926 (1977).

Car parked in carport behind house. Where defendants had a reasonable expectation of privacy in the car parked under the carport behind the house, the car was a constitutionally protected area where warrantless intrusions are forbidden under the federal and state constitutions. People v. Apodaca, 38 Colo. App. 395, 561 P.2d 351 (1976), aff'd, 194 Colo. 324, 571 P.2d 1109 (1977).

The legitimacy of the defendants' expectation of privacy in their utility records depended on whether defendants exhibited a subjective expectation of privacy in the records and whether that subjective expectation is one society recognizes as reasonable. People v. Dunkin, 888

P.2d 305 (Colo. App. 1994).

Relevant factors in determining whether a certain area is protected as curtilage include: (1) The proximity between the area claimed to be curtilage and the home; (2) the nature of the uses to which the area is put; (3) the steps taken to protect the area from observation; and (4) whether the area is included within an enclosure surrounding the house. Hoffmann v. People, 780 P.2d 471 (Colo. 1989); People v. Wimer, 799 P.2d 436 (Colo. App. 1990), cert. denied, 809 P.2d 998 (Colo. 1991).

Section does not protect individual where he has no reasonable expectation of privacy. Zamora v. People, 175 Colo. 340, 487 P.2d 1116 (1971).

What person knowingly exposes to public, even in home or office, is not protected by this section. People v. Gallegos, 179 Colo. 211, 499 P.2d 315 (1972); People v. McGahey, 179 Colo. 401, 500 P.2d 977 (1972).

Since defendant's arrest for possession of a marijuana-filled water pipe took place in a public garage where anybody could walk in at any time, he was not entitled to a reasonable expectation of privacy and therefore could be arrested without a valid warrant. Zamora v. People, 175 Colo. 340, 487 P.2d 1116 (1971).

Where defendants fled the scene of the crime leaving a car behind, they manifested an intent to abandon the car and whatever expectation of privacy they may have had regarding it. Kurtz v. People, 177 Colo. 306, 494 P.2d 97 (1972).

Defendant minor had no legitimate expectation of privacy with respect to a purse and its contents in the possession of his companion nor with respect to a tire iron voluntarily abandoned before an investigatory stop. People in Interest of D.E.J., 686 P.2d 794 (Colo. 1984).

Although police had neither probable cause nor warrant to search area underneath carpet serving as doormat in front of basement apartment, defendant had no legitimate expectation of privacy in area beneath carpet. People v. Shorty, 731 P.2d 679 (Colo. 1987).

In conducting criminal investigation, police officer may enter those residential areas that are expressly or impliedly held open to casual visitors. People v. Shorty, 731 P.2d 679 (Colo. 1987).

It was reasonable for police to enter the curtilage of a home at 1:30 a.m. without a warrant and to knock on the sliding glass door of a porch to seek permission to enter to conduct a search of the residence. People v. White, 64 P.3d 864 (Colo. App. 2002).

There is no invasion of privacy in the observation of that which is plainly visible to the public. What a person knowingly exposes to the public, even in his own home or office, is not a subject of fourth amendment protection. Hoffman v. People, 780 P.2d 471 (Colo. 1989).

There is no invasion of privacy in the observation of that which is plainly visible to the naked eye from an area which is routinely accessible to the public. People v. Wimer, 799 P.2d 436 (Colo. App. 1990), cert. denied, 809 P.2d 998 (Colo. 1991).

No "search" where officer observes property from navigable airspace above. People v. Henderson, 847 P.2d 239 (Colo. App. 1993), aff'd, 879 P.2d 383 (Colo. 1994).

Business premises are protected by this section but a business, by its special nature and voluntary existence, may open itself to intrusions that would not be permissible in a purely private context. People v. Rowe, 837 P.2d 260 (Colo. App. 1992).

Defendant maintained a reasonable expectation of privacy from government intrusion in the back room of a liquor store, an area without public access, where he was

the night manager, regardless of the fact that defendant's activities were being recorded via a surveillance system. People v. Galvadon, 103 P.3d 923 (Colo. 2005).

No expectation of privacy exists in shipping records obtained from a private shipping company which revealed only defendant's name and address, the supply company's name, and the number and weights of packages shipped, but did not reveal the contents of the shipments. People v. Beckstrom, 843 P.2d 34 (Colo. App. 1992).

Expectation of privacy in safe. One has a high expectation of privacy in a safe and its contents. People v. Press, 633 P.2d 489 (Colo. App. 1981).

Expectation of privacy in trunk of another. An expectation of privacy in an apartment shared with another person does not extend to a locked suitcase owned by the other person. People v. Whisler, 724 P.2d 648 (Colo. 1986).

Expectation of privacy in garbage placed adjacent to sidewalk for trash collection. An individual has no expectation of privacy in garbage placed adjacent to sidewalk for trash collection since such garbage is readily accessible to the public. People v. Hillman, 834 P.2d 1271 (Colo. 1992); People v. Laurent, 194 P.3d 1053 (Colo. App. 2008).

Expectation of privacy in a tax return and supporting documentation in the custody of a tax preparer. To overcome a taxpayer's reasonable expectation of privacy, a search warrant must show probable cause to believe that the tax records contain evidence of criminal wrongdoing by that taxpayer or the tax preparer. People v. Gutierrez, 222 P.3d 925 (Colo. 2009).

Partial obstruction of view does not create reasonable expectation of privacy. Where defendant had placed plastic over a portion of a shed containing marijuana plants, but contents were clearly visible from public airspace above, officer's observation of shed from a helicopter not shown to have been flying illegally was not a "search". People v. Henderson, 847 P.2d 239 (Colo. App. 1993), aff'd, 879 P.2d 383 (Colo. 1994).

Expectation of privacy in records held by bank. An individual has an expectation of privacy in records of his financial transactions held by a bank in Colorado. Charnes v. DiGiacomo, 200 Colo. 94, 612 P.2d 1117 (1980); People v. Lamb, 732 P.2d 1216 (Colo. 1987).

The government does not have to notify a bank customer of service of a grand jury subpoena of his records. In re East Nat'l Bank, 517 F. Supp. 1061 (D. Colo. 1981).

During the course of a criminal prosecution, the prosecution may compel production of telephone and bank records through the use of a subpoena duces tecum, so long as the defendant has the opportunity to challenge the subpoena for lack of probable cause. Use of a subpoena duces tecum for such records is not an unreasonable search and seizure provided that it is supported by probable cause and is properly defined and executed. People v. Mason, 989 P.2d 757 (Colo. 1999).

University's random, suspicionless, urinalysis drug-testings are unconstitutional searches. Testing of athletes is a significant intrusion and is not reasonable absent significant public safety or national security interests or without voluntary consent. Univ. of Colo. v. Derdeyn, 863 P.2d 929 (Colo. 1993).

To protect a bank customer's expectation of privacy in bank records, the customer must be given notice of judicial or administrative subpoenas prior to their execution. People v. Lamb, 732 P.2d 1216 (Colo. 1987).

Availability of a hearing subsequent to the production and disclosure of bank records pursuant to judicial or administrative subpoenas is inadequate to protect a customer's privacy right in the records since once the right has been violated there is no effective way to restore it. People v. Lamb, 732 P.2d 1216 (Colo. 1987).

Bank may notify customer of subpoenaed records. A bank may, if it chooses, notify a customer that the customer's bank records have been subpoenaed. If a bank so notifies a customer, no sustainable prosecution for obstructing justice can follow; if a bank does not notify the customer, it risks the chance of a lawsuit in state court for omitting the notice. In re East Nat'l Bank, 517 F. Supp. 1061 (D. Colo. 1981).

Standing to question government's access to bank records. Once a court allows intervention in a § 39-21-112 proceeding, which deals with the filing of annual returns to the department of revenue, it follows that a taxpayer with an expectation of privacy in his bank records has standing to raise the legitimacy of governmental access to the records in a motion to quash a subpoena for the records. Charnes v. DiGiacomo, 200 Colo. 94, 612 P.2d 1117 (1980).

Individual defendant has standing to challenge failure of the commissioner of securities to give defendant notice of the issuance of administrative subpoenas for corporate bank account records during investigation into securities law violations by the commissioner which was directed at both the defendant and the corporation. People v. Lamb, 732 P.2d 1216 (Colo. 1987).

For in camera examination of subpoenaed bank records, see Pignatiello v. District Court, 659 P.2d 683 (Colo. 1983).

Telephone numbers dialed on home telephone. A telephone subscriber has a legitimate expectation that information relating to telephone numbers dialed on his home telephone will remain private; and, in the absence of exigent circumstances, law enforcement officers must obtain a search warrant prior to the installation of a pen register. People v. Sporleder, 666 P.2d 135 (Colo. 1983).

The requirement of obtaining a search warrant prior to the installation of a pen register is applied retroactively in People v. Timmons, 690 P.2d 213 (Colo. 1984).

During the course of a criminal prosecution, the prosecution may compel production of telephone and bank records through the use of a subpoena duces tecum, so long as the defendant has the opportunity to challenge the subpoena for lack of probable cause. Use of a subpoena duces tecum for such records is not an unreasonable search and seizure provided that it is supported by probable cause and is properly defined and executed. People v. Mason, 989 P.2d 757 (Colo. 1999).

Electronic beeper. The government's installation of an electronic beeper inside a commercially-purchased sealed drum of chemicals violates the legitimate expectation of privacy of an individual who has a proprietary or possessory interest in the drum, and, in the absence of a warrant, such installation is an illegal search. People v. Oates, 698 P.2d 811 (Colo. 1985).

Bullets fired into front lawn. Where defendant openly, in daylight, and before witnesses, fires bullets into a front lawn, the defendant can assert no reasonable expectation of privacy with respect to the bullets. People v. Morgan, 681 P.2d 970 (Colo. App.), cert. denied, 469 U.S. 881, 105 S. Ct. 248, 83 L. Ed. 2d 185 (1984).

Defendant had an interest in his wife's motel room, even during his absence. As a result, the defendant had a proprietary interest in the room and had standing to object to a search

of such room. People v. Fox, 862 P.2d 1000 (Colo. App. 1993).

Expectation of privacy in toll records. A telephone subscriber has a legitimate expectation that toll records that reflect individually billed calls will remain private, and law enforcement officers generally must obtain a search warrant prior to the searches of toll records. People v. Corr, 682 P.2d 20 (Colo.), cert. denied, 469 U.S. 855, 105 S. Ct. 181, 83 L. Ed. 2d 115 (1984).

Utility records are not protected from disclosure by this section since society does not view the expectation of privacy in utility records as a reasonable one and, unlike telephone and bank records, utility records can be obtained by other members of the public. People v. Dunkin, 888 P.2d 305 (Colo. App. 1994).

Expectation of privacy in records of stockbroker's account. An individual has an expectation of privacy in the records of his stockbroker's account that is protected by the Colorado Constitution. People v. Fleming, 804 P.2d 231 (Colo. App. 1990).

Expectation of privacy in garbage placed on the curb. An individual has an expectation of privacy which society would regard as reasonable in trash left for collection at the curbside. People v. Hillman, 821 P.2d 884 (Colo. App. 1991).

Ultraviolet light examination of hands. A person has a reasonable expectation that police officers will not subject his hands to an ultraviolet lamp examination to discover incriminating evidence not otherwise observable. People v. Santistevan, 715 P.2d 792 (Colo. 1986).

A trespass is not the equivalent of a search. The presence or absence of a physical trespass by police has little or no relevance to the question of whether society would recognize an asserted privacy interest as reasonable. People v. Wimer, 799 P.2d 436 (Colo. App. 1990), cert. denied, 809 P.2d 998 (Colo. 1991).

Prisoners have little, if any, reasonable expectation of privacy while incarcerated. People v. Salaz, 953 P.2d 1275 (Colo. 1998); People v. Lee, 93 P.3d 544 (Colo. App. 2003).

A pretrial detainee's right to be free from unreasonable searches and seizures is not violated when the detainee's outgoing correspondence is seized and copied by correctional officials pursuant to an established practice that is reasonable and is no more intrusive than necessary to protect a legitimate governmental interest in institutional security. People v. Whalin, 885 P.2d 293 (Colo. App. 1994).

Section is intended as restraint upon activities of sovereign authority. People v. Benson, 176 Colo. 421, 490 P.2d 1287 (1971).

This section gives protection against unlawful searches and seizures by governmental agencies. People v. Benson, 176 Colo. 421, 490 P.2d 1287 (1971).

The guarantees against unreasonable searches and seizures have been applied to both administrative and criminal searches. Condon v. People, 176 Colo. 212, 489 P.2d 1297 (1971).

The exclusionary rule applies to forfeiture actions. People v. Lot 23, 707 P.2d 1001 (Colo. App. 1985), aff'd in part and rev'd in part on other grounds, 735 P.2d 184 (Colo. 1987).

And section not intended to be limitation upon other than governmental agencies, for the purpose of this section is to secure the citizen in the right to unmolested occupation of his dwelling and the possession of his property, subject to the right of seizure by process duly issued. People v. Benson, 176 Colo. 421, 490 P.2d 1287 (1971).

Constitutional prohibitions

on searches and seizures do not in general require exclusion of evidence seized by private parties. People v. Benson, 176 Colo. 421, 490 P.2d 1287 (1971); People v. Henderson, 38 Colo. App. 308, 559 P.2d 1108 (1976).

Test where search or seizure by private person. The test as to whether a "search" or "seizure" which falls within the scope of constitutional protection has occurred is whether the private person who is doing the searching, in light of all the circumstances of the case, must be regarded as having acted as an "instrument" or agent of the state. People v. Henderson, 38 Colo. App. 308, 559 P.2d 1108 (1976).

Officers' presence in vicinity does not necessarily constitute participation in the search and seizure by the private person. People v. Henderson, 38 Colo. App. 308, 559 P.2d 1108 (1976).

The fact that the person conducting a search might have intended to assist law enforcement does not transform him or her into a law enforcement agent so long as he or she had a legitimate independent motivation for engaging in the challenged conduct. The mere presence of officers, absent some form of participation in the search, did not establish an agency relationship. People v. Holmberg, 992 P.2d 705 (Colo. App. 1999).

Whether an individual conducting a search or seizure is an agent of the government is determined by the totality of the circumstances. In order to establish agency, one must show that the government encouraged, initiated, and instigated a search or seizure or that the person conducting the search acted only to assist law enforcement efforts. People v. Pilkington, 156 P.3d 477 (Colo. 2007).

A private actor's independent motive to investigate creates a strong presumption that he or she is not an agent of the government, and therefore the fourth amendment does not apply to the search. People v. Pilkington, 156 P.3d 477 (Colo. 2007).

Where hotel employee not acting as agent of police. Where police do not suggest or instigate an inspection by a hotel employee, nor accompany her when she enters a room, her actions are her own idea and not those of the state for she is not acting as an agent or an alter ego of the police. People v. Benson, 176 Colo. 421, 490 P.2d 1287 (1971).

Standard for determining whether search warrant complies with constitutional requirements is one of practical accuracy rather than technical nicety. People v. Ragulsky, 184 Colo. 86, 518 P.2d 286 (1974).

One asserting right to privacy must establish he was victim of invasion. Concomitant with the assertion of the right to privacy is the requirement that the one who asserts the right must establish that he was the victim of an invasion of his privacy. Kurtz v. People, 177 Colo. 306, 494 P.2d 97 (1972).

Before a defendant is entitled to an order of suppression, he first must establish that the challenged search violated a privacy interest which the fourth amendment is designed to protect. People v. Henry, 631 P.2d 1122 (Colo. 1981); People v. Settles, 685 P.2d 183 (Colo. 1984).

Prosecutor bears no burden at suppression hearing to prove that defendant was the victim of the claimed illegal police conduct because, when a defendant files a motion to suppress claiming his or her fourth amendment rights were violated, this initial allegation suffices to establish that he or she was the victim or aggrieved party of the alleged invasion of privacy. People v. Jorlantin, 196 P.3d 258 (Colo. 2008).

Person suspected of being insane has rights under section. Every person, including those

suspected of being insane, has certain fundamental constitutional rights. Not the least of these is the one mentioned in this section. Barber v. People, 127 Colo. 90, 254 P.2d 431 (1953).

Standing to question legality of seizure. Where defendants were legitimately on the premises and the evidence seized is proposed to be used against them, they have standing to question the legality of the seizure, and thus, the legitimacy of the presence of the police in the house. People v. Godinas, 176 Colo. 391, 490 P.2d 945 (1971).

A person may challenge the constitutional validity of a search only if he has a legitimate expectation of privacy in the invaded place. People v. Savage, 630 P.2d 1070 (Colo. 1981).

Property law concepts are not necessarily determinative of standing to challenge police activity under the Fourth Amendment as the inquiry extends beyond ownership or possession of the property seized to considerations of whether the defendant had a reasonable expectation of privacy in the area searched. People v. Holder, 632 P.2d 607 (Colo. App. 1981).

Passenger or hitchhiker has no property or possessory interest in an automobile and no legitimate expectation of privacy, but a passenger who has permission of the owner to use the car does have a legitimate expectation of privacy. People v. Naranjo, 686 P.2d 1343 (Colo. 1984).

No standing. Where the defendant was found unconscious inside an automobile which upon a search was found to contain the deceased's body and it was not an instance where the basis for defendant's prosecution was possession of the vehicle, the defendant did not have automatic standing to challenge the vehicle's search and seizure. People v. Trusty, 183 Colo. 291, 516 P.2d 423 (1973).

Nor standing to object to admission of evidence. A person who is only aggrieved by the admission of evidence illegally seized from a third person lacks standing to object. People v. Knapp, 180 Colo. 280, 505 P.2d 7 (1973).

One not legitimately on premises has no standing to move to suppress the fruits of a search and seizure of those premises. People v. Trusty, 183 Colo. 291, 516 P.2d 423 (1973).

Fourth amendment rights are personal and the suppression of the products of an unconstitutional search can be urged only by one whose rights were violated, not by those who are aggrieved solely by the admission of the damaging evidence, even if they be codefendants. People v. Henry, 631 P.2d 1122 (Colo. 1981).

Questions of standing and reasonableness of search merge into one: Whether the government officials violated any legitimate expectation of privacy held by the defendant. People v. Spies, 200 Colo. 434, 615 P.2d 710 (1980).

In order for a defendant to have standing to challenge the constitutionality of a governmental search, he or she must demonstrate a legitimate expectation of privacy in the areas searched or the items seized. Defendant bears the burden to establish standing, and the issue must be resolved in view of the totality of the circumstances. People v. Montoya, 914 P.2d 491 (Colo. App. 1995); People v. Flockhart, __ P.3d __ (Colo. App. 2009).

Appellate courts may address issues of standing sua sponte, regardless of whether the prosecution may be deemed to have waived its right to address the question. Appellate court, however, may not do so when the factual record was undeveloped and could not be supplemented with reliable testimony on remand given the passage of time. Moody v. People, 159 P.3d 611 (Colo. 2007).

Lawfulness of warrantless arrest determined by state law. The lawfulness of an arrest without a warrant by state officers for a state offense must be determined by state law. People v. Navran, 174 Colo. 222, 483 P.2d 228 (1971).

Lawfulness of search and seizure determined by trial judge. There is no constitutional requirement that the question of the lawfulness of the search and seizure be submitted to a jury. It remains a question of law which must be determined by the trial judge and, in this state, by the trial judge only. Jones v. People, 167 Colo. 153, 445 P.2d 889 (1968).

As courts to guard personal security. Courts still retain their traditional responsibility to guard against police conduct which trenches upon personal security without the objective evidentiary justification which the constitution requires. People v. Nelson, 172 Colo. 456, 474 P.2d 158 (1970).

Mere possibility of prejudice is insufficient to warrant reaching merits of constitutionality of an inventory search. People v. Thomas, 189 Colo. 490, 542 P.2d 387 (1975).

And acquittal moots question. Where defendant challenged the constitutionality of the inventory search of his car and the use of evidence obtained as a result of the search at his trial, the issue of constitutionality of the search was moot because the fruits of the search were used primarily to prove that the defendant was guilty of burglary on which charges he was acquitted. People v. Thomas, 189 Colo. 490, 542 P.2d 387 (1975).

Unlawful conduct of arresting officers does not destroy court's criminal jurisdiction. Unlawful conduct of arresting officers, or other persons holding public office, may have certain effects upon admissibility of evidence, but it does not destroy jurisdiction of the court to try a criminal charge lodged against a person brought before it. DeBaca v. Trujillo, 167 Colo. 311, 447 P.2d 533 (1968).

And illegal arrest of one charged with crime is no bar to his prosecution if all other elements necessary to give a court jurisdiction to try accused are present, a conviction in such a case being unaffected by such unlawful arrest. DeBaca v. Trujillo, 167 Colo. 311, 447 P.2d 533 (1968).

Preliminary examination not prerequisite to prosecution by information. There is no constitutional requirement making a preliminary examination a prerequisite to a prosecution by information. Holt v. People, 23 Colo. 1, 45 P. 374 (1896).

Nor is sworn complaint jurisdictional prerequisite to prosecution. There is no constitutional requirement that a sworn complaint is a jurisdictional prerequisite to prosecution of a misdemeanor charge. Stubert v. County Court, 163 Colo. 535, 433 P.2d 97 (1967).

And nothing requires that "summons and complaint" be verified where the summons and complaint is simply the method by which criminal proceedings are instituted against a person already validly arrested, and a warrant for arrest does not issue. Stubert v. County Court, 163 Colo. 535, 433 P.2d 97 (1967).

Insofar as the fourth amendment to the constitution of the United States is concerned, a criminal information need not be verified. Stubert v. County Court, 163 Colo. 535, 433 P.2d 97 (1967).

Unless it is to serve as basis for issuance of arrest warrant. Stubert v. County Court, 163 Colo. 535, 433 P.2d 97 (1967).

The oath or affirmation required by this section is an essential prerequisite to an arrest, whether a

preliminary examination is to be had or the warrant is to issue on an information. Holt v. People, 23 Colo. 1, 45 P. 374 (1896).

Affidavit is made essential in case preliminary examination has not been had, in order to comply with the requirements of this section. Noble v. People, 23 Colo. 9, 45 P. 376 (1896).

Technical requirements and elaborate specificity are not required in drafting of affidavits for search warrants. People v. Padilla, 182 Colo. 101, 511 P.2d 480 (1973).

Although warrant issues only on charge under oath in writing. To justify a warrant there must be a charge under oath, reduced to writing. Lustig v. People, 18 Colo. 217, 32 P. 275 (1893).

For other cases dealing with affidavits in the filing of informations, see Ausmus v. People, 47 Colo. 167, 107 P. 204 (1910); Curl v. People, 53 Colo. 578, 127 P. 951 (1912); Solt v. People, 130 Colo. 1, 272 P.2d 638 (1954).

Section has no application to ordinary cases of production of documents under a subpoena duces tecum. Eykelboom v. People, 71 Colo. 318, 206 P. 388 (1922).

Contemporaneous objection rule applies to search and seizure issues, and the failure to raise the objection of an illegal search and seizure by proper objection at the trial level is tantamount to a waiver. Brown v. People, 162 Colo. 406, 426 P.2d 764 (1967).

Absent egregious police misconduct, exclusionary rule is inapplicable to probation revocation proceedings. People v. Ressin, 620 P.2d 717 (Colo. 1980).

Application of exclusionary rule in a dependency and neglect case requires the court to balance the deterrent benefits of applying the rule against the societal cost of excluding relevant evidence. People ex rel. A.E.L., 181 P.3d 1186 (Colo. App. 2008).

Here, applying the rule would have a high societal cost in terms of protecting child welfare interests. Therefore, the court did not err in denying mother's motion to suppress evidence. People ex rel. A.E.L., 181 P.3d 1186 (Colo. App. 2008).

Oral statement prima facie inadmissible where reason for detention was an attempt to obtain an inculpatory statement from defendant. People v. Stark, 682 P.2d 1240 (Colo. App. 1984).

Later statement admissible if obtained by a means sufficiently distinct from the illegality. Relevant factors are: Intervening Miranda warnings and valid waiver; temporal proximity of illegal arrest and statement; intervening circumstances; and purpose and flagrancy of any official misconduct. People v. Stark, 682 P.2d 1240 (Colo. App. 1984).

Applied in Ratcliff v. People, 22 Colo. 75, 43 P. 553 (1896); Laffey v. People, 55 Colo. 575, 136 P. 1031 (1913); Potter v. Armstrong, 110 Colo. 198, 132 P.2d 788 (1942); Lucas v. District Court, 140 Colo. 510, 345 P.2d 1064 (1959); Hernandez v. People, 153 Colo. 316, 385 P.2d 996 (1963); Wilson v. People, 156 Colo. 243, 398 P.2d 35 (1965); Garcia v. People, 160 Colo. 220, 416 P.2d 373 (1966); People v. Aguilar, 173 Colo. 260, 477 P.2d 462 (1970); People v. Leahy, 173 Colo. 339, 484 P.2d 778 (1970); People v. Muniz, 198 Colo. 194, 597 P.2d 580 (1979).

II. PROBABLE CAUSE.

A. In General.

Constitutionality of an arrest is measured by probable cause. People v. Magoon, 645 P.2d 286 (Colo. 1982).

The constitutional requirement that arrests be based upon probable cause serves two

purposes: To protect citizens from rash and unreasonable interferences with privacy and to give fair leeway for enforcing the law in the community's protection. People v. Ratcliff, 778 P.2d 1371 (Colo. 1989); People v. Higbee, 802 P.2d 1085 (Colo. 1990).

It is only upon showing of probable cause that legal doors are opened to allow the police to gain official entry into an individual's domain of privacy for the purpose of conducting a search or for making an official seizure under the constitution. People v. Brethauer, 174 Colo. 29, 482 P.2d 369 (1971).

To support issuance of arrest warrant, complaint must comply with probable cause requirements of this section, the fourth amendment to the United States Constitution, and Crim. P. 3 and 4 (a). Scott v. People, 166 Colo. 432, 444 P.2d 388 (1968); People v. Nelson, 172 Colo. 456, 474 P.2d 158 (1970); People v. Henry, 173 Colo. 523, 482 P.2d 357 (1971); People v. Moreno, 176 Colo. 488, 491 P.2d 575 (1971).

No search warrant may issue without showing of probable cause affirmed in writing. Under both this section and the fourth amendment of the United States Constitution, no search warrants may issue without a showing of probable cause, which, under the Colorado Constitution, must be affirmed in writing before a search warrant may issue. Flesher v. People, 174 Colo. 355, 484 P.2d 113 (1971).

Warrant issued without showing of probable cause violates constitutional standards. A search warrant which is routinely issued at the request of the accusing officer, without the slightest showing of probable cause, is issued in violation of long-established fundamental constitutional standards, and any evidence seized under its authority should be excluded from evidence in the trial court unless there is other legal basis for its admission. Brown v. Patterson, 275 F. Supp. 629 (D. Colo. 1967), aff'd, 393 F.2d 733 (10th Cir. 1968).

Substance of all definitions of probable cause is a reasonable ground for belief of guilt. People v. Feltch, 174 Colo. 383, 483 P.2d 1335 (1971).

Courts have uniformly required an objective standard for determining probable cause. People v. Davis, 903 P.2d 1 (Colo. 1995).

The probable cause standard is a practical, nontechnical conception and is measured by reasonableness, not mathematical probability. People v. Rayford, 725 P.2d 1142 (Colo. 1986).

Because the standard of probable cause is substantially less than the quantum of evidence needed to support a conviction, only reasonable grounds, not a mathematical probability, to believe that the defendant participated in the crime in question must be demonstrated. Banks v. People, 696 P.2d 293 (Colo. 1985); People v. McCoy, 832 P.2d 1043 (Colo. App. 1992), aff'd, 870 P.2d 1231 (Colo. 1994).

As the term suggests, probable cause deals with probabilities, not certainties. People v. Washington, 865 P.2d 145 (Colo. 1994).

"Probable cause" not measured by certainty. It is not necessary that facts establishing probable cause for arrest rise to a level of certainty. People v. Hearty, 644 P.2d 302 (Colo. 1982); People v. Wirtz, 661 P.2d 300 (Colo. App. 1982); People v. Villiard, 679 P.2d 593 (Colo. 1984).

Probable cause for a search, as with probable cause to arrest, depends upon probabilities, not certainties, and involves a level of knowledge grounded in the practical considerations of everyday life on which reasonable and prudent persons act. People v. Rayford, 725 P.2d 1142 (Colo. 1986); People v. Lubben, 739 P.2d 833 (Colo. 1987).

Suspicion alone does not amount to probable cause. People v. Quintero, 657 P.2d 948 (Colo.), cert. granted, 463 U.S. 1206, 104 S. Ct. 62, 77 L. Ed. 2d 1386, cert. dismissed, 464 U.S. 1014, 104 S. Ct. 543, 78 L. Ed. 2d 719 (1983).

Probable cause exists when an affidavit for a search warrant alleges sufficient facts to warrant a person of reasonable caution to believe that contraband or evidence of criminal activity is located at the place to be searched. Bartley v. People, 817 P.2d 1029 (Colo. 1991); People v. Delgado, 832 P.2d 971 (Colo. App. 1991); People v. Leftwich, 869 P.2d 1260 (Colo. 1994); Henderson v. People, 879 P.2d 383 (Colo. 1994); People v. Fortune, 930 P.2d 1341 (Colo. 1997); People v. Pacheco, 175 P.3d 91 (Colo. 2006).

During a controlled drug transaction, probable cause exists to search the location to which the seller went before selling the drugs to the police. People v. Eirish, 165 P.3d 848 (Colo. App. 2007).

Probable cause for issuance of a subpoena duces tecum for obtaining telephone and bank records exists if there is a reasonable likelihood that the evidence sought exists and that it would link the defendant to the crime charged. People v. Mason, 989 P.2d 757 (Colo. 1999).

The Colorado Constitution presumes that an arrest for a criminal violation when predicated upon probable cause is permissible for any crime, not just a serious crime. People v. Triantos, 55 P.3d 131 (Colo. 2002).

Probable cause to arrest exists when, under the totality of the circumstances at the time of arrest, objective facts and circumstances available to a person of reasonable caution justify the belief that a crime has been or is being committed by the person who has been or is being arrested. People v. King, 16 P.3d 807 (Colo. 2001); People v. Brown, 217 P.3d 1252 (Colo. 2009).

Probable cause for an arrest does not exist if the police have no information that a crime has, in fact, been committed. People v. Quintero, 657 P.2d 948 (Colo. 1983); People v. McCoy, 832 P.2d 1043 (Colo. App. 1992), aff'd, 870 P.2d 1231 (Colo. 1994); People v. King, 16 P.3d 807 (Colo. 2001).

Probable cause for a warrantless arrest does not require specific information that a particular crime has been committed. People v. McCoy, 870 P.2d 1231 (Colo. 1994).

To support issuance of search warrant probable cause and oath or affirmation particularly describing the place and the objects to be seized are required. People v. Leftwich, 869 P.2d 1260 (Colo. 1994); Henderson v. People, 879 P.2d 383 (Colo. 1994).

A search may be reasonable despite the absence of individualized probable cause in limited circumstances if the privacy interests involved are minimal and if the compelling governmental interest would be placed in jeopardy by a requirement of individualized probable cause. Derdeyn v. Univ. of Colo., 832 P.2d 1031 (Colo. App. 1991).

A university's interest in securing a drug-free athletic program does not constitute a compelling state interest. There are no public safety or law enforcement interests that are served by such sports program and the urine testing program at issue is unconstitutional. Derdeyn v. Univ. of Colo., 832 P.2d 1031 (Colo. App. 1991).

Existence of outstanding arrest warrant provides prima facie showing of probable cause, although the person arrested may challenge the validity of the arrest warrant at a post-arrest probable cause hearing. People v. Gouker, 665 P.2d 113 (Colo. 1983).

An outstanding arrest warrant from another jurisdiction may provide the probable cause needed to make an arrest. People v. Gouker, 665 P.2d 113 (Colo. 1983).

Outstanding arrest warrant from another jurisdiction constituted probable cause for defendant's arrest even though warrant contain "no extradition" provision. People v. Thompson, 793 P.2d 1173 (Colo. 1990).

Same constitutional probable cause standards for search or arrest. The same constitutional standards for determining probable cause apply whether a search or an arrest is being effected by police officers, and these standards are applicable whether or not the officers have obtained a judicially authorized warrant to arrest or search. People v. Vaughns, 182 Colo. 328, 513 P.2d 196 (1973).

The same constitutional standards for determining probable cause apply whether a search or an arrest is being made by the police. People v. Burns, 200 Colo. 387, 615 P.2d 686 (1980).

And standards applicable whether or not warrant obtained. Probable cause standards for searches or arrests are applicable whether or not the police have obtained a warrant. People v. Burns, 200 Colo. 387, 615 P.2d 686 (1980).

Probable cause must be present for each warrant or place to be searched. While more than one search warrant may be issued on the basis of a single affidavit, the affidavit must support a finding of probable cause as to each separate warrant or each separate place to be searched. People v. Arnold, 181 Colo. 432, 509 P.2d 1248 (1973).

Probable cause permits officers to obtain a warrant to search premises and to seize property. Hoffman v. People, 780 P.2d 471 (Colo. 1989); People v. Taube, 843 P.2d 79 (Colo. App. 1992).

Probable cause must exist in order for warrantless arrest to be valid. People v. Thompson, 793 P.2d 1173 (Colo. 1990).

The showing of probable cause necessary to secure a warrant may vary with the object and intrusiveness of the search, but the necessity for a warrant persists. People v. Taube, 843 P.2d 79 (Colo. App. 1992).

Probable cause required for warrantless searches in exigent circumstances. In order for a warrantless search to be excused under exigent circumstances, probable cause must exist at the moment the arrest or the search is made. People v. Thompson, 185 Colo. 208, 523 P.2d 128 (1974).

Although the constitutional warrant requirement may be excused under exigent circumstances, the probable cause requirements are at least as strict in warrantless searches as in those pursuant to a warrant. People v. Thompson, 185 Colo. 208, 523 P.2d 128 (1974); People v. Gonzales, 186 Colo. 48, 525 P.2d 1139 (1974).

Violation of traffic ordinance does not establish probable cause for warrantless search for evidence of an unrelated criminal offense. People v. Goessl, 186 Colo. 208, 526 P.2d 664 (1974).

Not all drug arrests give rise to exigent circumstances thereby permitting warrantless, "security" searches. People v. Barndt, 199 Colo. 51, 604 P.2d 1173 (1980).

State must prove probable cause for warrantless arrest or search. The burden of proving probable cause in justification of a warrantless arrest and search is upon the state. People v. Nanes, 174 Colo. 294, 483 P.2d 958 (1971); People v. McCoy, 832 P.2d 1043 (Colo. App. 1992), aff'd, 870 P.2d 1231 (Colo. 1994).

The burden is upon the state

at the suppression hearing to establish that probable cause existed which would justify the warrantless search of the defendant's person. People v. Ware, 174 Colo. 419, 484 P.2d 103 (1971).

The burden of proving the existence of probable cause for an arrest without a warrant is on the prosecution. People v. Feltch, 174 Colo. 383, 483 P.2d 1335 (1971); Stork v. People, 175 Colo. 324, 488 P.2d 76 (1971); People v. Vaughns, 175 Colo. 369, 489 P.2d 591 (1971); DeLaCruz v. People, 177 Colo. 46, 492 P.2d 627 (1972); Mora v. People, 178 Colo. 279, 496 P.2d 1045 (1972); People v. Schreyer, 640 P.2d 1147 (Colo. 1982); People v. Roybal, 655 P.2d 410 (Colo. 1982); People v. Foster, 788 P.2d 825 (Colo. 1990); People v. Diaz, 793 P.2d 1181 (Colo. 1990); People v. McCoy, 832 P.2d 1043 (Colo. App. 1992).

Probable cause for valid arrest is a reasonable ground of suspicion, supported by circumstances sufficiently strong to warrant a cautious man to believe that an offense has been or is being committed by the person arrested. Scott v. People, 166 Colo. 432, 444 P.2d 388 (1968); People v. Nelson, 172 Colo. 456, 474 P.2d 158 (1970).

Probable cause exists where the facts and circumstances within the officers' knowledge, and of which they had reasonable trustworthy information, are sufficient in themselves to warrant a man of reasonable caution in the belief that an offense has been or is being committed. People v. Brethauer, 174 Colo. 29, 482 P.2d 369 (1971); People v. Weinert, 174 Colo. 71, 482 P.2d 103 (1971); People v. Nanes, 174 Colo. 294, 483 P.2d 958 (1971); People v. Feltch, 174 Colo. 383, 483 P.2d 1335 (1971); Finley v. People, 176 Colo. 1, 488 P.2d 883 (1971); People v. Thompson, 185 Colo. 208, 523 P.2d 128 (1974); People v. Chavez, 632 P.2d 574 (Colo. 1981); People v. Bustam, 641 P.2d 968 (Colo. 1982); People v. Rueda, 649 P.2d 1106 (Colo. 1982); People v. Quintero, 657 P.2d 948 (Colo.), cert. granted, 463 U.S. 1206, 104 S. Ct. 62, 77 L. Ed. 2d 1386, cert. dismissed, 464 U.S. 1014, 104 S. Ct. 543, 78 L. Ed. 2d 719 (1983); People v. Nygren, 696 P.2d 270 (Colo. 1985); People v. Diaz, 793 P.2d 1181 (Colo. 1990); People v. McCoy, 870 P.2d 1231 (Colo. 1994).

A court must determine whether the facts available to a reasonably cautious officer at the moment of arrest would warrant his belief that an offense has been or is being committed. People v. Navran, 174 Colo. 222, 483 P.2d 228 (1971); People v. Schreyer, 640 P.2d 1147 (Colo. 1982); People v. Villiard, 679 P.2d 593 (Colo. 1984); People v. Ratcliff, 778 P.2d 1371 (Colo. 1989); People v. Drake, 735 P.2d 1257 (Colo. 1990).

The fact that a jury later acquitted defendant of crime does not require a conclusion that the police lacked probable cause to arrest defendant on that charge. People v. Couillard, 131 P.3d 1146 (Colo. App. 2005).

The information relied upon to justify a warrantless arrest and search must be more than rumor or suspicion; however, it need not be of that quality and quantity necessary to satisfy beyond a reasonable doubt. It is sufficient if it warrants a reasonably cautious and prudent police officer in believing, in light of his training and experience, that an offense has been committed and that the person arrested probably committed it. People v. Nanes, 174 Colo. 294, 483 P.2d 958 (1971).

Probable cause for an arrest without a warrant exists where the facts available to a reasonably cautious officer at the moment of the arrest warrant his belief that an offense had been or is being committed. People v. Vincent, 628 P.2d 107 (Colo. 1981); People v. Quintana, 701 P.2d 1264 (Colo. App. 1985); People v. Tufts, 717

P.2d 485 (Colo. 1986); People v. Foster, 788 P.2d 825 (Colo. 1990).

In the case of multiple suspects, for each of whom there are reasonable grounds to believe they participated in a particular criminal offense, probable cause to search means no more than a showing of reasonable grounds to believe incriminating evidence is present on the premises to be searched. People v. Hearty, 644 P.2d 302 (Colo. 1982).

The probable cause threshold for a warrantless arrest is met when there are facts and circumstances sufficient to cause a person of reasonable caution to believe that at the time of the arrest an offense has been or is being committed by the person to be arrested. People v. Rayford, 725 P.2d 1142 (Colo. 1986); People v. Thompson, 793 P.2d 1173 (Colo. 1990).

Probable cause to arrest exists when, under the totality of the circumstances, the objective facts and circumstances warrant the belief by a reasonable and prudent person, in light of that person's training and experience, that an offense has been committed and that the defendant committed it. People v. McCoy, 870 P.2d 1231 (Colo. 1994); People v. McKay, 10 P.3d 704 (Colo. App. 2000).

Based on the totality of the facts and circumstances, officer reasonably concluded defendant was the driver of the car. The facts were the license plate on the car matched the report of the vehicle that caused the accident, defendant's breath smelled of alcohol, and the driver's seat was pulled too far forward for a six-foot tall person to be driving the car as defendant claimed. The circumstances were that defendant was the only one linked to the car when the officer arrived on the scene and the other person at the scene had not seen anyone else around the car except for the defendant. Those facts and circumstances are more than enough to establish probable cause for the arrest, so the evidence seized as a result of the arrest is admissible at trial. People v. Castaneda, 249 P.3d 1119 (Colo. 2011).

The absence of the arresting officer's testimony at a suppression hearing does not necessarily preclude a finding that the officer had probable cause to arrest. People v. Holmberg, 992 P.2d 705 (Colo. App. 1999).

While it is not necessary that the arresting officer possess knowledge of facts sufficient to establish guilt, more than mere suspicion is required to provide probable cause for arrest. Wong Sun v. United States, 371 U.S. 471, 83 S. Ct. 407, 9 L. Ed. 2d 441 (1963); People v. Saars, 196 Colo. 294, 584 P.2d 622 (1978); People v. McCoy, 832 P.2d 1043 (Colo. App. 1992), aff'd, 870 P.2d 1231 (Colo. 1994).

While an officer's "training and experience" may be considered in determining probable cause, such training and experience cannot substitute for an evidentiary nexus, prior to the search, between the place to be searched and any criminal activity. People v. Eirish, 165 P.3d 848 (Colo. App. 2007).

The determination of when facts cross the line from reasonable suspicion to probable cause is difficult. That line necessarily must be drawn by an act of judgment formed in the light of the particular situation and with account taken of all the circumstances. People v. McCoy, 870 P.2d 1231 (Colo. 1994).

Whenever detention by police officer is more than brief, there is an arrest which must be supported by probable cause. People v. Schreyer, 640 P.2d 1147 (Colo. 1982).

Where purpose and character of investigatory stop exceeds what is reasonable in light of the circumstances, there is an arrest which requires probable cause. People v. Stark, 682 P.2d 1240 (Colo. App.

1984).

Investigatory stop may be effected with guns drawn if it is reasonable under the circumstances. People v. Cooper, 731 P.2d 781 (Colo. App. 1986).

Where police officers wanted to question a parole violator in connection with a sexual assault involving use of a shotgun and handgun, officers could effectuate an investigatory stop with their weapons drawn to determine if one of the two men detained was the violator. People v. Cooper, 731 P.2d 781 (Colo. App. 1986).

Mere association with guilty persons does not amount to probable cause to arrest. People v. Henderson, 175 Colo. 400, 487 P.2d 1108 (1971).

Physical presence in an automobile, in and of itself, does not provide probable cause to arrest, for guilt by association has never been an acceptable rationale and it does not constitute probable cause to arrest. Mora v. People, 178 Colo. 279, 496 P.2d 1045 (1972).

Mere arrival of person at residence where shipment of marijuana is to be delivered is insufficient to provide probable cause to believe that the person has committed a crime or that a search of his car will reveal the presence of narcotic drugs. People v. Henderson, 175 Colo. 400, 487 P.2d 1108 (1971).

Mere presence of passenger in truck transporting motorcycle which officer believed to be stolen did not constitute probable cause for passenger to be arrested for stealing motorcycle. People v. Foster, 788 P.2d 825 (Colo. 1990).

Mere fact that individual may have been at the same convenience store on the previous day selling drugs is not sufficient evidence to establish probable cause for loitering. People v. Davis, 903 P.2d 1 (Colo. 1995).

Relationship with person alleged to have participated in forgery is not sufficient to establish probable cause to arrest. People v. Stark, 682 P.2d 1240 (Colo. App. 1984).

Defendant's arrest was not supported by probable cause and was unlawful since information that an individual is attempting to sell jewelry at a price substantially below market value can give rise to a reasonable suspicion that a crime has been committed but does not, without other information from which it may reasonably be inferred that the jewelry is illegally in the seller's possession, constitute probable cause for arrest. People v. McCoy, 832 P.2d 1043 (Colo. App. 1992), aff'd, 870 P.2d 1231 (Colo. 1994).

Investigation and surveillance may be carried out without probable cause. So long as investigation and surveillance activity does not constitute an invasion of privacy constituting an infringement upon constitutional rights, then no probable cause requirement need be met to initiate and carry out the investigation and surveillance activities. People v. Snelling, 174 Colo. 397, 484 P.2d 784 (1971); People v. McGahey, 179 Colo. 401, 500 P.2d 977 (1972).

A police officer may in appropriate circumstances and in an appropriate manner approach a person for purposes of investigating possibly criminal behavior even though there is no probable cause to make an arrest. People v. Martineau, 185 Colo. 194, 523 P.2d 126 (1974).

"Fellow officer" rule provides that an arresting officer who does not personally possess sufficient information to constitute probable cause may nevertheless make a warrantless arrest if (1) he acts upon the direction or as a result of a communication from a fellow officer, and (2) the police, as a whole, possess

sufficient information to constitute probable cause. People v. Thompson, 793 P.2d 1173 (Colo. 1990); People v. Washington, 865 P.2d 145 (Colo. 1994); People v. Fears, 962 P.2d 272 (Colo. App. 1997).

Trial court correctly found the information contained in the affidavit, when analyzed under the totality of the circumstances test, established probable cause to search the premises. The corroborating circumstances of the same license plate and presence of persons accompanying the defendant in the car at the time of the arrest and a high volume of short term visitors at the trailer shortly before defendant's arrest for selling cocaine to an undercover officer, established a reasonable probability that contraband or evidence of a crime would be found at the trailer. People v. Delgado, 832 P.2d 971 (Colo. App. 1991).

The totality of the circumstances supported a finding of probable cause for the search warrant. There was sufficient corroboration of the information in the affidavit to overcome the fact the affiant was a first-time informant. People v. Warner, 251 P.3d 567 (Colo. App. 2010).

The fact that the police failed to corroborate evidence directly related to illegal conduct is not necessarily fatal to a finding of probable cause. The verification of the noncriminal facts provided by the informant, considered together with the indicia of reliability and self-verifying details of the informant's information, allows the probable cause determination to be upheld. People v. Turcotte-Schaeffer, 843 P.2d 658 (Colo. 1993).

Following an illegal stop or attempted stop, probable cause for arrest existed when the defendant responded with new, distinct crimes by driving away at speeds up to 45 miles per hour in a residential neighborhood, twice swerving the car towards the police officer's car to hit it, and rolling out of the car while it was moving, leaving the car to crash into and damage a garage. Defendant's responses were new crimes that broke the chain of causation and dissipated any taint from the first arguably unlawful attempted stop. People v. Smith, 870 P.2d 617 (Colo. App. 1994).

Police officers had articulable and reasonable basis for suspecting criminal activity and initiating a valid investigatory detention, and had a reasonable basis for expanding the scope of the detention for the limited purpose of determining whether the defendant was reaching for a weapon. Facts presented to police that defendant paid for four one-way airline tickets to "source city" for illicit drugs with currency in small denominations and hesitated in providing surnames of passengers were consistent with a drug courier profile. Such profile was confirmed by the police upon observing the defendant and his companions arrive at the airport with only carry-on baggage. Upon the officers' request for identification the defendant's conduct caused the police to be concerned that the defendant was reaching for a weapon. In addition, the officers believed defendant was the subject of an outstanding warrant. People v. Perez, 852 P.2d 1297 (Colo. App. 1992).

Reasonable basis to stop suspect. A law enforcement officer is legally justified to approach a vehicle that is in violation of state statute, irrespective of the officer's subjective intent for contacting the vehicle. People v. Cherry, 119 P.3d 1081 (Colo. 2005).

Probable cause for warrantless arrest of defendant existed when officer shined flashlight into parked vehicle and observed defendant holding cash and a small plastic bag containing a white powdery substance. People v. Dickinson, 928

P.2d 1309 (Colo. 1996).

Trial court properly denied defendant's motion to suppress. On the facts, police had probable cause to associate the key in defendant's pocket with criminal activity. Detective testified that he asked defendant for permission to search defendant's person and defendant consented. Police retrieved items, including a key from defendant, and at that time knew that the stolen truck was a Ford, and that the truck had license plates on it that did not belong to it, and that the defendant had given them a false identity. Furthermore officer testified that he had owned Ford vehicles in the past and recognized the key as a Ford truck key. People v. Manier, 197 P.3d 254 (Colo. App. 2008).

B. Judicial Review.

Test for probable cause to issue warrant. Probable cause is an elusive term and is incapable of any precise definition, which would permit a mechanical application under all circumstances once certain factors are presented. The United States supreme court in attempting to define this area with certainty and to provide guidelines for proper investigation has provided a two-prong test. First, the affidavit upon which the warrant is based must set forth the underlying circumstances necessary to enable an independent judicial determination to be made, and, second, the information upon which the conclusion is based must come from a reliable or credible source. Flesher v. People, 174 Colo. 355, 484 P.2d 113 (1971).

An affidavit based on information provided in large part by an unidentified informant must, in order to establish probable cause for issuance of a search warrant: (1) allege facts from which the issuing magistrate could independently determine whether there were reasonable grounds to believe that illegal activity was being carried on in the place to be searched; and (2) set forth sufficient facts to allow the magistrate to determine independently if the informer is credible or the information reliable. People v. Harris, 182 Colo. 75, 510 P.2d 1374 (1973); People v. Baird, 182 Colo. 284, 512 P.2d 629 (1973); People v. Masson, 185 Colo. 65, 521 P.2d 1246 (1974); People v. Arnold, 186 Colo. 372, 527 P.2d 806 (1974); People v. McGill, 187 Colo. 65, 528 P.2d 386 (1974).

No technical measurement of probable cause. In dealing with probable cause, one deals with probabilities. These are not technical; they are the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act. Falgout v. People, 170 Colo. 32, 459 P.2d 572 (1969); People v. Baird, 172 Colo. 112, 470 P.2d 20 (1970); People v. Wilson, 173 Colo. 536, 482 P.2d 355 (1971); People v. Brethauer, 174 Colo. 29, 482 P.2d 369 (1971); People v. Weinert, 174 Colo. 71, 482 P.2d 103 (1971); People v. Feltch, 174 Colo. 383, 483 P.2d 1335 (1971); Finley v. People, 176 Colo. 1, 488 P.2d 883 (1971); People v. Conwell, 649 P.2d 1099 (Colo. 1982); People v. Rueda, 649 P.2d 1106 (Colo. 1982); People v. Thompson, 793 P.2d 1173 (Colo. 1990).

A magistrate may draw reasonable inferences and may utilize his common sense in making a determination of probable cause. People v. Williams, 200 Colo. 187, 613 P.2d 879 (1980).

Task of magistrate is to make practical, common-sense decision as to whether, given all circumstances stated in affidavit, there is fair probability that contraband or evidence of a crime will be found in a particular place. People v. Pannebaker, 714 P.2d 904 (Colo. 1986); People v. Atley, 727 P.2d 376 (Colo. 1986); People v. Lubben, 739 P.2d 833 (Colo. 1987).

When a magistrate has found probable cause, the courts should not invalidate the warrant by interpreting the affidavit in a hypertechnical rather than a common sense manner. People v. Maes, 176 Colo. 430, 491 P.2d 59 (1971).

In interpreting an affidavit for a search warrant and the execution of the warrant, a common sense interpretation must be applied. People v. Del Alamo, 624 P.2d 1304 (Colo. 1981).

Where an officer believes he has probable cause to search and states his reasons, the Colorado supreme court will not examine such reasons grudgingly, but will measure them by standards appropriate for a reasonable, cautious, and prudent police officer trained in the type of investigation which he is making. People v. Singleton, 174 Colo. 138, 482 P.2d 978 (1971).

Probable cause is to be measured by a common-sense, nontechnical standard of reasonable cause to believe with due consideration given to police officer's experience and training in determining the significance of his observations. People v. Ratcliff, 778 P.2d 1371 (Colo. 1989); People v. McCoy, 870 P.2d 1231 (Colo. 1994).

"Probable cause supported by oath or affirmation" is oath or affirmation of parties who depose to facts upon which the prosecution is founded. Lustig v. People, 18 Colo. 217, 32 P. 275 (1893).

Eyewitness not essential. It is not essential that the probable cause contemplated by this section be shown by the oath of an eyewitness. Holt v. People, 23 Colo. 1, 45 P. 374 (1896).

Two-pronged test for determining whether information received from informer is sufficient to establish probable cause. First, the police must know of some of the underlying circumstances which establish a basis for the informant's conclusion that a crime has been or is being perpetrated by an accused. Second, there must be some basis for believing that the information supplied by the informant was credible or the informant was reliable. People v. Glaubman, 175 Colo. 41, 485 P.2d 711 (1971); DeLaCruz v. People, 177 Colo. 46, 492 P.2d 627 (1972); People v. Stoppel, 637 P.2d 384 (Colo. 1981); People v. Dailey, 639 P.2d 1068 (Colo. 1982).

Test applied in People v. Villiard, 679 P.2d 593 (Colo. 1984).

Totality of circumstances test. Since the two-pronged test has been abandoned by the United States supreme court in Illinois v. Gates (462 U.S. 213, 103 S. Ct. 2317, 76 L. Ed. 2d 527 (1983)) in favor of the totality of the circumstances test, such test was used by the court to make the probable cause determination. People v. Gallegos, 680 P.2d 1294 (Colo. App. 1983); People v. Sullivan, 680 P.2d 851 (Colo. App. 1983).

A trial court must consider the totality of the circumstances in the evidentiary record in determining whether an investigatory detention violates the fourth amendment. Failure to do so is error. People v. D.F., 933 P.2d 9 (Colo. 1997); People v. Saint-Veltri, 945 P.2d 1339 (Colo. 1997).

Corroboration of an anonymous tip with facts learned by an investigating officer making an investigatory stop, while possibly not satisfying the two-pronged test, is sufficient to establish probable cause under the totality of circumstances test. People v. Contreras, 780 P.2d 552 (Colo. 1989).

Totality of circumstances test places particular value on corroboration of details of informant's tip by independent police work. People v. Diaz, 793 P.2d 1181 (Colo. 1990).

The totality of the facts considered can constitute probable cause even though no one fact, if viewed alone, would be sufficient.

People v. Eichelberger, 620 P.2d 1067 (Colo. 1980); People v. McCoy, 832 P.2d 1043 (Colo. App. 1992), aff'd, 870 P.2d 1231 (Colo. 1994).

An anonymous tip need not include a highly detailed description of the suspect or alleged criminal activity because a court will consider other factors when determining the reliability of such information. People v. Pate, 878 P.2d 685 (Colo. 1994).

The totality of the circumstances test does not lower the standard for probable cause determinations; it simply gives reviewing courts more flexibility to determine the overall reliability of information from a confidential informant. People v. Leftwich, 869 P.2d 1260 (Colo. 1994).

Test adopted in People v. Pannebaker, 714 P.2d 904 (Colo. 1986).

Test applied in People v. Smith, 685 P.2d 786 (Colo. App. 1984); People v. Peltz, 697 P.2d 766 (Colo. App. 1984), aff'd, 728 P.2d 1271 (Colo. 1986); People v. Salazar, 715 P.2d 1265 (Colo. App. 1985), cert. denied, 744 P.2d 80 (Colo. 1987); People v. Lubben, 739 P.2d 833 (Colo. 1987); People v. Grady, 755 P.2d 1211 (Colo. 1988); People v. Varrieur, 771 P.2d 895 (Colo. 1989); People v. Ratcliff, 778 P.2d 1371 (Colo. 1989); People v. Abeyta, 795 P.2d 1324 (Colo. 1990); People v. Turcotte-Schaeffer, 843 P.2d 658 (Colo. 1993); People v. Leftwich, 869 P.2d 1260 (Colo. 1994); People v. Pate, 878 P.2d 685 (Colo. 1994); People v. Davis, 903 P.2d 1 (Colo. 1995); People v. Meraz, 961 P.2d 481 (Colo. 1998); People v. Crippen, 223 P.3d 114 (Colo. 2010).

The appropriate question for the reviewing court considering a search authorized by warrant is whether the issuing magistrate had a substantial basis for issuing the search warrant, as distinguished from simply whether the reviewing court would have found probable cause in the first instance. People v. Crippen, 223 P.3d 114 (Colo. 2010).

Probable cause determination must include consideration of the totality of the circumstances. The totality of the circumstances includes the content of the information asserted in the affidavit and an assessment of the reliability of the information, including both the credibility of any sources and the way those sources acquired that information and their basis of knowledge. A deficiency in one element in the assessment of the reliability of the information may be compensated for by a strong showing in the other, or even by some other indicia of the information's reliability altogether. People v. Crippen, 223 P.3d 114 (Colo. 2010).

Magistrate had a substantial basis for issuing warrant even though affidavit did not include the identity of the person or agency conducting the audit that referenced the documents sought by the warrant or provide any corroboration of the information contained in the audit. Under the unique circumstances of the case, the reliability of the information could be assessed by the totality of the circumstances, including the nature and detail of the information provided and the fact that the information was obviously obtained through first-hand observation of the documents, in the normal course of business, for purposes other than a criminal investigation. People v. Crippen, 223 P.3d 114 (Colo. 2010).

Role of police officer in search warrant practice is limited solely to providing the judge with facts and trustworthy information upon which he, as a neutral and detached judicial officer, may make a proper determination. People v. Brethauer, 174 Colo. 29, 482 P.2d 369 (1971).

Determination of probable cause is judicial function. The determination of whether probable

cause exists is a judicial function to be performed by the issuing magistrate, and is not a matter to be left to the discretion of a police officer. Before the issuing magistrate can properly perform his official function he must be apprised of the underlying facts and circumstances which show that there is probable cause to believe that proper grounds for issuance of the warrant exist. Brown v. Patterson, 275 F. Supp. 629 (D. Colo. 1967), aff'd, 393 F.2d 733 (10th Cir. 1968); People v. Moreno, 176 Colo. 488, 491 P.2d 575 (1971); People v. Goggin, 177 Colo. 19, 492 P.2d 618 (1972).

The determination of whether probable cause exists is a judicial function to be performed by the issuing magistrate, which in Colorado may be any judge of the supreme, district, county, superior or justice of the peace court under Crim. P. 41 and is not a matter to be left to the discretion of a police officer. Hernandez v. People, 153 Colo. 316, 385 P.2d 996 (1963); People v. Brethauer, 174 Colo. 29, 482 P.2d 369 (1971).

Thus, issuing magistrate must be apprised of underlying facts. Before the issuing magistrate can properly perform his official function he must be apprised of the underlying facts and circumstances which show that there is probable cause to believe that proper grounds for the issuance of the warrant exist. Hernandez v. People, 153 Colo. 316, 385 P.2d 996 (1963); People v. Brethauer, 174 Colo. 29, 482 P.2d 369 (1971).

In order to support the issuance of a search warrant the issuing magistrate must be apprised of sufficient underlying facts and circumstances, reduced to writing, under oath, from which he may reasonably conclude that probable cause exists for the issuance of the warrant. People v. Padilla, 182 Colo. 101, 511 P.2d 480 (1973); People v. Clavey, 187 Colo. 305, 530 P.2d 491 (1975); People v. Bauer, 191 Colo. 331, 552 P.2d 512 (1976).

And may not rely on affiant's unexplained belief or assumption. An issuing magistrate may not rely on an affiant's unexplained belief that an urgency exists or on any assumption of immediacy. People v. Bauer, 191 Colo. 331, 552 P.2d 512 (1976).

Mere affirmance of the belief or suspicion on the officer's part is not enough. To hold otherwise would attach controlling significance to the officer's belief rather than to the magistrate's judicial determination. Hernandez v. People, 153 Colo. 316, 385 P.2d 996 (1963); People v. Brethauer, 174 Colo. 29, 482 P.2d 369 (1971).

Nor complainant's mere conclusion. In determining whether or not probable cause exists, a judge should not accept without question the complainant's mere conclusion that the person whose arrest is sought has committed a crime. People v. Moreno, 176 Colo. 488, 491 P.2d 575 (1971).

Affidavits containing only the conclusion of the police officer that he believed that certain property was on the premises or person and that such property was designed or intended or was or had been used as a means of committing a criminal offense or the possession of which was illegal, without setting forth facts and circumstances from which the judicial officer could determine whether probable cause existed, are fatally defective. Hernandez v. People, 153 Colo. 316, 385 P.2d 996 (1963).

Nor mere suspicion. An arrest with or without a warrant must stand on firmer ground than mere suspicion. People v. Weinert, 174 Colo. 71, 482 P.2d 103 (1971).

An arrest with or without a warrant must stand on firmer ground than mere suspicion, though the arresting officer need not have in hand evidence which would suffice to convict. People v. Gonzales, 186 Colo.

48, 525 P.2d 1139 (1974).

Vague suspicion does not rise to the dignity of probable cause. People v. Nelson, 172 Colo. 456, 474 P.2d 158 (1970); People v. Thompson, 185 Colo. 208, 523 P.2d 128 (1974); People v. Goessl, 186 Colo. 208, 526 P.2d 664 (1974); People v. Dauphinee, 192 Colo. 16, 554 P.2d 1103 (1976).

Mere conclusory belief or suspicion by an affiant officer is not enough upon which to base the issuance of a search warrant. People v. Clavey, 187 Colo. 305, 530 P.2d 491 (1975).

While it is not necessary that the arresting officer possess knowledge of facts sufficient to establish guilt, more than mere suspicion is required to provide probable cause for arrest. People v. McCoy, 832 P.2d 1043 (Colo. App. 1992), aff'd, 870 P.2d 1231 (Colo. 1994); People v. Davis, 903 P.2d 1 (Colo. 1995).

The duty of a reviewing court under Illinois v. Gates (462 U.S. 213, 103 S. Ct. 2317, 76 L. Ed. 2d 527 (1983)) is simply to ensure that the issuing judge had a substantial basis for concluding that there was probable cause to believe that contraband or other incriminating evidence will be found at the premises to be searched. People v. Arellano, 791 P.2d 1138 (Colo. 1990); People v. Leftwich, 869 P.2d 1260 (Colo. 1994).

Magistrate's probable cause determination is given great deference and is not reviewed de novo. In reviewing determination of probable cause, court must be satisfied that the magistrate had a substantial basis for ruling that probable cause existed. Henderson v. People, 879 P.2d 383 (Colo. 1994).

Doubts must be resolved in favor of a magistrate's determination of probable cause in order to avoid creating a climate in which police resort to warrantless searches rather than obtaining a warrant before conducting a search. People v. Fortune, 930 P.2d 1341 (Colo. 1997).

Suppression order reversed when redacted affidavit demonstrates the existence of probable cause. The court found that there were sufficient facts remaining in the affidavit, after redaction of suppressed evidence, to warrant a person of reasonable caution to believe that contraband or evidence of criminal activity was located at the address to be searched. People v. Hebert, 46 P.3d 473 (Colo. 2002).

Affidavit based on information supplied by unnamed informant is sufficient to support issuance of a search warrant. Bean v. People, 164 Colo. 593, 436 P.2d 678 (1968).

But such affidavit must be corroborated. An affidavit based on information supplied by an unnamed informant must be corroborated by other matters within the officer's knowledge. The "other matters" may include other sources of information and the fact that the defendant was known by police to be a user of narcotics. An affidavit so corroborated is not the mere affirmance of the belief or suspicion on the officer's part, nor is it a bare statement that officers had "reliable information from a credible person". Bean v. People, 164 Colo. 593, 436 P.2d 678 (1968).

Images of child pornography do not need to be attached to the affidavit in support of probable cause, nor does the affidavit need to include a description of the images. An affidavit from an investigating officer with extensive experience related to internet child pornography crimes that states the investigator believed the images involved sexually explicit material was sufficient, although an affidavit with a description of the images would be preferable. People v. Rabes, 258 P.3d 937 (Colo. App. 2010).

Remedies for error in affidavit left to court's discretion.

When, following a veracity hearing, the probability of an error in an affidavit for a search warrant has been found, the election of remedies or sanctions is left to the discretion of the district court. People v. Nunez, 658 P.2d 879 (Colo. 1983).

Under some circumstances, an anonymous informant's tip alone will not satisfy the probable cause requirement; however, a tip from an anonymous informant that has additional indicia of reliability or that is corroborated may provide a substantial basis for a determination of probable cause. Henderson v. People, 879 P.2d 383 (Colo. 1994).

Uncorroborated accusation by unidentified informant does not provide probable cause. People v. Feltch, 174 Colo. 383, 483 P.2d 1335 (1971).

Under totality of circumstances, probable cause for issuance of search warrant existed where affidavit relied on four independent anonymous informant's tips that described in detail petitioner's activities and property located at petitioner's residence and where affidavit further relied on police information obtained from airborne observations. Henderson v. People, 879 P.2d 383 (Colo. 1994).

Probable cause may be based in whole or in part upon hearsay. People v. Snelling, 174 Colo. 397, 484 P.2d 784 (1971).

The constitutional requirement of probable cause may be established by hearsay information. People v. Henry, 631 P.2d 1122 (Colo. 1981).

If the material in the affidavit is stated to be or appears to be hearsay information obtained from an informant or other person, and the information turns out to be incorrect, the supreme court will not use hindsight as a test to determine whether the search warrant should or should not have been issued. The law is clear that a search warrant may be based on hearsay, as long as a substantial basis for crediting the hearsay exists. People v. Woods, 175 Colo. 34, 485 P.2d 491 (1971).

The reasonably trustworthy information relied on by officers may be based upon hearsay and need not be evidence sufficiently competent for admission at the guilt-finding process. People v. Nanes, 174 Colo. 294, 483 P.2d 958 (1971).

But such hearsay must be determined to be reliable. People v. Snelling, 174 Colo. 397, 484 P.2d 784 (1971).

An affidavit which relies upon hearsay information from an undisclosed informant rather than upon the affiant's personal observations must contain sufficient information to permit the judge who issues the warrant to make an independent determination that the informant was credible or that his information was reliable. People v. Press, 633 P.2d 489 (Colo. App. 1981).

In order to establish that a police officer has probable cause to arrest, based on information received from an informer, there must be evidence that the officer was apprised of some of the underlying circumstances from which the informant concluded that a crime had been or was being committed, and there must be some basis from which the officer could conclude that the informer was reliable or his information credible. Stork v. People, 175 Colo. 324, 488 P.2d 76 (1971).

Probable cause for defendant's arrest cannot be predicated on an informant's tip when the information received by the police officers does not concern defendant and would not indicate that defendant is involved in any criminal activity. Mora v. People, 178 Colo. 279, 496 P.2d 1045 (1972).

Defendant may not rely upon an affidavit at a suppression hearing without attempting to call the affiant. The affidavit is hearsay

evidence and thus may not properly be admitted at a suppression hearing. The affidavit is sufficient to determine whether a hearing is necessary, but not to actually determine the matter itself. People v. Warner, 251 P.3d 567 (Colo. App. 2010).

Important fact is means of testing reliability of information given, and unless the affidavit provides such information, then no warrant should issue. Flesher v. People, 174 Colo. 355, 484 P.2d 113 (1971).

And affidavit must contain sufficient information to determine informant's credibility. If the officer seeking the warrant is relying upon a tip by another person, then the information contained in the affidavit upon which the informant based his conclusion must be of sufficient detail as to permit the making of an independent determination by the court of the credibility of the informant and his information. Flesher v. People, 174 Colo. 355, 484 P.2d 113 (1971).

Where probable cause is predicated on information from an undisclosed informant, the affidavit must allege sufficient facts from which the issuing judge may determine independently: (1) The adequacy of the informant's basis for his allegations that evidence of crime will be found at the place to be searched, and (2) the credibility of the informant or the reliability of his information. People v. Conwell, 649 P.2d 1099 (Colo. 1982).

Inability of detective to establish an anonymous informant's reliability and veracity does not end the inquiry concerning an affidavit establishing probable cause because a deficiency regarding reliability and veracity can be overcome by a strong showing as to the informant's basis of knowledge or some other indicia of reliability. People v. Leftwich, 869 P.2d 1260 (Colo. 1994).

Determination of reliability of informant's information. There are at least three ways in which an affidavit might allow a magistrate to determine the reliability of an informant's information so as to issue a search warrant: (1) By stating that the informant had previously given reliable information; (2) by presenting the information in detail which clearly manifests its reliability; and (3) by presenting facts which corroborate the informant's information. People v. Masson, 185 Colo. 65, 521 P.2d 1246 (1974).

The credibility of the informant or the reliability of his information may be supported by details supplied by the informant, set forth in the affidavit, indicating that the only way the informant could have obtained the information was through a reliable method. A second method of satisfying the credibility or reliability requirement is the presence of independent, collateral corroboration in the affidavit. People v. Conwell, 649 P.2d 1099 (Colo. 1982).

Where an unknown informant's tip constitutes the principal basis for believing that criminal activity is occurring in a certain place, the affidavit must state facts concerning where, how, and when the informant received the information so that the magistrate can independently determine whether reasonable grounds exist to believe that illegal activity is currently being conducted in the place to be searched or that contraband is currently located therein. People v. Bauer, 191 Colo. 331, 552 P.2d 512 (1976).

Where the information relied upon to establish probable cause for arrest originates from an anonymous informer, the informer's tip must allege sufficient facts to establish the basis for his knowledge of criminal activity and also must allege adequate circumstances to justify the officer's belief in the informer's credibility or the reliability of his information. People v. Henry, 631 P.2d 1122 (Colo. 1981).

Where an affidavit is based

upon an informer's tip, the totality of the circumstances inquiry looks to all indicia of reliability, including the informer's veracity, the basis of his knowledge, the amount of detail provided by the informer, and whether the information provided was current. People v. Leftwich, 869 P.2d 1260 (Colo. 1994); People v. Randolph, 4 P.3d 477 (Colo. 2000); People v. Pacheco, 175 P.3d 91 (Colo. 2006).

Informant's reliability, veracity, and basis of knowledge are important factors in determining existence of probable cause. People v. Diaz, 793 P.2d 1181 (Colo. 1990).

A bare assertion of knowledge is not sufficient to establish an informer's basis of knowledge; there must be sufficient facts to allow a magistrate to determine how the informant obtained the information on which the affiant relies. People v. Leftwich, 869 P.2d 1260 (Colo. 1994); People v. Pacheco, 175 P.3d 91 (Colo. 2006).

Declarations against the penal interests of informants may establish informant credibility in an affidavit for a search warrant. People v. Stoppel, 637 P.2d 384 (Colo. 1981); People v. Stark, 691 P.2d 334 (Colo. 1984); People v. Lubben, 739 P.2d 833 (Colo. 1987).

Reliability of a first-time informant may be determined from independent corroborative facts, such as the recitation of specific details which suggest strongly the informant's personal familiarity with the matter in question, or the receipt of identical information from another source. People v. Press, 633 P.2d 489 (Colo. App. 1981).

Where a common sense reading of the affidavit was that informant was a "citizen informant", an explanation of such informant's connection with the case or his basis of knowledge was not necessary to establish reliability and credibility. People v. Salazar, 715 P.2d 1265 (Colo. App. 1985), cert. denied, 744 P.2d 80 (Colo. 1987).

Probable cause for warrantless arrest did not exist when informants' reliability was not demonstrated and the reported information was not independently corroborated by police. People v. Diaz, 793 P.2d 1181 (Colo. 1990).

Informant's statements did not provide a substantial basis for issuing a warrant where the affidavit failed to establish informant's basis for knowledge. Although informant provided some details about defendant's alleged activities, the details that police corroborated did not relate to or describe criminal activities. These details were insufficient to allow a judge to reasonably conclude that the informant had access to reliable information about the illegal activities reported to the police. People v. Hoffman, 293 P.3d 1 (Colo. App. 2010), rev'd on other grounds, 2012 CO 66, 289 P.3d 24.

Facts that are easily obtained or predictions that are easily made add little to the decision of whether probable cause for a search exists. The focus of a court in reviewing an affidavit that relies on corroboration of non-criminal activity is the degree of suspicion that attaches to particular types of corroborated non-criminal acts, whether the informant provides details which are not easily obtained, and whether such statements allow an inference that the informant's allegations of criminal activity are reliable. People v. Leftwich, 869 P.2d 1260 (Colo. 1994); People v. Pacheco, 175 P.3d 91 (Colo. 2006).

Reliability of hearsay may be adduced by police investigation, police surveillance, or other investigative techniques. People v. Snelling, 174 Colo. 397, 484 P.2d 784 (1971).

Showing necessary to establish trustworthiness varies with

source. The type of showing necessary to establish the trustworthiness of information supporting an arrest will vary with the source of the information. People v. Henry, 631 P.2d 1122 (Colo. 1981).

Information furnished by a citizen-witness should not be subjected to the same tests for reliability applicable to the anonymous police informer. People v. Henry, 631 P.2d 1122 (Colo. 1981).

When the source of the information is a citizen-informer who witnessed a crime and is identified, the citizen's information is presumed to be reliable and the prosecution is not required to establish either credibility of the citizen or the reliability of the citizen's information. People v. Fortune, 930 P.2d 1341 (Colo. 1997).

Mere statement that informant known to be reliable insufficient. An affidavit does not establish the credibility of an informant by merely stating that the informant is known to be reliable. Nor does an affidavit establish the credibility of an informant by merely stating that the informant is known to be reliable based on past information supplied by the informer which has proved to be accurate. Although the words "past information" might conjure up in the mind of the officer some knowledge of the underlying circumstances from which the officer might conclude that the informant was reliable, the judge has not been apprised of such facts, and consequently, he cannot make a disinterested determination based upon such facts. People v. Brethauer, 174 Colo. 29, 482 P.2d 369 (1971).

As a basis for issuing a search warrant, the mere assertion of reliability is not sufficient to establish an informant's credibility, but there must be a more comprehensive statement of underlying facts upon which the magistrate can make an independent determination that the informant is credible or his information reliable. People v. Aragon, 187 Colo. 206, 529 P.2d 644 (1974).

An affidavit for a search warrant seeking to show an informant's credibility is not satisfactory by merely stating that the informant is reliable, or that he has supplied information in the past which proved to be accurate. Nor are irrelevant, albeit correct, details sufficient. People v. Montoya, 189 Colo. 106, 538 P.2d 1332 (1975); People v. Bowen, 189 Colo. 126, 538 P.2d 1336 (1975).

But statement that informant's previous information resulted in seizure of narcotics held sufficient. A basis for concluding that the affiant detective's informant was "credible" and the information supplied was "reliable" was found in affiant's statement that the informant's previously furnished information resulted in seizure of narcotics and arrests of suspects. People v. Schmidt, 172 Colo. 285, 473 P.2d 698 (1970).

Where the affidavit related that the informant had, within the past 14 months, supplied information which led to the arrest and conviction of an individual for possession of a narcotic drug, and that the informant had, within the past 24 hours, supplied information which resulted in arrests and the seizure of a quantity of marijuana, this information was sufficient to permit the issuing magistrate to find that the informant was reliable. People v. Harris, 182 Colo. 75, 510 P.2d 1374 (1973).

Where informant had furnished information which "has been the cause of approximately 20 narcotic and dangerous drug arrests in the past year", the magistrate could independently conclude that the police would not repeatedly accept information from one who has not proven by experience to be reliable, and hence, the magistrate could determine that the informant was credible. People v. Baird, 182 Colo. 284, 512 P.2d 629 (1973).

Where search warrant affidavit indicated that previous information supplied by the informant had led to narcotics arrests and seizures, such statement was sufficient to establish the reliability of the informant. People v. Ward, 181 Colo. 246, 508 P.2d 1257 (1973).

Reliability of informant is established if previous information resulted in arrests. The issue involved is the reliability of the informant; this reliability is satisfactorily established if the previous information led to arrests. To impose the more stringent requirement that the information led to convictions would impose an undue restriction on law enforcement officers. People v. Arnold, 186 Colo. 372, 527 P.2d 806 (1974).

Or furnished solid material information of specified criminal activity. Requirement that the affiant-police officer support his request for a search warrant with information showing that the informant was credible, or that his information was reliable, may be satisfied by an assertion that the informant has previously furnished solid material information of specified criminal activity. People v. Montoya, 189 Colo. 106, 538 P.2d 1332 (1975).

Under the totality of the circumstances, probable cause existed to support defendant's arrest and the subsequent seizure of evidence that was used at trial. The fact the informant got into a car with police officers to take them to the location where the drug deal was going to occur supports the reliability of the informant's information. People v. Robinson, 226 P.3d 1145 (Colo. App. 2009).

Informant's means of obtaining information need not be recited in the affidavit if there is stated such detail given by the informant as would corroborate his assertions of criminal activity. Flesher v. People, 174 Colo. 355, 484 P.2d 113 (1971).

Informant's personal observations sufficient. Personal observation by an informant of the objects of the search within the place to be searched satisfies requirement of establishing probable cause. People v. Harris, 182 Colo. 75, 510 P.2d 1374 (1973).

Requirement that the affidavit for a search warrant set forth underlying circumstances so as to enable a magistrate to independently judge the validity of the informant's conclusion that criminal activity exists can be satisfied by the assertion of personal knowledge of the informant. People v. Montoya, 189 Colo. 106, 538 P.2d 1332 (1975).

Where informant personally observed that apartment was used solely to grow mushrooms and observations were consistent with cultivation of psilocybin mushrooms, the totality of the affidavit established probable cause and supported the issuance of a search warrant. People v. Atley, 727 P.2d 376 (Colo. 1986).

Informant may sufficiently detail criminal activity. In the absence of a statement detailing the circumstances underlying an informant's conclusion, an informant's tip may only support a finding of probable cause if it describes the criminal activity of the accused in sufficient detail to allow the trial court to reasonably infer that the informant obtained his facts in a reliable manner. DeLaCruz v. People, 177 Colo. 46, 492 P.2d 627 (1972); People v. Sullivan, 680 P.2d 851 (Colo. App. 1984).

Disclosure of informer's identity not constitutional right. At a preliminary hearing to determine whether there was probable cause to support an arrest, the disclosure of the identity of an informer is not a constitutional right, and the informant's identity need not be made known. DeLaCruz v. People, 177 Colo. 46, 492 P.2d 627 (1972).

Disclosure is not automatic

upon request. A defendant seeking disclosure must make an initial showing that the informant will provide information essential to the merits of his suppression ruling. People v. Bueno, 646 P.2d 931 (Colo. 1982).

But evidentiary matter within discretion of trial judge. The disclosure of the identity of an informer is an evidentiary matter within the sound indiscretion of the trial judge. If the trial judge is convinced that the police officers relied in good faith upon credible information supplied by a reliable informant, the informant's identity need not be disclosed at the suppression hearing. DeLaCruz v. People, 177 Colo. 46, 492 P.2d 627 (1972).

Whether the identity of a confidential informant should be disclosed is committed to the sound discretion of the trial court. People v. Dailey, 639 P.2d 1068 (Colo. 1982).

Informer privilege recognizes general obligation of citizens to communicate their knowledge of crimes to law enforcement officials and, at the same time, encourages that obligation by protecting their anonymity under appropriate circumstances. People v. Bueno, 646 P.2d 931 (Colo. 1982).

Informer privilege is in reality the government's qualified privilege to withhold from disclosure the identity of persons who furnish information of crimes to law enforcement officers. People v. Bueno, 646 P.2d 931 (Colo. 1982).

Informer privilege is not absolute and must be administered in consideration of other significant and competing interests. Thus, where the disclosure of an informer's identity, or of the contents of his communication, would be relevant and helpful to the defense of an accused, or would be essential to a fair determination of a cause, the privilege generally should yield. People v. Bueno, 646 P.2d 931 (Colo. 1982).

Test for disclosure of informer's identity. In determining whether to disclose an informer's identity, the trial court must balance the public interest in protecting the flow of information to the police against the accused's right to prepare his defense. People v. Dailey, 639 P.2d 1068 (Colo. 1982); People v. Cook, 722 P.2d 432 (Colo. App. 1986).

Disclosure in connection with motion to suppress. The first situation involving disclosure arises in connection with a defendant's motion to suppress evidence. If the disclosure of an informant's identity is essential to a fair determination of a suppression motion, then the trial court in its discretion may order disclosure. People v. Bueno, 646 P.2d 931 (Colo. 1982).

When burden met for requiring disclosure. A defendant will meet this initial burden when he establishes a reasonable basis in fact to believe that an informer does not exist or, if he does, he did not relate to the police the information upon which the police purportedly relied as probable cause for an arrest or search. People v. Bueno, 646 P.2d 931 (Colo. 1982).

The necessary foundation for the court's exercise of discretion in ordering disclosure is a showing of a reasonable basis in fact to question the accuracy of the informant's recitals. People v. Nunez, 658 P.2d 879 (Colo. 1983).

Disclosure in connection with claim that informer is witness. The second situation involving the disclosure of an informant's identity arises in connection with a defendant's claim that the informer is an essential witness on the issue of guilt or innocence. Here again, the right to disclosure is not automatic. People v. Bueno, 646 P.2d 931 (Colo. 1982).

Evidence suppressed following failure to disclose. When the prosecution refuses to disclose the identity of an informant, the district court may properly suppress the

evidence seized during the search of the defendant's house. People v. Nunez, 658 P.2d 879 (Colo. 1983).

Dismissal of charges upheld, following failure to produce confidential witness. People v. Martinez, 658 P.2d 260 (Colo. 1983).

Informant must be likely source of relevant evidence. The necessary foundation for the court's exercise of discretion in ordering disclosure should be a showing of a reasonable basis in fact to believe the informant is a likely source of relevant and helpful evidence to the accused. People v. Bueno, 646 P.2d 931 (Colo. 1982).

Generally, a showing by the accused that the informant witnessed or participated in the crime will meet this threshold foundation and will provide an adequate basis for a discretionary order of disclosure. People v. Bueno, 646 P.2d 931 (Colo. 1982).

Victim as source of probable cause. A victim's detailed description of the offense and of its perpetration inside a vehicle is the source of both the probable cause to arrest the defendant and the probable cause to search the vehicle. People v. Meyer, 628 P.2d 103 (Colo. 1981).

Officer may rely upon information given by victim. Details of the underlying facts and circumstances of the crime, given to the investigating officers by the victim of the crime, can be relied upon by the officers and furnish the basis for their conclusion that a crime had been committed and that certain described persons probably committed it. People v. Nanes, 174 Colo. 294, 483 P.2d 958 (1971).

"Citizen-informer" rule. Colorado will follow the citizen-informer rule and will recognize that a citizen who is identified by name and address and was a witness to criminal activity cannot be considered on the same basis as the ordinary informant. People v. Glaubman, 175 Colo. 41, 485 P.2d 711 (1971).

Where the citizen-informant rule applies to information contained in an affidavit for issuance of a search warrant, it is not necessary that the affidavit contain a statement of facts showing the reliability of the citizen-informant, as is the case when the informant is confidential and unidentified. People v. Schamber, 182 Colo. 355, 513 P.2d 205 (1973).

The "citizen-informer" rule applies equally to a citizen-victim. People v. Henry, 631 P.2d 1122 (Colo. 1981).

A citizen informant is an eyewitness who, with no motive but public service, and without expectation of payment, identifies himself and volunteers information to the police. People v. Press, 633 P.2d 489 (Colo. App. 1981).

It is essential however that the citizen be an eyewitness to, or have some other firsthand knowledge of, the incident he reports to police officers. People v. Donnelly, 691 P. 2d 747 (Colo. 1984).

Information provided by citizen-informants is not subject to the same credibility standards as information provided by confidential police informants. People v. Rueda, 649 P.2d 1106 (Colo. 1982).

Reliability of citizen-informer presumed. When the source of information is a citizen-informer who witnessed a crime and is identified, the citizen's information is presumed to be reliable, and the prosecution is not required to establish either the credibility of the citizen or the reliability of his information. People v. Henry, 631 P.2d 1122 (Colo. 1981); People v. Rueda, 649 P.2d 1106 (Colo. 1982).

Information from a citizen informant is considered inherently trustworthy. People v. Press, 633 P.2d 489 (Colo. App. 1981).

Police officer's experience considered. In assessing the existence

of probable cause to arrest, a court must consider the police officer's knowledge, expertise, and experience in a particular law enforcement field. People v. Rueda, 649 P.2d 1106 (Colo. 1982); Bartley v. People, 817 P.2d 1029 (Colo. 1991); People v. McCoy, 870 P.2d 1231 (Colo. 1994).

Even if not false, statements of officer-affiants may be so misleading that a finding of probable cause may be deemed erroneous. People v. Winden, 689 P.2d 578 (Colo. 1984).

Reliability of police officer's observations. Information gained by the observations of a police officer may be presumed to be credible and reliable. People v. Cook, 665 P.2d 640 (Colo. App. 1983).

"Fellow-officer" rule. Affidavit in support of search warrant was not insufficient because it was predicated upon double hearsay, where the information is conveyed by one police officer to another police officer. People v. Quintana, 183 Colo. 81, 514 P.2d 1325 (1973).

A police officer has the right to rely upon the information relayed to him by his fellow law enforcement officers. People v. Nanes, 174 Colo. 294, 483 P.2d 958 (1971); People v. Reed, 56 P.3d 96 (Colo. 2002).

It is not necessary for the arresting officer to know of the reliability of the informer or to be himself in possession of information sufficient to constitute probable cause, provided that he acts upon the direction or as a result of communication with a brother officer or that of another police department and provided that the police, as a whole, are in possession of information sufficient to constitute probable cause to make the arrest. People v. Nanes, 174 Colo. 294, 483 P.2d 958 (1971).

Probable cause can be based on a combination of facts personally observed by the arresting officer and information relayed to him by other officers. People v. Handy, 657 P.2d 963 (Colo. App. 1982).

The fellow-officer rule permits a police officer to rely upon and accept information provided by another officer in determining whether there is probable cause for warrantless arrest. People v. Vaughns, 175 Colo. 369, 489 P.2d 591 (1971).

The "fellow officer" rule provides that an arresting officer need not have personal information amounting to probable cause but may rely on a dispatch or communication from another officer in effecting an arrest. People v. Henry, 631 P.2d 1122 (Colo. 1981).

An officer who does not personally possess sufficient information to constitute probable cause may nevertheless make a valid arrest if he acts upon the direction or as a result of a communication from a fellow officer, and the police, as a whole, possess sufficient information to constitute probable cause. People v. Freeman, 668 P.2d 1371 (Colo. 1983); People v. Thompson, 793 P.2d 1173 (Colo. 1990).

The right of one officer to rely on information relayed to him by a fellow officer is predicated upon the latter's assumed possession of trustworthy information of facts and circumstances which would themselves support a conclusion of probable cause. Where no such showing was made, justification for a warrantless search may not be placed on the so-called "fellow officer" rule. People v. Ware, 174 Colo. 419, 484 P.2d 103 (1971).

Overbreadth of search warrant cured by affidavit that more particularly described the items to be seized where affidavit was attached to warrant so that they appeared as one document. People v. Slusher, 844 P.2d 1222 (Colo. App. 1992).

Good faith basis required to challenge warrant affidavits. As conditions to a veracity hearing testing the truth of averments contained in a

warrant affidavit, a motion to suppress must be supported by one or more affidavits reflecting a good faith basis for the challenge and contain a specification of the precise statements challenged. People v. Dailey, 639 P.2d 1068 (Colo. 1982).

In considering whether a hearing should be held on veracity challenge to affidavit supporting a search warrant, trial court erred in applying standard akin to federal standard rather than the less demanding Colorado standard. People v. Cook, 722 P.2d 432 (Colo. App. 1986).

The government's qualified privilege of nondisclosure of confidential informants and a criminal defendant's veracity challenge should be balanced on considerations of fundamental fairness. People v. Flores, 766 P.2d 114 (Colo. 1988).

In camera interview in a veracity hearing must be preceded by defendant fairly placing into issue the existence of the informant, the informant's prior reliability, or the veracity of the officer-affiant. People v. Flores, 766 P.2d 114 (Colo. 1988).

Veracity challenger's attack must be more than conclusory or mere assertions of denial. If the only evidence produced at the suppression hearing is a defendant's bald assertion (e.g., that the informant does not exist or that the affiant misrepresented information conveyed by informant), then the defendant has failed to meet his threshold burden. People v. Flores, 766 P.2d 114 (Colo. 1988).

Suppression order reversed where affidavit alleged facts sufficient to support a finding of probable cause, including the fact of a one-day, round-trip to Denver by defendant and previous statements by defendant to an informer that he obtained heroin in Denver and that he was almost out of heroin. Information from second informant, held insufficient by district court to provide basis for informant's belief that defendant was going to Denver, deemed reliable due to corroboration by affiant and by confirmation of information from second informant on four previous occasions. People v. Varrieur, 771 P.2d 895 (Colo. 1989).

Suppression order reversed where affidavit stated that fellow officer observed defendant and another previous drug offender smoking outside hotel room, hotel staff connected defendant with another room in which methamphetamine precursors had been discovered, store employees identified defendant as having purchased large amounts of precursors, and defendant was observed driving his truck to hotel room. Search of room and truck held proper notwithstanding that some facts stated in affidavit may have been false, where trial court made no finding as to whether falsehoods were intentional or material. People v. Reed, 56 P.3d 96 (Colo. 2002).

Constitutional protection of the fourth amendment and this section applicable to civil forfeiture proceedings. People v. Taube, 843 P.2d 79 (Colo. App. 1992).

District attorney's investigator is officer within rule. An authorized investigator of a district attorney is a peace officer and therefore comes within the fellow officer rule for purposes of making a lawful arrest. People v. Herrera, 633 P.2d 1091 (Colo. App. 1981).

Probable cause found. People v. Bengston, 174 Colo. 131, 482 P.2d 989 (1971); People v. Ramey, 174 Colo. 250, 483 P.2d 374 (1971); People v. Barnes, 174 Colo. 531, 484 P.2d 1233 (1971); People v. Olson, 175 Colo. 140, 485 P.2d 891 (1971); People v. Henderson, 175 Colo. 400, 487 P.2d 1108 (1971); People v. Vigil, 175 Colo. 421, 489 P.2d 593 (1971); People v. DeBaca, 181 Colo. 111, 508 P.2d 393 (1973); People v. Johnson, 192 Colo. 483, 560 P.2d 465 (1977); People v. Ball, 639 P.2d 1078 (Colo. 1982); People v. Villiard, 679 P.2d 593 (Colo.

1983); People v. Hill, 690 P.2d 856 (Colo. 1984); Banks v. People, 696 P.2d 293 (Colo. 1985); People v. Smith, 709 P.2d 4 (Colo. App. 1985); People v. Atley, 727 P.2d 376 (Colo. App. 1986).

The best indication that a magistrate is not detached and neutral is the lack of probable cause in the affidavit. A review of the court's probable cause determination is the first step to determine if the warrant was issued by a neutral and detached magistrate. The affidavit clearly established probable cause. People v. Gallegos, 251 P.3d 1056 (Colo. 2011).

The next inquiry is whether the magistrate has an actual conflict so significant that he or she cannot be neutral and detached. An actual conflict would arise when the court would receive some benefit in issuing the warrant. In this case, the fact that the judge's son worked for the district attorney's office is just a mere appearance of impropriety, and, since the son was not involved in the case at all, there is no evidence of an actual conflict. People v. Gallegos, 251 P.3d 1056 (Colo. 2011).

C. Written Oath or Affirmation.

Law reviews. For article, "The 'Bare Bones' Affidavit Under Colorado's Good Faith Exception to the Exclusionary Rule", see 40 Colo. Law. 27 (May 2011).

When search warrant is challenged for lack of probable cause, supporting affidavit is an essential element to be introduced in evidence. People v. Espinoza, 195 Colo. 127, 575 P.2d 851 (1978).

Search warrrants must be supported by evidentiary affidavits containing sufficient facts to allow "probable cause" to be determined by a detached magistrate instead of the accusing police officer. To dispense with this requirement would render the search warrant itself meaningless. It would allow a police officer to subjectively determine probable cause. Brown v. Patterson, 275 F. Supp. 629 (D. Colo. 1967), aff'd, 393 F.2d 733 (10th Cir. 1968).

And affidavit must comply with United States supreme court's standards. If a search warrant is to be sustained, the Colorado supreme court must find that the affidavit complied with the standards set forth in Aguilar v. Texas, 378 U.S. 108, 84 S. Ct. 1509, 12 L. Ed. 2d 723 (1966), and in Spinelli v. United States, 393 U.S. 410, 89 S. Ct. 584, 21 L. Ed. 2d 637 (1969). People v. Brethauer, 174 Colo. 29, 482 P.2d 369 (1971).

Affidavit may include items observed in plain view. Items observed in plain view pursuant to a valid entry may be included in an affidavit for a search warrant. People v. Bustam, 641 P.2d 968 (Colo. 1982).

Verbal communication of facts, as contrasted with written communication, will not suffice to establish probable cause, nor will the affiant's conclusory declaration that he has probable cause add strength to the showing made. People v. Padilla, 182 Colo. 101, 511 P.2d 480 (1973).

Sufficient facts must appear on face of affidavit. The express constitutional requirement of a written oath or affirmation makes it clear beyond a doubt that sufficient facts to support a magistrate's determination of probable cause must appear on the face of the written affidavit. People v. Baird, 172 Colo. 112, 470 P.2d 20 (1970).

In determining whether the affidavit is sufficient, the judge must look within the four corners of the affidavit to determine whether there are grounds for the issuance of a search warrant. It is, of course, elementary and of no consequence that the police might have had additional information which could have provided a basis for the issuance of the warrant. People v. Brethauer, 174 Colo. 29, 482 P.2d 369 (1971); People v. Woods, 175 Colo. 34,

485 P.2d 491 (1971); People v. Padilla, 182 Colo. 101, 511 P.2d 480 (1973); People v. Bauer, 191 Colo. 331, 552 P.2d 512 (1976).

An affidavit may be used to charge a crime for the purpose of obtaining an arrest warrant; however, when used it must set forth facts sufficient to justify a finding of the existence of probable cause. People v. McFall, 175 Colo. 151, 486 P.2d 6 (1971).

Facts set forth in an affidavit must support the belief of a reasonably prudent person that the property to be seized is located at the place to be searched or, in the case of an arrest warrant, that an offense has been committed by the person named in the warrant. People v. White, 632 P.2d 609 (Colo. App. 1981); People v. Hamer, 689 P.2d 1147 (Colo. App. 1984).

But documents attached to and incorporated in an affidavit by reference need not be sworn to separately and may thus fall within the four corners of the affidavit. People v. Campbell, 678 P.2d 1035 (Colo. App. 1983).

Where same magistrate reviewed and signed two warrants within hours of each other, facts within affidavits for both warrants may be considered for determining probable cause for the second warrant. People v. Scott, 227 P.3d 894 (Colo. 2010).

However, an affidavit containing wholly conclusory statements devoid of facts from which a magistrate can independently determine probable cause is a "bare bones" affidavit and thus deficient. People v. Randolph, 4 P.3d 477 (Colo. 2000); People v. Bachofer, 85 P.3d 615 (Colo. App. 2003); People v. Pacheco, 175 P.3d 91 (Colo. 2006).

The fact that a companion arrived at defendant's detached garage and gave some of his or her methamphetamine to defendant insufficient to establish probable cause that defendant possessed methamphetamine in his or her residence or that he or she was dealing drugs from his or her residence. People v. Bachofer, 85 P.3d 615 (Colo. App. 2003).

Although judge may require testimony to supplement insufficient affidavit. Should the judge to whom application has been made for the issuance of a search warrant determine that the affidavit is insufficient, he can require that sworn testimony be offered to supplement the warrant or can demand that the affidavit be amended to disclose additional facts, if a search warrant is to be issued. People v. Brethauer, 174 Colo. 29, 482 P.2d 369 (1971); People v. Moreno, 176 Colo. 488, 491 P.2d 575 (1971) (arrest warrant).

But not if affidavit basically deficient. Verbal communications to the magistrate of additional supporting information cannot correct an affidavit which is basically deficient in its statement of the underlying facts and the circumstances relied upon. People v. Padilla, 182 Colo. 101, 511 P.2d 480 (1973).

Supplemental testimony must be reduced to writing and signed. Under the Colorado Constitution, the warrant can only be issued upon probable cause supported by oath or affirmation which is reduced to writing. Moreover, Crim. P. 41 requires an affidavit to support a search warrant, which establishes the grounds for the issuance of the warrant, and demands that the affidavit be sworn to before the judge. Accordingly, the testimony taken would have to be reduced to writing and signed by the witness or witnesses that offered testimony, under oath, to supplement the affidavit. People v. Brethauer, 174 Colo. 29, 482 P.2d 369 (1971); People v. Moreno, 176 Colo. 488, 491 P.2d 575 (1971).

An affidavit can be used to satisfy the fourth amendment's

particularity requirement if (1) a deficient warrant incorporates a curative affidavit by reference, (2) both documents are presented to the issuing magistrate or judge, and (3) the curative affidavit accompanies the warrant when it is executed. People v. Staton, 924 P.2d 127 (Colo. 1996).

The execution of the search warrant under the supervision and control of the officer who is the affiant obviates the necessity for the affidavit to accompany the warrant when it is executed. People v. Staton, 924 P.2d 127 (Colo. 1996).

Court to strike false information supportive of search warrant. Where the information supplied by the affiant which supports the issuance of the search warrant is false, the trial court has no alternative but to strike the admittedly erroneous information which the affiant supplied. People v. Hampton, 196 Colo. 466, 587 P.2d 275 (1978).

Statements in an affidavit which are untrue or which were known to the affiant to be false must be stricken and cannot be considered in determining whether probable cause exists to support the issuance of a warrant. People v. White, 632 P.2d 609 (Colo. App. 1981).

A police officer's factual statements in an affidavit that are erroneous and false must be stricken and may not be considered in determining whether the affidavit will support the issuance of a search warrant. People v. Malone, 175 Colo. 31, 485 P.2d 499 (1971).

But warrant will not be stricken if affidavit still contains sufficient material facts. Where the affidavit still contains material facts sufficient as a matter of law to support the issuance of a warrant after deletion of the erroneous statements, the supreme court will not strike down the warrant because the affidavit is not completely accurate. People v. Malone, 175 Colo. 31, 485 P.2d 499 (1971).

Although warrants issued on fatally defective affidavits are nullities, and any search conducted under them is unlawful. Hernandez v. People, 153 Colo. 316, 385 P.2d 996 (1963); People v. Brethauer, 174 Colo. 29, 482 P.2d 369 (1971).

A search warrant is fatally defective where it is based upon an affidavit which was wholly insufficient to support a finding of probable cause. Smaldone v. People, 173 Colo. 385, 479 P.2d 973 (1971).

Test for determining whether omission in affidavit invalidates search warrant is whether the omitted facts rendered the affidavit substantially misleading to the judge who issued the warrant. People v. Winden, 689 P.2d 578 (Colo. 1984); People v. Sundermeyer, 769 P.2d 499 (Colo. 1989).

The omission of material facts known to the affiant at the time the affidavit was executed may cause statements within the affidavit to be so misleading that a finding of probable cause may be deemed erroneous. An omitted fact is material for purposes of vitiating an entire affidavit only if its omission rendered the affidavit substantially misleading to the judge who issued the warrant. People v. Fortune, 930 P.2d 1341 (Colo. 1997).

Omission of fact in affidavit that reserve police officer had viewed marijuana plants in defendant's home prior to observations made by officers through window did not make affidavit misleading as omitted fact did not cast doubt on existence of probable cause. People v. Sundermeyer, 769 P.2d 499 (Colo. 1989).

Omission of fact in affidavit that would have indicated the affiant's source of information related to specific address to be searched arguably failed to provide a substantial basis for issuing a warrant, however, even a bare bones affidavit should not lead to an exclusionary sanction unless it is so lacking in indicia of probable

cause that official belief in its existence was unreasonable. People v. Gall, 30 P.3d 145 (Colo. 2001).

So long as the omission of certain facts in the affidavit does not cause it to be misleading, a search warrant based on such affidavit is still valid. People v. Grady, 755 P.2d 1211 (Colo. 1988).

Regardless of whether facts were omitted with a reckless disregard for the truth in the affidavit submitted in support of a search warrant, the information was not material such that its omission rendered the affidavit substantially misleading as to the existence of probable cause. People v. Kerst, 181 P.3d 1167 (Colo. 2008).

An affiant's impression that later proved to be incorrect, but was not negligently made, did not have to be excised from the search warrant affidavit when determining whether probable cause existed so long as the impression was reasonable. People v. Young, 785 P.2d 1306 (Colo. 1990).

There is no requirement that all steps taken, all information obtained, and all statements made by witnesses during the course of an investigation be described fully and in chronological order in an affidavit. People v. Fortune, 930 P.2d 1341 (Colo. 1997).

When the information indicates a continuing series of illegal activities, the need for precise times of surveillance is lessened. While specific dates are preferable and should be given if at all possible, the fact that they are absent is not fatal to the sufficiency of the affidavit. People v. Lubben, 739 P.2d 833 (Colo. 1987).

Erroneous description of location not necessarily fatal. Fact that the affidavit identified the wrong street, which was less than one block away from the actual location of the truck that was to be searched, was not dispositive of the affidavit's efficacy. People v. Del Alamo, 624 P.2d 1304 (Colo. 1981).

Fact that affidavit failed to include apartment number and made a specific request to search a different residence was not necessarily fatal when affidavit and warrant were both prepared by the same officer and presented to the judge at the same time, affidavit included an annotation with a correct address and apartment number at the bottom of each page, and the documents taken together left no doubt as to the correct address and apartment number to search. People v. Gall, 30 P.3d 145 (Colo. 2001).

Thus, failure to specifically state in affidavit that sex crime had occurred in vehicle to be searched was not fatally defective where it had been established that vehicle was present at location of alleged crimes, and it was reasonable to believe evidence of the sex crime might be inside the vehicle. People v. Martinez, 32 P.3d 520 (Colo. App. 2001).

But a "bare bones" affidavit which fails to connect the property to be searched with the alleged criminal activity and which otherwise lacks particularity is insufficient. People v. Randolph, 4 P.3d 477 (Colo. 2000).

Admission of evidence seized from a defendant's residence pursuant to a defective warrant did not constitute reversible error, even though warrant was issued based on an affidavit inadvertently failing to allege facts linking defendant to the residence to be searched. People v. Deitchman, 695 P.2d 1146 (Colo. 1985).

Not every instance of insufficient attention to detail by police officers, any more than by attorneys or judges, is unreasonable and in absence of any evidence of a deliberately false affidavit, abandonment by the judge of his duty, or a facially deficient warrant, the exclusion of evidence discovered in reliance on the search warrant was improper. People v. Gall, 30 P.3d 145

(Colo. 2001).

Good faith exception to exclusionary rule held to apply to seizure of telephone toll records where affidavit underlying search warrant was insufficient. People v. Taylor, 804 P.2d 196 (Colo. App. 1990).

Good faith exception to exclusionary rule does not apply where a detective's reliance on a warrant is not objectively reasonable. Where an affidavit contains no facts that would allow a reasonable officer to conclude that probable cause for a search exists, the illegally obtained evidence is not admissible under the good faith exception to the exclusionary rule. People v. Leftwich, 869 P.2d 1260 (Colo. 1994); People v. Pacheco, 175 P.3d 91 (Colo. 2006); People v. Gutierrez, 222 P.3d 925 (Colo. 2009).

Nor does good faith exception apply when the police submit a defective affidavit to the county judge, and continue to rely on that defective affidavit. The failure of the police to corroborate the details in the affidavit and to narrow the search with particularity was not in accord with the duty of the police to assure compliance with the probable cause requirement at each step of the process. People v. Randolph, 4 P.3d 477 (Colo. 2000).

The fact that same officer filed bare bones affidavit for warrant and executed warrant bolsters trial court's conclusion that the officer's reliance on the defective affidavit was not objectively reasonable, and, consequently, the good faith exception to the exclusionary rule did not apply to shield the evidence obtained in the search. People v. Pacheco, 175 P.3d 91 (Colo. 2006).

The fact that the affidavit details activities that are lawful does not cause it to be a bare bones affidavit; a combination of otherwise lawful circumstances may well lead to a legitimate inference of criminal activity. People v. Altman, 960 P.2d 1164 (Colo. 1998).

The determination by an appellant court that a warrant is invalid does not mean a police officer's reliance upon that warrant was objectively unreasonable. People v. Altman, 960 P.2d 1164 (Colo. 1998).

A warrant that has failed appellate scrutiny can nonetheless form the basis for good faith execution by a reasonable police officer. People v. Altman, 960 P.2d 1164 (Colo. 1998).

Probable cause to issue a search warrant for a residence was sufficiently established by affidavit that was based primarily on information provided by confidential police informant and only thinly corroborated by independent police investigation. The "totality of circumstances" test for determining whether probable cause existed for issuing warrant was met. People v. Paquin, 811 P.2d 394 (Colo. 1991).

Effect of sufficient affidavit. If the supporting affidavit was sufficient to provide probable cause for issuance of a warrant, then the searching officers were rightfully in the defendant's apartment and were entitled to seize items in plain view which they recognized as stolen. People v. Espinoza, 195 Colo. 127, 575 P.2d 851 (1978).

Affidavit held sufficient. People v. Campbell, 678 P.2d 1035 (Colo. App. 1983); People v. Grady, 755 P.2d 1211 (Colo. 1988); People v. Quintana, 785 P.2d 934 (Colo. 1990).

Affidavit held insufficient. People v. Schmidt, 172 Colo. 285, 473 P.2d 698 (1970); People v. Brethauer, 174 Colo. 29, 482 P.2d 369 (1971); Flesher v. People, 174 Colo. 355, 484 P.2d 113 (1971); People v. Myers, 175 Colo. 109, 485 P.2d 877 (1971); People v. Padilla, 182 Colo. 101, 511 P.2d 480 (1973); People v. Bauer, 191 Colo. 331, 552 P.2d 512 (1976).

III. SEARCHES AND SEIZURES.

A. In General.

This section protects only against unreasonable searches and seizures. The prohibitions of this section are intended to protect only against unreasonable searches and seizures. Dickerson v. People, 179 Colo. 146, 499 P.2d 1196 (1972); Hoffman v. People, 780 P.2d 471 (Colo. 1989); People v. Hakel, 870 P.2d 1224 (Colo. 1994); People v. Upshur, 923 P.2d 284 (Colo. App. 1996).

The security of persons is guaranteed only against unreasonable searches. Larkin v. People, 177 Colo. 156, 493 P.2d 1 (1972).

The fourth and fourteenth amendments to the U.S. Constitution and this section guarantee the right of the people to be secure in their persons against unreasonable seizures. To effectuate these guarantees, police must have probable cause to arrest before they can subject a person to those deprivations of liberty that result from being arrested. People v. McCoy, 870 P.2d 1231 (Colo. 1994); People v. Davis, 903 P.2d 1 (Colo. 1995).

Federal fourth amendment search and seizure protections are insufficient when law enforcement attempts to use a search warrant to obtain an innocent, third-party bookstore's customer purchase records. The Colorado Constitution provides greater protection in this arena than the federal constitution. A more substantial justification from the government is required when the government action is likely to chill people's willingness to read and be exposed to diverse ideas. Tattered Cover, Inc. v. City of Thornton, 44 P.3d 1044 (Colo. 2002).

An innocent, third-party bookstore must be afforded an opportunity for a hearing prior to the execution of any search warrant that seeks to obtain its customers' book-purchasing records. Tattered Cover, Inc. v. City of Thornton, 44 P.3d 1044 (Colo. 2002).

A police officer's request for identification, without more, does not convert a consensual encounter into a seizure that requires fourth amendment protection. People v. Paynter, 955 P.2d 68 (Colo. 1998).

Even after Brendlin v. California, 551 U.S. 249 (2007), police officer may ask automobile passenger for identification. Although passenger was technically seized at time she provided a false name, officer could lawfully ask for her identification during the traffic stop without reasonable suspicion of criminal activity on her part. People v. Bowles, 226 P.3d 1134 (Colo. App. 2009).

Neither a request for consent to search nor a request for a person to move a short distance transforms a consensual encounter into a seizure, so long as the officer does not convey a message that compliance is required. People v. Marujo, 190 P.3d 1003 (Colo. 2008).

Investigatory stops and arrests are seizures and therefore implicate the guarantees contained in the fourth amendment to the United States constitution and this section. People v. Morales, 935 P.2d 936 (Colo. 1997).

Reasonableness of search determined by balancing public need against invasion. In determining reasonableness, it is necessary to balance the public need to search against the invasion of the defendant's person or property which the search entails. Roybal v. People, 166 Colo. 541, 444 P.2d 875 (1968).

Reasonableness determined by balancing need for search against invasion of personal rights involved while giving consideration to scope of intrusion, manner and place conducted, and justification for. People v. Martin,

806 P.2d 393 (Colo. App. 1990).

Reasonableness standard of the fourth amendment should be applied to claims that law enforcement officers have used excessive force in the course of an arrest, investigatory stop, or other seizure of a free citizen. Martinez v. Harper, 802 P.2d 1185 (Colo. App. 1990).

"Special needs" exception exists to the warrant and probable cause requirements for the needs of law enforcement. City and County of Denver v. Casados, 862 P.2d 908 (Colo. 1993), cert. denied, 511 U.S. 1005, 114 S. Ct. 1372, 128 L. Ed. 2d 48 (1994).

And reasonableness inquiry requires balancing the nature and quality of the intrusion on the individual's fourth amendment interest against the countervailing interests at stake. Martinez v. Harper, 802 P.2d 1185 (Colo. App. 1990).

And reasonableness inquiry must be made objectively, that is, judged from the perspective of a reasonable officer on the scene. Martinez v. Harper, 802 P.2d 1185 (Colo. App. 1990); People v. Weston, 869 P.2d 1293 (Colo. 1994).

It is constitutionally reasonable to prevent escape by using deadly force where an officer has probable cause to believe that the suspect poses a threat of serious physical harm, either to the officer or to others. Thus, if a suspect threatens the officer with a weapon or there is probable cause to believe that the suspect has committed a crime involving the infliction or threatened infliction of serious physical harm, deadly force may be used if necessary to prevent escape, and if, where feasible, some warning has been given. Martinez v. Harper, 802 P.2d 1185 (Colo. App. 1990).

A limited intrusion may be upheld on the basis of its objective reasonableness even though the officer may have harbored a subjective intent to engage in a more extensive intrusion than was warranted under the circumstances. People v. Weston, 869 P.2d 1293 (Colo. 1994).

Every search and seizure issue must be considered on the basis of the totality of the circumstances. DeLaCruz v. People, 177 Colo. 46, 492 P.2d 627 (1972).

Whether a search and seizure is unreasonable within the meaning of this section depends upon the facts and circumstances of each case. Early v. People, 178 Colo. 167, 496 P.2d 1021 (1972).

Each search and seizure case must be tested on its own particular facts, and the test is always whether the search was reasonable under the circumstances. People v. Burley, 185 Colo. 224, 523 P.2d 981 (1974).

In determining whether a particular encounter between the police and a citizen violates the fourth amendment, it is helpful to classify the incident as one of three types of police-citizen contact: Consensual encounters; arrests or full-scale searches; or intermediate forms of intrusion such as investigatory stops or limited searches. Consensual encounters do not trigger the fourth amendment as long as a reasonable person would feel free to disregard the police and go about his or her business. Arrests and full-scale searches are subject to the fourth amendment reasonableness requirement which requires that searches are based upon warrants issued upon probable cause or on an established exception to the warrant requirement. Finally, intermediate forms of intrusion may be used under specific circumstances based upon less than probable cause. People v. Archuleta, 980 P.2d 509 (Colo. 1999).

The degree of restraint incident to a traffic stop did not rise to the level associated with a formal arrest where the police officer stood

next to the car and did not remove the defendant from the car or handcuff the defendant. After issuing the citation, when the police officer continued to question the defendant, the extent of restraint did not rise to the level of a formal arrest, even if the police officer retained the defendant's driver's license and registration. People v. Cervantes-Arredondo, 17 P.3d 141 (Colo. 2001).

Once the purpose of an investigatory stop is accomplished and there is no further reasonable suspicion to support further investigation, the officer generally may not further detain the driver. However, further questioning is permissible if the initial detention becomes a consensual encounter. To determine the nature and phases of an extended contact, the court must consider the duration and conditions of the contact in the context of the entire stop. But, the tenth circuit has applied a bright line rule: An officer must return a driver's documentation before a detention can end and a consensual encounter can begin. People v. Cervantes-Arredondo, 17 P.3d 141 (Colo. 2001).

The presence of a scent-masking agent, combined with other indicia of criminal activity may create a reasonable suspicion to support further investigation and a reasonably brief inquiry. People v. Cervantes-Arredondo, 17 P.3d 141 (Colo. 2001).

A consensual interview can escalate into an investigatory stop if, upon consideration of the totality of the circumstances, a reasonable person, innocent of any crimes, would feel that he or she was not free to leave the officer's presence or disregard the officer's request for information. The record supports the trial court's finding that the encounter was consensual. People v. Valencia, 169 P.3d 212 (Colo. App. 2007).

"Search". There was clearly a "search" when an officer went to the address given by the defendant in order to obtain evidence or information about the defendant and the evidence was produced by the owner at the specific request of the officer. Spencer v. People, 163 Colo. 182, 429 P.2d 266 (1967).

Courts have interpreted the phrase "searches and seizures" in constitutional provisions to regulate the type of conduct designed to elicit a benefit for the government in an investigatory or, more broadly, an administrative capacity. People v. Loggins, 981 P.2d 630 (Colo. App. 1998).

A visual observation which infringes upon a person's reasonable expectation of privacy constitutes a search. People v. Harfmann, 38 Colo. App. 19, 555 P.2d 187 (1976).

A search involves some exploratory investigation, or an invasion and quest, a looking for or seeking out, and implies a prying into hidden places for that which is concealed. People v. Gomez, 632 P.2d 586 (Colo. 1981), cert. denied, 455 U.S. 943, 102 S. Ct. 1439, 71 L. Ed. 2d 655 (1982).

Requiring a person to submit to an ultraviolet lamp examination constitutes a search. People v. Santistevan, 715 P.2d 792 (Colo. 1986).

Actions of officer did not constitute search where the officer knocked on an improperly latched door of residence, causing it to open and allowing the officer to observe a bong. People v. Holmes, 981 P.2d 168 (Colo. 1999).

Collection and testing of urine performed as part of university's drug testing program is a "search" within the meaning of this section. Derdeyn v. Univ. of Colo., 832 P.2d 1031 (Colo. App. 1991).

The collection and testing of urine performed as part of the university of Colorado's drug testing

program for intercollegiate athletics is a "search" within the meaning of §7 of art. II, Colo. Const. Derdeyn v. Univ. of Colo., 832 P.2d 1031 (Colo. App. 1991).

General searches forbidden. A basic consideration to control and guide the magistrate in issuing a search warrant is that general or blanket searches are forbidden, such being the very evil sought to be protected against by the adoption of the constitutional provisions against unreasonable searches and seizures. People v. Avery, 173 Colo. 315, 478 P.2d 310 (1970).

It is not how many items may be seized that determines validity of a search, for the rule against general exploratory searches is not aimed against quantity, nor even designed to protect property quantitatively, but, instead, is designed to prevent indiscriminate searches and seizures that invade privacy. People v. Tucci, 179 Colo. 373, 500 P.2d 815 (1972).

Whether search of defendant's room was reasonable because search warrant authorized search of entire house depends on facts known to officers. Officers knew that defendant's father, the person whose unlawful activities formed the basis of the search warrant, had ready access to defendant's bedroom. The search of defendant's bedroom for the contraband identified in the search warrant was constitutionally reasonable irrespective of whether the officers were aware that defendant was paying rent to his parents. People v. Martinez, 165 P.3d 907 (Colo. App. 2007).

Executive order held not to be facially invalid under the fourth amendment. The order stated that employees must submit to screening when there is "reasonable suspicion" of illicit drug or alcohol use. The court ruled that the order did not contemplate the testing of those who did not hold safety or security-sensitive positions based only on a suspicion of off-duty use or impairment. City and County of Denver v. Casados, 862 P.2d 908 (Colo. 1993), cert. denied, 511 U.S. 1005, 114 S. Ct. 1372, 128 L. Ed. 2d 48 (1994).

Searches have been described as intrusive governmental investigations or explorations into non-public places for that which is concealed. Hoffman v. People, 780 P.2d 471 (Colo. 1989).

There was no "search" where emergency room personnel, in the course of treating the defendant for a serious injury under standard hospital procedures and not motivated by an investigatory or administrative purpose, discovered contraband hidden on his person. People v. Loggins, 981 P.2d 630 (Colo. App. 1998).

Search held unconstitutional as general exploratory search. In re People in Interest of B.M.C., 32 Colo. App. 79, 506 P.2d 409 (1973).

Officer may seize contraband discovered during valid search for other articles. If an officer is conducting a search, either under a valid search warrant or incident to a valid arrest where the search is such as is reasonably designed to uncover the articles for which he is looking, and in the course of such search discovers contraband or articles the possession of which is a crime, other than those for which he was originally searching, he is not required to shut his eyes and refrain from seizing that material under the penalty that if he does seize it it cannot be admitted in evidence. Hernandez v. People, 153 Colo. 316, 385 P.2d 996 (1963).

An officer conducting a reasonable search, either under a valid search warrant or incident to a valid arrest, who uncovers contraband or articles the possession of which is a crime, may seize these articles even though they may not relate to the crime for which the arrest was made. Baca v. People, 160 Colo. 477, 418 P.2d 182

(1966); Roybal v. People, 166 Colo. 541, 444 P.2d 875 (1968).

An officer conducting a reasonable search, incident to a valid arrest, may seize contraband or articles, the possession of which gives the police officer reason to believe a crime has been committed, even though such articles do not relate to the crime for which the defendant was initially arrested. People v. Ortega, 181 Colo. 223, 508 P.2d 784 (1973).

And that articles discovered do not relate to crime for which defendant arrested does not render search exploratory and general. Baca v. People, 160 Colo. 477, 418 P.2d 182 (1966).

Seizure of "mere evidence". When intrusions upon privacy are allowed, there is no viable reason to distinguish intrusions to secure "mere evidence" from intrusions to secure fruits, instrumentalities, or contraband. Marquez v. People, 168 Colo. 219, 450 P.2d 349 (1969).

"Mere evidence" is articles which are not fruits, instrumentalities, or contraband, and which are not per se associated with criminal activity, but which the officer executing the warrant has probable cause to believe are associated with criminal activity. People v. Henry, 173 Colo. 523, 482 P.2d 357 (1971).

People must show connection between such articles and criminal activity. When a defendant demonstrates that an article is not specifically described in the search warrant, and when it is not per se connected with criminal activity, the burden of showing that it is so connected falls upon the people. People v. Henry, 173 Colo. 523, 482 P.2d 357 (1971); People v. Wilson, 173 Colo. 536, 482 P.2d 355 (1971); People v. Lujan, 174 Colo. 554, 484 P.2d 1238 (1971); People v. Bustam, 641 P.2d 968 (Colo. 1982).

"Mere evidence" which is seized within the scope of the search authorized by the warrant must be shown to have a nexus with the case in which the motion to suppress is filed and with at least one of the defendants in the case. People v. Henry, 173 Colo. 523, 482 P.2d 357 (1971); People v. Piwtorak, 174 Colo. 525, 484 P.2d 1227 (1971).

If people sustain burden, articles should not be suppressed. People v. Wilson, 173 Colo. 536, 482 P.2d 355 (1971).

When a civilian acts as an agent of the state, evidence obtained from an unlawful search must be suppressed. People v. Aguilar, 897 P.2d 84 (Colo. 1995).

Whether an individual becomes an "agent" of the police is determined by the totality of the circumstances. People v. Aguilar, 897 P.2d 84 (Colo. 1995).

Connection shown. Where objection was made to the seizure of the particular personal effects which served to identify the person or persons residing at and in control of the premises searched and the record indicated that these personal effects were intermingled with the suspected narcotics and dangerous drugs found on the premises, it was held that these personal effects, which bore the names of the defendants, were validly seized, since these items might well serve to establish elements of the crimes for which defendants were charged and for the investigation of which crimes the search warrant was issued and executed. People v. Piwtorak, 174 Colo. 525, 484 P.2d 1227 (1971).

Motion to suppress granted where district attorney fails to make showing. At hearings on suppression motions in the future, when the district attorney fails to make the requisite showing, the trial court should sustain the motion as it relates to nonspecified articles not per se connected with criminal activity. People v. Wilson, 173 Colo. 536, 482 P.2d 355 (1971).

Suppression issues become

moot upon entry of a guilty plea. People v. Waits, 695 P.2d 1176 (Colo. App. 1984), aff'd in part and rev'd in part on other grounds, 724 P.2d 1329 (Colo. 1986).

Return of seized property. Seized property against which the government has no claim must be returned to its lawful owner. People v. Buggs, 631 P.2d 1200 (Colo. App. 1981).

Burden in motion for return of property. In a motion for return of seized property, a defendant has the burden of making a prima facie showing that goods were seized from him at the time of his arrest and are being held by law enforcement authorities. People v. Buggs, 631 P.2d 1200 (Colo. App. 1981).

Evidence obtained by means of undercover work. So long as the agent's conduct falls short of actual instigation of a crime, which raises the defense of entrapment, the United States supreme court has refused to set aside convictions because evidence was obtained by means of undercover work by law enforcement agents. Patterson v. People, 168 Colo. 417, 451 P.2d 445 (1969).

Absent exigent circumstances, it is necessary to obtain arrest warrant in order to justify entry into a private home to make an arrest. People v. Williams, 200 Colo. 187, 613 P.2d 879 (1980).

The warrantless entry into a home in order to make an arrest, in the absence of consent or exigent circumstances, is unconstitutional. People v. Hogan, 649 P.2d 326 (Colo. 1982).

In the absence of exigent circumstances, police officers may not enter a private residence for the purpose of making a warrantless arrest without first obtaining a search warrant, even though the officers have probable cause to believe a suspect residing therein has committed a crime. People v. Magoon, 645 P.2d 286 (Colo. App. 1982).

Since police officers arrested defendant in his home without a warrant, the arrest could be justified only on the basis of consent to enter the home or on there being exigent circumstances present. People v. Santisteven, 693 P.2d 1008 (Colo. App. 1984).

Police officers may enter a residence without a search warrant to execute an arrest warrant when there is reason to believe the suspect is within. People v. Aarness, 116 P.3d 1233 (Colo. App. 2005), rev'd on other grounds, 150 P.3d 1271 (Colo. 2006).

Officers must have a reasonable belief the arrestee (1) lives at the residence and (2) is within the residence at the time of entry. People v. Aarness, 116 P.3d 1233 (Colo. App. 2005), rev'd on other grounds, 150 P.3d 1271 (Colo. 2006).

The officers had no reason to believe that the defendant lived at the address, but there were exigent circumstances that justified the police entry into the home to arrest the defendant. The circumstances were sufficient to conclude there was a substantial safety risk to both police and others to justify entry to arrest the defendant. People v. Aarness, 150 P.3d 1271 (Colo. 2006).

One's house cannot lawfully be searched without search warrant, except as incident to lawful arrest at the house. A belief, however well founded, that an article sought is concealed in a dwelling house furnishes no justification for a search of that place without a warrant. Such searches are constitutionally unlawful notwithstanding facts unquestionably showing probable cause. Wilson v. People, 156 Colo. 243, 398 P.2d 35 (1965); People v. Baird, 172 Colo. 112, 470 P.2d 20 (1970).

But inviting officer into home to transact business waives right of privacy. When one opens his home to the transaction of business and

invites another to come in and trade with him, he waives his right to privacy in the home or premises, with relation to the person who accepts that invitation to trade. When the customer turns out to be a government agent, the seller cannot then complain that his privacy has been invaded so long as the agent does no more than buy his wares. Patterson v. People, 168 Colo. 417, 451 P.2d 445 (1969).

When one opens his home to the transaction of business and invites another to come and trade with him, he breaks the seal of sanctity and waives his right to privacy. People v. Henry, 173 Colo. 523, 482 P.2d 357 (1971).

There is no unreasonable search when an undercover agent, posing as a willing participant in an unlawful transaction, gains entry by invitation and observes or is handed contraband. People v. Henry, 173 Colo. 523, 482 P.2d 357 (1971); People v. Nisser, 189 Colo. 471, 542 P.2d 84 (1975).

But once police officers are illegally on premises, they may not make use of anything observed or seized therein to form the basis for a determination of probable cause to arrest the occupants. People v. Baird, 172 Colo. 112, 470 P.2d 20 (1970).

Police officer did not make a request to search defendant's residence merely by knocking on the door and identifying himself as a police officer. People v. Turner, 730 P.2d 333 (Colo. App. 1986).

No invasion of privacy where officers knocked on the door of defendant's house to investigate possible traffic offense. People v. Baker, 813 P.2d 331 (Colo. 1991).

Police officer's testimony was properly allowed when the officer testified that the defendant slammed the door in the officer's face after the officer identified himself as a police officer because there was no evidence that the officer requested to search the premises before the door was slammed. People v. Turner, 730 P.2d 333 (Colo. App. 1986).

Arrest during perpetration of crime. There is no constitutional requirement for an arrest warrant when the arrest is effected in the motel room of another during the perpetration of a crime. People v. Velasquez, 641 P.2d 943 (Colo.), appeal dismissed, 459 U.S. 805, 103 S. Ct. 28, 74 L. Ed. 2d 43 (1982), reh'g denied, 459 U.S. 1138, 103 S. Ct. 774, 74 L. Ed. 2d 986 (1983).

Answering defendant's telephone following arrest not unconstitutional. Where for over an hour following the defendant's arrest the officers continued to answer the telephone which rang repeatedly, and the court permitted these officers to testify as to conversations that they had over the phone with unidentified persons on the other end of the line relating to inquiries as to odds and placing of bets and the defendant contended that "seizure" of the contents of these telephone calls was unconstitutional, there were no perceived violations of the United States or Colorado constitution. McNulty v. People, 174 Colo. 494, 483 P.2d 946 (1971).

And arrest not invalidated by misapprehension as to officer's identity. An arrest made by reason of observed violation of law is not invalid because of the fact that the arresting officer was invited into a home under a misapprehension of his identity by the home's occupant, which misapprehension was known to the arresting officer. People v. Henry, 173 Colo. 523, 482 P.2d 357 (1971).

Arrest can only be justified by information available to officer immediately prior to arrest. The discovery of contraband on the person of one who is unlawfully arrested does not validate an arrest. People v. Nelson, 172 Colo. 456, 474 P.2d 158 (1970); People v. Feltch, 174 Colo. 383, 483 P.2d 1335 (1971).

And prior record of arrest, in and of itself, cannot justify repeated intrusions on person's constitutional rights. Cowdin v. People, 176 Colo. 466, 491 P.2d 569 (1971).

Full search of person in custody, including trace metal test, is reasonable, and evidence of and comment on refusal of defendant to comply with lawful request for nontestimonial evidence is proper where probative value of evidence outweighs prejudicial effect. People v. Larson, 782 P.2d 840 (Colo. App. 1989).

Police are permitted to search a lawfully arrested person and the area within the arrestee's immediate control. People v. Aguilar, 897 P.2d 84 (Colo. 1995).

Acts of one member do not give probable cause to arrest whole group. The furtive acts of one of a hippy group, which was apparently together for an utterly innocent reason, do not give an officer cause to arrest the whole group. People v. Feltch, 174 Colo. 383, 483 P.2d 1335 (1971).

Police to identify selves before forced entry. Even with a valid warrant, before police officers attempt a forced entry into a house, they must first identify themselves and make their purpose known. People v. Godinas, 176 Colo. 391, 490 P.2d 945 (1971).

Forceful, warrantless entry into an apartment by police officers for purposes of securing the apartment until a search warrant arrived was in violation of defendants' constitutional rights. People v. Hannah, 183 Colo. 9, 514 P.2d 320 (1973).

Exceptions. When police officers attempt a forced entry, they must first identify themselves and make their purpose known, unless (1) the warrant expressly authorizes forced entry without such a prior announcement, or (2) the circumstances known to such officer or person at the time of forced entry, but, in the case of the execution of a warrant, unknown to the applicant when applying for such warrant, give him probable cause to believe that (a) such notice is likely to result in the evidence subject to seizure being easily and quickly destroyed or disposed of, which is true in every case involving a search for narcotics, (b) such notice is likely to endanger the life or safety of the officer or other person, (c) such notice is likely to enable the party to be arrested to escape, or (d) such notice would be a useless gesture. People v. Lujan, 174 Colo. 554, 484 P.2d 1238 (1971).

And officers must show circumstances justifying forced entry. Where the notice and purpose requirement is to be dispensed with, the officers must sustain the burden of showing the exigent circumstances under which they assumed the power to enter forcibly. People v. Lujan, 174 Colo. 554, 484 P.2d 1238 (1971).

Forceful entries need not involve the actual breaking of doors and windows. People v. Godinas, 176 Colo. 391, 490 P.2d 945 (1971).

But forced entries may include any entries made without permission. People v. Godinas, 176 Colo. 391, 490 P.2d 945 (1971).

Circumstances need not always be determined by magistrate prior to forced entry. Police discretion should not always be limited by requiring that the exigent circumstances authorizing forced entry without prior announcement be determined by the magistrate, since in many instances, the facts requiring immediate entry by force will not be known to the officer when he obtains the warrant. People v. Lujan, 174 Colo. 554, 484 P.2d 1238 (1971).

Forced entry found where officers, acting without a "no-knock" search warrant, identified themselves to unidentified persons sitting on front porch of house who were not apparently owners or occupiers of the house, opened a closed but unlocked

door, and, once inside the house, identified themselves to wife of defendant and indicated to her that a search warrant had been issued. People v. Gifford, 782 P.2d 795 (Colo. 1989).

Prosecution must demonstrate by clear and convincing evidence that an occupant freely gave the police consent to enter the premises. In the course of making an inquiry, a police officer is not entitled to walk past the person opening the door to a house without obtaining permission to enter the house. People v. O'Hearn, 931 P.2d 1168 (Colo. 1997).

One area traditionally recognized as deserving of special protection from unwarranted government intrusion is the area immediately surrounding a private residence, or the curtilage. Hoffman v. People, 780 P.2d 471 (Colo. 1989).

Fact that search occurs within curtilage is not dispositive, if area's public accessibility dispels any reasonable expectation of privacy. People v. Shorty, 731 P.2d 679 (Colo. 1987).

Gate entrance held open to the public that led to basement, along with basement lights being on and defendant's evasive responses to questions about co-inhabitants of premises, supported trial court's conclusion that officers had a reasonable basis to walk onto the premises through open gate and knock on basement door. People v. Cruse, 58 P.3d 1114 (Colo. App. 2002).

In general, a curtilage is not protected from observations that are lawfully made from outside its perimeter not involving physical intrusion. The U.S. supreme court has identified four factors to consider in defining the extent of a home's curtilage: The proximity of the area claimed to be curtilage to the home; whether the area is included within an enclosure surrounding the home; the nature of the uses to which the area is put; and the steps taken by the resident to protect the area from observation by people passing by. Hoffman v. People, 780 P.2d 471 (Colo. 1989); People v. Bartley, 791 P.2d 1222 (Colo. App. 1990), aff'd, 817 P.2d 1029 (Colo. 1991).

Police entry into curtilage of premises held reasonable. Blincoe v. People, 178 Colo. 34, 494 P.2d 1285 (1972).

Flying over a person's back yard in a helicopter to determine whether such person is cultivating marijuana constitutes a search for the purposes of the fourth amendment to the U.S. Constitution and if done without a warrant, it is an illegal search. People v. Pollock, 796 P.2d 63 (Colo. App. 1990).

Television news helicopter flyover of private residence did not constitute a search where helicopter flew within permissible FAA altitude range, posed limited degree of intrusiveness, and where marijuana plants growing in shed were in plain view to anyone legally observing the shed from helicopter. Henderson v. People, 879 P. 2d 383 (Colo. 1994).

Motion to suppress was properly denied where information obtained by an airplane flight was not necessary to the validity of the affidavit for search warrant since information obtained independently of that aerial survey supplied probable cause for issuance of a warrant to search the defendant's property for stolen wheat and vehicles that transported it. Bartley v. People, 817 P.2d 1029 (Colo. 1991).

Where constitutionally admissible evidence establishing the defendant's guilt was overwhelming, the admission of evidence gained by flying over the defendant's property, including photographs taken during that flight, even if impermissibly received, was harmless beyond a reasonable doubt. Bartley v. People, 817 P.2d 1029 (Colo. 1991).

Where defendant did not

object at trial, review was for plain error and to determine whether testimony by police that defendant refused a search of his home so affected the fundamental fairness of the trial as to cast serious doubt on the reliability of the judgment of conviction, but, because evidence of defendant's guilt was so overwhelming, any error was harmless beyond a reasonable doubt. People v. Perry, 68 P.3d 472 (Colo. App. 2002).

This section did not require suppression of the information obtained from an airplane flight, even if it was assumed that the objects photographed were within the curtilage on defendant's property, where there is no contention that the flight path or altitude of the airplane violated any applicable law or regulation or that the information obtained was not visible to the naked eye. People v. Bartley, 791 P.2d 1222 (Colo. App. 1990), aff'd, 817 P.2d 1029 (Colo. 1991).

For history of rule of prior notice by police officers, see People v. Lujan, 174 Colo. 554, 484 P.2d 1238 (1971).

Searches conducted by prison officials, whose charge is to operate the prisons in a safe and orderly manner, are not unreasonable so long as they are not conducted for the purpose of harassing or humiliating an inmate, or in a cruel and unusual manner. Larkin v. People, 177 Colo. 156, 493 P.2d 1 (1972); People v. Valenzuela, 41 Colo. App. 375, 589 P.2d 71 (1978).

Where defendant, knowing the jailer's presence was imminent, voluntarily stated that he was one who shot victim, jailer's overhearing of statement was not violation of defendant's right to privacy under this section. People v. Gallegos, 179 Colo. 211, 499 P.2d 315 (1972).

Body cavity searches of inmates of penal institutions are permissible unless it can be demonstrated that such searches bear no reasonable relationship to the requirements of maintaining security. People v. Valenzuela, 41 Colo. App. 375, 589 P.2d 71 (1978).

Warrantless searches of penitentiary visitors rejected. Suggestion of the attorney general that warrantless searches of penitentiary visitors and their automobiles should be permitted under a relaxed standard of probable cause and that perhaps reasonable suspicion would be sufficient to support such searches was rejected. People v. Thompson, 185 Colo. 208, 523 P.2d 128 (1974).

But could require consent to search as condition of visiting penitentiary. The court did recognize that circumstances involving penitentiary visitation and the bringing of contraband into a penitentiary could be a basis for the adoption of strict rules to be properly posted which would include consent to search as a condition of exercising the privilege of entering the penal institution to visit a prisoner. People v. Thompson, 185 Colo. 208, 523 P.2d 128 (1974).

Searches by public school officials. The prohibition against unreasonable searches and seizures applies to searches conducted by public school officials. To determine the reasonableness of a search and seizure involving a student, the student's expectation of privacy shall be balanced against the "substantial interest of teachers and administrators in maintaining discipline in the classroom and school grounds" and the school's "legitimate need to maintain an environment in which learning can take place". The test under New Jersey v. T.L.O. (469 U.S. 325, 105 S. Ct. 733, 83 L. Ed. 2d 720 (1985)) to determine the legality of school searches involves a twofold inquiry: First, whether the action was justified at its inception; and second, whether the search as actually conducted was reasonably related in scope to the circumstances which justified the initial interference. People

in Interest of P.E.A., 754 P.2d 382 (Colo. 1988); Martinez v. Sch. Dist. No. 60, 852 P.2d 1275 (Colo. App. 1992).

The first prong of the test, that a search is justified at its inception, is satisfied if there are specific and articulable facts known to the officer which, with rational inferences, creates a reasonable suspicion of criminal activity. This standard has been met where search of a student's vehicle by principal and security officer was based on a police officer's information that two other minors had brought marijuana to school, search of these two minors and their lockers failed to reveal the marijuana, and the principal had further information that one of the searched minors had been driven to school by the student. In view of the substantial state interests triggered by the contemplated sale of marijuana to other students, the measures taken by school officials in search of the student, his locker, and his car, which provided the means for transporting the marijuana to the school and for concealing the contraband, were reasonably related to the objectives of the search. As such, the second prong of the test, that the scope of the search be reasonable, was satisfied. People in Interest of P.E.A., 754 P.2d 382 (Colo. 1988); People in Interest of F.M., 754 P.2d 390 (Colo. 1988).

The two-prong test was met where a monitor for a school dance required two students attending the dance to submit to a "breath test" to determine whether the students were under the influence of alcohol. Martinez v. Sch. Dist. No. 60, 852 P.2d 1275 (Colo. App. 1992).

Detention for questioning. In order lawfully to detain an individual for questioning, (1) the officer must have a reasonable suspicion that the individual has committed, or is about to commit, a crime; (2) the purpose of the detention must be reasonable; and (3) the character of the detention must be reasonable when considered in light of the purpose. Stone v. People, 174 Colo. 504, 485 P.2d 495 (1971); People v. Lidgren, 739 P.2d 895 (Colo. App. 1987).

Detention for fingerprints may constitute a much less serious intrusion upon personal security than other types of police searches and detentions: Fingerprinting involves none of the probing into an individual's private life and thoughts that marks an interrogation or search; detention cannot be employed repeatedly to harass any individual, since the police need only one set of each person's prints; fingerprinting is an inherently more reliable and effective crime-solving tool than eyewitness identifications or confessions and is not subject to such abuses as the improper line-up and the "third degree"; and, because there is no danger of destruction of fingerprints, the limited detention need not come unexpectedly or at an inconvenient time. Early v. People, 178 Colo. 167, 496 P.2d 1021 (1972).

An intrusion pursuant to a court order for non-testimonial identification, under Crim. P. 41.1, clearly is within the scope of this section and the search and seizure clause of the fourth amendment. People v. Madson, 638 P.2d 18 (Colo. 1981); People v. Harris, 729 P.2d 1000 (Colo. App. 1986), aff'd, 762 P.2d 651 (Colo. 1988), cert. denied, 488 U.S. 985, 109 S. Ct. 541, 103 L. Ed. 2d 804 (1988).

Arrest of defendant for palmprinting may be reasonable. Early v. People, 178 Colo. 167, 496 P.2d 1021 (1972).

And evidence obtained thereby is properly received in evidence. Early v. People, 178 Colo. 167, 496 P.2d 1021 (1972).

Stopping motorist at a sobriety checkpoint is not an unreasonable seizure in violation of the constitution. People v. Rister, 803 P.2d 483 (Colo. 1990); Orr v. People,

803 P.2d 509 (Colo. 1990).

Warrantless administrative searches of commercial property do not necessarily violate the fourth amendment, but inspections of commercial property may be unreasonable if they are not authorized by law, are unnecessary for the furtherance of governmental interests, or are so random, infrequent, or unpredictable that the owner has no real expectation that his property will be inspected from time to time by governmental officials. People v. Escano, 843 P.2d 111 (Colo. App. 1992).

Warrantless search of storage locker held proper where officer reasonably believed that the lessor had authority to consent to the entry into the locker. The test is whether the police officer's belief that a third party had authority to consent is objectively reasonable. People v. Upshur, 923 P.2d 284 (Colo. App. 1996).

Contact between police and citizen constitutes seizure when police restrain citizen's liberty by physical force or show of authority. People v. Carillo-Montes, 796 P.2d 970 (Colo. 1990).

Determination of "seizure" resolved by objective standard. The determination of the issue whether a person has been seized must be resolved by an objective standard -- that is, whether in view of all the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave. People v. Bookman, 646 P.2d 924 (Colo. 1982); People v. Pancoast, 659 P.2d 1348 (Colo. 1982); People v. Tottenhoff, 691 P.2d 340 (Colo. 1984); People v. Carillo-Montes, 796 P.2d 970 (Colo. 1990).

Not every personal confrontation between a police officer and a citizen, which results in some form of interrogation directed to the citizen, necessarily involves a "seizure" of the person. People v. Pancoast, 659 P.2d 1348 (Colo. 1982); People v. T.H., 892 P.2d 301 (Colo. 1995).

Even if the totality of police officers' conduct rose to the level of a show of authority to constitute a seizure, evidence abandoned prior to the seizure cannot be suppressed. People v. McClain, 149 P.3d 787 (Colo. 2007).

An unconscious person cannot perceive that there has been a show of authority directed against him, therefore, defendant could not have been seized within the meaning of the fourth amendment. By the time defendant awoke, the officer had reasonable suspicion justifying the investigatory stop. Tate v. People, 2012 CO 75, 290 P.3d 1268.

A police officer's chase of a suspect does not trigger the protections of the fourth amendment because the chase does not constitute a seizure. People v. Archuleta, 980 P.2d 509 (Colo. 1999).

Whenever detention by police officer is more than brief, there is an arrest which must be supported by probable cause. People v. Schreyer, 640 P.2d 1147 (Colo. 1982).

However, when determining when detention is too long in duration, it is appropriate to examine whether police were diligent in pursuing means of investigation likely to resolve their suspicions quickly, and it is also relevant to consider circumstances during stop which give rise to deeper suspicion or justify longer detention. People v. Lidgren, 739 P.2d 895 (Colo. App. 1987).

Police officers' initial contact with the defendant was not a seizure or an investigatory stop, but rather was a consensual interview. Because the officers approached the house in a non-threatening manner, did not detain the defendant, and asked rather than demanded the defendant's name, the totality of the circumstances showed that the encounter was not so

intimidating as to make the defendant feel he was not free to leave or to refuse to answer the officers' questions. It was irrelevant that the officers went to the defendant's house intending to question him and obtain a search waiver. People v. Melton, 910 P.2d 672 (Colo. 1996).

Not all seizures are arrests. Not all forms of police intrusion which lead a person to reasonably believe that he is not free to leave constitute, on that basis alone, arrests which must be supported by probable cause. People v. Lewis, 659 P.2d 676 (Colo. 1983).

When a police officer accosts an individual and restrains his freedom to walk away, he has "seized" that person in a constitutional sense; but it does not follow that the seizure necessarily amounts to an arrest which must be supported by probable cause. People v. Lewis, 659 P.2d 676 (Colo. 1983).

Seizures refer to some meaningful interference with an individual's possessory interest in personal property such as the physical taking and removing of such property. Hoffman v. People, 780 P.2d 471 (Colo. 1989).

A seizure must involve a meaningful interference with the possessory interest. The removal of a luggage claim tag does not constitute a seizure. However, when an officer moves the luggage to a new location, uses a ruse to identify the owner of the luggage, and maintains a prolonged detention of the luggage, a seizure occurs. People v. Ortega, 34 P.3d 986 (Colo. 2001).

Standing. Trial court is not required to decide issues of standing prior to hearing evidence as to legality of contested searches. People v. Tufts, 717 P.2d 485 (Colo. 1986).

Person in possession of keys to automobile has a reasonable expectation of privacy in contents of car and has standing to challenge search of car. People v. Tufts, 717 P.2d 485 (Colo. 1986).

To establish standing, the defendant must demonstrate a sufficient connection to the areas searched to support a legitimate expectation of privacy in those areas. Determination of a sufficient connection is based on the totality of the circumstances. The lack of a proprietary or possessory interest is not necessarily determinative. People v. Curtis, 959 P.2d 434 (Colo. 1998).

To challenge a search and seizure, the complaining party must establish that he had a reasonable expectation that the location searched and the items seized would be free from nonconsensual, unreasonable police intrusion. People v. Mickens, 734 P.2d 646 (Colo. App. 1986).

Facts provided by anonymous caller and corroborated by officers provided reasonable basis to support stopping of car. People v. Melanson, 937 P.2d 826 (Colo. App. 1996).

Observation through motel window not search. Where a police officer, while walking on a sidewalk used as a common entrance way to a motel unit, observes through a window the actions of a defendant occurring inside a motel unit, the observations of the officer do not constitute a search in the constitutional sense of that term. People v. Gomez, 632 P.2d 586 (Colo. 1981), cert. denied, 455 U.S. 943, 102 S. Ct. 1439, 71 L. Ed. 2d 655 (1982); People v. Donald, 637 P.2d 392 (Colo. 1981).

The observations of a police officer which are made through a car window and which are illuminated by a flashlight do not constitute a search. People v. Romero, 767 P.2d 1225 (Colo. 1989); People v. Dickinson, 928 P.2d 1309 (Colo. 1996).

No requirement of "close proximity" standard for forfeiture of contents of building declared a public nuisance. Since forfeiture statute is a civil statute, once the people

make a prima facie case that contents of a house were used in criminal activity, burden shifts to the owner of the property to show why it should not be seized. People v. Lot 23, 735 P.2d 184 (Colo. 1987).

Ordering nontestimonial identification under rule Crim. P. 41.1 does not deprive a person of procedural safeguards even though the offenses involved were committed in another jurisdiction. Ginn v. County Court, 677 P.2d 1387 (Colo. App. 1984).

Rule Crim. P. 41.1 is limited to non-testimonial identification evidence only and does not authorize the acquisition of testimonial communications protected by the privilege against self-incrimination. People v. Harris, 729 P.2d 1000 (Colo. App. 1986).

Defendant's consent to search was voluntary and not the result of coercion. Defendant's parents provided guidance and advice before, during, and after the interrogation. The parents' position that they approved of DNA testing was consistent throughout. There is no requirement that the defendant's parents be present during the sample collection. People v. Lehmkuhl, 117 P.3d 98 (Colo. App. 2004).

Evidence offered for impeachment purposes of defendant's refusal to consent to a search does not impermissibly burden the fourth amendment right to be free from unreasonable searches and seizures. If defendant testifies at trial, evidence of the refusal to consent may be admitted to impeach defendant's testimony, and the prosecution may comment on the refusal in closing argument. People v. Chavez, 190 P.3d 760 (Colo. App. 2007).

B. With Warrant.

Officers must obtain search warrant whenever reasonably practicable. Officers who plan to enter premises to conduct a search must obtain a search warrant for a legitimate entry whenever reasonably practicable even if the officers have probable cause for the search. People v. Vigil, 175 Colo. 421, 489 P.2d 593 (1971).

Only judicial officer may issue search warrant. Hernandez v. People, 153 Colo. 316, 385 P.2d 996 (1963).

And only judicial officer may alter warrant. The right to alter, modify, or correct a search warrant is necessarily vested only in a judicial officer. Hernandez v. People, 153 Colo. 316, 385 P.2d 996 (1963).

Alteration by police office improper. Alteration of a search warrant by a police officer is usurpation of the judicial function and, therefore, improper. Hernandez v. People, 153 Colo. 316, 385 P.2d 996 (1963).

Failure to comply with ministerial requirements does not invalidate warrant. Failure to comply with the requirements of a rule relating to the making of the return and inventory, which requirements are ministerial in nature, does not render the search warrant or the seizure of the property pursuant thereto invalid. People v. Schmidt, 172 Colo. 285, 473 P.2d 698 (1970).

Copy of affidavit need not be attached. There is nothing which requires that a person given a warrant must receive a copy of the underlying affidavit or that a copy thereof must be attached to the copy of the warrant which is served at the time of the search. People v. Papez, 652 P.2d 619 (Colo. App. 1982).

Omission of affiant's name on the face of a search warrant was an immaterial variance which did not invalidate warrant where proper affidavit had been executed by an officer and reviewed by a judge prior to issuance. People v. McKinstry, 843 P.2d 18 (Colo. 1993).

Search warrant should not be broader than justifying basis of facts. People v. Clavey, 187 Colo. 305, 530 P.2d 491 (1975).

The information upon which the warrant was based justified a general search of the premises. People v. Lot 23, 707 P.2d 1001 (Colo. App. 1985), aff'd in part and rev'd in part on other grounds, 735 P.2d 184 (Colo. 1987).

Having probable cause to search for drugs and paraphernalia, the officers were authorized to search in places where such items might reasonably be expected to be secreted. Therefore, the search of closed containers was reasonable. People v. Lot 23, 707 P.2d 1001 (Colo. App. 1985), aff'd in part and rev'd in part on other grounds, 735 P.2d 184 (Colo. 1987).

Particularity requirement serves multiple purposes. It prevents a general search, it curtails the issuance of search warrants on loose and vaguely stated bases in fact, and it prevents the seizure of one thing under a warrant describing another. People v. Hearty, 644 P.2d 302 (Colo. 1982); People v. Hart, 718 P.2d 538 (Colo. 1986).

Probable cause requires that the affidavit allege sufficient facts to warrant a person of reasonable caution to believe that contraband or evidence of criminal activity is located on the premises to be searched. People v. Ball, 639 P.2d 1078 (Colo. 1982); People v. Hearty, 644 P.2d 302 (Colo. 1982); People v. Campbell, 678 P.2d 1035 (Colo. App. 1983); People v. Arellano, 791 P.2d 1135 (Colo. 1990); People v. Abeyta, 795 P.2d 1324 (Colo. 1990); People v. Hakel, 870 P.2d 1224 (Colo. 1994).

There was reasonable probability that evidence would be located at a particular location where affidavit established that all three residences were under defendant's control and were contiguous pieces of property. People v. Salazar, 715 P.2d 1265 (Colo. App. 1985), cert. denied, 744 P.2d 80 (Colo. 1987).

In a trial against a defendant for possession of a controlled substance, evidence obtained pursuant to a search warrant was inadmissible where the affidavit supporting the request for a search warrant, after excluding information obtained pursuant to an illegal warrantless search of the defendant's home, contained insufficient information to establish probable cause that evidence of a crime would be found in the defendant's house. People v. Sprowl, 790 P.2d 848 (Colo. App. 1989).

An affidavit must be interpreted in a common sense and realistic fashion in determining whether the constitutional standard of probable cause has been satisfied. People v. Arellano, 791 P.2d 1138 (Colo. 1990); Bartley v. People, 817 P.2d 1029 (Colo. 1991); People v. Hakel, 870 P.2d 1224 (Colo. 1994).

In assessing the validity of a warrant, it is to be tested in a common sense and realistic fashion. People v. McKinstry, 843 P.2d 18 (Colo. 1993).

Standard for determining whether a search warrant complies with constitutional requirements is one of practical accuracy rather than technical nicety. Accordingly, highly technical attacks on warrants and affidavits are not well received. People v. McKinstry, 843 P.2d 18 (Colo. 1993); People v. Martinez, 898 P.2d 28 (Colo. 1995); People v. Schrader, 898 P.2d 33 (Colo. 1995).

Probable cause exists when an affidavit for a search warrant alleges sufficient facts to warrant a person of reasonable caution to believe that contraband or evidence of criminal activity is located at the place to be searched. People v. Abeyta, 795 P.2d 1324 (Colo. 1990); Bartley v. People, 817 P.2d 1029 (Colo. 1991); People v. Hakel, 870 P.2d 1224 (Colo. 1994);

People v. Page, 907 P.2d 624 (Colo. App. 1995).

During a controlled drug transaction, probable cause exists to search the location to which the seller went before selling the drugs to the police. People v. Eirish, 165 P.3d 848 (Colo. App. 2007).

The issuing magistrate has to make a practical, common sense decision whether, given all of the circumstances set forth in the affidavit before him, including the "veracity" and "basis of knowledge" of persons supplying hearsay information, there is fair probability that contraband of a crime will be found in a particular place. People v. Abeyta, 795 P.2d 1324 (Colo. 1990).

The duty of the reviewing court is to determine whether the magistrate had a substantial basis for concluding that probable cause existed; that determination of probable cause is entitled to great deference and any doubts must be resolved in favor of that determination because of the constitutional preference for investigating officers to obtain warrants in lieu of pursuing some basis for warrantless searches. People v. Dunkin, 888 P.2d 305 (Colo. App. 1994); People v. Page, 907 P.2d 624 (Colo. App. 1995).

Whether facts in an affidavit provided by a confidential informant establish probable cause for a search warrant depends not on a rigid set of legal rules but on a practical, nontechnical totality of the circumstances approach that considers an informant's veracity, reliability, and basis of knowledge. Under the totality-of-the-circumstances test, an informant's account of criminal activities need not establish the informant's basis of knowledge, so long as the informant's statement is sufficiently detailed to allow a judge to reasonably conclude that the informant had access to reliable information about the illegal activities reported to the police. People v. Abeyta, 795 P.2d 1324 (Colo. 1990); People v. Dunkin, 888 P.2d 305 (Colo. App. 1994).

Due consideration should also be given to a law enforcement officer's experience and training in determining the significance of the officer's observations relevant to probable cause set forth in the affidavit. Bartley v. People, 817 P.2d 1029 (Colo. 1991); People v. Dunkin, 888 P.2d 305 (Colo. App. 1994).

Probability, not certainty, is the touchstone of probable cause, and deference should be given to the initial judicial determination regarding probable cause; however, in recognition of the significance of a person's right to privacy in his or her residence, law enforcement officials should in all but the most compelling of circumstances obtain warrants prior to performing any search of a residence. People v. Hakel, 870 P.2d 1224 (Colo. 1994).

Even if an affidavit does not establish the informant's basis of knowledge for the reported criminal activity or the veracity of the reported information, police corroboration of the information that obviously relates to and describes criminal activities may properly be considered in a probable cause determination. People v. Abeyta, 795 P.2d 1324 (Colo. 1990).

A strip search is outside the scope of a warrant for search "upon person". A strip search must be specifically authorized by a warrant that includes an articulable basis for the more invasive search or by officers having particularized reasonable suspicion that the defendant has hidden contraband on his or her body. People v. King, 292 P.3d 959 (Colo. App. 2011).

Warrant must particularly describe place to be searched. The fourth amendment and this section require that a warrant particularly describe the place to be searched.

People v. Lucero, 174 Colo. 278, 483 P.2d 968 (1971).

It is required that the house or home to be searched must be particularly described or described as near as may be. People v. Avery, 173 Colo. 315, 478 P.2d 310 (1970).

Sufficiency of description in warrant of place to be searched. The test for determining whether the sufficiency of a description in a search warrant is adequate is if the officer executing the warrant can with reasonable effort ascertain and identify the place intended to be searched. People v. Ragulsky, 184 Colo. 86, 518 P.2d 286 (1974).

Where warrant stated that defendant owned several properties and ownership was independently verified, and where police independently established that informant knew how to reach defendant's property, the affidavit demonstrated reasonable grounds to believe the stolen goods would be found on defendant's property. People v. Salazar, 715 P.2d 1265 (Colo. App. 1985), cert. denied, 744 P.2d 80 (Colo. 1987).

Warrant which gives a generic description of the items to be searched is sufficient when the facts necessitate a broad search. People v. Hart, 718 P.2d 538 (Colo. 1986).

Particular apartment within apartment building must be described. When authority is desired to search a particular apartment or apartments within an apartment building, or a particular room or rooms within a multiple-occupancy structure, the warrant must sufficiently describe the apartment or subunit to be searched, either by number or other designation, or by the name of the tenant or occupant. People v. Avery, 173 Colo. 315, 478 P.2d 310 (1970); People v. Alarid, 174 Colo. 289, 483 P.2d 1331 (1971).

Where the warrant merely describes the entire multiple-occupancy structure by street address only, without reference to the particular dwelling unit or units sought to be searched, it is constitutionally insufficient and the evidence seized pursuant to such warrant will be suppressed upon proper motion. People v. Avery, 173 Colo. 315, 478 P.2d 310 (1970); People v. Alarid, 174 Colo. 289, 483 P.2d 1331 (1971).

A search of a subunit under a general warrant authorizing search of the entire structure but not the particular subunit is unlawful and evidence seized as a result of such search will be suppressed. People v. Avery, 173 Colo. 315, 478 P.2d 310 (1970).

Where a structure is divided into several occupancy units, or is a multi-unit dwelling, and there is no common occupancy of the entire structure by all of the tenants, a search warrant which merely describes or identifies the larger multiple-occupancy structure and not the particular sub-units to be searched is insufficient to meet the constitutional requirements of particularity of description. People v. Myrick, 638 P.2d 34 (Colo. 1981).

As apartment dwellers or roomers are entitled to same constitutional protections against unlawful searches and seizures as persons living in single-family residences. People v. Arnold, 181 Colo. 432, 509 P.2d 1248 (1973).

Exception where officers do not know that multi-family dwelling involved. The general rule of law when dealing with searches made in rooming houses or apartment houses is subject to an exception, among others, where the officers did not know nor did they have reason to know that they were dealing with a multi-family dwelling when obtaining the warrant, and providing that they confined the search to the area which was occupied by the person or persons named in the affidavit. People v. Lucero, 174 Colo. 278, 483 P.2d 968 (1971); People v. Maes, 176 Colo. 430, 491 P.2d 59

(1971).

Search warrant failing to designate subunits of multiple-occupancy structure to be searched met the requirement that place to be searched be described with particularity where it was reasonable for the police to conclude that the structure was not divided into subunits. People v. McGill, 187 Colo. 65, 528 P.2d 386 (1974).

When the police executed the warrant and discovered that the building was not a single-family residence, as the warrant described, but was instead divided into subunits, they did not have to abandon their search and obtain a new warrant, for had they elected to delay their search to obtain an amended warrant, they would have jeopardized the search and the loss of evidence. People v. McGill, 187 Colo. 65, 528 P.2d 386 (1974).

But when officers knew or should have known that house was not one-family residence, and the fact that the officers had notice of the separate dwelling facilities located in the basement of the residence was evident from the affidavit of an officer containing the facts provided by the confidential, reliable informant, which indicated that the downstairs rooms had been used as separate living quarters by nonfamily members on a possible rental basis and the record also indicated that there was a separate outside entrance leading to the basement apartment and that the tenant utilized the separate entrance in going to and from the apartment, the general rule as to multiple-occupancy structures was applicable, and a warrant describing the entire house by street address only was constitutionally insufficient since no facts were presented which could show that there was probable cause to believe that criminal activity was occurring in both dwelling places. People v. Alarid, 174 Colo. 289, 483 P.2d 1331 (1971).

Warrant describing house as within Denver when in fact the house lay one-half block outside Denver was not for that reason invalid. People v. Martinez, 898 P.2d 28 (Colo. 1995).

Where warrant specified a street address adjacent to defendant's residence and owned by the same owner, and defendant's residence was not itself searched, both the warrant and the search were valid. People v. Schrader, 898 P.2d 33 (Colo. 1995).

The fourth amendment generally requires officers to knock before executing a search warrant except when the warrant specifically authorizes a "no-knock" or the particular facts and circumstances known to the officer at the time the warrant is executed adequately justify dispensing with the requirement to knock. In this case the officers had reasonable suspicion that knocking would result in destruction of the drugs subject to seizure. People v. King, 292 P.3d 959 (Colo. App. 2011).

Search must be one in which officers look for specific articles. A search, whether under a valid warrant or as incident to a lawful arrest, must be one in which the officers are looking for specific articles and must be conducted in a manner reasonably calculated to uncover such article; any more extensive search constitutes a general exploratory search and is contrary to the constitutional guarantee against unreasonable search and seizure. Hernandez v. People, 153 Colo. 316, 385 P.2d 996 (1963); People v. Drumright, 172 Colo. 577, 475 P.2d 329 (1970).

To countenance seizure of evidence not specified in the warrant and unrelated to the criminal matters under investigation would open wide the doors to general searches and seizures based upon mere suspicion but not upon probable cause as constitutionally required. People v. LaRocco, 178 Colo. 196, 496 P.2d 314

(1972).

An entire search would only seem to become invalid if its general tenor was that of an exploratory search for evidence not specifically related to the search warrant. People v. Tucci, 179 Colo. 373, 500 P.2d 815 (1972); People v. Lewis, 710 P.2d 1110 (Colo. App. 1985).

Personal property of guest on premises is not subject to search under search warrant. People v. Lujan, 174 Colo. 554, 484 P.2d 1238 (1971).

Where probable cause exists for arrest, search of personal property of guests of a house subject to a search warrant is a lawful search. People v. Tufts, 717 P.2d 485 (Colo. 1986).

Description in warrant of articles to be seized. Description of items in a search warrant to be seized must be specific. People v. Clavey, 187 Colo. 305, 530 P.2d 491 (1975); People v. Donahue, 750 P.2d 921 (Colo. 1988).

Technical requirements of elaborate specificity of articles to be seized by warrant once enacted under common-law pleadings have no proper place in this area. People v. Schmidt, 172 Colo. 285, 473 P.2d 698 (1970).

The rationale concerning the degree of particularity of description for a search warrant is stated to be one of necessity. If the purpose of the search is to find a specific item of property, it should be so particularly described in the warrant as to preclude the possibility of the officer seizing the wrong property; whereas, on the other hand, if the purpose is to seize not a specific property, but any property of a specified character, which by reason of its character is illicit or contraband, a specific particular description of the property is unnecessary and it may be described generally as to its nature or character. People v. Schmidt, 172 Colo. 285, 473 P.2d 698 (1970).

If the purpose of search is to seize, not a specific property, but any property of a specified character, which by reason of its character is illicit or contraband, a specific particular description of the property is unnecessary and it may be described generally as to its nature or character. People v. Benson, 176 Colo. 421, 490 P.2d 1287 (1971).

Where the search warrant correctly described a $20 bill with the exception of the last character of the serial number which was illegible, the likelihood of defendant's possession of another bill with nine identical characters, all in the same sequential order, and having a different tenth character from the bill described in the search warrant was highly improbable, and hence, there was probable cause to seize the $20 bill. There was reasonable certainty of description. People v. Piwtorak, 174 Colo. 525, 484 P.2d 1227 (1971).

The term "narcotic paraphernalia" is not so vague as to make a search warrant a general warrant. People v. Henry, 173 Colo. 523, 482 P.2d 357 (1971).

Where the affidavit contains information which justifies the magistrate in believing that upon a search of the particular premises not only marijuana but other narcotics might be found, a warrant describing "a quantity of narcotic drugs" is in order. People v. Benson, 176 Colo. 421, 490 P.2d 1287 (1971).

Command portion of search warrant which read: "you are therefore commanded to search forthwith the _____ above described property for the property described" did not render the warrant insufficient on its face where the property to be searched had been specifically described "above" two times and where the property to be seized likewise had been described above as "amphetamines, barbiturates, opium, opium derivatives, and other synthetic narcotics and implements used in the traffic and in the use of

narcotic drugs". People v. Ragulsky, 184 Colo. 86, 518 P.2d 286 (1974).

Computers reasonably likely to serve as "containers" for writings or the functional equivalent of "written and printed material", thus seizure and removal of computers for a subsequent search pursuant to a second, more detailed warrant, was authorized by warrant allowing seizure of written or printed material. People v. Gall, 30 P.3d 145 (Colo. 2001).

Warrant authorized search and seizure of all computer and non-computer equipment and written materials in plaintiff's house, without any mention of any particular crime to which they might be related, essentially authorizing a general exploratory rummaging through plaintiff's belongings for any unspecified criminal offense, and was therefore invalid under the particularity clause of the fourth amendment. Mink v. Knox, 613 F.3d 995 (10th Cir. 2010).

If items not described with sufficient particularity, they should be suppressed. All times seized under a search warrant that failed to describe the things to be seized with sufficient particularity should be suppressed. People ex rel. McKevitt v. Harvey, 176 Colo. 447, 491 P.2d 563 (1971).

Insufficient description. Where, in the space provided in the warrant for the description of the property to be seized, there appeared a description of the location of the home of the defendant, and this incorrect language doubtless was inserted by mistake, and the person who completed the warrant intended to insert the required description of the property to be seized, this was, however, not the type of mere "technical omission" that was excused in previous cases. It goes rather to the very essence of the constitutional requirement that a warrant describes the person or thing to be seized, as near as may be. People v. Drumright, 172 Colo. 577, 475 P.2d 329 (1970).

Proper procedure where officer holds defective search warrant. Where an officer holds a defective search warrant, the procedure of returning the warrant to the judicial officer who issued it while other officers remain on the premises conforms to the constitutional requirements that govern search and seizure. Mayorga v. People, 178 Colo. 106, 496 P.2d 304 (1972).

Unsuccessful attempt to force entry without express authority does not render subsequent warranted search invalid. Where police attempted an unauthorized "no knock" entry but actual entry was carried out as authorized by warrant, subsequent search and seizure was not rendered invalid by mere attempt to force entry. People v. Fox, 691 P.2d 349 (Colo. App. 1984).

Entire business record system searched. When the alleged crime involves the entire business operation of the place searched, all files of the business may be searched. People v. Lewis, 710 P.2d 1110 (Colo. App. 1985).

Warrant not required for searching lawfully seized property. A second search warrant is not required to open a safe seized during a lawful search. People v. Press, 633 P.2d 489 (Colo. App. 1981).

Subpoena limiting scope of records in tax investigation meets constitutional standards. Where the department of revenue was investigating personal and business tax liability and the subpoena limited the scope of the records by subject and date, the documents sought were relevant and identified specifically enough to meet constitutional standards. Charnes v. DiGiacomo, 200 Colo. 94, 612 P.2d 1117 (1980).

Search of law office must be limited. Any search of a law office for client files and materials must be precisely limited and restricted to prevent an exploratory search. Law

Offices of Bernard D. Morley, P.C. v. MacFarlane, 647 P.2d 1215 (Colo. 1982).

Rigid adherence to the particularity requirement is appropriate where a lawyer's office is searched for designated documents. Anything less than a strict limitation of the search and seizure to those documents particularly described in the warrant could result in a wholesale incursion into privileged communications of a highly sensitive nature. People v. Hearty, 644 P.2d 302 (Colo. 1982).

Privacy interests relating to law office searches. There is an enhanced privacy interest underlying the attorney-client relationship which warrants a heightened degree of judicial protection and supervision when law offices are the subject of a search for client files or documents. Law Offices of Bernard D. Morley, P.C. v. MacFarlane, 647 P.2d 1215 (Colo. 1982).

The unmonitored search of a lawyer's office endangers the privacy interest not only of those clients against whom the search is directed but also the privacy interest of other clients not under investigation who have made confidential disclosures to the attorney. Law Offices of Bernard D. Morley, P.C. v. MacFarlane, 647 P.2d 1215 (Colo. 1982) (concurring opinion).

In considering the staleness of a search, in addition to the length of time between the commission of a crime and a search warrant application, the court must also consider the elapsed time between the date the police had probable cause to secure a warrant and the date the warrant was issued. People v. Thrower, 670 P.2d 1251 (Colo. App. 1983); People v. Tafoya, 703 P.2d 663 (Colo. App. 1985).

Expiration of previous warrant's 90-day period for completing a forensic analysis of seized items did not bar law enforcement from initiating another investigation and subsequently obtaining a new warrant two years later to search the same, previously searched items. People v. Strauss, 180 P.3d 1027 (Colo. 2008).

Information contained in affidavit not stale. When only one day had elapsed between the acquisition of probable cause and execution of the warrant, and less than three weeks between the alleged crime and the execution, the information contained in the affidavit was not stale. People v. Salazar, 715 P.2d 1265 (Colo. App. 1985), cert. denied, 744 P.2d 80 (Colo. 1987).

The lack of specific times and dates within the affidavit was not fatal to the probable cause determination and the allegations of three anonymous informants were not stale where the detective spoke with the informants within a two week period prior to the application for the warrant, where there was a fair inference that the informants were referring to contemporary incidents that were ongoing, and where the informants' information was corroborated by the detective. People v. Abeyta, 795 P.2d 1324 (Colo. 1990).

Warrant not stale simply through passage of time where the nature of the criminal activity at issue and the type of records being sought in the warrant support the belief that the items would still be found in the place to be searched at the time the search was conducted. Defendant would have kept the records sought in the normal course of business and there was no reason to believe that the defendant had been aware of the audit's findings or would have otherwise had cause to destroy the records. People v. Crippen, 223 P.3d 114 (Colo. 2010); People v. Krueger, 2012 COA 80, __ P.3d __.

The link between suspected criminal activity and a specific location to be searched may be established by circumstantial evidence and proper inferences drawn therefrom. People v. Hakel, 870 P.2d 1224 (Colo.

1994).

Informant's personal knowledge of defendant's prior conduct, together with the observations of other officials of defendant's conduct in connection with two cocaine sales, established the nexus between the items to be seized and the place to be searched necessary to support the county court judge's finding of probable cause to issue search warrant for the defendant's residence. People v. Hakel, 870 P.2d 1224 (Colo. 1994).

Defendant's treatment of stolen watch as his own and the likelihood of keeping the watch at his residence with other possessions, coupled with fact that the watch theft had occurred only one day before the issuance of the search warrant, raised a reasonable inference that the stolen watch was still under defendant's control and easily concealed at residence. People v. Green, 70 P.3d 1213 (Colo. 2003).

Evidence suppressed where seizure of items pursuant to search warrant followed an invalid entry. People v. Gifford, 782 P.2d 795 (Colo. 1989).

Suppression order reversed. Even though initial entry into a house was illegal, evidence seized from the house after a valid warrant was obtained was admissible, so long as the warrant was based upon legally obtained evidence. The undisputed facts support the independent source doctrine as an exception to the exclusionary rule. People v. Morley, 4 P.3d 1078 (Colo. 2000).

Where an affidavit includes illegally obtained evidence as well as evidence derived from independent and lawful sources, a valid search warrant may issue if the lawfully obtained evidence, considered by itself, establishes probable cause to issue the warrant. Bartley v. People, 817 P.2d 1029 (Colo. 1991).

If a law enforcement officer includes a false statement in an affidavit intentionally or with reckless disregard for the truth, the statement must be stricken and the remaining allegations must be reviewed to determine whether probable cause exists; however, if the erroneous statement is the result of the good faith mistake or negligence of an officer-affiant, appropriate sanctions need only be imposed at the discretion of the trial court. People v. Flores, 766 P.2d 114 (Colo. 1988); People v. Dunkin, 888 P.2d 305 (Colo. App. 1994).

A court may sever deficient portions of a search warrant without invalidating the entire warrant. When a warrant lists several locations to be searched, a court may suppress evidence recovered at a location for which police lacked probable cause but admit evidence recovered at locations for which probable cause was established. Under this severability doctrine, items that are illegally seized during the execution of a valid search warrant do not affect admissibility of evidence legally obtained while executing the warrant. People v. Eirish, 165 P.3d 848 (Colo. App. 2007).

Trial court improperly suppressed evidence obtained by search warrant after dog sniff of public storage locker on grounds that dog sniff did not constitute search or that dog sniff constituted valid warrantless search based upon reasonable suspicion. People v. Wieser, 796 P.2d 982 (Colo. 1990).

Probable cause to issue a search warrant for a residence was sufficiently established by affidavit that was based primarily on information provided by confidential police informant and only thinly corroborated by independent police investigation. The "totality of circumstances" test for determining whether probable cause existed for issuing warrant was met. People v. Paquin, 811 P.2d 394 (Colo. 1991).

Affidavit that indicated

excessive use of electricity for the residence and investigator's discussion of that information with DEA representative indicating a drug lab was probable, when read in a practical, common sense fashion, was sufficient evidence to establish probable cause to search defendant's residence. People v. Dunkin, 888 P.2d 305 (Colo. App. 1994).

Whether the purpose of the intrusion was objectively reasonable in light of the circumstances confronting the officer at the time of the search is dispositive of the validity of a search and not an officer's subjective intent. People v. Daverin, 967 P.2d 629 (Colo. 1998).

Once defendant was within the geographical area covered by the arrest warrant the officer had probable cause to stop his vehicle. People v. Daverin, 967 P.2d 629 (Colo. 1998).

Where there is evidence that everyone in a place described in a search warrant may be involved in a criminal activity, there is probable cause to search the defendant's person. People v. Johnson, 805 P.2d 1156 (Colo. App. 1990).

Order for seizure of premises which may constitute a nuisance under forfeiture statutes does not amount to an order authorizing warrantless entry and search of premises. People v. Taube, 864 P.2d 123 (Colo. 1993).

Court's finding of probable cause to believe that a house constituted a public nuisance was not equivalent to a finding that probable cause existed to enter and search the contents of the house. People v. Taube, 864 P.2d 123 (Colo. 1993).

Probable cause for issuance of search warrant found in People v. Jones, 767 P.2d 236 (Colo. 1989).

Investigator's observations of defendant's hands, perception of distinct drug smell from defendant's clothing, defendant's verification of residential address, defendant's past involvement with drug manufacture, and distinct drug odor emanating from the residence established probable cause for issuance of a warrant to search the residence. People v. Cruse, 58 P.3d 1114 (Colo. App. 2002).

Alleged conduct of bringing the media into plaintiff's home to film and record his arrest exceeded the scope of the arrest warrant and amounted to an unreasonable execution of a warrant, thus violating plaintiff's fourth amendment rights. Robinson v. City and County of Denver, 39 F. Supp. 2d 1257 (D. Colo. 1999).

Court concluded that reasonable officers would have realized that bringing the media into a private home grossly exceeded the authorization provided by an arrest warrant, even though, as of the March 30, 1993, date law enforcement defendants went to defendant's home to execute the warrant, no reported court decisions expressly forbade law enforcement officials from doing so. Robinson v. City and County of Denver, 39 F. Supp. 2d 1257 (D. Colo. 1999).

A violation of the knock-and-announce rule does not permit suppression of any illegally obtained evidence found in the search; the only available remedy is a civil action. People v. Butler, 251 P.3d 519 (Colo. App. 2010).

At the time the law enforcement defendants brought the media into plaintiff's home, it was clearly established that the alleged actions exceeded the warrant's scope; undermined the particularity requirement; and, in so doing, violated plaintiff's rights under the fourth amendment. Accordingly, defendants sued in their individual capacities are not entitled to qualified immunity from plaintiff's fourth amendment claim. Robinson v. City and County of Denver, 39 F. Supp. 2d 1257 (D. Colo. 1999).

District attorney caused the issuance of a search warrant that lacked probable cause and particularity, thereby setting in motion a series of events that she knew or reasonably should have known would cause others to deprive plaintiff of his fourth amendment rights. Mink v. Knox, 613 F.3d 995 (10th Cir. 2010).

Because a reasonable person would not take statements in an editorial column as statements of facts by or about a university professor, no reasonable prosecutor could believe it was probable that publishing such statements constituted a crime warranting search and seizure of plaintiff's property. Mink v. Knox, 613 F.3d 995 (10th Cir. 2010).

C. Legal Search Without Warrant.

Law reviews. For article, "Logical Fallacies and the Supreme Court", see 59 U. Colo. L. Rev. 741 (1988). For article, "The Use of Drug-Sniffing Dogs in Criminal Prosecutions", see 19 Colo. Law. 2429 (1990). For aticle, "The Exigent Circumstances Exception to the Warrant Requirement", see 20 Colo. Law. 1167 (1991). For article, "Using Anonymous Informants to Establish Reasonable Suspicion for a Stop", see 32 Colo. Law. 61 (June 2003).

Exceptions to warrant requirement. Among the exceptions to the warrant requirement are "plain view", consent, search incident to arrest, and exigent circumstances such as hot pursuit of a fleeing felon, and seizure of goods in the process of destruction or removal. People v. Alexander, 193 Colo. 27, 561 P.2d 1263 (1977).

Not every search without a warrant is unreasonable or illegal. Larkin v. People, 177 Colo. 156, 493 P.2d 1 (1972); Dickerson v. People, 179 Colo. 146, 499 P.2d 1196 (1972).

Administrative demand for records of a closely regulated industry is not an unconstitutional warrantless search. Since non-consensual towing of motor vehicles is a closely regulated industry, a towing carrier had little expectation of privacy in its documentation of tows, the keeping of which was required by an agency rule under the authority of a state statute. The public utilities commission therefore could assess a civil penalty for the carrier's refusal to produce the records. Eddie's Leaf Spring v. PUC, 218 P.3d 326 (Colo. 2009).

However, warrantless searches and seizures per se unreasonable. The basic constitutional rule regarding warrantless searches and seizures is that they are per se unreasonable, subject to a few specifically established and well-delineated exceptions, such as, where the arresting officers were confronted with exigent circumstances which required immediate action. People v. Vaughns, 182 Colo. 328, 513 P.2d 196 (1973); People v. Gurule, 196 Colo. 562, 593 P.2d 319 (1978).

A search conducted without a warrant is prima facie invalid, unless it falls within the limits of one of several well-recognized "exceptions" to the warrant requirement. People v. Casias, 193 Colo. 66, 563 P.2d 926 (1977).

A search without a warrant is presumed to violate the constitutional provisions forbidding unreasonable searches. People v. Williams, 200 Colo. 187, 613 P.2d 879 (1980).

A search conducted without a warrant issued upon probable cause is unconstitutional, subject to only a few well delineated exceptions. People v. Savage, 630 P.2d 1070 (Colo. 1981); People v. Wright, 804 P.2d 866 (Colo. 1991); People v. McMillan, 870 P.2d 493 (Colo. App. 1993); People v. Savedra, 907 P.2d 596 (Colo. 1995).

A warrantless intrusion into a home is presumptively unreasonable. People v. Bustam, 641 P.2d 968 (Colo. 1982); People v. Jansen, 713 P.2d 907

(Colo. 1986).

Warrantless searches are presumed to be unreasonable unless they satisfy an exception to the warrant requirement. People v. Carper, 876 P.2d 582 (Colo. 1994).

Warrantless searches and seizures are per se unreasonable unless they fall within a specific, clearly articulated exception to the warrant requirement such as an arrest based on probable cause or an investigatory stop justified based on reasonable suspicion of criminal activity. People v. Rodriguez, 945 P.2d 1351 (Colo. 1997); People v. Ingram, 984 P.2d 597 (Colo. 1999).

A warrantless search and seizure is unreasonable unless justified by an established exception to the warrant clause of the fourth amendment. People v. Salazar, 964 P.2d 502 (Colo. 1998).

Warrantless searches and seizures are presumptively invalid under the fourth amendment to the United States Constitution and this section, subject only to a few specifically delineated exceptions. Hoffman v. People, 780 P.2d 471 (Colo. 1989); People v. Martinez, 801 P.2d 542 (Colo. 1990); People v. Taube, 843 P.2d 79 (Colo. App. 1992); People v. Taube, 864 P.2d 123 (Colo. 1993).

Warrantless search is invalid unless supported by probable cause and justified under one of the narrowly defined exceptions to the warrant requirement. People v. Higbee, 802 P.2d 1085 (Colo. 1990).

Reasonableness requirement applicable to exceptions. Even within the scope of a given exception to the warrant requirement, the search must still meet the ultimate requirement of "reasonableness". People v. Casias, 193 Colo. 66, 563 P.2d 926 (1977).

Warrantless search must satisfy reasonableness requirement even though search is within scope of established exception. People v. Boff, 766 P.2d 646 (Colo. 1988); People v. Martin, 806 P.2d 393 (Col. App. 1990); People v. McMillan, 870 P.2d 493 (Colo. App. 1993); People v. Patnode, 126 P.3d 249 (Colo. App. 2005).

Burden of proof in warrantless search and seizure. The burden of proof is upon the people to establish facts and circumstances which bring a warrantless search and seizure within one of the exceptions to the warrant requirements. People v. Boorem, 184 Colo. 233, 519 P.2d 939 (1974).

A warrantless search is presumptively illegal and the burden is upon the prosecution to establish a recognized exemption from the warrant requirements of the United States constitution and of the constitution of Colorado. People v. Neyra, 189 Colo. 367, 540 P.2d 1077 (1975); People v. Alexander, 193 Colo. 27, 561 P.2d 1263 (1977); People v. Amato, 193 Colo. 57, 562 P.2d 422 (1977).

The burden of proof is upon the prosecution to establish the existence of facts which render the warrantless entry truly imperative. People v. Hogan, 649 P.2d 326 (Colo. 1982).

The prosecution has the burden of proving that a warrantless search falls within a recognized exception to the warrant requirements. People v. Williams, 200 Colo. 187, 613 P.2d 879 (1980); People v. Jansen, 713 P.2d 907 (Colo. 1986); People v. Taube, 843 P.2d 79 (Colo. App. 1992); Outlaw v. People, 17 P.3d 150 (Colo. 2001).

An arrest without a warrant is presumed to have been unconstitutional, and the prosecution has the burden of rebutting that presumption by showing both that the arrest was supported by probable cause and that it fell within a recognized exception to the warrant requirement. People v. Burns, 200 Colo. 387, 615 P.2d 686 (1980).

Where defendant is arrested without a warrant and moves to suppress evidence seized in course of his arrest, burden of proof is upon prosecution to prove constitutional validity of arrest and search. People v. Crow, 789 P.2d 1104 (Colo. 1990).

Burden of proof is on the prosecution to establish the existence of probable cause to arrest without a warrant. Unless the facts and circumstances known to an arresting officer at the time of the arrest amount to probable cause, seizure of a citizen effecting an arrest is unreasonable and violates constitutional rights. People v. Davis, 903 P.2d 1 (Colo. 1995).

The validity of a search must be determined by an objective analysis of the validity of the arrest warrant and the circumstances of its execution and not by an analysis of the officer's motives for executing the warrant. People v. Miller, 94 P.3d 1197 (Colo. App. 2004).

Whether warrantless police eavesdropping violates the fourth amendment depends on whether the defendant had a justified expectation of privacy at the time and place of the communication. People v. Palmer, 888 P.2d 348 (Colo. App. 1994).

Tape recording of defendant's conversation with accomplice made without his knowledge in the back of police car could properly be considered since, irrespective of defendant's subjective belief that his conversation while in the police vehicle was private, such belief was unreasonable and unjustified. People v. Palmer, 888 P.2d 348 (Colo. App. 1994).

Two bases furnishing justification for warrantless arrest in home. The only bases that conceivably could furnish a constitutional justification for a warrantless arrest in a home are exigent circumstances or consent. McCall v. People, 623 P.2d 397 (Colo. 1981).

In applying "emergency doctrine" to warrantless searches each case must be tested on its own particular facts. The test is reasonableness under the circumstances. Condon v. People, 176 Colo. 212, 489 P.2d 1297 (1971).

Obtaining evidence or seizing contraband under emergency doctrine must involve an immediate crisis and the probability that assistance will be helpful. People v. Amato, 193 Colo. 57, 562 P.2d 422 (1977).

Emergency doctrine has been treated as a variant of the exigent circumstances exception to the warrant requirement. People v. Amato, 193 Colo. 57, 562 P.2d 422 (1977).

But officers' generalized speculation that chemicals or waste products could be present, and that those chemicals might be improperly dumped and mixed, which, in turn, might result in an explosion, is insufficient to constitute a showing of the "immediate crisis" required under the emergency exception. People v. Winpigler, 8 P.3d 439 (Colo. 1999).

Lack of credible evidence of an immediate crisis or emergency preclude warrantless entry and search. By the time the officers entered the home there had been significant lag time since the report of the incident indicating there was not an immediate crisis. Moreover, the officers failed to question the witness about whether anyone else was injured or whether there was an emergency that would have provided a basis to believe an emergency existed. People v. Pate, 71 P.3d 1005 (Colo. 2003).

Emergency exception does not apply if officers enter a residence with an investigatory intent and then find a medical emergency. In order for the emergency exception to apply, the officers must enter the home with the intent to provide emergency assistance. Entering the home, without knocking, guns drawn, searching the apartment prior to asking the defendant whether

he was injured or required medical attention demonstrates the officers entered the home to investigate. People v. Pate, 71 P.3d 1005 (Colo. 2003).

Factors relevant to the consideration of exigent circumstances include (1) urgency; (2) time needed to get a warrant; (3) reasonable belief contraband would be removed or destroyed; and (4) possibility of danger to police guarding contraband while the warrant would be obtained. People v. Amato, 193 Colo. 57, 562 P.2d 422 (1977).

Factors relevant to a determination of exigency include (1) the degree of urgency and the time required to obtain a warrant, (2) reasonable belief that evidence or contraband would be removed or destroyed, (3) information that those in possession of the evidence or contraband are aware that the police are closing in, and (4) the ease of destroying the evidence or contraband and the awareness that narcotics dealers often try to dispose of narcotics and escape under the circumstances. People v. Bustam, 641 P.2d 968 (Colo. 1982).

Factors applied in People v. Henson, 705 P.2d 996 (Colo. App. 1985).

If an officer's initial observations through the window of an apartment were constitutionally permissible, the prosecution bears the burden of establishing that the warrantless entry was necessary to prevent the immediate destruction of evidence or otherwise was justified under the exigent circumstances doctrine. People v. Donald, 637 P.2d 392 (Colo. 1981); People v. Jansen, 713 P.2d 907 (Colo. 1986).

The threat of immediate destruction or removal of evidence constitutes an exigent circumstance if the prosecution can demonstrate that the police had an articuable basis to justify a reasonable belief that evidence was about to be removed or destroyed. People v. Turner, 660 P.2d 1284 (Colo. 1983); People v. Garcia, 752 P.2d 570 (Colo. 1988).

In determining whether the emergency exception has been satisfied, a court must examine the totality of circumstances, including the delay likely to be occasioned by obtaining a warrant, the character of the investigation, and the potential risk posed to other persons from any unnecessary delay. People v. Higbee, 802 P.2d 1085 (Colo. 1990); People v. Winpigler, 8 P.3d 439 (Colo. 1999).

Destruction of evidence. To justify a warrantless entry and seizure on the basis of destruction of evidence, the perceived danger must be real and immediate: there must be a real or substantial likelihood that the contraband or known evidence on the premises might be removed or destroyed before a warrant could be obtained. People v. Turner, 660 P.2d 1284 (Colo. 1983); People v. Henson, 705 P.2d 996 (Colo. App. 1985).

In order for exigent circumstances to be fully examined when the claim is premised upon destruction of drugs, there must first be a finding that the police knew drugs were located in the home, which could be tantamount to a finding of probable cause. People v. Mendoza-Balderama, 981 P.2d 168 (Colo. 1999).

In order to satisfy this exception, a showing is required that the police have an articulable basis upon which to justify a reasonable belief that evidence is about to be destroyed. But the mere fact that evidence is of a type that can be easily destroyed does not, in and of itself, constitute an exigent circumstance. People v. Winpigler, 8 P.3d 439 (Colo. 1999).

Exigent circumstances exception to warrant requirement. The presence of exigent circumstances, such as the risk of immediate removal or destruction of evidence, permits quick police action and militates against strict adherence to the warrant

requirement to gain entry into a residence. People v. Magoon, 645 P.2d 286 (Colo. App. 1982).

Exigent circumstances doctrine encompasses compelling need for immediate police action. The doctrine of exigent circumstances encompasses those situations where, due to an emergency, the compelling need for immediate police action militates against the strict adherence to the warrant requirement. McCall v. People, 623 P.2d 397 (Colo. 1981); People v. Gomez, 632 P.2d 586 (Colo. 1981), cert. denied, 455 U.S. 943, 102 S. Ct. 1439, 71 L. Ed. 2d 655 (1982); People v. Lucero, 677 P.2d 370 (Colo. App. 1983), cert. dismissed, 706 P.2d 1283 (Colo. 1985); People v. Jansen, 713 P.2d 907 (Colo. 1986); People v. Garcia, 752 P.2d 570 (Colo. 1988); People v. Barry, 888 P.2d 327 (Colo. App. 1994).

Exigent circumstances generally have been limited to those bona fide situations which legitimately require swift police action, such as the hot pursuit of a fleeing suspect, the risk of the immediate destruction of evidence, or a colorable claim of an emergency threatening the life or safety of another. People v. Hogan, 649 P.2d 326 (Colo. 1982); People v. Reger, 731 P.2d 752 (Colo. App. 1986); People v. Garcia, 752 P.2d 570 (Colo. 1988).

Exigent circumstances that necessitate immediate and warrantless police action: (1) "Hot pursuit" of a fleeing suspect; (2) a risk of immediate destruction of evidence; and (3) a colorable claim of an emergency threatening the life or safety of another. People v. Lewis, 975 P.2d 160 (Colo. 1999); People v. Aarness, 150 P.3d 1271 (Colo. 2006); People v. Nelson, 2012 COA 37M, __ P.3d __.

Exigent circumstances exist only when there is a pressing need that cannot brook the delay incident to obtaining a warrant. People v. Lindsey, 805 P.2d 1134 (Colo. App. 1990).

An additional exigent circumstance that allows warrantless police action is the belief that police officers' own lives or the lives of others are at risk. People v. Nelson, 2012 COA 37M, __ P.3d __.

Exigent circumstances exception has been limited to those situations involving a bona fide pursuit of a fleeing suspect, the risk of immediate destruction of evidence, or a colorable claim of emergency threatening life or safety of another. People v. Higbee, 802 P.2d 1085 (Colo. 1990).

Driving under the influence is a sufficiently grave offense to support a warrantless entry into a person's home by police, even though it is a misdemeanor offense in this state, because a person convicted of DUI as a first-time offender may be jailed. People v. Wehmas, 246 P.3d 642 (Colo. 2010).

Dissipation of defendant's blood alcohol content is not a sufficiently exigent circumstance justifying warrantless home entry by police based on the immediate risk of destruction of evidence. People v. Wehmas, 246 P.3d 642 (Colo. 2010).

Exigent circumstances allow immediate, warrantless searches and seizures when it reasonably appears that evidence may be removed or destroyed by a third person before it can be secured by the police. People v. Barndt, 604 P.2d 1173 (Colo. 1980); People v. Barry, 888 P.2d 327 (Colo. App. 1994).

Scope of the emergency exception must be strictly circumscribed by the exigencies which justify its initiation, because the exigent circumstances doctrine runs counter to fourth amendment guarantees. Thus, the state must show that an immediate crisis existed inside the place to be searched and that police assistance probably would be helpful in alleviating the crisis. People v. Higbee, 802 P.2d 1085 (Colo. 1990).

Emergency variant of

exigent circumstances exception to warrant requirement satisfied where officer entered apartment with reasonable belief that an immediate crisis existed with respect to the safety of an infant inside. People v. Malczewski, 744 P.2d 62 (Colo. 1987).

Exception supported only by showing of immediate crisis inside private premises and that police assistance probably will help alleviate crises. People v. Martin, 806 P.2d 393 (Colo. App. 1990).

Exigent circumstances found to have continued to exist when police discovered bomb making material. Police were not required to stop lawful search of house for injured persons once they discovered bomb making material in plain sight. People v. Kluhsman, 980 P.2d 529 (Colo. 1999).

Medical emergency variant of exigent circumstances doctrine applied where emergency room personnel discovered cocaine unexpectedly, in the course of treating the defendant for a serious injury, and discovery was entirely incidental to the medical purpose for the treatment. People v. Loggins, 981 P.2d 630 (Colo. App. 1998).

Under exigent circumstances, a police officer may enter private property without a warrant when he reasonably believes the premises have been or are being burglarized. People v. Berow, 688 P.2d 1123 (Colo. 1984).

Police officers' knowledge that apartment tenant was not home but had given directions to arrest trespassers, along with the fact that people were in the apartment but not answering the door, were circumstances sufficient to support a reasonable belief by the officers that the people in the apartment were trespassers who should be arrested. People v. Trusty, 53 P.3d 668 (Colo. App. 2001).

But police officers who respond to a report of a possible burglary in progress, yet find no objective signs of any burglary in progress at the scene, have no probable cause to believe a burglary is in progress and conduct a warrantless entry, search, and seizure. People v. Grazier, 992 P.2d 1149 (Colo. 2000).

Finding broken glass is insufficient to support probable cause that a burglary was in progress when responding to a call that a burglary is in progress. People v. Pate, 71 P.3d 1005 (Colo. 2003).

It is unreasonable for officers to enter a home believing a burglary may be in progress after failing to ask the witness at the scene any questions critical to a burglary investigation. People v. Pate, 71 P.3d 1005 (Colo. 2003).

Police officers reasonably entered defendant's home under exigent circumstances. Daughter's 911 report of a physical altercation involving her mother and defendant established probable cause that a domestic violence crime had occurred or was occurring in the home. When the officers arrived, the home was dark, and no one answered repeated knocks on the front door even though the daughter had reported a physical altercation occurring inside just minutes earlier. It was reasonable, therefore, for the officers to proceed to the back door of the darkened home when their repeated knocks on the front door went unanswered. When they saw the door slightly ajar, it was reasonable for them to enter and announce themselves. People v. Chavez, 240 P.3d 448 (Colo. App. 2010).

Exigent circumstances justifying warrantless arrest existed where police had detailed information from informant, circumstances at the scene matched that information, and person holding suspected contraband was leaving in automobile. People v. Garcia, 752 P.2d 570 (Colo. 1988).

Burden of proof of exigent

circumstances. In order to support the warrantless entry and arrest of a defendant in his residence, the prosecution must establish the existence of both probable cause and exigent circumstances. People v. Bustam, 641 P.2d 968 (Colo. 1982); People v. Henson, 705 P.2d 996 (Colo. App. 1985); People v. Higbee, 802 P.2d 1085 (Colo. 1990).

Because both probable cause and exigent circumstances must be present in order to justify a warrantless search into a defendant's home and trial court found only that police entered defendant's home in the absence of exigent circumstances without first making a probable cause determination, case was remanded to trial court to determine first whether defendant informed detective that drugs were in his home, giving detective probable cause, and then to determine whether exigent circumstances justified warrantless entry into the defendant's home. People v. Mendoza-Balderama, 981 P.2d 168 (Colo. 1999).

Police had reasonable grounds to believe that person might destroy possible evidence inside the house or harm the officers outside where, during arrest of suspect outside of house, defendant was seen trying to conceal himself by closing curtains to the house. People v. Barry, 888 P.2d 327 (Colo. App. 1994).

Warrantless entry was justified where police had reason to believe that evidence could be destroyed: razor blades and victim's underwear could have been flushed down a toilet or thrown away; bedsheets could have been washed. People v. Crawford, 891 P.2d 255 (Colo. 1995).

Officer's probable cause to believe that a car in the driveway of a home had been stolen and that the responsible party was in the home did not create exigent circumstances that would allow an officer to enter the fenced backyard while other officers knocked on the front door. There was nothing to indicate that the circumstances were moving so quickly that officers could not have secured the area without entering the backyard and waited for a warrant. People v. Brunsting, 224 P.3d 259 (Colo. App. 2009).

Warrantless search on the basis of reasonable suspicion. A police officer may briefly stop a suspicious person and make reasonable inquiries to confirm or dispel his suspicions including a pat-down search of the individual to determine whether the person is carrying a weapon, as long as the officer is justified in believing that the person may be armed and presently dangerous. People v. Corpany, 859 P.2d 865 (Colo. 1993).

The purpose of the limited search is not to discover evidence of a crime but to allow an officer to pursue an investigation without fear of violence. People v. Corpany, 859 P.2d 865 (Colo. 1993).

In drug transactions the possibility of violence involving armed drug dealers exists and a protective sweep and search for weapons provides an additional justification for the warrantless search. People v. Barry, 888 P.2d 327 (Colo. App. 1994).

The presence of a burning building clearly created an exigent circumstance that justified a warrantless entry by fire officials to extinguish the blaze and warranted seizure of evidence in plain view. People v. Harper, 902 P.2d 842 (Colo. 1995).

The proper test for determining whether police intrusion is reasonable is an objective one based on the totality of facts and circumstances known to the police at the time. The appropriate inquiry is to balance the intrusion on the individual's fourth amendment interests against the promotion of legitimate governmental interests. People v. Taube, 843 P.2d 79

(Colo. App. 1992).

And a court must evaluate the circumstances as they would have appeared to a prudent and trained police officer at the time of the challenged entry. People v. Higbee, 802 P.2d 1085 (Colo. 1990).

Exigent circumstances found justifying search and seizure. People v. Smith, 709 P.2d 4 (Colo. App. 1985), holding reaffirmed, Mendez v. People, 986 P.2d 275 (Colo. 1999).

Exigent circumstances justified officers' forcible entry where the officers smelled burned marijuana when defendant opened the door. People v. Baker, 813 P.2d 331 (Colo. 1991).

Exigent circumstances justified officers' entry into home to protect the safety of the officers and other occupants where it was reasonable for officers to believe, based on defendant's conduct, that defendant was reaching for a weapon. People v. Aarness, 150 P.3d 1271 (Colo. 2006).

Exigent circumstances requiring warrantless search absent. People v. Guerin, 769 P.2d 1068 (Colo. 1989).

Where extreme cold and not threats of destruction or removal of evidence motivated warrantless entry into house, evidence discovered and seized should have been suppressed. People v. Schoondermark, 717 P.2d 504 (Colo. App. 1985), rev'd on other grounds, 759 P.2d 715 (Colo. 1988).

Courts have uniformly required an objective standard for determining probable cause. People v. Davis, 903 P.2d 1 (Colo. 1995).

Courts use an objective standard for determining reasonable suspicion. In reviewing an officer's conduct in making an investigative stop, a court must apply an objective test. An officer's improper motives will not remove the legal justification for an otherwise valid investigatory stop based on reasonable suspicion. People v. Rodriguez, 945 P.2d 1351 (Colo. 1997).

Inherent right to enter and investigate in emergencies. The reasonable exercise of the broad duties of police officers clearly includes the inherent right to enter and investigate in emergencies without an intent to either search or arrest. People v. Boileau, 36 Colo. App. 157, 538 P.2d 484 (1975).

Emergency and consent are necessary conditions for administrative search without warrant. An administrative search without a warrant is not proper except under certain circumstances and conditions, two of these conditions being (1) that an emergency existed sufficient to justify a warrantless search and (2) that consent was given to search the premises. Condon v. People, 176 Colo. 212, 489 P.2d 1297 (1971).

A search justified under the emergency doctrine is limited by the nature of the emergency; an emergency cannot be used to support a general exploratory search. People v. Unruh, 713 P.2d 370 (Colo. 1986), cert. denied, 476 U.S. 1171, 106 S. Ct. 2894, 90 L. Ed. 2d 981 (1986).

Sufficient emergency. Where both the resuscitation unit of the fire department and the police officers had a legal right to be present in the defendant's apartment in response to a general emergency call, the emergency doctrine fully justified warrantless entry. People v. Amato, 193 Colo. 57, 562 P.2d 422 (1977).

Otherwise lawful search was not vitiated by the entry into apartment without prior identification and announcement of purpose, because exigent circumstances would justify entry without prior identification and announcement, and exigent circumstances are always present in searches for narcotics. The ease with which narcotics can be expended or destroyed is the justification for this practical rule. People v. Arnold, 186 Colo. 372, 527 P.2d 806 (1974).

Where time was of the essence and the police officers had the choice of either acting upon the information which they had obtained or of allowing the narcotics violation to escape detection, the exigent circumstances permitted an arrest without resort to the time-consuming process incident to the obtaining of a warrant. DeLaCruz v. People, 177 Colo. 46, 492 P.2d 627 (1972).

Police officers can, when in hot pursuit and when confronted with exigent circumstances, act to protect themselves and to prevent the destruction of evidence or injury to another. People v. Vaughns, 175 Colo. 369, 489 P.2d 591 (1971).

Even though an arrest warrant is invalid, the arrest of a defendant may be upheld if the arresting officer had probable cause to believe that an offense had been committed by the defendant apart from the complaint, and the officer was confronted with exigent circumstances. People v. Moreno, 176 Colo. 488, 491 P.2d 575 (1971).

Investigation of premises without warrant upheld where unpleasant odor from trailer was so unpleasant to cause complaints from neighbors and was adequate to constitute an emergency sufficient to allow park owners to enter trailer and investigate. People v. Rivers, 727 P.2d 394 (Colo. App. 1986).

Facts known to police, including victim's unexplained failure to appear at work and unusual circumstances, were sufficient to support invocation of emergency doctrine to justify warrantless entry into trailer. People v. Reger, 731 P.2d 752 (Colo. App. 1986).

Emergency situation existed where the circumstances suggested a low risk of explosion but a grave danger to any persons in the vicinity if an explosion of dynamite should occur and where an experienced bomb squad officer concluded that the defendant's apartment should be searched. People v. Higbee, 802 P.2d 1085 (Colo. 1990).

For a warrantless entry to be justified as hot pursuit, the police must have been provided with some sort of direction, whether it be the result of a chase or the result of a tip from a witness, which leads them to a particular premises. People v. Lewis, 975 P.2d 160 (Colo. 1999).

Warrantless search of a person's purse or wallet may be conducted in a medical emergency but only if such person is unconscious or semiconscious and the search is conducted to obtain the person's identity or medical information and the person is unable to provide such information themselves. People v. Wright, 804 P.2d 866 (Colo. 1991).

Not sufficient emergency. Detection of an odor which might be that of a decomposing body does not create, in and of itself, an emergency sufficient to justify a warrantless search. Condon v. People, 176 Colo. 212, 489 P.2d 1297 (1971).

No exception for search at homicide scene. There is no special exception which permits the police to conduct a warrantless search at the scene of a possible homicide. People v. Roark, 643 P.2d 756 (Colo. 1982).

Even if police officers' initial entry into defendant's home was not supported by exigent circumstances, defendant's consent to the search of his home was voluntary and attenuated from any illegality; therefore, admission of evidence was not error. People v. Benson, 124 P.3d 851 (Colo. App. 2005).

Parole officer investigating a parole violation who has reasonable grounds to believe that a parole violation has occurred does not need a search warrant to search parolee's house if police officer is not a part of the search. People v. Slusher, 844 P.2d 1222 (Colo. App. 1992).

Special-needs exception to

the warrant and probable-cause requirements applies when special needs, beyond the normal need for law enforcement, make the warrant and probable-cause requirement impracticable. Parole officer must authorize the search and would normally be present during the search, and the search must be related to the rehabilitation and supervision of the parolee. United States v. Warren, 566 F.3d 1211 (10th Cir.), cert. denied, __ U.S. __, 130 S. Ct. 569, 175 L. Ed. 2d 393 (2009).

Search of parolee's residence was a special-needs parole search because participating police officer acted under the direction of a parole officer. United States v. Warren, 566 F.3d 1211 (10th Cir.), cert. denied, __ U.S. __, 130 S. Ct. 569, 175 L. Ed. 2d 393 (2009).

Evidence seized within the scope of a reasonable search by a parole officer is admissible in the prosecution of parolee for another crime, even if unrelated to the parole violation. People v. Slusher, 844 P.2d 1222 (Colo. App. 1992).

A warrantless parole search may be constitutional, even in the absence of "reasonable grounds", if the search meets the following requirements: (1) It is conducted pursuant to any applicable statute; (2) it is conducted in furtherance of the purposes of parole, i.e., related to the rehabilitation and supervision of the parolee; and (3) it is not arbitrary, capricious, or harassing. People v. McCullough, 6 P.3d 774 (Colo. 2000).

The absence of an authorizing law or condition of probation does not necessarily render unconstitutional a warrantless search of a probationer's residence if based on a reasonable suspicion. The totality of all other relevant circumstances may render such a search reasonable. The defendant's status as a probationer on intensive supervised probation greatly reduced his reasonable expectation of privacy in his residence and, combined with the other circumstances of the situation, justified the search by his probation officer. People v. Samuels, 228 P.3d 229 (Colo. App. 2009).

Warrantless search of a passenger compartment of an automobile must satisfy four conditions: (1) There must be an articulable and specific basis in fact for suspecting that criminal activity has occurred, is taking place, or is about to occur; (2) the purpose of the intrusion must be reasonable; (3) the scope and character of the intrusion must be reasonably related to its purpose; and (4) there must be a reasonable belief based on specific and articulable facts which reasonably cause the officer to believe that the suspect is armed and dangerous and may gain immediate control of weapons. People v. Corpany, 859 P.2d 865 (Colo. 1993).

Automobile may be searched without warrant provided that there is probable cause to believe that the automobile contains articles that officers are entitled to seize. People v. Weinert, 174 Colo. 71, 482 P.2d 103 (1971); People v. Chavez, 175 Colo. 25, 485 P.2d 708 (1971); Kurtz v. People, 177 Colo. 306, 494 P.2d 97 (1972).

Automobiles, because of their mobility, may be searched without a warrant upon facts not justifying a warrantless search of a residence or office, but the officers conducting the search must have "reasonable or probable cause" to believe that they will find the instrumentality of a crime or evidence pertaining to a crime before they begin their warrantless search. Cowdin v. People, 176 Colo. 466, 491 P.2d 569 (1971); People v. Padilla, 182 Colo. 101, 511 P.2d 480 (1973); People v. Fratus, 187 Colo. 52, 528 P.2d 392 (1974).

Where circumstances require police officers to either seize a vehicle and hold it until a search warrant could

be obtained or search it without a warrant, and where there is probable cause to search, a warrantless search is permissible. People v. Henderson, 175 Colo. 400, 487 P.2d 1108 (1971); People v. Neyra, 189 Colo. 367, 540 P.2d 1077 (1975).

The police may conduct a warrantless search of a motor vehicle if: (1) There is probable cause to believe that it contains evidence of a crime; and (2) the circumstances create a practical risk of the vehicle's unavailability if the search is postponed until a warrant is obtained. People v. Meyer, 628 P.2d 103 (Colo. 1981).

Test applied in People v. Thiret, 685 P.2d 193 (Colo. 1984); People v. Edwards, 836 P.2d 468 (Colo. 1992).

The lawfulness of a car stop must finally rest upon a determination that the officer had a reasonable suspicion, based on objective facts, that the driver of the car was involved in criminal activity. People v. Smith, 620 P.2d 232 (Colo. 1980).

Warrantless search of an automobile held valid even though exigent circumstances absent and defendant-owner of vehicle had been released, because police had reasonable belief that automobile was itself the instrumentality of a crime. People v. Zamora, 695 P.2d 292 (Colo. 1985).

Warrantless search of automobile trunk, where trunk was locked and automobile's driver and passengers had been detained, held justified where officer had probable cause to believe trunk contained a weapon used in a burglary. People v. Edwards, 836 P.2d 468 (Colo. 1992).

Police had reasonable suspicion to believe criminal activity occurred where the driver of a rental vehicle in Colorado produced two unsigned rental agreements for the vehicle, one of which was for the wrong vehicle, where the rental agreement prohibited driving outside of Arizona or Nevada, and where the driver offered conflicting reasons for being in the state. People v. Litchfield, 918 P.2d 1099 (Colo. 1996).

Automobile exception to warrant requirement applies to police officers' observation of a television set in the vehicle subsequent to the time the vehicle was initially stopped for traffic violation. People v. Naranjo, 686 P.2d 1343 (Colo. 1984).

Based on the totality of the circumstances, the officer had reasonable suspicion to detain truck and conduct a dog sniff. People v. Garcia, 251 P.3d 1152 (Colo. App. 2010).

Observing an air freshener hanging from rearview mirror not an automatic basis for a traffic stop. Officer needs to reasonably believe the air freshener actually obstructs the driver's vision through the windshield. People v. Arias, 159 P.3d 134 (Colo. 2007).

Existence of probable cause justifies warrantless search of car. Where there is probable cause to obtain a warrant to search a car, a search of the car without a warrant is justified. People v. Smith, 620 P.2d 232 (Colo. 1980).

Where probable cause to search a car exists, no exigent circumstances are required. People v. Romero, 767 P.2d 1225 (Colo. 1989).

In such case, the vehicle may be searched immediately without a warrant or seized without a warrant for a later search after a warrant is obtained. People v. Martinez, 32 P.3d 520 (Colo. App. 2001).

A drug checkpoint in which vehicles are stopped without reasonable suspicion that the occupants have engaged in criminal activity constitutes illegal police conduct in violation of the fourth amendment. People v. Roth, 85 P.3d 571 (Colo. App. 2003) (citing Indianapolis v. Edmond, 531 U.S. 32, 121 S. Ct. 447, 148 L. Ed. 2d 333 (2000)).

It was not unconstitutional, however, for the police to have created a ruse checkpoint that caused defendant's passengers to abandon an item of property, the discovery of which provided reasonable suspicion to stop the defendant's vehicle. People v. Roth, 85 P.3d 571 (Colo. App. 2003) (following United States v. Flynn, 309 F.3d 736 (10th Cir. 2002)).

Where the police have legitimately stopped an automobile and have probable cause to search it, they may also search containers that may contain the object of their search. Because the officer was validly searching the car for drug evidence, the officer was justified in searching a wallet found on the back seat. People v. Moore, 900 P.2d 66 (Colo. 1995).

Under the automobile exception police are allowed to conduct a warrantless search of a car if there is probable cause to believe the car contains contraband. People v. Naranjo, 686 P.2d 1343 (Colo. 1984); People v. McMillan, 870 P.2d 493 (Colo. App. 1993).

The automobile exception to warrant requirement is rooted in the inherent mobility of motor vehicles and the diminished expectation of privacy in an object designed exclusively as a means of transportation. People v. Thiret, 685 P.2d 193 (Colo. 1984); People v. McMillan, 870 P.2d 493 (Colo. App. 1993).

But not without cause to believe that car contains contraband. Where the police officer stated unequivocally in the record that he had no cause to believe that the car contained any contraband, under this state of the record the search was exploratory only and cannot be sustained. People v. Singleton, 174 Colo. 138, 482 P.2d 978 (1971).

The need for immediate police action is recognized when an automobile is being utilized to transport contraband. People v. Fratus, 187 Colo. 52, 528 P.2d 392 (1974).

No exploratory searches of automobiles are authorized, and in order to be reasonable, the search must be one designed to afford evidence in connection with the particular crime for which the person was arrested. Stewart v. People, 162 Colo. 117, 426 P.2d 545 (1967).

Following Arizona v. Gant, 556 U.S. 332, 129 S. Ct. 1710, 173 L. Ed. 2d 485 (2009), the search-incident-to-arrest exception does not apply in this case, and the search of the passenger compartment of defendant's car was unconstitutional. Because statements defendant made following the discovery of drugs were the fruit of the unlawful search, the evidentiary use of the statements must also be suppressed. Perez v. People, 231 P.3d 957 (Colo. 2010).

Search of auto incident to arrest. The search of a vehicle, which was made substantially contemporaneously with the arrest, was permissible as an incident to such arrest. People v. Olson, 175 Colo. 140, 485 P.2d 891 (1971); People v. Lucero, 182 Colo. 39, 511 P.2d 468 (1973); People v. Coulson, 192 Colo. 53, 555 P.2d 516 (1976); People v. Patnode, 126 P.3d 249 (Colo. App. 2005).

Arrest of defendant and search of defendant's motorcycle were not so separated by time or intervening events that the search was not incident to the arrest. People v. Malloy, 178 P.3d 1283 (Colo. App. 2008).

Search of automobile held not incident to arrest. Where the defendant was in custody, so there was no danger of his destroying any evidence in his car, and the car was without the area authorized to be searched by the warrant, the search was not incident to the arrest. People v. Singleton, 174 Colo. 138, 482 P.2d 978 (1971); People v. Neyra, 189 Colo. 367, 540 P.2d 1077 (1975).

Where defendant's automobile is immobilized, and defendant is in custody, and there is no danger that evidence will be removed, the essential ingredient -- exigent circumstance that would allow a warrantless search -- is not present. People v. Railey, 178 Colo. 297, 496 P.2d 1047 (1972); People v. Simmons, 973 P.2d 627 (Colo. App. 1998).

Automobile may be searched by police at time and place remote from arrest, provided that the police have valid custody of the automobile at the time, and provided that the arrest is valid, and provided that the search is made for the fruits of the crime, the instruments of the crime, or evidence relating to the crime for which the accused was validly arrested. Stewart v. People, 162 Colo. 117, 426 P.2d 545 (1967).

Not for mere traffic violation. A mere traffic violation does not authorize a suspicion of an unrelated criminal activity so as to justify a warrantless search. People v. Vialpando, 183 Colo. 19, 514 P.2d 622 (1973).

Traffic offenses cannot justify general, exploratory searches of motor vehicles. Cowdin v. People, 176 Colo. 466, 491 P.2d 569 (1971).

Bases for searching unoccupied vehicle. Where a vehicle is unoccupied, the right to search hinges on a reasonable belief that it contains seizable objects -- contraband, the fruits or instrumentalities of a crime, or evidence of a crime. People v. Meyer, 628 P.2d 103 (Colo. 1981).

Right to enter private driveway to investigate. Even if an officer, having a reasonable suspicion that criminal activity is occurring in "plain view", may enter a private driveway to investigate, that right vanishes absent such reasonable suspicion. People v. Apodaca, 38 Colo. App. 395, 561 P.2d 351 (1976), aff'd, 194 Colo. 324, 571 P.2d 1109 (1977).

Car parked under carport behind house. People v. Apodaca, 38 Colo. App. 395, 561 P.2d 351 (1976), aff'd, 194 Colo. 324, 571 P.2d 1109 (1977).

Validity of inventory searches upheld. The validity of inventory searches, when constrained within the limits of "reasonableness", has consistently been upheld. People v. Counterman, 192 Colo. 152, 556 P.2d 481 (1976).

Inventory search is justified as incident of lawful incarceration. People v. Overlee, 174 Colo. 202, 483 P.2d 222 (1971); People v. Valdez, 182 Colo. 80, 511 P.2d 472 (1973).

The legitimate purposes for inventory searches provide one measure of the limits of reasonable police intrusion. These purposes include (1) protection of the owner's or occupant's property, (2) protection of the police officers from liability based upon subsequent claims of missing or damaged property, and (3) protection of the police officers and the public from dangerous instrumentalities inside the car. People v. Counterman, 192 Colo. 152, 556 P.2d 481 (1976); People v. Eakins, 196 Colo. 517, 587 P.2d 790 (1978).

An inventory search is valid when it follows a lawful arrest, is prior to impoundment of the vehicle, and is conducted in accordance with existing agency policies that are consistently applied. People v. Patnode, 126 P.3d 249 (Colo. App. 2005).

Limiting factor as to reasonableness of inventory search is whether the "caretaking" or protective functions of the search are tainted as pretexts for "concealing an investigatory police motive". People v. Counterman, 192 Colo. 152, 556 P.2d 481 (1976); People v. Eakins, 196 Colo. 517, 587 P.2d 790 (1978).

Inventory of property found in impounded vehicle is not unreasonable search, since such a search is supported by the legitimate

police concern of protecting property in their custody, or retrieving suspected weapons which may present a danger to the community. People v. Trusty, 183 Colo. 291, 516 P.2d 423 (1973); People v. Grana, 185 Colo. 126, 527 P.2d 543 (1974).

The inventory search of a vehicle is constitutional if the decision to impound the vehicle is made pursuant to the standard criteria in department's regulations. The police followed their impound guidelines in this case so the inventory search of the vehicle was constitutional. People v. Grenier, 200 P.3d 1062 (Colo. App. 2008).

Inventory search held unreasonable. The present case clearly fell outside of guidelines as to reasonableness of an inventory search where a knapsack was itself in plain view, but its contents were securely sealed and completely unknown to the officer, the knapsack did not give any indication that its contents were dangerous or particularly valuable and in need of a special inventory, and the legitimate purpose of the inventory search could have been fully accomplished by merely noting the item as a sealed knapsack. People v. Counterman, 192 Colo. 152, 556 P.2d 481 (1976).

Inventory search exception to warrant requirement inapplicable to warrantless entry into defendant's home to conduct inventory after it had been seized pursuant to a temporary restraining order issued in a civil forfeiture action in the absence of probable cause to believe the home was related to the nuisance activity. People v. Taube, 843 P.2d 79 (Colo. App. 1992).

Warrantless entry into defendant's home to conduct an inventory without probable cause was an unreasonable intrusion and violated the defendant's constitutional rights. People v. Taube, 843 P.2d 79 (Colo. App. 1992).

Articulable facts requiring seizure required. This section requires that specific, articulable, and objective facts indicate that society's legitimate interests demand the seizure of a particular individual. People v. Schreyer, 640 P.2d 1147 (Colo. 1982).

A police officer must have a reasonable suspicion that the individual has committed, or is about to commit, a crime; the test is whether the facts, viewed as a whole, justify the officer's belief that the individual is engaged in wrongdoing. People v. Schreyer, 640 P.2d 1147 (Colo. 1982); People v. Bell, 698 P.2d 269 (Colo. 1985); People v. Guffie, 749 P.2d 976 (Colo. App. 1987); People v. Sutherland, 886 P.2d 681 (Colo. 1994).

In determining whether police had reasonable suspicion to justify investigatory stop, totality of the circumstances must be considered. People v. Carillo-Montes, 796 P.2d 970 (Colo. 1990).

Articulable suspicion of criminal activity needed to support investigatory stop. People v. Trujillo, 773 P.2d 1086 (Colo. 1989).

Seizure of contraband in inventory procedure lawful. Contraband discovered in defendant's car during inventory procedure was lawfully seized. People v. Roddy, 188 Colo. 55, 532 P.2d 958 (1975).

Right to "stop and frisk" is not an open invitation to conduct an unlimited search incident to arrest or a means to effect a search to provide grounds for an arrest. Rather, it is a right to conduct a limited search for weapons. People v. Navran, 174 Colo. 222, 483 P.2d 228 (1971).

It is well established that an officer may conduct a limited search for weapons (a so-called "pat-down" or "stop and frisk") for his own safety when he is justified in believing that he is dealing with a potentially armed and dangerous individual. Finley v. People, 176 Colo. 1, 488 P.2d 883 (1971); People v. Casias, 193 Colo. 66, 563

P.2d 926 (1977); People v. Ratcliff, 778 P.2d 1371 (Colo. 1989); People v. Mack, 33 P.3d 1211 (Colo. App. 2001).

In light of the fact that police officers must always make arrests under a shadow of uncertainty as to the risk which they are taking, police officers stopping a speeding car are justified in making a "pat-down" search for weapons and to forestall assault or escape. Cowdin v. People, 176 Colo. 466, 491 P.2d 569 (1971).

The rule allowing contemporaneous searches incident to lawful arrests is justified by the need to seize weapons and other things which might be used to assault an officer or effect an escape, as well as by the need to prevent the destruction of evidence of the crime. People v. Vigil, 175 Colo. 421, 489 P.2d 593 (1971).

When a person is lawfully arrested, the police have the right, without a search warrant, to make a contemporaneous search of the person of the accused for weapons or for the fruits of or implements used to commit the crime. People v. Vigil, 175 Colo. 421, 489 P.2d 593 (1971).

But free license has not been granted to law enforcement officers to stop an individual to obtain identification or address. Stone v. People, 174 Colo. 504, 485 P.2d 495 (1971).

Temporary detention on less than probable cause authorized. A police officer may subject a person to a temporary detention, short of the traditional arrest, on less than the probable cause standard. People v. Tate, 657 P.2d 955 (Colo. 1983).

The limited intrusion of an investigatory stop may be carried out with less than probable cause without violating the fourth amendment of the U.S. Constitution and this section. People v. Lagrutta, 775 P.2d 576 (Colo. 1989); People v. Rahming, 795 P.2d 1338 (Colo. 1990); People v. Lingo, 806 P.2d 949 (Colo. 1991); People v. Sutherland, 886 P.2d 681 (Colo. 1994).

A police officer may have sufficient information for a temporary detention based on a reasonable suspicion that an individual may have committed a crime but such detention must be limited to determining the individual's identity or obtaining an explanation of his behavior. People v. Davis, 903 P.2d 1 (Colo. 1995).

Subjective intentions of officer are irrelevant to a determination that officer has reasonable suspicion to conduct an investigatory stop. People v. Grenier, 200 P.3d 1062 (Colo. App. 2008).

Investigatory stop of defendant valid and seizure of defendant not illegal. Record supports the reasonable conclusion that defendant may have been committing a traffic offense when officer undertook the investigatory stop. People v. McDaniel, 160 P.3d 247 (Colo. 2007).

Investigatory stop was legal. Police had reasonable suspicion to believe that a crime was occurring where defendant stood on private property in a high-crime area late at night where no businesses were open and no other people were nearby, and officers heard a loud crash shortly thereafter. People v. Funez-Paiagua, 2012 CO 37, 276 P.3d 576.

An investigatory stop must be brief in duration, limited in scope, and narrow in purpose. People v. Tottenhoff, 691 P.2d 340 (Colo. 1984); People v. Rodriguez, 945 P.2d 1351 (Colo. 1997); Outlaw v. People, 17 P.3d 150 (Colo. 2001).

But a detective's request for defendant's identification information was reasonably related in scope and character to the investigative detention. People v. McCoy, 870 P.2d 1231 (Colo. 1994); People v. McKay, 10 P.3d 704 (Colo. App. 2000).

Law enforcement interests can support a seizure based on less than probable cause in the case of a minimally intrusive detention. People

v. Ortega, 34 P.3d 986 (Colo. 2001); People v. Tallent, 174 P.3d 310 (Colo. 2008).

Performing drug interdiction stops serves an important public interest; therefore, if law enforcement can conduct a search and seizure in a reasonably short period of time without delaying the common carrier schedule, the conduct is an investigative detention, requiring only reasonable suspicion. People v. Ortega, 34 P.3d 986 (Colo. 2001).

Investigatory stop of suspect limited. Any temporary police detention made for the purpose of questioning a suspect who might otherwise escape is limited to determining an individual's identity or obtaining an explanation of his behavior. People v. Schreyer, 640 P.2d 1147 (Colo. 1982); People v. Villiard, 679 P.2d 593 (Colo. 1984); People v. Lingo, 806 P.2d 949 (Colo. 1991); People v. Rodriguez, 945 P.2d 1351 (Colo. 1997).

Else it becomes arrest. Although an investigatory stop itself does not constitute an arrest, whenever detention and questioning by a police officer are more than brief and cursory, there is an arrest which must be supported by probable cause. People v. Schreyer, 640 P.2d 1147 (Colo. 1982); People v. Roybal, 655 P.2d 410 (Colo. 1982); People v. Hazelhurst, 662 P.2d 1081 (Colo. 1983); People v. Villiard, 679 P.2d 593 (Colo. 1984); People v. Trujillo, 710 P.2d 1169 (Colo. App. 1985).

Use of force and physical restraint for officer's safety is not per se an arrest. If an officer's use of force and physical restraint for safety is reasonable, it does not transform the investigatory stop into an arrest. People v. Smith, 13 P.3d 300 (Colo. 2000); People v. Smith, __ P.3d __ (Colo. App. 2010).

Where a police officer conducts an investigatory stop, an accompanying search upon less than probable cause is permissible only for the purpose of discovering weapons, and the officer must entertain such purpose at the time the search is conducted. People v. Cagle, 688 P.2d 718 (Colo. 1984), appeal dismissed for want of a substantial federal question, 486 U.S. 1028, 108 S. Ct. 2009, 100 L. Ed. 2d 597 (1988); People v. Lingo, 806 P.2d 949 (Colo. 1991).

During a valid investigatory stop, an officer may search those areas of a vehicle's passenger compartment where a weapon may be placed or hidden if, prior to the search, the officer possesses a reasonable belief, based on specific and articulable facts, that the suspect is dangerous and may gain immediate control of a weapon. The fact that suspect ducked down in the vehicle out of sight of the officer for a period of time justified the officer's belief that the suspect may have been reaching for a weapon. People v. McDaniel, 160 P.3d 247 (Colo. 2007).

Unlike a search incident to a lawful arrest, the only justification for a search during an investigatory stop is to neutralize the potential risk of physical harm confronting the investigating officer and others during the stop. People v. Tate, 657 P.2d 955 (Colo. 1983); People v. Melgosa, 753 P.2d 221 (Colo. 1988); People v. Ratcliff, 778 P.2d 1371 (Colo. 1989); People v. Lingo, 806 P.2d 949 (Colo. 1991).

An investigatory stop must be supported by an articulable suspicion of criminal activity, and an arrest by probable cause to believe criminal activity has occurred or is occurring. People v. Morales, 935 P.2d 936 (Colo. 1997); People v. Smith, 13 P.3d 300 (Colo. 2000).

An investigatory stop occurs when an officer requests and retains an automobile passenger's identification and instructs the passenger to remain in the car while the officer runs the identification for

warrants. A mere traffic stop and request for identification from a passenger does not constitute a seizure, however retention of the identification and instructing the passenger to remain in the car creates a seizure. Under the totality of the circumstances, no reasonable person could expect to be free to leave or terminate the encounter once his or her identification is retained and he or she is instructed to remain in the car. Since the officer had no reasonable suspicion to conduct the check, all evidence obtained as a result of the arrest is inadmissible. People v. Jackson, 39 P.3d 1174 (Colo. 2002).

A consensual interview does not need to be justified by either probable cause or reasonable suspicion of criminal activity. People v. Morales, 935 P.2d 936 (Colo. 1997).

A consensual encounter does not mature into a stop merely as a result of passage of time. People v. Morales, 935 P.2d 936 (Colo. 1997).

Merely asking questions about criminal conduct does not transform a consensual interview into an investigatory stop. However, such questions coupled with a tone of voice indicating that compliance with a request for information might be compelled may indicate a seizure. People v. Morales, 935 P.2d 936 (Colo. 1997).

The test for determining whether an encounter is consensual is whether a reasonable person under the circumstances would believe he or she was free to leave or to disregard the official's request for information. People v. Padgett, 932 P.2d 810 (Colo. 1997); People v. Morales, 935 P.2d 936 (Colo. 1997).

Consensual interview not investigatory stop. Under normal circumstances, a consensual interview between the police and a suspect or witness is not considered an investigatory stop. People v. Gouker, 665 P.2d 113 (Colo. 1983).

Consensual interviews are encounters in which no restraint of the liberty of the citizen is implicated and the voluntary cooperation of the citizen is elicited through noncoercive questioning. People v. Padgett, 932 P.2d 810 (Colo. 1997).

A consensual encounter is negated if the police conduct would have communicated to a reasonable person that he or she was not at liberty to ignore the police presence and go about his or her business. People v. Padgett, 932 P.2d 810 (Colo. 1997).

A seizure occurred at the moment police summoned defendant to the patrol car. A seizure has occurred where officers required a defendant to alter his direction of travel, walk back to where the officers were, and remain while police investigated him. Outlaw v. People, 17 P.3d 150 (Colo. 2001).

Remand proper to determine whether trial court applied proper test in determining whether interview at which defendant made inculpatory statements to drug enforcement agency was a consensual interview. People v. Beckstrom, 843 P.2d 34 (Colo. App. 1992).

Precautionary measures do not transform stop into arrest. Although the precautionary measures taken in a particular case may lead a detainee to believe that he is not free to leave, this does not necessarily transform a stop into an arrest. People v. Weeams, 665 P.2d 619 (Colo. 1983).

And handcuffs may be justified in investigatory stop. Under the narrow circumstances surrounding an apprehension of criminal suspects reasonably believed to be armed, the use of handcuffs in an investigatory stop may be a reasonably justified intrusion. People v. Weeams, 665 P.2d 619 (Colo. 1983).

And a drawn gun may be justified in an investigatory stop. Under specific circumstances of preparing to confront a criminal suspect, drawing a weapon was a justifiable measure of precaution for

ensuring protection. People v. Archuleta, 980 P.2d 509 (Colo. 1999).

In order to make a valid investigatory stop: (1) The officer must have a reasonable suspicion that the individual has committed, or is about to commit, a crime; (2) the purpose of the detention must be reasonable; and (3) the character of the detention must be reasonable when considered in light of the purpose. Stone v. People, 174 Colo. 504, 485 P.2d 495 (1971); People v. McCombs, 629 P.2d 1088 (Colo. App. 1981); People v. Martinez, 801 P.2d 542 (Colo. 1990); People v. Rodriguez, 924 P.2d 1100 (Colo. App. 1996), aff'd, 945 P.2d 1351 (Colo. 1997); People v. Padgett, 932 P.2d 810 (Colo. 1997); People v. Dowhan, 951 P.2d 905 (Colo. 1998); People v. Mack, 33 P.3d 1211 (Colo. App. 2001).

Test applied in People v. Trujillo, 710 P.2d 1169 (Colo. App. 1985); People v. Cooper, 731 P.2d 781 (Colo. App. 1986); People v. Ratcliff, 778 P.2d 1371 (Colo. 1989); People v. Garcia, 789 P.2d 190 (Colo. 1990); People v. Martinez, 801 P.2d 542 (Colo. 1990); People v. Rodriguez, 924 P.2d 1100 (Colo. App. 1996), aff'd, 945 P.2d 1351 (Colo. 1997); People v. Archuleta, 980 P.2d 509 (Colo. 1999); People v. Barnard, 12 P.3d 290 (Colo. App. 2000); Outlaw v. People, 17 P.3d 150 (Colo. 2001).

In determining whether the temporary detention was reasonable, the court must determine whether the defendant was detained only for the amount of time necessary to complete the purpose of the stop. People v. Cobb, 690 P.2d 848 (Colo. 1984).

When investigating officer suspected that vehicle's occupants might be involved in a burglary or vandalism, the continued detention of defendant while officer examined exterior of nearby building did not exceed the scope of the investigatory stop. People v. Pacheco, 182 P.3d 1180 (Colo. 2008).

Requirement that officer making investigatory stop have reasonable suspicion that individual has committed, or is about to commit, a crime is met if there are specific and articulable facts known to the officer, coupled with rational inferences from those facts, which create reasonable suspicion of criminal activity sufficient to justify the intrusion; only facts known prior to the intrusion may be used to evaluate reasonableness of officer's suspicion. People v. Cooper, 731 P.2d 781 (Colo. App. 1986); People v. Wilson, 784 P.2d 325 (Colo. 1989).

Facts uncovered after a chase begins do not enter into the constitutional equation for reasonable suspicion. People v. Rahming, 795 P.2d 1338 (Colo. 1990).

The basis for the reasonable suspicion that an individual has committed or is about to commit a crime is not restricted to the officer's personal observations; an informant's tip may also serve as such basis. People v. Lagrutta, 775 P.2d 576 (Colo. 1989).

Police officers who had warrant to arrest parole violator and had been waiting for search warrant prior to entering violator's residence had reasonable cause to make investigatory stop of man resembling violator who left residence. People v. Cooper, 731 P.2d 781 (Colo. App. 1986).

State trooper's investigatory stop of driver was justified where trooper believed that the driver was intoxicated upon observing that the driver was weaving. People v. Rodriguez, 924 P.2d 1100 (Colo. App. 1996), aff'd, 945 P.2d 1351 (Colo. 1997).

Trooper could ask driver for identification after ascertaining that driver was not intoxicated and deciding not to ticket driver for weaving because trooper still had reasonable suspicion that driver had committed traffic offense of weaving. People v.

Rodriguez, 945 P.2d 1351 (Colo. 1997).

Officer had reasonable suspicion that a violation of § 42-4-1107 occurred, thus justifying officer to stop vehicle, where vehicle moved three to four feet into another lane of traffic, essentially straddling the lane divider for several seconds. United States v. Valenzuela, 494 F.3d 886 (10th Cir.), cert. denied, 552 U.S. 1032, 128 S. Ct. 636, 169 L. Ed. 2d 411 (2007).

Traffic stops outside municipal boundaries did not violate clearly established fourth amendment law at the time of the violations. Tenth circuit law did not clearly establish a fourth amendment violation at the time of the conduct. Even assuming a constitutional violation, a reasonable police officer would not have known in 2006 that extra-jurisdictional, but within the same state, traffic stops constituted a violation of clearly established fourth amendment law, when no dispute existed that the officer observed traffic violations before effectuating the stops. Swanson v. Town of Mtn. View, 577 F.3d 1196 (10th Cir. 2009).

Officer's act of merely approaching a person suspected of criminal activity does not constitute a stop; however, when defendant, in an area known for criminal activity where officers had previously taken weapons from others in the area, put his hand behind his back as officer approached and hesitated when asked to show his hand, officer had reason to be concerned about whether defendant was reaching for a weapon, and the totality of the facts and circumstances justified an investigatory stop. People v. Mack, 33 P.3d 1211 (Colo. App. 2001).

Authority to continue with investigatory stop is not changed by the officer's subjective intent not to issue a traffic citation. Officer's request to search vehicle even after he informed the defendant that he had decided not to issue a ticket for weaving could still be considered reasonable. People v. Ramos, 13 P.3d 295 (Colo. 2000).

Investigatory stop or limited search authorized. Three conditions must exist before a person may be subjected to some form of intermediate intrusion, such as an investigatory stop or a limited search of his person: (1) There must be an articulable and specific basis in fact for suspecting that criminal activity has or is about to take place; (2) the purpose of the intrusion must be reasonable; and (3) the scope and character of the intrusion must be reasonably related to its purpose. People v. Tate, 657 P.2d 955 (Colo. 1983); People v. Thomas, 660 P.2d 1272 (Colo. 1983); People v. Ratcliff, 778 P.2d 1371 (Colo. 1989); People v. Wilson, 784 P.2d 325 (Colo. 1989); People v. Sosbe, 789 P.2d 1113 (Colo. 1990); People v. Carillo-Montes, 796 P.2d 970 (Colo. 1990); People v. Weston, 869 P.2d 1293 (Colo. 1994); People v. Sutherland, 886 P.2d 681 (Colo. 1994); People v. Litchfield, 918 P.2d 1099 (Colo. 1996); People v. Dowhan, 951 P.2d 905 (Colo. 1998); People v. Archuleta, 980 P.2d 509 (Colo. 1999); People v. Garcia, 11 P.3d 449 (Colo. 2000); People v. Hardrick, 60 P.3d 264 (Colo. 2002).

Condition that purpose of the intrusion be reasonable is met if the scope and character of the intrusion do not exceed its legitimate purpose; an officer's subjective intent to effect an intrusion more extensive than legally justified is not a factor in determining the reasonabless of an intrusion. People v. Lagrutta, 775 P.2d 576 (Colo. 1989).

Whether conditions existed is applied in People v. Villiard, 679 P.2d 593 (Colo. 1984); People v. White, 680 P.2d 1318 (Colo. App. 1984); People v. Cagle, 688 P.2d 718 (Colo. 1984); People v. Perez, 690 P.2d 853 (Colo. 1984); People v. Johnson, 691 P.2d 751 (Colo. App. 1984); People v. Savage,

698 P.2d 1330 (Colo. 1985); People v. Koolbeck, 703 P.2d 673 (Colo. App. 1985); People v. Wilson, 709 P.2d 29 (Colo. App. 1985); People v. Trujillo, 710 P.2d 1169 (Colo. App. 1985); People v. Cagle, 751 P.2d 614 (Colo. 1988), appeal dismissed for want of a substantial federal question, 486 U.S. 1028, 108 S. Ct. 2009, 100 L. Ed. 2d 597 (1988); People v. Melgosa, 753 P.2d 221 (Colo. 1988); People v. Hughes, 767 P.2d 1201 (Colo. 1989); People v. Sosbe, 789 P.2d 1113 (Colo. 1990); People v. Rahming, 795 P.2d 1338 (Colo. 1990); People v. Smith, 926 P.2d 186 (Colo. App. 1996); People v. Rodriguez, 945 P.2d 1351 (Colo. 1997); People v. Ingram, 984 P.2d 597 (Colo. 1999).

Facts about criminal activity known to police officers at the time of a stop, even though suspect's conduct is wholly lawful, might justify the suspicion that criminal activity is afoot. People v. Morales, 935 P.2d 936 (Colo. 1997).

Defendant's acts of placing his hand behind his back as officer approached and then hesitating when asked to show his hand supported a determination of reasonable suspicion. People v. Mack, 33 P.3d 1211 (Colo. App. 2001).

Four factors used to determine when an investigatory stop becomes an arrest that must be supported by probable cause are: (1) The length of the detention; (2) whether the police diligently investigated their suspicions of criminal activity during the detention; (3) whether the suspect was forced to move to another location; and (4) whether the police unreasonably failed to use the least intrusive means available to resolve their suspicions. People v. Rodriguez, 945 P.2d 1351 (Colo. 1997).

Test applied in People v. Rodriguez, 945 P.2d 1351 (Colo. 1997).

But a lengthy detention did not become an arrest when defendant provided a false name that could not be verified. People v. Barnard, 12 P.3d 290 (Colo. App. 2000).

An officer who conducts an investigative detention must do so on the basis of more than an inchoate and unparticularized suspicion or hunch. People v. Rahming, 795 P.2d 1338 (Colo. 1990); People v. Padgett, 932 P.2d 810 (Colo. 1997).

Investigatory stop of vehicle. Law enforcement officers may make an investigatory stop when objective facts and circumstantial evidence suggest that a particular vehicle was or might be involved in criminal activity. People v. Schreyer, 640 P.2d 1147 (Colo. 1982); People v. Guffie, 749 P.2d 976 (Colo. App. 1987).

Observations of peace officer and the information known to him immediately prior to investigatory stop of defendant provided officer with reasonable suspicion that defendant had engaged, or was about to engage, in a criminal act where officer had received an anonymous tip that there was suspected drug activity at a site known for prior drug transactions and where such tip was corroborated by the officer's own observations. People v. Canton, 951 P.2d 907 (Colo. 1998).

Requests for information during an investigatory stop of vehicle. A police officer may request a driver's license, vehicle registration, and proof of insurance during a valid traffic stop. People v. Rodriguez, 945 P.2d 1351 (Colo. 1997).

Officer's action did not amount to investigatory stop where officer merely approached parked vehicle in which defendant was sitting and identified himself as a police officer. People v. Dickinson, 928 P.2d 1309 (Colo. 1996).

Retention of driver's license for a brief period without issuance of traffic citation. The authority of a police officer to issue a traffic citation

to the driver of a vehicle who is impeding traffic does not cause all other actions by the officer to be constitutional violations. The court of appeals incorrectly assumed that the constitution requires that once a police officer stops an individual, the officer must either issue a traffic citation and allow the individual to proceed on his way or not take any action. Moody v. Ungerer, 885 P.2d 200 (Colo. 1994).

Although some cases have held that retention of a driver's license is a factor in determining whether a seizure has occurred, no court has held that when an officer retains a license the seizure is per se unreasonable and the traffic stop becomes a violation of the driver's constitutional rights. Moody v. Ungerer, 885 P.2d 200 (Colo. 1994).

Reasonable suspicion is based on the totality of circumstances known to the government at the time of detention. In the case of a drug interdiction, new, expensive, unusually heavy luggage with an unusually large lock, a chemical odor, and no tags identifying the owner destined to a drug source city, constitutes reasonable suspicion. People v. Ortega, 34 P.3d 986 (Colo. 2001).

During the course of an investigatory stop, a police officer may search those areas of the passenger compartment of an automobile in which a weapon may be placed or hidden. However, the officer must possess a reasonable belief based upon specific and articulable facts that the suspect is dangerous and may gain immediate control of weapons. People v. Weston, 869 P.2d 1293 (Colo. 1994); People v. Litchfield, 918 P.2d 1099 (Colo. 1996).

During the course of an investigatory stop, a protective search for weapons is permitted if the officer has a reasonable basis to suspect that the person might be armed and dangerous, and defendant's action of putting his hand behind his back as officers approached, the officers' awareness that the area was known for criminal activity, and the officers' previous experience of taking weapons from others in the area made it reasonable for the officers to be concerned about whether defendant was reaching for a weapon, thus there was no error in the officer's act of frisking defendant. People v. Mack, 33 P.3d 1211 (Colo. App. 2001).

Defendant's passenger's furtive gesture of bending over to reach or hide something and defendant's giving false name warranted a reasonable belief by police officer who made investigatory stop that defendant was dangerous and could gain immediate control of weapon as required to make weapons search of automobile passenger compartment. People v. Cagle, 751 P.2d 614 (Colo. 1988), appeal dismissed for want of a substantial federal question, 486 U.S. 628, 108 S. Ct. 2009, 100 L. Ed. 2d 597 (1988).

Pat-down search conducted almost fifteen minutes after initial stop of car was reasonable when officer became concerned for his safety. Defendant's retrieval of coat from backseat of car and placement in his lap after police intervention justified search by police. People v. Jackson, 948 P.2d 506 (Colo. 1997).

Action taken to avoid police contact sufficient. Action which does not amount to illegal conduct, but is taken simply to avoid police contact, is sufficient to support an investigatory stop. People v. Thomas, 660 P.2d 1272 (Colo. 1983).

The defendant's physical action in attempting to forcibly open the trailer door and his obvious effort to leave the scene constitute a sufficiently particularized basis in fact for stopping the defendant in order to briefly investigate the circumstances of his conduct. People v. Wells, 676 P.2d 698 (Colo. 1984).

An individual's attempt to avoid coming in contact with a police officer does not, without more, justify an investigative detention of the individual. People v. Rahming, 795 P.2d 1338 (Colo. 1990); People v. Padgett, 932 P.2d 810 (Colo. 1997).

Court properly determined the officer made a proper investigatory stop. The officer was entitled to make an investigatory stop when he observed the defendant at 3:30 a.m. in a dark area not usually frequented by the public and where he had never observed anyone before. In addition, there had been burglaries in the area in the last two weeks and the defendant moved away toward a car when the officer approached. These facts in their totality led to a minimum level of subjective suspicion that the defendant, was, had, or would commit a crime. People v. Rushdoony, 97 P.3d 338 (Colo. App. 2004).

Suspect's attempt to flee from an officer, standing alone, fails to amount to a reasonable suspicion of criminal activity to justify an investigatory stop of the suspect. People v. Archuleta, 980 P.2d 509 (Colo. 1999).

An investigatory stop cannot be justified solely on the reputation of past criminal activity in a locality. A history of past criminal activity in a locality does not justify suspension of the constitutional rights of everyone who may subsequently be in that locality. People v. Padgett, 932 P.2d 810 (Colo. 1997); People v. Archuleta, 980 P.2d 509 (Colo. 1999); Outlaw v. People, 17 P.3d 150 (Colo. 2001).

In order to characterize a forceful encounter as an investigatory stop, there must be the existence of specific facts or circumstances to show that the degree of force used was a reasonable precaution for the safety and protection of the investigating officers. People v. King, 16 P.3d 807 (Colo. 2001).

Passenger's furtive gesture of bending down in his automobile seat after police officer signaled the automobile to stop warranted a reasonable belief that passenger had a weapon in the automobile. Therefore, the scope and character of the automobile search was within the proper scope of stop and search, although further finding was needed as to whether purpose of search was reasonable. People v. Cagle, 688 P.2d 718 (Colo. 1984).

Authority to make search without probable cause is limited in the following manner: There must be (a) some reason for the officer to confront the citizen in the first place, (b) something in the circumstances, including the citizen's reaction to the confrontation, must give officer reason to suspect that the citizen may be armed and, thus, dangerous to the officer or others, and (c) the search must be limited to a frisk directed at discovery and appropriation of weapons and not at evidence in general. People v. Navran, 174 Colo. 222, 483 P.2d 228 (1971); People v. Martineau, 185 Colo. 194, 523 P.2d 126 (1974); People v. Shackelford, 37 Colo. App. 317, 546 P.2d 964 (1976); People v. Casias, 193 Colo. 66, 563 P.2d 926 (1977); People v. Sherman, 197 Colo. 442, 593 P.2d 971 (1979).

There is an area of proper police procedure in which an officer having less than probable cause to arrest nevertheless may detain an individual temporarily for certain purposes and not violate the unreasonable search and seizure limitation. This area the Colorado supreme court has called the "stone area". Stone v. People, 174 Colo. 504, 485 P.2d 495 (1971); People v. Marquez, 183 Colo. 231, 516 P.2d 1134 (1973); People v. Schreyer, 640 P.2d 1147 (Colo. 1982).

In the adoption of Crim. P. 41.1, the supreme court recognized that there can be a seizure for some

purposes when there is less than probable cause involved. By that rule a judge may enter an order allowing the fingerprints of an individual to be obtained when it is shown by an affidavit (1) that a known criminal offense has been committed, (2) that there is reason to suspect that the individual is connected with the perpetration of a crime, and (3) that the individual's fingerprints are not in the files of the applying agency. Stone v. People, 174 Colo. 504, 485 P.2d 495 (1971).

Trial court properly suppressed evidence seized during search of defendant when fact that defendant ran in opposite direction from companions did not satisfy constitutional requirement of reasonable suspicion for an investigatory stop and scope of resulting search exceeded a pat down for weapons. People v. Wilson, 784 P.2d 325 (Colo. 1989).

There was nothing unusual in an individual slipping on an icy sidewalk and the facts did not rise to the level of an articulable and specific basis in fact that the two men were committing, had committed, or were about to commit a crime. Under the totality of the circumstances, the facts known to the officers at the time of the intrusion did not satisfy the threshold constitutional test for reasonable suspicion. People v. Padgett, 932 P.2d 810 (Colo. 1997).

Reasonableness of protective search. In determining the reasonableness of a search in the situation where the search is not full blown but is rather just a protective search for weapons, the inquiry is a dual one: (1) Was the officer's action justified at its inception, and (2) was the search reasonably related in scope to the circumstances which justified the interference in the first place? People v. Burley, 185 Colo. 224, 523 P.2d 981 (1974).

Where the danger to the police officers was still present at the time the search was initiated, the immediate search for weapons was reasonable. People v. Burley, 185 Colo. 224, 523 P.2d 981 (1974).

The permissible scope of the weapons search is limited by its purpose. People v. Casias, 193 Colo. 66, 563 P.2d 926 (1977).

In order to uphold the stop and frisk as reasonable, both the initial confrontation and the subsequent search must have been prompted by the officers' reliance on particular facts, rather than on inarticulable hunches, and the scope of the frisk must be limited to that necessary for the discovery of weapons. People v. Shackelford, 37 Colo. App. 317, 546 P.2d 964 (1976).

When an officer is justified in believing that the individual whose suspicious behavior he is investigating at close range is armed and presently dangerous to the officer or to others, he may conduct a limited protective search for concealed weapons. People v. Vincent, 628 P.2d 107 (Colo. 1981).

Where police officers have reasonable suspicion to stop and temporarily detain the driver of an automobile and are cautioned beforehand that he might be armed, a contemporaneous, cursory examination for a weapon in the area of the driver's seat is reasonably related in scope and character to ensuring the officers' safety during the period of detention. People v. Lewis, 659 P.2d 676 (Colo. 1983).

Where passenger placed an indeterminate object under automobile seat in response to police encounter and where suspects were observed near the site of possible criminal activity soon after such activity, protective search of automobile was justified. People v. Melgosa, 753 P.2d 221 (Colo. 1988).

An officer's examination of the map pocket located in the driver's side door of an automobile and the contents of the baggies contained therein did not exceed the

constitutionally permissible limits of a protective search for a weapon. People v. Weston, 869 P.2d 1293 (Colo. 1994).

Protective search for weapons satisfies constitutional requirements as long as the intrusion is reasonably related to neutralizing the risk of physical harm confronting the officer during the investigatory stop. People v. Ratcliff, 778 P.2d 1371 (Colo. 1989).

Where police officer and detective testified that they did not consider individuals at residence to be a threat and that the situation was not one in which they were in danger or in which unknown individuals were throughout the residence, officers' actions were inconsistent with a protective search. People v. Walter, 890 P.2d 240 (Colo. App. 1994).

Protective search of defendant's car was not reasonable since it was not necessary to protect his own safety since he was in handcuffs and no longer had access to the car or its contents nor was it established that the search was necessary to protect the safety of the police officers. People v. Simmons, 973 P.2d 627 (Colo. App. 1998).

Root function of "articulable suspicion" requirement as a condition to the reasonableness of a frisk or pat-down has not been to hamstring officers facing dangerous street situations, but rather, it has been to establish a basis for post hoc judicial review to insure that the weapons frisk is not used as a substitute for a search incident to arrest or as a means of evading the normal warrant and probable cause requirements of the state and federal constitutions. People v. Casias, 193 Colo. 66, 563 P.2d 926 (1977).

When officers may go beyond exterior frisk. Only when some reasonable basis for believing that a weapon may be contained in the clothing, or that an exterior frisk will not be availing in detecting some specific weapon, is the further intrusion of reaching into the pockets or other areas of clothing permitted. People v. Casias, 193 Colo. 66, 563 P.2d 926 (1977).

It is reasonable for a police officer conducting a legal search of premises for narcotics to "frisk" or "pat down" the occupants of the house as well as those coming into the house for weapons in order to protect himself and his fellow officers from the use of such weapons. In connection with such a search, the officer could ask the defendant to remove his hand from his pocket, and if, when the defendant took his hand from his pocket, he held syringes in his hand, the seizure would be justified under the "plain view" doctrine and the subsequent search of the defendant would be valid as incident to his arrest. People v. Noreen, 181 Colo. 327, 509 P.2d 313 (1973).

But where search beyond scope of permissibility. If a police officer reached into the defendant's back pocket to find out what was there, and discovered syringes and drug, the search and seizure would be invalid as beyond the scope of a permissible frisk, for such a search is limited in scope to a pat down or frisk of the clothing for assaultive weapons and not for evidence in general. People v. Noreen, 181 Colo. 327, 509 P.2d 313 (1973).

During protective frisk, closed container recovered from suspect could not be opened by officer unless specific and articulable facts support a reasonable suspicion that the closed container posed a danger to officer and to others. People v. Ratcliff, 778 P.2d 1371 (Colo. 1989).

Trooper's pat-down search of defendant, conducted under trooper's own "officer safety practice" was not a constitutionally reasonable search. People v. Berdahl, 2012 COA 179, __ P.3d __.

A protective search of an automobile is justified only by the need to protect those present and is

therefore limited to those areas in which a weapon may be placed or hidden. People v. Weston, 869 P.2d 1293 (Colo. 1994).

Officer conducting protective frisk is permitted to make a cursory, plain view examination of any object seized in order to determine whether it indeed is a weapon or other dangerous instrument. People v. Ratcliff, 778 P.2d 1371 (Colo. 1989).

Officers conducting a protective search of an auto are entitled to make a cursory examination of any objects discovered during the search of the passenger compartment in order to assure themselves that the objects are not dangerous. People v. Weston, 869 P.2d 1293 (Colo. 1994).

Police protective search of passenger compartment of vehicle justified. People v. Brant, 252 P.3d 459 (Colo. 2011).

Applying the "plain feel" doctrine, police properly seized evidence discovered in cloth glove. People v. Brant, 252 P.3d 459 (Colo. 2011).

Search of trunk did not constitute valid protective or inventory search where police only temporarily detained the rental vehicle and where the driver was to retain control over the vehicle and drive the vehicle to the police station for the purpose of confirming that the driver had lawful possession of the vehicle. People v. Litchfield, 918 P.2d 1099 (Colo. 1996).

Where the detention and search of the defendant exceeded the constitutional limits of an investigatory stop, the strip search of the defendant must be justified either as a search incident to a lawful arrest or as a search within the scope of the defendant's voluntary consent. People v. Lingo, 806 P.2d 949 (Colo. 1991).

Ordering driver to get out of vehicle during traffic stop. It is not an unlawful search or seizure during a lawful traffic stop for a police officer who reasonably suspects a motorist of violating traffic laws to order the motorist to get out of the vehicle and walk to the rear or to some other nearby place to ensure the officer's safety while he investigates suspected traffic violation. People v. Carlson, 677 P.2d 310 (Colo. 1984).

Stopping a defendant's vehicle to arrest a passenger was constitutionally permissible. Therefore, drugs possessed by the defendant that the police officers found in the vehicle were the fruit of a lawful search incident to the arrest of the defendant's passenger, and not the fruit of an unlawful seizure. People v. Taylor, 41 P.3d 681 (Colo. 2002).

Police officers had reasonable and articulable basis for suspecting criminal activity and initiating a valid investigatory detention, and had a reasonable basis for expanding the scope of the detention for the limited purpose of determining whether the defendant was reaching for a weapon. Facts presented to police that defendant paid for four one-way airline tickets to "source city" for illicit drugs with currency in small denominations and hesitated in providing surnames of passengers were consistent with a drug courier profile. Such profile was confirmed by the police upon observing the defendant and his companions arrive at the airport with only carry-on baggage. Upon the officers' request for identification the defendant's conduct caused the police to be concerned that the defendant was reaching for a weapon. In addition, the officers believed defendant was the subject of an outstanding warrant. People v. Perez, 852 P.2d 1297 (Colo. App. 1992).

Limited seizure aimed solely at neutralizing any threat to officer or citizen is justified and conduct raises reasonable suspicion where officer is engaged in a valid

search or arrest and a third party walks into the scene, refuses to show his hands upon request, and makes a furtive gesture. People v. Hardrick, 60 P.3d 264 (Colo. 2002).

Circumstances, taken as a whole, justify officer's stop of defendant: Drugs were found at the scene, thus increasing the risk of violence; occupants of the residence were not cooperative; and defendant did not comply with officer's attempts to ensure defendant was not a safety threat. People v. Hardrick, 60 P.3d 264 (Colo. 2002).

Search and seizure incident to lawful arrest is lawful. People v. Hively, 173 Colo. 485, 480 P.2d 558 (1971); People v. Weinert, 174 Colo. 71, 482 P.2d 103 (1971); People v. Boileau, 36 Colo. App. 157, 538 P.2d 484 (1975).

A reasonable search may be made in the place where a lawful arrest occurs in order to find and seize articles connected with a crime as the fruits thereof, or as the means by which it was committed. Hernandez v. People, 153 Colo. 316, 385 P.2d 996 (1963).

Where the arrest is legal, a search is not violative of the state and federal constitutions regarding unreasonable search and seizure where circumstances justifying the arrest were also those furnishing probable cause for the search. People v. Clark, 173 Colo. 129, 476 P.2d 564 (1970); People v. Noreen, 181 Colo. 327, 509 P.2d 313 (1973).

Where there was probable cause to make the warrantless arrests, the contemporary warrantless searches of the defendants and a U-Haul van were lawful. People v. Nanes, 174 Colo. 294, 483 P.2d 958 (1971).

Opening of "tin-foil" package found in narcotics suspect's pocket held valid as search incident to lawful arrest. People v. Casias, 193 Colo. 66, 563 P.2d 926 (1977).

A search incident to an arrest, for which police officers had no statutory authority but which was constitutionally correct, as the officers had probable cause, is not an unlawful seizure. People v. Wolf, 635 P.2d 213 (Colo. 1981).

Arresting officers are entitled to conduct a thorough search of a defendant's person at the time of his custodial arrest and to seize any contraband they discover, even though it is not related to the crime for which defendant was initially arrested. People v. Harfmann, 633 P.2d 500 (Colo. App. 1981).

Such a search requires no independent justification, such as a reasonable suspicion or belief that the defendant might be armed or in possession of contraband. People v. Tottenhoff, 691 P.2d 340 (Colo. 1984); People v. Bischofberger, 724 P.2d 660 (Colo. 1986); People v. Ratcliff, 778 P.2d 1371 (Colo. 1989).

A search incident to the arrest of a minor was valid where the sheriff's deputy had probable cause to make the arrest. People in Interest of S.J.F., 736 P.2d 29 (Colo. 1987).

Search incident to lawful arrest for driving without a license is constitutional. People v. Meredith, 763 P.2d 562 (Colo. 1988).

A search of the passenger compartment of a motor vehicle is valid if (1) there has been a lawful custodial arrested and (2) the person arrested was an occupant or a recent occupant of the vehicle. People v. Savedra, 907 P.2d 596 (Colo. 1995).

Open bed of pickup truck is subject to an incidental search. People v. Barrientos, 956 P.2d 634 (Colo. App. 1997).

A vehicle passenger compartment search incident to arrest is valid even if the defendant is transported from the scene prior to the conclusion of the search. People v. Graham, 53 P.3d 658 (Colo. App. 2001).

Search of a backpack at police station was justified by lawful

arrest and prompt conveyance of defendant to police station. People v. Boff, 766 P.2d 646 (Colo. 1988).

Search of defendant's backpack was lawful since it was a search of a container near the defendant incident to arrest. The U.S. supreme court's decision in Arizona v. Gant, 556 U.S. 332 (2009), applies only to vehicle searches not a search of a person. People v. Marshall, 2012 CO 72, 289 P.3d 27.

Distinction between an inventory search and a broad evidentiary search is a question of fact under the circumstances of the particular case. People v. Taube, 864 P.2d 123 (Colo. 1993).

Where there are dual purposes for an arrest and search, the trial court must determine whether the purpose of the arrest is a mere pretext intended to validate an otherwise invalid search. Where the officer had information that drugs were located in the defendant's trunk and the officer found the drugs after arresting the defendant on a traffic stop and conducting an inventory search of the car, the trial court was required to determine whether the arrest and resulting inventory search were a pretext for conducting an investigatory search. People v. Hauseman, 900 P.2d 74 (Colo. 1995) (interpreting the fourth amendment to the U.S. Constitution).

When an officer reasonably applies written policy and unwritten routine procedures in deciding to conduct an inventory search, the search is not pretextual. People v. Gee, 33 P.3d 1252 (Colo. App. 2001).

The decision to impound defendant's car was in accordance with standardized police procedure, thus the impoundment and inventory did not violate defendant's right to be free from unreasonable search and seizure. People v. Milligan, 77 P.3d 771 (Colo. App. 2002).

The cocaine in defendant's fanny pack inevitably would have been discovered during an inventory of his vehicle, accordingly, the trial court did not err in denying defendant's motion to suppress this evidence. People v. Milligan, 77 P.3d 771 (Colo. App. 2002).

But search incident to unlawful incarceration invalid. Where, under the circumstances of the case, the incarceration was illegal and unjustified, since the accused had funds to post the only bond that the officer could require, the search incident to the incarceration was also invalid. People v. Overlee, 174 Colo. 202, 483 P.2d 222 (1971).

Search may include area under accused's immediate control. The right to search and seize without a search warrant incident to a lawful arrest extends to things under the accused's immediate control, and, to an extent depending on the circumstances of the case, to the place where he is arrested. People v. Vigil, 175 Colo. 421, 489 P.2d 593 (1971).

An arresting officer has an incidental right to make a contemporaneous search of the person arrested and of things under his control, for weapons by which his escape might be effected or the officer's safety or life endangered. Roybal v. People, 166 Colo. 541, 444 P.2d 875 (1968).

There is ample justification for a search of the arrestee's person and the area "within his immediate control" -- construing that phrase to mean the area from within which he might gain possession of a weapon or destructible evidence. People v. Vigil, 175 Colo. 421, 489 P.2d 593 (1971).

The lawful arrest of a person justifies a contemporaneous warrantless search of the person and the immediately surrounding area. People v. Henry, 631 P.2d 1122 (Colo. 1981); People v. Clouse, 859 P.2d 228 (Colo. App. 1992).

Prosecution can show the search was contemperaneous to the arrest and limited to an area

immediately around the arrestee. This search was lawful because the court found there was a continuing and ongoing search of the nightstand that was within the area immediate to the arrestee after the arrest. People v. Gothard, 185 P.3d 180 (Colo. 2008).

Scope of warrantless evidentiary search incident to arrest is limited to evidence related to offense for which arrest is made. In re People in Interest of B.M.C., 32 Colo. App. 79, 506 P.2d 409 (1973).

In a search conducted incident to warrantless arrest, the arresting officers have authority to search for instrumentalities or evidence of the specific crime for which they had probable cause to arrest. People v. Valdez, 182 Colo. 80, 511 P.2d 472 (1973).

Search not unreasonable where officer reasonably believed offense committed. A search and seizure involved was not unreasonable when the officer conducting it had a probable and reasonable belief that an offense had been committed. Hopper v. People, 152 Colo. 405, 382 P.2d 540 (1963).

Search of passenger's purse lawful when search of vehicle incident to lawful arrest of driver. People v. McMillon, 892 P.2d 879 (Colo. 1995); People v. Kirk, 103 P.3d 918 (Colo. 2005).

Searching the call history of a cell phone found on arrestee's person is a lawful search incident to arrest. The officer searched the phone's call history for evidence of the crime, in this case, to confirm that defendant had called the co-conspirator. People v. Taylor, 2012 COA 91, __ P.3d __.

The question of whether the search of the car was incident to arrest was not properly before the court, and the court declined to address it since it was not raised at the trial court level. People v. Thomas, 853 P.2d 1147 (Colo. 1993).

People need not show that handcuffed arrestee was physically able to reach exact place searched at exact second searched. People v. Hufnagel, 745 P.2d 242 (Colo. 1987).

Where warrantless entry and arrest are based on probable cause and search warrant is issued subsequent to the entry and arrest, the evidence seized is not inadmissible because of the warrantless entry and arrest. People v. Vaughns, 175 Colo. 369, 489 P.2d 591 (1971).

Scope of search incident to arrests for minor offenses. When persons are arrested for minor traffic violations or minor municipal offenses, the instrumentalities or evidence of such crimes are minimal or nonexistent, and thus the scope of a search incident to such a warrantless arrest would be quite limited. People v. Valdez, 182 Colo. 80, 511 P.2d 472 (1973).

However, even though a person may not be subject to a custodial arrest for possessing one ounce or less of marihuana in violation of § 18-18-406, the non-custodial arrest of such a person may permit not only a search for weapons, but also an extensive search for the instrumentalities of the crime. People v. Bland, 884 P.2d 312 (Colo. 1994).

Scope of inventory search conducted pursuant to protective custody is limited by the privacy interest of the detainee and any closed containers must be set aside and a warrant obtained before they may be opened. However, in an inventory search pursuant to an arrest, the searching officer may completely search all of the arrestee's belongings, including closed containers. People v. Carper, 876 P.2d 582 (Colo. 1994).

Police station, immediately following arrest, is not too remote from the place of arrest in a search and seizure case. Baca v. People, 160 Colo. 477, 418 P.2d 182 (1966); Glass v. People, 177 Colo. 267, 493 P.2d 1347 (1972).

Modern police practice calls for a thorough search at the station house of any person who is taken into custody as well as the "frisking" which takes place at the moment of arrest. Such searches are not unreasonable; they are an integral part of efficient police procedure. Baca v. People, 160 Colo. 477, 418 P.2d 182 (1966); Roybal v. People, 166 Colo. 541, 444 P.2d 875 (1968).

Where, after her arrest, the defendant was transported immediately to police headquarters so that a female matron might conduct the search according to police regulations, the substantially contemporaneous search was made incident to a lawful arrest. People v. Vaughns, 182 Colo. 328, 513 P.2d 196 (1973).

Search preceding arrest cannot be justified as incident to arrest. When the search and seizure preceded the arrest, and the officers intended by the entry and search to secure evidence upon which to predicate the subsequent arrest, such a search is not incident to the arrest, but rather the arrest is in truth incident to the search. The search cannot be justified by what it turned up and is illegal. Wilson v. People, 156 Colo. 243, 398 P.2d 35 (1965).

Where officers who used invalid search warrant to obtain entry to living quarters had no probable cause for arrest of occupant until they unlawfully entered his quarters, search of premised could not be justified as incident to arrest of occupant, whom officers allegedly observed, upon entering quarters, in act of committing crime of illegally possessing narcotics. Brown v. Patterson, 275 F. Supp. 629 (D. Colo. 1967), aff'd, 393 F.2d 733 (10th Cir. 1968).

Unless search and arrest are nearly simultaneous. The arrest need not precede the search where the two acts (search and arrest) are nearly simultaneous and constitute for all practical purposes one transaction. People v. Drumright, 172 Colo. 577, 475 P.2d 329 (1970).

Right to search motor vehicle independent of right to arrest driver. The right to search a motor vehicle may exist independently of the right to arrest a driver or occupant. People v. Meyer, 628 P.2d 103 (Colo. 1981).

Officers not required to ignore evidence in plain view. Police officers standing in a place where they have every right to be are not required to close their eyes to evidence in plain view; and the sight of such evidence can properly form the basis for a determination of probable cause to make an arrest. People v. Baird, 172 Colo. 112, 470 P.2d 20 (1970); People v. Boileau, 36 Colo. App. 157, 538 P.2d 484 (1975).

If an officer sees the fruits of crime--or what he has good reason to believe to be fruits of crime--lying freely exposed on a suspect's property, he is not required to look the other way or disregard the evidence his senses bring him. Marquez v. People, 168 Colo. 219, 450 P.2d 349 (1969).

Where the evidence was voluntarily put on the table in front of the sheriff passing as a buyer, there was no search involved which could be said to be unreasonable. Patterson v. People, 168 Colo. 417, 451 P.2d 445 (1969).

Being legitimately on the property, police officers are entitled to seize any stolen items which are in plain view. Blincoe v. People, 178 Colo. 34, 494 P.2d 1285 (1972); People v. Billington, 191 Colo. 323, 552 P.2d 500 (1976).

Under the plain view rule, where the officer would have been entitled to seize the check stubs and sheets of paper at the time of the search, the officer did not act unconstitutionally in making the seizure at a later time, away from the premises, when examining the papers which were properly recovered pursuant to authorization from the

defendant. People v. Billington, 191 Colo. 323, 552 P.2d 500 (1976).

If a police officer observes illegal activity inside a defendant's apartment by looking through the living room window from a common entrance or similar passageway, those observations do not constitute a search. People v. Donald, 637 P.2d 392 (Colo. 1981).

A warrantless seizure does not offend the fourth amendment as long as the incriminating character of an item is immediately apparent and the officer seizing it is lawfully located in a place from which the officer can both plainly see and lawfully access it. People v. Koehn, 178 P.3d 536 (Colo. 2008).

Although items seized were not within the scope of a valid search warrant, the pants pocket and kitchen cabinet were places that could contain guns or bullets for which a search was validly authorized. People v. Koehn, 178 P.3d 536 (Colo. 2008).

Plain view doctrine provides that no warrant is needed to seize evidence in plain view which police or similar public officials see while conducting a legitimate investigation of criminal activity. People v. Gurule, 196 Colo. 562, 593 P.2d 319 (1978).

A well-defined exception to the rule (that warrantless searches and seizures are presumptively invalid) is the plain view doctrine, which holds that a warrant is not required to seize items discovered in plain view while conducting a legitimate investigation of criminal activity. People v. Harding, 620 P.2d 245 (Colo. 1980).

Warrantless search permissible under plain view doctrine where officer entered under exigent circumstances and with the permission of apartment manager who had appearance of authority to consent to search and the contraband was inadvertently discovered. People v. Berow, 688 P.2d 1123 (Colo. 1984).

Evidence seized under plain view exception can be photographed and measured. There is no reason for requiring the police to obtain a search warrant to photograph and measure, as part of an ongoing investigation, evidence which they lawfully seize under the plain view exception. People v. Reynolds, 672 P.2d 529 (Colo. 1983); People v. Reger, 731 P.2d 752 (Colo. App. 1986).

Warrantless search valid under plain view exception when police officer entered under exigent circumstances and had knowledge of facts establishing reasonable nexus between drug bindle and criminal activity. People v. Martin, 806 P.2d 393 (Colo. App. 1990).

The plain view doctrine permits a law enforcement officer to seize evidence that is plainly visible if: (1) Initial intrusion into the premise was legitimate; (2) officer had a reasonable belief that the evidence was incriminating; and (3) officer had a lawful right to access the object. In this case, exigent circumstances justified the officer's presence in the hotel room satisfying the first criteria. Also, the officer observed the clear baggie that appeared to contain methamphetamine, so the incriminating nature of the evidence was apparent, giving the officer the right to seize it. People v. Gothard, 185 P.3d 180 (Colo. 2008).

Consent to entry of a residence for the purpose of inquiry constitutes a valid intrusion for the purposes of the plain view doctrine. Police officers may constitutionally knock at the entrance to a residence and seek permission to enter for the purpose of inquiry and, if the occupant validly consents, the officers may enter. People v. Milton, 826 P.2d 1282 (Colo. 1992).

Consent given to police officers to enter a residence for the purposes of inquiry does not justify otherwise impermissible searches or

seizures, but such consent may support seizure of evidence falling within the plain view doctrine. People v. Milton, 826 P.2d 1282 (Colo. 1992).

The mere observation by government officials of that which is plainly visible to anyone does not constitute a search for constitutional purposes. Hoffman v. People, 780 P.2d 471 (Colo. 1989).

Plain view doctrine did not apply where marihuana pipe was not visible to officer until after he was standing in the living room without invitation. People v. O'Hearn, 931 P.2d 1168 (Colo. 1997).

The plain feel doctrine is an exception to the warrant requirement that is met when an officer lawfully pats down a suspect's clothing and feels an object whose contour or mass makes its identity immediately apparent. If the object is contraband, the warrantless seizure is justified in the same manner as in a plain view context. When the officer immediately recognized a pipe during a pat-down search, he was entitled to remove the item and seize it upon determining it was contraband. People v. Rushdoony, 97 P.3d 338 (Colo. App. 2004).

Officer's warrantless entry into trailer under emergency doctrine was proper and warranted admission of evidence in plain view in subsequent drug and homicide prosecutions. People v. Reger, 731 P.2d 752 (Colo. App. 1986).

The presence of a burning building clearly created an exigent circumstance that justified a warrantless entry by fire officials to extinguish the blaze and warranted seizure of evidence in plain view. People v. Harper, 902 P.2d 842 (Colo. 1995).

Plain view seizure is permissible where: (1) There is a prior valid intrusion; (2) discovery of the evidence is inadvertent; and (3) the object in plain view possesses a readily apparent incriminating nature. People v. Harper, 902 P.2d 842 (Colo. 1995).

Factors applied in People v. Dumas, 955 P.2d 60 (Colo. 1998).

Police may seize evidence in plain view if: (1) The initial police intrusion onto the premises was legitimate; (2) the police had a reasonable belief that the evidence seized was incriminating; and (3) the police had a lawful right of access to the object. People v. White, 64 P.3d 864 (Colo. App. 2002).

The plain view exception applies to items in open drawers so long as the officer did not pick up or move the object before he or she noticed its incriminating character or open or move the dresser drawer and he or she had lawful access to the object. People v. Bostic, 148 P.3d 250 (Colo. App. 2006).

Rationale behind the plain view exception to the warrant requirement is that, where the police inadvertently come upon evidence during the course of an otherwise lawful search, it would be a needless inconvenience and possibly dangerous to require a warrant for the seizure of such evidence. People v. Stoppel, 637 P.2d 384 (Colo. 1981).

Inadvertence requirement. So long as the police do not have probable cause to believe the evidence in plain view would be present, and the evidence is observed in the course of an otherwise justified search, the inadvertence requirement for a valid warrantless search under the plain view doctrine is met. People v. Stoppel, 637 P.2d 384 (Colo. 1981); People v. Clements, 661 P.2d 267 (Colo. 1983).

When the terms of a search warrant allowed officers to enter a bedroom to measure its dimensions, the discovery of a jar of bullets on the dresser was inadvertent because there was no probable cause to believe a jar of bullets would be found. People v. Cummings, 706 P.2d 766 (Colo. 1985).

Where police search for

bloodstained rags in the garage was valid under the terms of the search warrant, the discovery of a rifle meets the inadvertence requirement when the rifle was found in a place which might have contained the bloodstained rags. People v. Cummings, 706 P.2d 766 (Colo. 1985).

Reasonable suspicion short of probable cause will justify the superficial scrutiny of an object seen in plain view during the course of a valid search of a defendant's premises. People v. Torand, 633 P.2d 1061 (Colo. 1981).

Evidence in plain view seized during protective search. Seizure of items which are in plain view during a legitimate protective search is constitutional where suspects were stopped in area of criminal activity, where crime tools and possibly stolen items were found in automobile, and where suspect attempted to conceal something under automobile seat, thus providing officer with probable cause to believe that he had come upon incriminating evidence. People v. Melgosa, 753 P.2d 221 (Colo. 1988); People v. Smith, 13 P.3d 300 (Colo. 2000).

Threshold question in determining whether a person has been subjected to unreasonable governmental conduct is whether the person had a reasonable expectation of privacy in the area or item searched or seized. This involves weighing whether (1) the person exhibited a subjective expectation of privacy in the area or item and, if so (2) whether society recognizes such an expectation as reasonable. People v. Carper, 876 P.2d 582 (Colo. 1994).

No legitimate expectation of privacy where defendant was sitting in apartment facing open door which led to hallway of complex which allowed officers to view defendant without entering apartment. People v. Harris, 797 P.2d 816 (Colo. App. 1990).

Escaped probationer had no reasonable expectation of privacy when authorities searched the residence of his parolee brother and found illegal drugs and a deadly weapon belonging to defendant, even when defendant only stayed in brother's residence occasionally. People v. Brown, 250 P.3d 718 (Colo. App. 2010).

No reasonable expectation of privacy exists in a conversation that can be heard without the aid of a listening device by persons lawfully present. People v. Hart, 787 P. 2d 186 (Colo. App. 1989).

There is no expectation of privacy of objects in plain view. People v. Stoppel, 637 P.2d 384 (Colo. 1981).

No expectation of privacy in physical traits. A driver of a motor vehicle has no legitimate expectation of privacy in his physical traits and demeanor that are in the plain sight of an officer during a valid traffic stop. People v. Carlson, 677 P.2d 310 (Colo. 1984).

Where detainee voluntarily discloses the contents of his pocket to officer conducting an inventory search, detainee has not manifested a subjective expectation of privacy in the contents of his pocket, therefore, conduct of officer in removing a bindle from the detainee's pocket and opening it did not constitute a search or seizure for the purposes of fourth amendment analysis. People v. Carper, 876 P.2d 582 (Colo. 1994).

Unique nature of drug bindle infers contraband contents without any reasonable expectation of privacy so that opening of bindle lawfully seized under plain view exception was permissible. People v. Martin, 806 P.2d 393 (Colo. App. 1990).

Officer may look into automobile. To look into an automobile is not a violation of law, and an officer has the right to shine a flashlight into a car. People v. Ramey, 174 Colo. 250, 483 P.2d 374 (1971).

Where police officer approached parked van in which defendant was seated, acting suspiciously, he had a right to flash his light inside, and marijuana which he saw in the van and seized was admissible against defendant. People v. Shriver, 186 Colo. 405, 528 P.2d 242 (1974).

When an officer legitimately makes an investigatory stop of a vehicle, he may look through a car window and use a flashlight in observing objects lying inside the vehicle. People v. Henry, 631 P.2d 1122 (Colo. 1981).

It is not against the law for a police officer to look inside a car, nor to use a flashlight to do so. People v. McCombs, 629 P.2d 1088 (Colo. App. 1981).

And may use flashlight in darkened room. Fact that police officer used his flashlight to observe the items in a darkened room does not in and of itself alter the application of the plain view doctrine. People v. Boileau, 36 Colo. App. 157, 538 P.2d 484 (1975).

Articles in plain view inside automobile can be seized. Where articles similar to those reported taken in a burglary are in plain view when an officer shines his flashlight into a car, they can be seized. People v. Ramey, 174 Colo. 250, 483 P.2d 374 (1971).

And officers may thoroughly search such automobile. Once the officers have seen the suspect articles which are in plain view, they have the right thoroughly to search the car. People v. Ramey, 174 Colo. 250, 483 P.2d 374 (1971).

Plain view exception applies to contraband in defendant's home observed by officers using a flashlight to view inside defendant's residence. Officers who were lawfully on defendant's porch when defendant left front door open could use flashlights to peer into the home. The fact that the officers used their flashlights to see inside defendant's home did not transform their plain view observations into an illegal search because, had it been daylight, the contraband on the table inside the home would have been plainly visible to the officers. People v. Glick, 250 P.3d 578 (Colo. 2011).

But mere fact that package is in plain view does not automatically warrant intrusion into its contents. People v. Casias, 193 Colo. 66, 563 P.2d 926 (1977).

Seizure of a plastic bag and its contents falls within the plain view exception of the warrant requirement. Officer's view of the drugs was not obscured by the container because the drugs were clearly visible through the plastic bag, and it was "immediately apparent" to the officer that the bag contained a controlled substance. People v. Hammas, 141 P.3d 966 (Colo. App. 2006).

Auto map pocket is not a closed container. An officer may therefore lawfully examine the contents of the map pocket in the course of a protective search. When a container is not closed or is transparent, the container supports no reasonable expectation of privacy and its contents can be said to be in plain view. People v. Weston, 869 P.2d 1293 (Colo. 1994).

Evidence discovered during inventory search of defendant's van was admissible in the absence of showing that police acted in bad faith or for sole purpose of investigation. Colo. v. Bertine, 479 U.S. 367, 107 S. Ct. 738, 93 L. Ed. 2d 739 (1987).

Evidence discovered in vehicle admissible when found pursuant to a valid inventory search. Pineda v. People, 230 P.3d 1181 (Colo. 2010).

Certain restrictions have been placed upon plain view doctrine in order to protect private citizens from general warrantless seizures being carried out under the guise of a plain

view discovery: first, the police must be in a place where they are legitimately entitled to be; second, police cannot use the plain view doctrine as a pretext for a warrantless seizure of evidence they expect to uncover in their search; third, the officer seizing the evidence must have good reason to believe that the exposed item is incriminating evidence, although it need not be illegal per se. People v. Gurule, 196 Colo. 562, 593 P.2d 319 (1978); People v. Harding, 620 P.2d 245 (Colo. 1980); People v. Stoppel, 637 P.2d 384 (Colo. 1981).

A plain view seizure is permissible under the following circumstances: There must be a prior valid intrusion; the discovery of the evidence must be inadvertent; and the officer must have reasonable cause to believe that the exposed item is incriminating. People v. Hearty, 644 P.2d 302 (Colo. 1982); People v. Cummings, 706 P.2d 766 (Colo. 1985); People v. Lillie, 707 P.2d 1043 (Colo. App. 1985).

While it is required that for a plain view seizure to be permissible the officer must have present knowledge of facts that establish a nexus between the article to be seized and criminal behavior, the criminal behavior need not relate to the criminal activity that brought the officers onto the premises. People v. Lillie, 707 P.2d 1043 (Colo. App. 1985).

Property was properly seized under the plain view doctrine even though it was not contraband, given the disarray of the residence, the character and variety of the property, and the fact that a rifle was found containing an address label that did not match the name and address of any of the persons known to occupy the residence. People v. Lillie, 707 P.2d 1043 (Colo. App. 1985).

Factors establishing a "nexus" between the evidence seized and criminal behavior. In order to seize evidence discovered in "plain view", but not described in the warrant, there must be a "nexus" between the evidence and criminal behavior. Factors relevant to this determination are: (1) Whether the items seized are similar to items described in the warrant; (2) whether the quantity and placement of the property renders it unlikely that the property is on the premises for ordinary use; and (3) whether persons on the scene can offer information concerning the property. People v. Franklin, 640 P.2d 226 (Colo. 1982); People v. Salazar, 715 P.2d 1265 (Colo. App. 1985), cert. denied, 744 P.2d 80 (Colo. 1987).

Police were justified in seizing 13 guns, a large quantity of suspected drugs, and other items during search of defendant's premises where the search warrant police officers were executing described similar items, where some of the items were known to be stolen, and where the amount and location of the items were suspicious. People v. Salazar, 715 P.2d 1265 (Colo. App. 1985), cert. denied, 744 P.2d 80 (Colo. 1987).

Plain view alone is never enough to justify warrantless seizure of evidence. People v. Harding, 620 P.2d 245 (Colo. 1980).

A "plain view" observation requires a prior valid intrusion at the outset. People v. Hogan, 649 P.2d 326 (Colo. 1982).

Plain view doctrine inapplicable. The "plain view" doctrine is not applicable, where the hashish was not in plain view and the officer admitted he did not know what was contained in the aluminum foil package and that it could have contained most anything. People v. Ware, 174 Colo. 419, 484 P.2d 103 (1971).

Plain view doctrine has no valid application where the view of the marijuana on the table, seen through the opening in the doorway after the door had been unlocked and partially opened, was the product of an unlawful

entry. People v. Boorem, 184 Colo. 233, 519 P.2d 939 (1974).

Plain view exception did not apply where officers conducted detailed search of defendant's home following issuance of court order for seizure of home under civil forfeiture statutes, but without obtaining a search warrant. People v. Taube, 864 P.2d 123 (Colo. 1993).

Plain view exception did not apply where police officers did not have search warrant to enter apartment to execute arrest warrant even though they could see defendant within the apartment. People v. Aarness, 116 P.3d 1233 (Colo. App. 2005).

If a police officer sees stereo equipment during the search of a residence pursuant to an unrelated warrant which the officer suspects, but has no probable cause to believe is stolen, the officer may not move the equipment to record its serial numbers without violating the constitutional prohibition against unreasonable search and seizure. The "plain view" exception may be invoked only if the serial numbers can be recorded without moving the equipment. People v. Alexis, 794 P.2d 1029 (Colo. App. 1989), rev'd on other grounds, 806 P.2d 929 (Colo. 1991).

"Inventory" exception did not apply where officers searched defendant's home following issuance of court order for seizure of home under civil forfeiture statutes, but without obtaining a search warrant, and no inventory was actually made nor was search limited by standardized criteria. People v. Taube, 864 P.2d 123 (Colo. 1993).

Jailers are not required to obtain a warrant to conduct a second search of an inmate's clothing which has been inventoried and continues to be held in the jail's custody for safekeeping. People v. Salaz, 953 P.2d 1275 (Colo. 1998).

Consent search is outside ambit of traditional fourth amendment warrant requirements. People v. Hancock, 186 Colo. 30, 525 P.2d 435 (1974).

Ordinarily, the fourth amendment bars searches conducted without a warrant issued upon probable cause. However, an exception to this rule has long been recognized for searches conducted with the consent of the person exercising effective control over the place searched or the article seized. People v. Helm, 633 P.2d 1071 (Colo. 1981).

Consent to warrantless search not invalid under the fourth amendment merely because of a reasonable, good-faith mistake of fact by the officers concerning the authority of the party consenting to the search. People v. McKinstrey, 852 P.2d 467 (Colo. 1993); People v. Hopkins, 870 P.2d 478 (Colo. 1994).

As consent to search waives constitutional protection. When an accused consents to a search of his premises, he waives the constitutional protection which prohibits unreasonable searches and seizures. Capps v. People, 162 Colo. 323, 426 P.2d 189 (1967).

No warrant need be obtained in order for police to make a search where consent thereto, in light of the totality of the circumstances, has been freely and voluntarily given. People v. Billington, 191 Colo. 323, 552 P.2d 500 (1976); People v. Drake, 785 P.2d 1257 (Colo. 1990).

A search loses its illegal effect when a defendant, complaining thereof, gave permission for such a search of the premises. This consent removes the applicability of the constitutional guaranty. Williams v. People, 136 Colo. 164, 315 P.2d 189 (1957); Hopper v. People, 152 Colo. 405, 382 P.2d 540 (1963); Phillips v. People, 170 Colo. 520, 462 P.2d 594 (1969).

Evidence allegedly obtained by unreasonable search and seizure is

not inadmissible where defendant consented to a search of his premises. Williams v. People, 136 Colo. 164, 315 P.2d 189 (1957).

The court need not concern itself with the investigatory procedures of Crim. P. 41.1 where the defendants voluntarily submitted to fingerprinting, thereby waiving their constitutional protections. People v. Hannaman, 181 Colo. 82, 507 P.2d 466 (1973).

A voluntary consent by an occupant of premises authorizing entry by the police for the purpose of effecting an arrest inside the home may constitute, under appropriate circumstances, a valid waiver of the warrant requirement. McCall v. People, 623 P.2d 397 (Colo. 1981); People v. Lingo, 806 P.2d 949 (Colo. 1991).

Police may conduct warrantless search for incriminating evidence when person to be searched voluntarily consents. People v. Diaz, 793 P.2d 1181 (Colo. 1990).

Even if police officers' initial entry into defendant's home was not supported by exigent circumstances, defendant's consent to the search of his home was voluntary and attenuated from any illegality; therefore, admission of evidence was not error. People v. Benson, 124 P.3d 851 (Colo. App. 2005).

A warrantless search is valid if an officer reasonably relies on the apparent authority of the person giving consent to the search regardless of the actual authority of the consenting party. People v. Hopkins, 870 P.2d 478 (Colo. 1994).

Defendant's express refusal to consent to a search did not invalidate the search based on voluntary consent of a co-occupant of the premises who had joint access and control. People v. Miller, 94 P.3d 1197 (Colo. App. 2004).

Wife's consent to entry of co-owned home permitted seizure of items in plain view even though the items were in a room that husband warned his wife not to enter. Once the officers were invited in, they had no duty to determine whether the absent co-owner would also consent to the entry. People v. Shover, 217 P.3d 901 (Colo. App. 2009).

A co-owner may consent to a search of their home after the other co-owner is no longer physically present at the residence as long as the police did not remove the other co-owner in order to avoid an objection to the search. Although defendant barricaded himself in the house and forbid the police to enter, after he surrendered and was taken into custody the police could conduct a warrantless search of the home for weapons upon request of the defendant's wife. People v. Strimple, 2012 CO 1, 267 P.3d 1219.

Family friend had actual authority to consent to the police officer's entry into house and it was reasonable for the police officer to believe that he had authority to enter the house based on the apparent authority of the family friend. People v. White, 64 P.3d 864 (Colo. App. 2002).

Warrantless search of property by police who had the voluntary consent of the "caretaker" to search is invalid where the caretaker did not have common authority over the property. Petersen v. People, 939 P.2d 824 (Colo. 1997).

But consent given by both the property manager and apartment tenant provided police with objectively reasonable basis for believing that they were authorized to enter the apartment without a warrant. People v. Trusty, 53 P.3d 668 (Colo. App. 2001).

A search justified by the apparent authority doctrine is not authorized by consent from one with authority to give it. Rather, such a search, without valid consent, does not violate this section because it is not unreasonable. Petersen v. People, 939

P.2d 824 (Colo. 1997).

However, police belief that a caretaker having no ownership interest in the property could consent to a search was unreasonable because it was a mistake of law and not a mistake of fact. Petersen v. People, 939 P.2d 824 (Colo. 1997).

The question of whether reliance on apparent authority to consent to search is reasonable is a question of law subject to de novo review. People v. Hopkins, 870 P.2d 478 (Colo. 1994).

Although defendant may limit the scope of his consent, and when this occurs the police must likewise limit the scope of their search unless they properly procure a warrant authorizing a broader search. People v. Billington, 191 Colo. 323, 552 P.2d 500 (1976).

Consent to search may be exceeded and must be limited to scope of the consent. Consent to officers' "looking around" house did not authorize extensive 45-minute search. People v. Thiret, 685 P.2d 193 (Colo. 1984).

Scope of consent, where defendant consented to "complete search of my vehicle and contents" and made no attempt to further limit the search, extended to vehicle's trunk, spare tire compartment, and spaces behind loose door panels where contraband might be hidden. People v. Olivas, 859 P.2d 211 (Colo. 1993).

The scope of a general consent search extends to any area that an objective officer could reasonably assume might hold the object of the search, including the trunk of a vehicle and unlocked containers therein. People v. Minor, 222 P.3d 952 (Colo. 2010).

Search of checkbook within scope of defendant's consent to search for drugs, contraband, or weapons because it was objectively reasonable to believe that checkbook could contain drugs. People v. Dumas, 955 P.2d 60 (Colo. 1998).

Warning to defendant that he can refuse to give permission to search without warrant sufficiently advises him of his rights, and it is not necessary to advise him of the right to silence and counsel. Massey v. People, 178 Colo. 141, 498 P.2d 953 (1972).

When consent is given after an interrogation in violation of Miranda, the consent is likely to be constitutionally infirm. People v. Cleburn, 782 P.2d 784 (Colo. 1989).

Evidence obtained when consent to search follows improper police conduct is admissible only if the consent was voluntary and not an exploitation of the prior illegal conduct. People v. Rodriguez, 945 P.2d 1351 (Colo. 1997).

State troopers' warrantless search failed all three prongs of the test enumerated in Brown v. Illinois, 422 U.S. 590, 95 S. Ct. 2254, 45 L. Ed. 2d 416 (1975), in determining whether a preceding illegal stop renders inadmissible a subsequently obtained inculpatory statement given after Miranda warnings where: (1) The temporal proximity of the illegal detention and the consent to search was immediate; (2) there was no, or no significant, intervening circumstances between the illegal detention and the consent to search; and (3) the illegal detention of defendant for an extended period of time after trooper was satisfied as to the grounds for the initial contact was flagrant. People v. Rodriguez, 924 P.2d 1100 (Colo. App. 1996), aff'd, 945 P.2d 1351 (Colo. 1997).

Custody alone does not render consent involuntary. People v. Helm, 633 P.2d 1071 (Colo. 1981); People v. Mack, 33 P.3d 1211 (Colo. App. 2001).

No affirmative duty to warn of right to refuse consent. It is not necessary to impose on police officers an affirmative duty to warn persons of their right to refuse consent because other evidence is often adequate to

demonstrate that a search was agreed to voluntarily. People v. Helm, 633 P.2d 1071 (Colo. 1981); People v. Olivas, 859 P.2d 211 (Colo. 1993).

Knowledge of right to refuse consent is not prerequisite to valid consent, but is one of many factors to be considered by the trial court. People v. Helm, 633 P.2d 1071 (Colo. 1981); People v. Carlson, 677 P.2d 310 (Colo. 1984); People v. Olivas, 859 P.2d 211 (Colo. 1993).

Knowledge of the purpose of a search is not prerequisite to valid consent, but is one of the many factors to be considered by a trial court in determining whether a search was justified on the ground of consent. People v. Santistevan, 715 P.2d 792 (Colo. 1986).

After consent has been granted to conduct search, consent cannot be withdrawn. People v. Kennard, 175 Colo. 479, 488 P.2d 563 (1971).

So courts indulge every reasonable presumption against waiver of fundamental constitutional rights, and this is especially true where the defendant is under arrest. People v. Reyes, 174 Colo. 377, 483 P.2d 1342 (1971).

And the people must prove that consent to search was given; that there was no duress or coercion, expressed or implied; and that the consent was unequivocal and specific and freely and intelligently given. Capps v. People, 162 Colo. 323, 426 P.2d 189 (1967); People v. Reyes, 174 Colo. 377, 483 P.2d 1342 (1971); People v. Billington, 191 Colo. 323, 552 P.2d 500 (1976).

The burden of proof in the determination of whether a consent to a warrantless search is intelligently and freely given rests firmly on the people. People v. Neyra, 189 Colo. 367, 540 P.2d 1077 (1975); People v. Wieckert, 191 Colo. 511, 554 P.2d 688 (1976), overruled on other grounds in Villafranca v. People, 194 Colo. 472, 573 P.2d 540 (1978); People v. Savage, 630 P.2d 1070 (Colo. 1981); People v. Carlson, 677 P.2d 310 (Colo. 1984); Derdeyn v. Univ. of Colo., 832 P.2d 1031 (Colo. App. 1991).

Prosecution carries the burden to establish by clear and convincing evidence that the consent was voluntary and the trial court's resolution of this issue must be upheld on appeal unless the decision was clearly erroneous. People v. Genrich, 928 P.2d 799 (Colo. App. 1996).

Only requirement of intelligent consent to a search is that the person giving the consent know that he may properly refuse to give his permission to a search conducted without a warrant. Phillips v. People, 170 Colo. 520, 462 P.2d 594 (1969).

Consent must be voluntarily given. A warrantless search is constitutionally justified by a consent to search only if that consent is voluntarily given. People v. Savage, 630 P.2d 1070 (Colo. 1981).

Voluntary consent defined. A voluntary consent to search is one intelligently and freely given. People v. Helm, 633 P.2d 1071 (Colo. 1981); People v. Carlson, 677 P.2d 310 (Colo. 1984); People v. Santistevan, 715 P.2d 792 (Colo. 1986); People v. Cleburn, 782 P.2d 784 (Colo. 1989), cert. denied, 495 U.S. 923, 110 S. Ct. 1959, 109 L. Ed. 2d 321 (1990).

While the defendant's knowledge of his right to withhold consent is a factor to be considered, an advisement of this right is not a condition to a finding of voluntary consent. People v. Bowman, 669 P.2d 1369 (Colo. 1983).

Consent is voluntary when it is the result of free and unconstrained choice and not the result of force, threat, or promise. People v. Diaz, 793 P.2d 1181 (Colo. 1990).

Voluntary consent to search is the product of an essentially free and unconstrained choice by its maker and not the result of circumstances where

the subject's will has been overborne and the capacity for self-determination critically impaired. People v. Reddersen, 992 P.2d 1176 (Colo. 2000).

A search based upon voluntary consent may be undertaken by government actors without a warrant or probable cause, and any evidence discovered during the search may be seized and admitted at trial. People v. Morales, 935 P.2d 936 (Colo. 1997).

However, consent is only valid where it is given freely and voluntarily. People v. Morales, 935 P.2d 936 (Colo. 1997).

Test of voluntariness in context of consent searches is whether the consent is the product of an essentially free and unconstrained choice by its maker. People v. Elkhatib, 632 P.2d 275 (Colo. 1981).

If an officer's entry into an apartment was lawful, the occupant's consent to search still must satisfy constitutional standards of voluntariness, that is, it must be the product of an essentially free and unconstrained choice by its maker. People v. Donald, 637 P.2d 392 (Colo. 1981).

The contact between the officers and defendant was a consensual contact and did not amount to a seizure. The evidence supports the conclusion that defendant voluntarily cooperated with the police, in both allowing the police to enter the room and search the room. People v. Tweedy, 126 P.3d 303 (Colo. App. 2005).

Search of defendant's vehicle was consensual. After returning defendant's driver's license and registration, informing defendant he was not issuing him a ticket, and saying good-bye, the officer asked defendant if he had drugs or guns in the vehicle and if he could search the vehicle. Defendant's consent to the search occurred after the initial detention, which was based on a justified traffic stop, so the search was valid. People v. Montalvo-Lopez, 215 P.3d 1139 (Colo. App. 2008).

Driver with control over the vehicle possesses the authority to consent to a search even when owner is present as a passenger. People v. Minor, 222 P.3d 952 (Colo. 2010).

Intoxication does not subvert consent if the individual is capable of giving an explanation of his actions. People v. Helm, 633 P.2d 1071 (Colo. 1981).

The fact that a person was tired, "chemically messed up", and only 18 years old did not support a finding that the person's consent to conduct a search was involuntary. People v. Licea, 918 P.2d 1109 (Colo. 1996).

Unlawful arrest does not render a subsequent consent involuntary, although the consent might well be invalid under the derivative evidence doctrine. People v. Henry, 631 P.2d 1122 (Colo. 1981).

Consent is not rendered involuntary by the fact that the person is in custody and has not been advised of their constitutional rights. People v. Licea, 918 P.2d 1109 (Colo. 1996).

Therefore, a failure to give a Miranda advisement in a non-custodial situation, such as a routine traffic stop, also does not render the consent to search involuntary. People v. Reddersen, 992 P.2d 1176 (Colo. 2000).

Officers do not need to give Miranda warnings prior to asking for consent to perform a search even if the suspect is in custody. The consent need only be voluntary. People v. Garcia, 11 P.3d 449 (Colo. 2000).

Coerced consent involuntary. If there is coercion or duress in the obtaining of the consent, or if the facts and circumstances surrounding the giving of the consent are such as to indicate the unlikelihood of voluntary consent, such consent will

be held to be involuntary and therefore unlawful. Capps v. People, 162 Colo. 323, 426 P.2d 189 (1967).

To secure a consent search, the officers may not use any methods which coerce the occupant into waiving fourth amendment rights. People v. Hancock, 186 Colo. 30, 525 P.2d 435 (1974).

Psychologically coerced consent. Police officers from an independent investigation had enough evidence to consider defendant as a prime suspect and had probable cause to believe she had committed several burglaries in the apartment building where she lived, but they did not obtain a search warrant for a search of defendant's apartment. Rather, the officers testified defendant had been the victim of a break-in and sexual assault and one of their officers had interviewed defendant concerning that attack. Thus, the officers said they gained admittance on the pretext that they desired to consult defendant further about the unsolved crime against her person. Under the totality of the circumstances the defendant's actions in consenting to a search of her apartment and admissions of criminality made by her were induced by psychological coercion and a promise made to her by the police that she would not be taken to jail. Thus, consent to the search was not freely and voluntarily given nor was the statement made voluntarily. People v. Coghlan, 189 Colo. 99, 537 P.2d 745 (1975).

Consent obtained by deception constitutionally lacking. Where entry into the home is gained by a preconceived deception as to purpose, consent in the constitutional sense is lacking. McCall v. People, 623 P.2d 397 (Colo. 1981).

Voluntariness determined from totality of circumstances. The determination of the voluntariness of a consent to search is measured by the totality of the circumstances surrounding the purported waiver. This is true regardless of the basis for the challenge. People v. Reyes, 174 Colo. 377, 483 P.2d 1342 (1971); Capps v. People, 162 Colo. 323, 426 P.2d 189 (1967); Phillips v. People, 170 Colo. 520, 462 P.2d 594 (1969); Dickerson v. People, 179 Colo. 146, 499 P.2d 1196 (1972); People v. Wieckert, 191 Colo. 511, 554 P.2d 688 (1976); People v. Savage, 630 P.2d 1070 (Colo. 1981); People v. Carlson, 677 P.2d 310 (Colo. 1984); People v. Genrich, 928 P.2d 799 (Colo. App. 1996).

Whether or not the consent which is given in a particular case is voluntary is a question to be determined by the court in light of the totality of the circumstances surrounding that consent, and the overriding inquiry is whether the consent is intelligently and freely given. People v. Hancock, 186 Colo. 30, 525 P.2d 435 (1974); People v. Drake, 785 P.2d 1257 (Colo. 1990).

All the evidence, including the various circumstances of the giving of the consent, must be objectively viewed with diligent care by the trial court, and, if the court finds no evidence showing coercion or duress, it is proper to hold that the consent was voluntary and was a knowledgeable waiver of the defendant's constitutional right. Capps v. People, 162 Colo. 323, 426 P.2d 189 (1967).

Under the totality of circumstances test, it is appropriate to take into account both the characteristics of the consenting person, such as youth, education and intelligence, and the circumstances of the search, such as duration and location. People v. Helm, 633 P.2d 1071 (Colo. 1981); People v. Carlson, 677 P.2d 310 (Colo. 1984); People v. Cleburn, 782 P.2d 784 (Colo. 1989), cert. denied, 495 U.S. 923, 110 S. Ct. 1959, 109 L. Ed. 2d 321 (1990); People v. Licea, 918 P.2d 1109 (Colo. 1996).

Factors involved in determination of whether the consent was voluntary include the defendant's

age, education, intelligence, state of mind, the duration and location of the search, the gravity of any official misconduct, and any other relevant circumstances. People v. Genrich, 928 P.2d 799 (Colo. App. 1996).

Consent to a warrantless search may be implied from the totality of the circumstances. Consent is implied based on the person's conduct in engaging in a certain activity. In this case, there was no conduct by either party in the hotel room that implied consent to enter. Defendant's request to deputy to help get his money back is not sufficient to imply an invitation to enter particularly since the request was made after the deputy entered the room without permission. Since the initial officer's entry was unlawful, the second officer's entry may not be predicated on the first unlawful entry. People v. Prescott, 205 P.3d 416 (Colo. App. 2008).

Relationship between police conduct and a person in defendant's circumstances, and with the defendant's particular characteristics, is necessary for determining whether a consent to search is voluntary. People v. Magallanes-Aragon, 948 P.2d 528 (Colo. 1997); People v. Berdahl, 2012 COA 179, __ P.3d __.

Court applied erroneous subjective standard when it relied exclusively on the defendant's state of mind to determine the voluntariness of a consent to search. The court failed to determine whether the police conduct was objectively coercive in relation to the defendant's subjective state. People v. Magallanes-Aragon, 948 P.2d 528 (Colo. 1997).

The circumstances surrounding a consent to search must be examined for evidence of intrusive, overbearing, or coercive police conduct and whether the impact of such conduct rendered the consent involuntary. People v. Magallanes-Aragon, 948 P.2d 528 (Colo. 1997); People v. Reddersen, 992 P.2d 1176 (Colo. 2000).

If the consent to search the residence was voluntary, the search may be permissible even though the entry was illegal. People v. Genrich, 928 P.2d 799 (Colo. App. 1996).

Prosecution must demonstrate by clear and convincing evidence that an occupant freely gave the police consent to enter the premises. In the course of making an inquiry, a police officer is not entitled to walk past the person opening the door to a house without obtaining permission to enter the house. People v. O'Hearn, 931 P.2d 1168 (Colo. 1997).

Trial court's finding of "passive consent" to police officer's entry into a home without a warrant amounted to a finding of no consent in that the finding showed only a failure to object and as such there was an insufficient basis to conclude that the ensuing entry was achieved as a result of the homeowner's consent. People v. Santisteven, 693 P.2d 1008 (Colo. App. 1984).

Evidence held sufficient to establish consent to search. People v. Drake, 785 P.2d 1257 (Colo. 1990).

Trial judge in best position to make determination. The trial judge, having the advantage of seeing and hearing the witnesses and being able to evaluate their credibility, is in the best position to weigh the significance of the pertinent facts involved and determine whether, under the totality of all the facts and circumstances, the defendant voluntarily consented to this search. Capps v. People, 162 Colo. 323, 426 P.2d 189 (1967); People v. Carlson, 677 P.2d 310 (Colo. 1984).

Consent waives subsequent objections to search. Where the defendants gave permission to game and fish officer at check station to search the trunk of the automobile, and to look inside the trash bag contained in

the trunk of the automobile, this consent waives any objections against the search and seizure. People v. Benner, 187 Colo. 309, 530 P.2d 964 (1975).

Where after the police advised the defendant of his rights, he voluntarily consented to a search for, and examination of, certain clothing which he admittedly wore on the night that the crime was committed, the defendant's consent caused any subsequent attack on the validity of the search to be without merit. People v. Sanchez, 184 Colo. 25, 518 P.2d 818 (1974).

The university of Colorado failed to demonstrate that intercollegiate athletes voluntarily without coercion signed consent forms, where, because of economic or other commitments the athletes had made to the university, they were not faced with an unfettered choice in regard to signing the consent. Derdeyn v. Univ. of Colo., 832 P.2d 1031 (Colo. App. 1991).

Consent is involuntary as a matter of law where evidence was uncovered in an illegal search and defendant was confronted with incriminating evidence when police had firm control over his home and family. People v. Walter, 890 P.2d 240 (Colo. App. 1994).

Apparent owner who has equal access to premises may authorize search. The apparent owner of the property who has equal rights to the use of the premises and has equal access to the premises may legally authorize a search of those premises. Spencer v. People, 163 Colo. 182, 429 P.2d 266 (1967).

Third-party consent. A voluntary consent to a warrantless search may be given by a third party who possesses common authority over, or other sufficient relationship to, the premises. People v. Mickens, 734 P.2d 646 (Colo. App. 1986).

Another person possessing common authority over the premises may consent to a search of those premises. People v. Wieckert, 191 Colo. 511, 554 P.2d 688 (1976).

The authority which justifies third-party consent does not rest upon the law of property but rests rather on mutual use of the property by persons generally having joint access or control for most purposes, so that it is reasonable to recognize that any of the co-inhabitants has the right to permit the inspection in his own right and that the others have assumed the risk that one of their number might permit the common area to be searched. People v. Savage, 630 P.2d 1070 (Colo. 1981).

When two or more persons have equal right of ownership, occupancy, or other possessory interest in the premises searched or the property seized, any one of such persons may authorize a search and seizure thereof thereby binding the others and waiving their rights to object. Lanford v. People, 176 Colo. 109, 489 P.2d 210 (1971).

Defendant's mother could grant consent to a search since she was owner of the house and controlled the possessory interest of those occupying the house; only she made rules concerning what areas of house would be used by whom; and defendant was tenant at sufferance. People v. Lucero, 720 P.2d 604 (Colo. App. 1985).

Consent to a search of a dwelling need not be obtained from the owner, if it is obtained from a third party who possesses "common authority over the property" or some other "sufficient relationship" with it. People v. Rivers, 727 P.2d 394 (Colo. App. 1986); People v. Kellum, 907 P.2d 712 (Colo. App. 1995); People v. White, 64 P.3d 864 (Colo. App. 2002).

Consent from third party possessing common authority over the premises may be explicit, or it may be inferred from the totality of the circumstances. People v. Rivers, 727 P.2d 394 (Colo. App. 1986).

The valid consent of a person with common authority justifies a warrantless search of a residence despite the physical absence of the consenting co-occupant and the physical presence of a nonconsenting co-occupant. People v. Sanders, 904 P.2d 1311 (Colo. 1995).

When one co-occupant has victimized the other, the emergency nature and exigent circumstances provided an additional reason for validating a co-occupant's consent to a warrantless search when the nonconsenting co-occupant was present. People v. Sanders, 904 P.2d 1311 (Colo. 1995).

Where alleged accomplice voluntarily consented to the search of his motel room, to which the defendant admittedly had access the day after a burglary, voluntary consent provides an independent and constitutional basis for the search as well as a justification for the use of the items seized as evidence of defendant's guilt in prosecution for burglary in the second degree. People v. Hutto, 181 Colo. 279, 509 P.2d 298 (1973).

A warrantless electronic transmission and monitoring of conversations taking place between a suspect and a police informant in the informant's motel room, when the informant has previously consented to the electronic surveillance, does not violate this section. People v. Velasquez, 641 P.2d 943 (Colo.), appeal dismissed, 459 U.S. 805, 103 S. Ct. 28, 74 L. Ed. 2d 43 (1982), reh'g denied, 459 U.S. 1138, 103 S. Ct. 774, 74 L. Ed. 2d 986 (1983).

Babysitter and her mother could not grant consent to search of homeowner's bedroom where there was no evidence that homeowner or his wife delegated authority to babysitter with regard to residence beyond that necessary to care for children or that police officer reasonably believed babysitter or her mother had the authority to consent to a search of homeowner's bedroom. People v. Walter, 890 P.2d 240 (Colo. App. 1994).

So may resident of apartment. A resident of an apartment has the ability to consent to a search of the premises, and a search based on such consent is not illegal. Lanford v. People, 176 Colo. 109, 489 P.2d 210 (1971).

Mere property interest not common authority. Common authority over property to consent to a warrantless search is not to be implied from the mere property interest a third party has in the property. People v. Savage, 630 P.2d 1070 (Colo. 1981).

Valid consent inferred where individual giving consent had been entrusted with a key by individual seeking to suppress the evidence discovered. People v. Rivers, 727 P.2d 394 (Colo. App. 1986).

Consent by wife. That defendant's wife was told a warrant would be sought if her consent to search their home was not obtained does not negate the evidence which strongly supports the trial court's finding of consent. People v. Hancock, 186 Colo. 30, 525 P.2d 435 (1974).

The evidence supported the court's finding that defendant's wife freely and voluntarily consented to the search of her premises where she was informed by the police that they would not conduct the search if she did not want them to, and she responded that she wanted all of the guns out of her house, and where she assisted the police officers in their efforts to locate a revolver in the garage and offered them coffee while they searched her house. People v. Wieckert, 191 Colo. 511, 554 P.2d 688 (1976).

But landlord is not proper person to give consent to search of his tenant's residence. Condon v. People, 176 Colo. 212, 489 P.2d 1297 (1971).

Absent a showing of

authority from the tenant to the apartment manager, the manager cannot authorize or permit an entry into a tenant's apartment in the absence of exigent circumstances. People v. Boorem, 184 Colo. 233, 519 P.2d 939 (1974).

Reliance on consent of landlord is a mistake of law and not a mistake of fact. Therefore, search does not fall within the good faith exception of § 16-3-308. People v. Brewer, 690 P.2d 860 (Colo. 1984) (decided prior to 1985 amendment to § 16-3-308).

Apartment manager had necessary appearance of authority to consent to warrantless search of tenant's apartment when he had been asked by tenant to watch the apartment and to arrest intruders and when he had a substantial interest in protecting hotel as the security and maintenance manager. People v. Berow, 688 P.2d 1123 (Colo. 1984).

Juvenile as consenting party. The same test is applicable to the validity of the search whether the consenting party is an adult or a juvenile with the one exception noted in the children's code, section 19-2-102(3)(c). That is, a parent, guardian, or legal custodian of the child must be present, and freely and intelligently give his consent. People v. Reyes, 174 Colo. 377, 483 P.2d 1342 (1971).

The fact that one is a minor does not necessarily preclude effective consent to a search, especially where the person consenting has a greater right in the premises searched than the person who is contesting the legality of the search. Blincoe v. People, 178 Colo. 34, 494 P.2d 1285 (1972).

Since § 19-2-210 (1) does not apply to consent to search by juvenile in a noncustodial setting, the proper test to measure the validity of the consent is set forth in §§ 19-2-208 and 19-2-209 (4). People in Interest of S.J., 778 P.2d 1384 (Colo. 1989).

Consent held valid. Where a police officer advised a juvenile defendant and his father that a search warrant could be obtained if the defendant's father did not sign the consent form, and it was contended that the representation constituted coercion, it was held that consent was "freely and intelligently" given. People v. Reyes, 174 Colo. 377, 483 P.2d 1342 (1971).

Where the defendant on two separate occasions gave his consent to search his motel room to two different officers, although at the times of consent he was under arrest, handcuffed, and claiming innocence, nevertheless the totality of all the facts and circumstances did not create a situation where it must be said as a matter of law that the defendant's consent was involuntary. Capps v. People, 162 Colo. 323, 426 P.2d 189 (1967).

Where a defendant is informed of his right not to allow officers to search his vehicle without their first obtaining a warrant, and he not only consents to the search but unlocks the trunk himself, he is under no duress or coercion and he knowingly and intelligently waives his constitutional rights by consenting to the search. Dickerson v. People, 179 Colo. 146, 499 P.2d 1196 (1972).

Where the defendant attempted to direct the police officers to enter his car and remove the articles which were in it clearly compelling the officers to inventory the contents of the car for the protection both of the defendant and themselves, as a matter of law, this was a consent of the defendant for them to enter the car. Upon entry the articles in question were then in plain view. People v. Bordeaux, 175 Colo. 441, 488 P.2d 57 (1971).

The defendant's contention that the officers lacked authority to search the trunk of his sister's car does not have merit where his sister consented to the procedures which were followed and cooperated with the F.B.I. in making the arrest possible.

Sergent v. People, 177 Colo. 354, 497 P.2d 983 (1972).

Whether or not a search was incident to the defendant's arrest need not be decided, where it is clear that the defendant consented to the search after he had been given his Miranda warnings and had indicated that he understood his rights. Sergent v. People, 177 Colo. 354, 497 P.2d 983 (1972).

Evidence held sufficient to establish consent to search. Lanford v. People, 176 Colo. 109, 489 P.2d 210 (1971).

Circumstances supported the trial court's conclusion that defendant did not consent to a search of his car since, unlike the pat-down search which was accomplished immediately and accompanied by repeated expressions of consent, thereby resolving any ambiguity, the search of the car was conducted after the defendant was taken into custody, back-up was radioed and had arrived, and defendant received his Miranda warnings. People v. Thomas, 853 P.2d 1147 (Colo. 1993).

Where trial court evaluated conflicting testimony and evidence relevant to the issue of consent to search home without a warrant and determined that defendant did not consent to a search of his home, absent lack of evidence in the record to support the trial court's factual findings, reviewing court is bound to uphold the trial court's conclusion of lack of consent and unlawful search. People v. Mendoza-Balderama, 981 P.2d 168 (Colo. 1999).

A search made pursuant to consent must be limited to the scope of the consent actually given, and the consent is measured by "objective reasonableness". A suspect who consents only to a limited search for certain materials does not automatically insulate him or herself from the lawful seizure of other objects not delineated in the officer's request; seizure is lawful if justified by another exception to the warrant requirement. People v. Najjar, 984 P.2d 592 (Colo. 1999); People v. Mack, 33 P.3d 1211 (Colo. App. 2001).

The act of taking blood for a blood test and the process of collecting and testing urine samples constitute an invasion of an employee's privacy interest and therefore constitute a "search" under the fourth amendment. Casados v. City and County of Denver, 832 P.2d 1048 (Colo. App. 1992), rev'd on other grounds, 862 P.2d 908 (Colo. 1993), cert. denied, 511 U.S. 1005, 114 S. Ct. 1372, 128 L. Ed. 2d 48 (1994).

Collection of blood sample does not constitute unreasonable search and seizure. People v. Duemig, 620 P.2d 240 (Colo. 1980), cert. denied, 451 U.S. 971, 101 S. Ct. 2048, 68 L. Ed. 2d 350 (1981).

Standard for admissibility of blood sample. The standard for determining the admissibility of a blood sample is that the trial court must determine that the police were justified in requiring the defendant to submit to the blood test, and that the means and procedures used were reasonable. People v. Rodriquez, 645 P.2d 857 (Colo. App. 1982).

Blood sample taken prior to defendant's arrest and without his permission is not violation of defendant's constitutional rights so long as the facts establish probable cause to make such arrest at the time the sample is taken. People v. Sutherland, 683 P.2d 1192 (Colo. 1984); People v. Milhollin, 751 P.2d 43 (Colo. 1988); People v. MacCallum, 925 P.2d 758 (Colo. 1996).

The test set forth in Schmerber v. California (384 U.S. 757, 86 S. Ct. 1826, 16 L. Ed. 2d 908 (1966)) shall be the test which governs extraction of an involuntary blood sample from a putative defendant who is suspected of an alcohol-related driving offense. The four requirements of the test are: (1) Probable cause for arrest of the defendant for an

alcohol-related driving offense; (2) a clear indication that the blood sample will provide evidence of the defendant's level of intoxication; (3) exigent circumstances which make it impractical to obtain a search warrant; and (4) reasonableness including conducting of the test in a reasonable manner. People v. Sutherland, 683 P.2d 1192 (Colo. 1984); People v. Milhollin, 751 P.2d 43 (Colo. 1988); People v. Shepherd, 906 P.2d 607 (Colo. 1995); People v. MacCallum, 925 P.2d 758 (Colo. 1996).

Where there were consistent statements from witnesses that the defendant was operating a motorcycle at an excessive speed and in a dangerous manner, where the investigating trooper noted that the defendant had the odor of an alcoholic beverage on his breath and had bloodshot eyes, where it has been established that the percentage of alcohol in the blood begins to diminish shortly after drinking stops, and where blood has been extracted in a hospital environment according to accepted medical practices, the test requirements which govern the extraction of an involuntary blood sample have been met. People v. Milhollin, 751 P.2d 43 (Colo. 1988).

Probable cause existed to arrest driver where three eyewitnesses observed the driver's conduct of reckless and dangerous driving for a sustained period of time over the course of 15 miles, where the pattern of driving observed was highly unusual and erratic, and where the driver ultimately caused an accident that killed another motorist. People v. MacCallum, 925 P.2d 758 (Colo. 1996).

Standard for forced production of bodily fluids. In determining whether forced production of bodily fluids is permissible, the appropriate standard is clear indication that evidence of intoxication or drug abuse will be found. Moreover, there must be some indication that evidence of drugs or alcohol, if found, will be relevant to a crime for which the defendant may be charged. In the typical alcohol or drug case, this clear indication requirement is easily satisfied by observations of the defendant's speech, gait, breath, appearance, and conduct. People v. Williams, 192 Colo. 249, 557 P.2d 399 (1976); People v. Milhollin, 751 P.2d 43 (Colo. 1988).

Taking blood under implied consent law not unconstitutional. The implied consent law is constitutional; and although it has been determined that the taking of blood is an intrusion of the person and a search within the meaning of the state and federal constitutions, such is not an unreasonable search and seizure violative of the fourth amendment or this section. Compton v. People, 166 Colo. 419, 444 P. 2d 263 (1968); People v. Brown, 174 Colo. 513, 485 P.2d 500 (1971), appeal dismissed, 404 U.S. 1007, 92 S. Ct. 671, 30 L. Ed. 2d 656 (1972).

Where the defendant was charged with causing injury while driving under the influence of intoxicating liquor, the trial court correctly denied the motion to suppress the blood sample where the defendant was in a semiconscious condition and was unable to consent or to refuse to give his consent. People v. Fidler, 175 Colo. 90, 485 P.2d 725 (1971).

Even if taken in nonmedical environment. Notwithstanding the fact that the blood extraction for the purpose of administering blood-alcohol test took place in a nonmedical environment without a doctor or nurse present, where the record reveals that a highly qualified and experienced medical technologist took the blood sample in conformity with the department of health regulations and with no infringement upon the personal dignity of the defendant, the taking was well within the ambit of a reasonable

search. People v. Mari, 187 Colo. 85, 528 P.2d 917 (1974).

Standard for admissibility of roadside sobriety test. To satisfy constitutional guarantees against unlawful searches and seizures, a roadside sobriety test can be administered only when there is probable cause to arrest the driver for driving under the influence of, or while his ability is impaired by, intoxicating liquor or other chemical substance, or when the driver voluntarily consents to perform the test. People v. Carlson, 677 P.2d 310 (Colo. 1984).

Urine sample taken prior to defendant's arrest and without his permission is not violation of defendant's constitutional rights so long as the facts establish probable cause to make such arrest at the time the sample is taken. People v. Kokesh, 175 Colo. 206, 486 P.2d 429 (1971).

Blood and urine test evidence properly suppressed. Where there were no signs of defendant's being drunk observed either in her home or, later, at the hospital, the searches which obtained blood and urine samples against her will were conducted without any clear indication that these fluids would produce evidence of intoxication or drug use, thus violating her rights under the fourth amendment and this section, and the blood and urine test evidence was properly suppressed. People v. Williams, 192 Colo. 249, 557 P.2d 399 (1976).

Requiring blood samples from a person convicted of a crime for DNA identification purposes satisfies the "special needs" exception to the fourth amendment. A DNA database serves a number of special needs beyond normal law enforcement, namely bringing closure to victims of past crimes and sheltering society from future victimization. These interests weigh heavily compared to the minimal intrusion into the greatly reduced expectation of privacy of the person convicted of a crime. People v. Shreck, 107 P.3d 1048 (Colo. App. 2004); People v. Ramirez, 140 P.3d 169 (Colo. App. 2005).

Applied to probationer in People v. Rossman, 140 P.3d 172 (Colo. App. 2006).

Privacy interests of a person on probation do not outweigh governmental interests in obtaining samples for DNA database. Defendant, who was on probation, could be ordered to submit biological samples for DNA testing without violating the state and federal constitutional prohibition against warrantless searches and seizures conducted without probable cause. A probationer has a diminished right to privacy that does not outweigh the government interests served by DNA databases, which are "undeniably compelling" and "monumental" in weight. People v. Rossman, 140 P.3d 172 (Colo. App. 2006).

Defendant's consent to DNA identification is not involuntary merely because defendant is not informed that the identification will be used in other investigations. People v. Collins, 250 P.3d 668 (Colo. App. 2010).

A reasonable person would understand that DNA sample taken and data obtained from analysis of the sample would remain in possession of law enforcement and be available for future law enforcement uses. Therefore, when a defendant consents to DNA testing without limitation, there is no constitutional violation if the sample is used to solve another crime. People v. Collins, 250 P.3d 668 (Colo. App. 2010).

Seizure of business records did not violate defendant's privilege against self-incrimination because defendant was not "compelled" to produce the papers; the papers were not communicative in nature, but were business records of which others must have had knowledge, rather than

personal and private writings; and the papers were instrumentalities of the crime with which defendant was charged. People v. Tucci, 179 Colo. 373, 500 P.2d 815 (1972).

Discovery of contraband which is result of private inspections is constitutionally permissible. People v. Hively, 173 Colo. 485, 480 P.2d 558 (1971).

When evidence comes into the possession of government without violation of petitioner's rights by governmental authority, there is no reason why the fact that individuals, unconnected with the government, may have wrongfully taken them, should prevent them from being held for use in prosecuting an offense where the documents are of an incriminatory character. People v. Benson, 176 Colo. 421, 490 P.2d 1287 (1971).

Airline has right to make own independent investigation of packages in its own interests--to protect lives and property from possible destruction from bombing--without the instigation or participation of law enforcement officials. People v. Hively, 173 Colo. 485, 480 P.2d 558 (1971).

Airline freight personnel have the right and authority to make a reasonable inspection of packages accepted for shipment. People v. Hively, 173 Colo. 485, 480 P.2d 558 (1971).

And airline, upon discovery of contraband, has duty to notify authorities. People v. Hively, 173 Colo. 485, 480 P.2d 558 (1971).

Information obtained by officers after such notification is not tainted. Where an airline freight agent in San Francisco made a search on his own initiative of a package accepted for shipment, this was a lawful private inspection; and information obtained by officers after they had been notified by agent that the package contained dangerous drugs was not "tainted" and could serve as foundation for probable cause to make arrest and seizure at destination in Denver to which package was addressed. People v. Hively, 173 Colo. 485, 480 P.2d 558 (1971).

Warrantless search lawful after defendant went through airport security checkpoint and need not be justified by any showing of probable cause or reasonable suspicion. Due to concern about air piracy or other acts of terrorism, after a potential passenger voluntarily consents to a search by submitting himself to the screening process, airport security is justified in conducting further physical search of carry-on item. Although continued search must be limited to determination of whether potential passenger is carrying an object that is potentially dangerous to air commerce, drugs discovered during the process are admissible. People v. Heimel, 812 P.2d 1177 (Colo. 1991).

Once defendant consented to security screening by walking though the magnetometer, he had no right to withdraw that consent prior to completion of a reasonable search of his bag. To allow withdrawal of consent prior to completion of the screening process would encourage airline terrorism by providing a secure exit where detection was threatened. People v. Heimel, 812 P.2d 1177 (Colo. 1991).

Potential passenger has the right to refuse an airport security search by leaving the area at any time prior to the actual commencement of the screening process and such refusal, without more, would not furnish any objective justification for any further detention or search. People v. Heimel, 812 P.2d 1177 (Colo. 1991).

Where individual relinquishes his claim to privacy in contraband and therefore is not the victim of an illegal search and seizure, the evidence seized is admissible against him. Dickerson v. People, 179 Colo. 146, 499 P.2d 1196 (1972).

Abandoned property. When all dominion and control over an article is surrendered by the act of the defendant, his capacity to object to search and seizure without a warrant is at an end. Smith v. People, 167 Colo. 19, 445 P.2d 67 (1968); Kurtz v. People, 177 Colo. 306, 494 P.2d 97 (1972).

When defendants abandon their vehicle and its contents, they have no standing to object to a subsequent search of the vehicle and seizure of evidence. People v. Hampton, 196 Colo. 466, 603 P.2d 133 (1979).

Where the defendants, or one of them, left a watch in a police car, it was abandoned, and the finding of it was not a search. People v. Ramey, 174 Colo. 250, 483 P.2d 374 (1971).

When the defendant expelled the incriminating evidence from his person, and from the vehicle, in which he was riding as a passenger, and it lit on a vacant lot, his dominion over and control of the evidence ended. Therefore, the act of the police officer in picking it up from the ground did not come within the realm of a search and seizure, and the incriminating evidence as far as the defendant was concerned was abandoned contraband in plain view. Martinez v. People, 169 Colo. 366, 456 P.2d 275 (1969).

Exploratory canine sniff of defendant's safe was a constitutional warrantless search where police had requisite reasonable suspicion that safe contained drugs. People v. Unruh, 713 P.2d 370 (Colo. 1986), cert. denied, 476 U.S. 1171, 106 S. Ct. 2894, 90 L. Ed. 2d 981 (1986).

A dog sniff search need not be justified by probable cause sufficient to obtain a search warrant, but instead by reasonable suspicion, similar to that required to stop and frisk a person suspected of involvement in imminent criminal activity. People v. Wieser, 796 P.2d 982 (Colo. 1990); People v. Unruh, 713 P.2d 370 (Colo. 1986); People v. Boylan, 854 P.2d 807 (Colo. 1993).

The dog sniff of defendants' package sent by a private overnight courier was a search, but it was supported by reasonable suspicion and therefore legal. People v. Boylan, 854 P.2d 807 (Colo. 1993).

A dog sniff search of a person's automobile in connection with a traffic stop that is prolonged beyond its purpose to conduct a drug investigation intrudes upon a reasonable expectation of privacy and constitutes a search and seizure requiring reasonable suspicion of criminal activity. People v. Haley, 41 P.3d 666 (Colo. 2001).

The totality of the circumstances demonstrated that the postal inspector had reasonable suspicion that the package contained narcotics before the dog-sniff search. People v. May, 886 P.2d 280 (Colo. 1994).

A dog sniff search of a lawfully stopped automobile does not violate the state constitution search and seizure provisions and does not require reasonable suspicion. There is no legitimate interest in possessing contraband, and the action of the dog is not a search since it only communicates the dog's belief that illegal drugs are present. People v. Esparza, 2012 CO 22, 272 P.3d 367.

Search of public alley. Defendant's constitutional right to be free from unreasonable search and seizure does not require the police officer to obtain a search warrant before searching a public alley. Martinez v. People, 162 Colo. 195, 425 P.2d 299 (1967).

D. Unreasonable Search and Seizure.

Law reviews. For article, "Logical Fallacies and the Supreme Court", see 59 U. Colo. L. Rev. 741 (1988). For comment, "An Exclusionary Rule Colorado Can Call Its Own", see 63 U. Colo. Law. 207 (1992).

A warrantless search of a shared dwelling for evidence over the express refusal of consent by a physically present defendant cannot be justified as reasonable on the basis of consent given to the police by another resident. People v. Miller, 143 P.3d 1195 (Colo. App. 2006); People v. Nelson, 2012 COA 37M, __ P.3d __.

Because the cell phone in question could not be fairly characterized as abandoned, lost, or mislaid under the circumstances of the case, the warrantless examination of its contents amounted to an unconstitutional search. People v. Schutter, 249 P.3d 1123 (Colo. 2011).

The policy underlying the exclusionary rule is deterrence of police misconduct. People v. Press, 633 P.2d 489 (Colo. App. 1981).

The primary purpose of the exclusionary rule is to deter unlawful police conduct by the exclusion of evidence which is the fruit of that unlawful conduct. People v. Banks, 655 P.2d 1384 (Colo. App. 1982).

Exclusionary rule is designed primarily to deter unlawful searches and seizures by police. People v. Fournier, 793 P.2d 1176 (Colo. 1990); People v. McKinstry, 843 P.2d 18 (Colo. 1993).

The exclusionary rule is intended to deter improper police conduct and should not be applied in cases where the deterrence purpose is not served, or where the benefits associated with the rule are minimal in comparison to the costs associated with the exclusion of the probative evidence. People v. Altman, 960 P.2d 1164 (Colo. 1998).

Defendant may not respond to an unreasonable search or seizure by a threat of violence against the officer and then rely on the exclusionary rule to suppress evidence pertaining to the criminal act of obstructing a peace officer and resisting arrest. People v. Brown, 217 P.3d 1252 (Colo. 2009).

Application of exclusionary rule in a dependency and neglect case requires the court to balance the deterrent benefits of applying the rule against the societal cost of excluding relevant evidence. People ex rel. A.E.L., 181 P.3d 1186 (Colo. App. 2008).

Here, applying the rule would have a high societal cost in terms of protecting child welfare interests. Therefore, the court did not err in denying mother's motion to suppress evidence. People ex rel. A.E.L., 181 P.3d 1186 (Colo. App. 2008).

The inevitable discovery exception to the exclusionary rule applies to both primary evidence and to secondary evidence. People v. Burola, 848 P.2d 958 (Colo. 1993); People v. Welsh, 58 P.3d 1065 (Colo. App. 2002), aff'd on other grounds, 80 P.3d 296 (Colo. 2003).

Where there was neither a search warrant, consent nor a valid arrest, the search was improper. Gale v. People, 174 Colo. 491, 484 P.2d 1210 (1971).

Test of admissibility of evidence obtained in, or as a result of, an illegal search is whether the challenged evidence was obtained by exploitation of the initial illegality or, instead, whether it was obtained by a means sufficiently distinguishable to be purged of primary taint. People v. Hogan, 703 P.2d 634 (Colo. App. 1985).

In determining whether the taint of an illegality has been dissipated, consideration is given to the temporal proximity of the illegality and defendant's statements, the presence of intervening circumstances, and the purpose and flagrancy of any official misconduct. People v. Harris, 729 P.2d 1000 (Colo. App. 1986).

The "fruit of the poison tree" doctrine which requires that evidence obtained as a result of an unconstitutional arrest be suppressed, is an exclusionary rule created primarily

to deter unlawful police actions, and is applicable both to the illegally obtained evidence itself, as well as to any derivative evidence. People v. McCoy, 832 P.2d 1043 (Colo. App. 1992), aff'd, 870 P.2d 1231 (Colo. 1994).

Exclusionary rule inapplicable where police conduct not improper. When there is no improper police conduct, the exclusionary rule is not applicable since its use would serve no purpose but to deprive the prosecution of reliable and probative evidence. People v. Banks, 655 P.2d 1384 (Colo. App. 1982).

Police conduct exercised in "good faith". A major consideration in determining the admissibility of statements obtained pursuant to alleged illegal police conduct is whether the law enforcement officer's conduct was exercised in "good faith", rather than as being purposeful or flagrant misconduct. People v. Banks, 655 P.2d 1384 (Colo. App. 1982).

Where defendant police officers removed property without legal authority, their search for and seizure of fixtures was per se unreasonable and subjects defendant officers to civil liability for any resulting damages. Walker v. City of Denver, 720 P.2d 619 (Colo. App. 1986).

Governmental conduct must constitute search. In order for the exclusionary rule to apply, there first must be a determination that the challenged governmental conduct constitutes a search. People v. Gomez, 632 P.2d 586 (Colo. 1981), cert. denied, 455 U.S. 943, 102 S. Ct. 1439, 71 L. Ed. 2d 655 (1982).

Police-citizen encounter did not amount to a "seizure" within the meaning of this section. Two-minute conversation between police officers and defendant at the airport, where the police officer asked the defendant six basic questions in non-intimidating manner and without blocking the defendant's movement, was not a seizure. People v. Johnson, 865 P.2d 836 (Colo. 1994).

No seizure occurs during a consensual interview where a police officer merely seeks voluntary cooperation of a citizen by asking noncoercive questions. People v. Coleman, 55 P.3d 817 (Colo. App. 2002).

Prosecutor not required to object at every instance to a trial court's mischaracterization of the prosecution's argument that a police-citizen encounter did not amount to a seizure requiring reasonable suspicion of criminal activity. Remand to the district court was unnecessary to address the issue of the stop. People v. Johnson, 865 P.2d 836 (Colo. 1994).

Suppression of evidence obtained during extraterritorial arrest. Future violations of the statutes governing peace officers' authority to arrest may trigger application of the exclusionary rule and require suppression of evidence obtained in the course of an extraterritorial arrest. People v. Wolf, 635 P.2d 213 (Colo. 1981).

Officer making unconstitutional search violates law. Every officer making an unconstitutional search, and every officer advising or conniving at such conduct is a law violator. Massantonio v. People, 77 Colo. 392, 236 P. 1019 (1925).

Defendant's allegedly criminal acts were sufficiently attenuated from any illegal conduct of sheriff's deputies so that exclusion of evidence was not appropriate. Evidence of a new crime committed in response to an unlawful trespass is admissible. People v. Doke, 171 P.3d 237 (Colo. 2007).

Fruits of unlawful search are inadmissible in evidence. The fruits of an unlawful search are, by Mapp v. Ohio (367 U.S. 643, 81 S. Ct.

1684, 6 L. Ed. 2d 1081 (1961)) and by Crim. P. 41 inadmissible in evidence. Hernandez v. People, 153 Colo. 316, 385 P.2d 996 (1963).

Laudable ends no longer justify illegal means to obtain those ends and illegal searches can no longer furnish a foundation for the admission of evidence found and taken under illegal search. Wilson v. People, 156 Colo. 243, 398 P.2d 35 (1965).

In granting motion to suppress, where court finds that probable cause for arrest without a warrant is not shown, the subsequent search and seizures are invalid. People v. Trujillo, 179 Colo. 428, 500 P.2d 1176 (1972).

Fruits of search predicated on unlawful arrest cannot be used as evidence against defendants. Gale v. People, 174 Colo. 491, 484 P.2d 1210 (1971).

Where articles are seized incident to an arrest which is made without probable cause, the defendants' motion to suppress will be sustained. People v. Navran, 174 Colo. 222, 483 P.2d 228 (1971).

Where the arrest of the defendant was "unreasonable" when tested by balancing the need to arrest under the exigencies of the situation against the invasion of the privacy which the arrest entailed, any evidence obtained is not admissible. People v. Nelson, 172 Colo. 456, 474 P.2d 158 (1970).

Where police officers' initial entry into apartment to execute arrest warrant was unlawful, all physical evidence seized from defendant's person and from other occupants of apartment should have been suppressed. People v. Aarness, 116 P.3d 1233 (Colo. App. 2005).

Where the sole basis of a probable cause for the search of the defendant's home presented in the affidavit was his confession, and that confession was illegally obtained under the "fruit of the poison tree" doctrine, the articles obtained must be suppressed. People v. Vigil, 175 Colo. 373, 489 P.2d 588 (1971).

Having arrested defendant illegally, the prosecution cannot claim that evidence obtained as a result of this arrest need not be suppressed because it was abandoned by defendant. Mora v. People, 178 Colo. 279, 496 P.2d 1045 (1972).

Unless recognized exception to the exclusionary rule applies, evidence obtained by police as result of an unlawful search and seizure is not admissible against the defendant. People v. Fournier, 793 P.2d 1176 (Colo. 1990); People v. McKinstry, 843 P.2d 18 (Colo. 1993).

Fruit must be obtained as direct result of violation of defendant's constitutional rights. To apply the "fruit of the poison tree" doctrine, which is applicable in Colorado, the fruit of the search must have been obtained as the direct result of a violation of the defendant's constitutional rights--such a violation is said to taint the tree and, in turn, the fruit. People v. Vigil, 175 Colo. 373, 489 P.2d 588 (1971).

The basic test utilized in determining if evidence is the "fruit" of an unlawful arrest is whether, granting establishment of the primary illegality, the evidence to which the instant objection is made has been come at by exploitation of that illegality or instead by means sufficiently distinguishable to be purged of the primary taint. Wong Sun v. United States, 371 U.S. 471, 83 S. Ct. 407, 9 L. Ed. 2d 441 (1963); People v. McCoy, 832 P.2d 1043 (Colo. App. 1992), aff'd, 870 P.2d 1231 (Colo. 1994).

Even if seizure of person is unconstitutional, evidence abandoned prior to that seizure is not the fruit of the seizure and should not be suppressed. Defendant who dropped bag of cocaine prior to arrest could not have the cocaine

suppressed at trial using the argument of unconstitutional seizure. People v. McClain, 149 P.3d 787 (Colo. 2007).

When "fruit of the poison tree" doctrine inapplicable. Where there is no illegality involved in the first seizure, there is no "poisonous fruit" requiring the application of the derivative evidence rule. People v. Meyer, 628 P.2d 103 (Colo. 1981).

Suppression of evidence seized in general exploratory search without probable cause. Where evidence seized was not discovered in plain view, by a "frisk" of the defendant for assaultive weapons, by a search of the defendant for instrumentalities or evidence of the offense for which he was arrested, by an inventory search, or by a search for evidence or instrumentalities of an offense for which there existed probable cause but, rather, was seized during a general exploratory search for which no probable cause existed, defendant's motion to suppress the evidence will be granted. People v. Valdez, 182 Colo. 80, 511 P.2d 472 (1973).

Exclusionary prohibition extends as well to the indirect as the direct products of unlawful invasions. People v. Vigil, 175 Colo. 373, 489 P.2d 588 (1971).

The exclusionary rule has traditionally barred from trial physical, tangible materials obtained either during or as the direct result of an unlawful invasion. People v. Vigil, 175 Colo. 373, 489 P.2d 588 (1971).

The exclusionary rule not only bars the admission of evidence illegally acquired, but also prohibits the government from utilizing evidence which is the direct fruit or product of the initial illegality. People v. Hogan, 649 P.2d 326 (Colo. 1982); People v. Breland, 728 P.2d 763 (Colo. App. 1986).

But to suppress statements made by individuals subsequent to their illegal arrest with the defendant, defendant must establish that the incriminating statements arose from and were directly dependent upon defendant's own illegal arrest. People v. Zamora, 695 P.2d 292 (Colo. 1985).

Use of exclusionary rule not warranted where it would not result in appreciable deterrence. Exclusionary rule is the judicially created remedy, and not a personal constitutional right, that is designed to safeguard fourth amendment rights through its deterrent effect. Where DNA sample was provided as a condition of probation for a later-determined illegal sentence, case does not implicate exclusionary rule: (1) Constitutional error did not involve the police; and (2) conduct failed the "assessment of flagrancy" test in that the conduct was not sufficiently deliberate that exclusion could meaningfully deter it. People v. Glasser, 293 P.3d 68 (Colo. App. 2011).

Where evidence from search merely cumulative, constitutionality of search not determined. Where the evidence which was discovered in a warrant search and thereafter introduced at trial was merely cumulative of other overwhelming and competent evidence of the defendant's guilt, the constitutionality of the search need not be determined. People v. Wieckert, 191 Colo. 511, 554 P.2d 688 (1976), overruled on other grounds, Villafranca v. People, 194 Colo. 472, 573 P.2d 540 (1978).

Test of admissibility of evidence seized in lawful search following unlawful search is whether, granting establishment of the primary illegality, the evidence to which objection is made has been come at by exploitation of that illegality or instead by means sufficiently distinguishable to be purged of the primary taint. People v. Hannah, 183 Colo. 9, 514 P.2d 320 (1973).

When "fruit of the poison

tree" doctrine inapplicable. The "fruit of the poison tree" doctrine is inapplicable where the allegedly tainted information was in fact obtained by officers from independent, lawful sources apart from the defendant's statements. People v. Vigil, 175 Colo. 373, 489 P.2d 588 (1971).

Cocaine seized by police as a result of an unlawful entry into an apartment in which the defendant was arrested does not fall within the inevitable discovery exception to the exclusionary rule since prosecutors could not establish that the evidence ultimately or inevitably would have been discovered by lawful means. People v. Burola, 848 P.2d 958 (Colo. 1993).

Evidence discovered after a nonconsensual, warrantless entry into the defendant's residence was properly suppressed. Because the officers were conducting a narcotics investigation, their nonconsensual entry was not justified by the existence of outstanding municipal warrants for the defendant based on dog license violations. People v. O'Hearn, 931 P.2d 1168 (Colo. 1997).

Under "independent source" exception to the exclusionary rule. Unconstitutionally obtained evidence may be admitted if the prosecution can establish that it was also discovered by means independent of the illegality. People v. Schoondermark, 759 P.2d 715 (Colo. 1988) (disapproving People v. Barndt, 199 Colo. 51, 604 P.2d 1173 (1980); People v. Turner, 660 P.2d 1284 (Colo. 1983); and People v. Griffith, 727 P.2d 55 (Colo. 1986)).

The independent source exception allows the admission of evidence obtained as the fruit of an illegal warrantless search or seizure where the government learned of the evidence "from an independent source". People v. Lewis, 975 P.2d 160 (Colo. 1999).

Under this exception, however, if search warrant is based partly on information unlawfully obtained, trial court must determine whether the lawful seizure was genuinely independent of the tainted seizure. In the absence of such determination on appeal, remand is proper so that the trial court can make the determination. People v. Cruse, 58 P.3d 1114 (Colo. App. 2002).

The attenuation exception to the poisonous tree doctrine applies when the connection between the lawless conduct of police and their discovery of the challenged evidence is so attenuated to dissipate the taint. There was no time delay from when the deputy unlawfully entered the hotel room and defendant's request for help, so the doctrine of attenuation does not apply. People v. Prescott, 205 P.3d 416 (Colo. App. 2008).

Illegally seized evidence admissible for impeachment purposes. Evidence that is a product of an unlawful search is admissible for the limited purpose of impeachment of a defendant's testimony. LeMasters v. People, 678 P.2d 538 (Colo. 1984).

Where illegally seized evidence is admitted for impeachment purposes, the nexus between defendant's statements and the contradictory evidence introduced on cross-examination must be apparent. LeMasters v. People, 678 P.2d 538 (Colo. 1984).

Suppressed evidence which tended to establish defendant's presence at scene of crime was not admissible on cross-examination to impeach defendant's direct testimony, where defendant in direct testimony did not refer to suppressed items. And where defendant made no statement on cross-examination that was properly impeachable by the suppressed items. LeMasters v. People, 678 P.2d 538 (Colo. 1984).

Suppressed evidence was not admissible for impeachment purposes where it was not "reasonably

suggested" by defendant's direct testimony. People v. Eickman, 728 P.2d 369 (Colo. App. 1986).

Prosecution's burden of proof. The prosecution bears the burden of establishing that the evidence obtained from a witness was not obtained through exploitation of the defendant's illegally obtained statements. People v. Briggs, 668 P.2d 961 (Colo. App. 1983).

Evidence seized by arresting officers acting outside territorial limit of authority. Though police officers not in fresh pursuit exceeded their authority in arresting a defendant outside the territorial limit of their authority, suppression of evidence seized from the defendant incident to the arrest was not required where the warrant itself established probable cause. People v. Hamilton, 666 P.2d 152 (Colo. 1983).

Evidence seized in violation of a statutory provision may be suppressed only if the unauthorized search and seizure violated constitutional restraints on unreasonable searches and seizures. People v. Hamer, 689 P.2d 1147 (Colo. App. 1984); People v. Vigil, 729 P.2d 360 (Colo. 1986); People v. Fournier, 793 P.2d 1176 (Colo. 1990).

Failure for good cause to comply with Crim. P. 41(c)(1), which requires affidavits for search warrants to be sworn to or affirmed before the issuing judge, does not constitute a constitutional violation that automatically triggers the exclusionary rule. People v. Fournier, 793 P.2d 1176 (Colo. 1990).

Independent source exception sufficient to legitimize seizure, under validly issued warrant, of evidence first encountered upon illegal entry. Where warrant issued after illegal entry was based upon facts known prior to and independently of illegal search, independent source would support legality of search. People v. Schoondermark, 759 P.2d 715 (Colo. 1988).

Independent source exception sufficient to legitimize seizure where affidavit in support of search warrant contained illegally obtained information but, after redacting the portions of the affidavit that were based on the illegal search, the remaining, lawfully obtained information established probable cause. People v. Pahl, 169 P.3d 169 (Colo. App. 2006).

Exclusionary rule inapplicable in attorney disciplinary proceeding. Disciplinary proceedings, which are sui generis, need not be afforded the same constitutional safeguards which are provided to an accused in a criminal case. The exclusionary rule should not be extended to provide a shield to a lawyer charged in a disciplinary complaint. People v. Harfmann, 638 P.2d 745 (Colo. 1981).

In civil proceedings, the suppression of illegally seized evidence is not always required. The determination of the applicability of the exclusionary rule beyond the context of a criminal prosecution is made by weighing the likely social benefits of excluding evidence against the likely costs of exclusion. Ahart v. Dept. of Corr., 943 P.2d 7 (Colo. App. 1996), aff'd, 964 P.2d 517 (Colo. 1998).

In cases in which an employee has a security- or safety-sensitive job, suppression of relevant evidence in a civil proceeding may not be the appropriate remedy for alleged constitutional violations. Ahart v. Dept. of Corr., 943 P.2d 7 (Colo. App. 1996).

Where outstanding arrest warrant was void from its inception, the arrest of the defendant violated fourth amendment to the United States Constitution and this section, and because neither the "good faith mistake" nor "technical violation" exceptions to the exclusionary rule, as defined in § 16-3-308, are applicable to the facts, evidence seized from

defendant was properly suppressed. People v. Mitchell, 678 P.2d 990 (Colo. 1984).

If government agents act in violation of fourth amendment guarantee against unreasonable search and seizure, such violation gives rise to a cause of action for damages resulting from such conduct. Walker v. City of Denver, 720 P.2d 619 (Colo. App. 1986).

Warrantless entry into a home is proscribed and evidence derived from the illegal entry must be suppressed in the absence of probable cause to believe that a crime has been committed and exigent circumstances necessitating immediate police action. People v. Lewis, 975 P.2d 160 (Colo. 1999).

The difference between a permissible consensual encounter at a person's doorway and an impermissible constructive entry depends on whether there was coercive conduct or a display of force by police officers. People v. Nelson, 2012 COA 37M, __ P.3d __.

Admission of the circumstances of the arrest in error did not violate defendant's fourth amendment right because the police never entered the defendant's home and defendant did not assert his right to have the police obtain an arrest warrant. Defendant voluntarily left his home so that the police could arrest him. People v. Summitt, 132 P.3d 320 (Colo. 2006).

Alleged conduct of bringing the media into plaintiff's home to film and record his arrest exceeded the scope of the arrest warrant and amounted to an unreasonable execution of a warrant, thus violating plaintiff's fourth amendment rights. Robinson v. City & County of Denver, 39 F. Supp. 2d 1257 (D. Colo. 1999).

Warrantless entry into private residence to inventory contents violated defendant's fourth amendment rights where home was seized pursuant to a temporary restraining order issued in a civil forfeiture case without probable cause to believe that the contents of the home were related to the nuisance activity. People v. Taube, 843 P.2d 79 (Colo. App. 1992).

Evidence discovered during inventory search of defendant's van was admissible in the absence of showing that police acted in bad faith or for the sole purpose of investigation. Colo. v. Bertine, 479 U.S. 367, 107 S. Ct. 738, 93 L. Ed. 2d 739 (1987).

The arrest of a person, together with the routine booking procedure incidental to such arrest, provides an adequate constitutional basis for a complete inventory search, including all articles and containers found in a purse. People v. Inman, 765 P.2d 577 (Colo. 1988).

Detention of safe after recovery from burglars who had stolen it from defendant until the safe was opened was not an unconstitutional seizure of safe. People v. Unruh, 713 P.2d 370 (Colo. 1986).

Statements made by a defendant subsequent to a warrantless arrest which could not be justified upon a basis of consent or exigent circumstances should have been suppressed notwithstanding that the defendant was given his Miranda rights where the record unequivocally established a straight, short, and unbroken line from the defendant's arrest to his confession. People v. Santisteven, 693 P.2d 1008 (Colo. App. 1984).

Other factors in determining whether a confession is obtained by exploitation of an illegal arrest: The temporal proximity of the arrest and the confession, the presence of intervening circumstances, and, particularly, the purpose and flagrancy of the official misconduct. People v. Lewis, 975 P.2d 160 (Colo. 1999).

Statements made by a

prisoner who is accompanied to a telephone by jailhouse personnel should not be suppressed because such a prisoner does not have a reasonable expectation of privacy in his telephone communications. People v. Smith, 716 P.2d 1115 (Colo. 1986).

Contents of package seized from detainee's coat pocket, which was discovered during initial pat-down search of defendant after decision was made to take him into civil protective custody due to his intoxication, was not admissible against him where after package was confiscated and identified as probable weapon, limited objectives of warrantless search had fully been accomplished and police were not justified in additional intrusion into defendant's privacy interest to support warrantless search of seized package. People v. Dandrea, 736 P.2d 1211 (Colo. 1987).

Exclusionary rule applies to the warrantless search of a passenger compartment of an automobile if the search goes beyond what is necessary to determine whether a suspect is armed. People v. Corpany, 859 P.2d 865 (Colo. 1993).

Defendant forfeited any expectation of privacy by delivery of unprocessed film to processor and government's delivery of the prints to the defendant and their recovery under a valid search warrant does not constitute an unreasonable search. People v. Atencio, 780 P.2d 46 (Colo. App. 1989), cert. denied, 790 P.2d 796 (Colo. 1990).

Evidence must be suppressed where officers elected to enter the backyard, walk to a garden and seize marijuana plants, all without first obtaining a warrant judicially authorizing such conduct, and where the defendant was not present on the property and aware police officers were also present. Hoffman v. People, 780 P.2d 471 (Colo. 1989).

Police officer's entry into fenced backyard constituted a warrantless search. Officer's probable cause to believe that a car in the driveway of a home had been stolen and that the responsible party was in the home did not create exigent circumstances that would allow an officer to enter the fenced backyard while other officers knocked on the front door. There was nothing to indicate that circumstances were moving so quickly that the officers could not have secured the area without entering the backyard and waited for a warrant. People v. Brunsting, 224 P.3d 259 (Colo. App. 2009).

Officer's unlawful entry into backyard tainted all further evidence requiring that all evidence obtained after entry into the backyard be suppressed. People v. Brunsting, 224 P.3d 259 (Colo. App. 2009).

Evidence of methamphetamine production seized from defendants' residence required to be suppressed where officer who executed search of residence relied on search warrant based upon affidavit containing his own false and recklessly made statements and other valid information in the affidavit was insufficient to support the finding of probable cause necessary for the issuance of a valid search warrant. People v. Kazmierski, 25 P.3d 1207 (Colo. 2001).

Evidence must be suppressed where there was probable cause but no exigent circumstances to justify a warrantless search. People v. Baker, 813 P.2d 331 (Colo. 1991), distinguished in that police did not inform anyone they detected the smell of iodine and there was no attempt to prevent officers from entering residence. People v. Winpigler, 8 P.3d 439 (Colo. 1999).

Emergency aid exception is an exception to both the warrant requirement and the usual probable cause requirement. To justify a warrantless search under the emergency

aid exception, though police do not have to have probable cause to believe that contraband or other evidence of criminal activity is located at a particular place, police must have a reasonable basis, approximating probable cause, to associate the emergency with the area or place to be searched. Police officer's conclusion that it was "within the realm of possibility" that someone was injured or hurt inside the home was insufficient as police must have more than a theoretical validation for their actions. People v. Hebert, 46 P.3d 473 (Colo. 2002).

Under the emergency aid exception, the prosecution must prove both that an immediate crisis existed and the probability that assistance would be helpful. It does not require probable cause, but the police must have a reasonable basis approximating probable cause that associates the emergency with the area to be searched. People v. Allison, 86 P.3d 421 (Colo. 2004).

Emergency aid exception justifies warrantless search when officers' main purpose is to render aid to victim, not search for evidence. Exception applies where prudent and trained police officers determine that an immediate crisis exists and that there is a probability their emergency assistance will prove helpful. People v. Souva, 141 P.3d 845 (Colo. App. 2005).

Trial court's suppression of evidence proper where warrantless entry by police into defendant's home was not justified under the medical emergency exception. There was no immediate crisis, objectively examined by a prudent and trained police officer, when defendant passed out for a few seconds at his door but immediately regained consciousness. People v. Smith, 40 P.3d 1287 (Colo. 2002).

Investigatory stop of defendant, who was passenger in car outside of drug suspect's house, was not based on reasonable suspicion of police officers and, therefore, subsequent arrest of defendant and search incident to arrest was illegal and all evidence obtained as result of arrest and search constitutes fruit of the poisonous tree. People v. Carillo-Montes, 796 P.2d 970 (Colo. 1990).

Arresting officers lacked probable cause to support a warrantless search of defendant's vehicle or justification for a search incident to his arrest, as that doctrine was subsequently clarified in Arizona v. Gant, 556 U.S. 332, 129 S. Ct. 1710, 173 L. Ed. 2d 485 (2009). Being stopped for a traffic infraction immediately after leaving a suspect import store and being in possession of a recently purchased and still unwrapped and unused "pot pipe", although sufficient to justify an arrest for possession of drug paraphernalia, is nevertheless insufficient to provide reasonable, articulable suspicion that additional evidence of that offense might be found in the arrestee's vehicle. People v. McCarty, 229 P.3d 1041 (Colo. 2010).

Police lacked probable cause to search trunk of vehicle incident to arrest of driver. The nervousness of an underage driver coupled with the driver's unlawful possession of a single prescription pill is not enough to elevate suspicion to a fair probability that more contraband would be found in the vehicle. People v. Coates, 266 P.3d 397 (Colo. 2011).

Although police officer was justified in making investigatory stop, evidence seized was properly suppressed as search exceeded limits of permissible protective search for weapons. People v. Martinez, 801 P.2d 542 (Colo. 1990).

In order for an investigatory stop to be constitutionally valid, three prerequisites must be met: (1) There

must be an articulable and specific basis in fact for suspecting that criminal activity has taken place, is in progress, or is about to occur; (2) the purpose of the intrusion must be reasonable; and (3) the scope and character of the intrusion must be reasonably related to its purpose. People v. Rodriguez, 849 P.2d 799 (Colo. App. 1992); People v. Dowhan, 951 P.2d 905 (Colo. 1998); People v. Salazar, 964 P.2d 502 (Colo. 1998); People v. Dixon, 21 P.3d 440 (Colo. App. 2000).

And the existence of the three prerequisites to a valid investigatory stop must be judged against an objective standard that takes into consideration the facts and circumstances known to the officer at the time of the intrusion and evaluates the scope of the intrusion in light of those facts. People v. Dixon, 21 P.3d 440 (Colo. App. 2000).

Observations of peace officer and the information known to him immediately prior to investigatory stop of defendant provided officer with reasonable suspicion that defendant had engaged, or was about to engage, in a criminal act where officer had received an anonymous tip that there was suspected drug activity at a site known for prior drug transactions and where such tip was corroborated by the officer's own observations. People v. Canton, 951 P.2d 907 (Colo. 1998).

An objective standard is used in determining whether there was reasonable suspicion necessary for the investigatory stop. In determining whether reasonable suspicion exists, we must look to the totality of the circumstances. The facts known to the officers immediately prior to the intrusion are of critical importance. People v. Rodriguez, 849 P.2d 799 (Colo. App. 1992).

When the purpose for which an investigatory stop was instituted has been accomplished and no other reasonable suspicion exists to support further investigation, there is no justification for continued detention and interrogation of citizens. People v. Redinger, 906 P.2d 81 (Colo. 1995).

Where there are dual purposes for an arrest and search, the trial court must determine whether the purpose of the arrest is a mere pretext intended to validate an otherwise invalid search. Where the officer had information that drugs were located in the defendant's trunk and the officer found the drugs after arresting the defendant on a traffic stop and conducting an inventory search of the car, the trial court was required to determine whether the arrest and resulting inventory search were a pretext for conducting an investigatory search. People v. Hauseman, 900 P.2d 74 (Colo. 1995) (interpreting the fourth amendment to the U.S. Constitution).

There is no consensual encounter where a reasonable person under the circumstances would not have believed he or she was free to leave or to disregard the officer's requests. A seizure occurred without facts justifying reasonable suspicion of a person having committed a crime. People v. Heilman, 52 P.3d 224 (Colo. 2002).

Defendant's "furtive gesture" was too ambiguous to constitute the basis for an investigatory stop and prosecution did not carry the burden that the evidence was not the fruit of the prior illegality. People v. Heilman, 52 P.3d 224 (Colo. 2002).

There was no articulable and specific basis in fact to support a reasonable suspicion of criminal conduct where an anonymous tip consisted of a physical description of a person and his clothing and a claim that the person stored cocaine in his shoe and the police officer corroborated only that a person matching the description given by the informant was present where the informant said he would be. People v. Salazar, 964 P.2d 502 (Colo. 1998).

Police officer may not lawfully detain a passenger who has exited from a vehicle that has stopped at its destination, when the driver of the vehicle has been contacted for minor traffic violations, and when the officer lacks reasonable suspicion to believe that the passenger is involved in criminal activity. People v. Dixon, 21 P.3d 440 (Colo. App. 2000).

Section 8. Prosecutions - indictment or information. Until otherwise provided by law, no person shall, for a felony, be proceeded against criminally otherwise than by indictment, except in cases arising in the land or naval forces, or in the militia when in actual service in time of war or public danger. In all other cases, offenses shall be prosecuted criminally by indictment or information.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 29.

Cross references: For prosecution by indictment or information, see Crim. P. 6 to 9 as well as part 2 of article 5 of title 16.

ANNOTATION

Law reviews. For article, "By Leave of Court First Had", see 8 Dicta 10 (May 1931). For article, "By Leave of Court First Had", see 8 Dicta 14 (June 1931).

This section directs that felony proceedings must be initiated by indictment and authorizes the general assembly to provide alternative methods of proceeding. Falgout v. People, 170 Colo. 32, 459 P.2d 572 (1969).

This section recognizes but two methods whereby person may be proceeded against criminally in the courts: the one method is by indictment; the other, by information. People v. Gibson, 53 Colo. 231, 125 P. 531 (1912).

Information is written accusation of crime preferred by prosecuting officer without the intervention of a grand jury. It is used in the constitution in the common-law sense of the term, that is, an accusation preferred, as at common law, by the public prosecutor. People v. Gibson, 53 Colo. 231, 125 P. 531 (1912).

There is no constitutional guarantee of grand jury indictment. Losavio v. Robb, 195 Colo. 533, 579 P.2d 1152 (1978).

No constitutional provision forbids indictments and informations as concurrent remedies when surrounded by proper regulations and safeguards. Falgout v. People, 170 Colo. 32, 459 P.2d 572 (1969).

General assembly may provide for prosecuting misdemeanors before justices of the peace, upon sworn complaint or other information. In re Constitutionality of House Bill No. 158, 9 Colo. 625, 21 P. 472 (1886).

Expedience may not override section. While summary procedure in police court cases has been countenanced from the standpoint of expediency, expedience may not override the constitution and dethrone rights guaranteed thereunder. City of Canon City v. Merris, 137 Colo. 169, 323 P.2d 614 (1958).

State constitution leaves status of contempts as to pending causes as it was at common law, therefore unimpaired as to procedure, or as to what constitutes contempt, or as to the defense to contempts by the constitutional provisions, as to freedom of speech, section 10 of this article; prosecution of offenses by indictment or information, this section; due process of law, section 25 of this article; warrants of arrest, section 7 of

this article. People ex rel. Attorney Gen. v. News-Times Publishing Co., 35 Colo. 253, 84 P. 912 (1906), dismissed, 205 U.S. 454, 27 S. Ct. 556, 51 L. Ed. 879 (1907).

The power to punish contempts is inherent in courts, and summary proceedings for contempts without indictment or trial by jury have always been recognized. The constitution was not intended to change the practice in this respect. Such summary proceedings are therefore not inconsistent with the constitutional guarantees relating to criminal prosecutions. Wyatt v. People, 17 Colo. 252, 28 P. 961 (1892).

Applied in In re Lowrie, 8 Colo. 499, 9 P. 489 (1885); Heinssen v. State, 14 Colo. 228, 23 P. 995 (1890); In re Dolph, 17 Colo. 35, 28 P. 470 (1891); Grandbouche v. People, 104 Colo. 175, 89 P.2d 577 (1939).

Section 9. Treason - estates of suicides. Treason against the state can consist only in levying war against it or in adhering to its enemies, giving them aid and comfort; no person can be convicted of treason, unless on the testimony of two witnesses to the same overt act, or on his confession in open court; no person can be attainted of treason or felony by the general assembly; no conviction can work corruption of blood or forfeiture of estate; the estates of such persons as may destroy their own lives shall descend or vest as in cases of natural death.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 30.

Editor's note: Compare Commonwealth of Pennsylvania v. Nelson, 350 U.S. 497, 100 L. Ed. 640, 76 S. Ct. 477 (affirming Commonwealth of Pennsylvania v. Nelson, 377 Pa. 58, 104 A.2d 133 whereby the enforceability of a state anti-sedition act was successfully resisted as superseded by federal intervention into the field by the Smith Act which proscribed the same conduct as did the state act); and Uphaus v. Wyman, 360 U.S. 72, 79 S. Ct. 1040, 3 L. Ed. 2d 1090 (1959) (Distinguishing Commonwealth of Pennsylvania v. Nelson, 350 U.S. 497, 76 S. Ct. 477, 100 L. Ed. 640 (1956) on the state's right to require the production of corporate papers of a state-chartered corporation pursuant to legislative investigation to determine if state policy concerning seditionary activities had been violated, not impaired by the Smith Act.).

ANNOTATION

Law reviews. For article, "State and Federal Forfeiture of Property Used in Criminal Activity", see 11 Colo. Law. 2597 (1982).

This section does not prohibit an order of forfeiture entered under the Colorado public nuisance statute. People v. Milton, 732 P.2d 1199 (Colo. 1987).

Section 10. Freedom of speech and press. No law shall be passed impairing the freedom of speech; every person shall be free to speak, write or publish whatever he will on any subject, being responsible for all abuse of that liberty; and in all suits and prosecutions for libel the truth thereof may be given in evidence, and the jury, under the direction of the court, shall determine the law and the fact.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 30.

Cross references: For statutory provision concerning truth as a defense or

mitigating factor in a defamation action, see § 13-25-125; for the privilege of nondisclosure of news information by newspersons, see § 13-90-119; for provisions relating to governmental access to news information, see article 72.5 of title 24; for freedom of press for students in public schools, see § 22-1-120; for what constitutes criminal libel, see § 18-13-105.

ANNOTATION

Law reviews. For article, "Some Legal Aspects of the Colorado Coal Strike", see 4 Den. B. Ass'n Rec. 22 (Dec. 1927). For article, "Martial Law in Colorado", see 5 Den. B. Ass'n Rec. 4 (Feb. 1928). For article, "An Analysis of the Colorado Labor Peace Act", see 19 Rocky Mt. L. Rev. 359 (1947). For note, "Rights and Duties of the Press in Criminal Cases", see 27 Dicta 382 (1950). For article, "The Law of Libel in Colorado", see 28 Dicta 121 (1951). For article, "Libel is a Limitation on Newspaper Publications", see 25 Rocky Mt. L. Rev. 278 (1953). For article, "Torts", see 31 Dicta 456 (1954). For comment, "Reporter's Privilege: Pankratz v. District Court", see 58 Den. L.J. 681 (1981). For article, "The Colorado Supreme Court's Developing Defamation Guidelines: Colorado Enters the Quagmire", see 59 Den. L.J. 627 (1982). For article, "Some Observations on the Swinging Courthouse Doors of Gannett and Richmond Newspapers", see 59 Den. L.J. 721 (1982). For article, "Obscenity Law in Colorado: The Struggle to Pass a Constitutional Statute", see 60 Den. L.J. 49 (1982). For note, "A First Amendment Analysis of Governmental Suppression of Speech", see 60 Den. L.J. 105 (1982). For article, "Constitutional Law", which discusses Tenth Circuit decisions dealing with freedom of speech, see 61 Den. L.J. 221 (1984). For article, "Constitutional Law", which discusses a Tenth Circuit decision dealing with freedom of speech, see 62 Den. U. L. Rev. 91 (1985). For article, "Regulations of Speech Intended to Affect Behavior", see 63 Den. U. L. Rev. 37 (1986). For article, "Constitutional Law", which discusses Tenth Circuit decisions dealing with freedom of speech, see 63 Den. U. L. Rev. 247 (1986). For article, "Libel and Letters to the Editor: Toward an Open Forum", see 57 U. Colo. L. Rev. 651 (1986). For comment, "Unlimited PACcess to the Political Process: First Amendment Protection of Independent Expenditures by Political Action Committees", see 57 U. Colo. L. Rev. 759 (1986). For comment, "The Evolution of a Public Issue: New York Times Through Greenmoss", see 57 U. Colo. L. Rev. 773 (1986). For article, "Pronouncements of the U.S. Supreme Court Relating to the Criminal Law Field: 1985-1986", which discusses cases relating to free expression and association, see 15 Colo. Law. 1560 (1986). For comment, "Anderson v. Liberty Lobby, Inc.: Federal Rules Decision or First Amendment Case?", see 59 U. Colo. L. Rev. 933 (1988). For articles, "Civil Rights" and "Constitutional Law", which discuss Tenth Circuit decisions dealing with freedom of speech, see 65 Den. U. L. Rev. 389 and 511 (1988). For article, "Emotional Distress, The First Amendment, and 'This kind of speech': A Heretical Perspective on Hustler Magazine v. Falwell", see 60 U. Colo. L. Rev. 315 (1989). For article, "Learned Hand and the Self-government Theory of the First Amendment: Masses Publishing Co. v. Patten", see 61 U. Colo. L. Rev. 1 (1990). For article, "The Flag-Burning Episode: An Essay on the Constitution", see 61 U. Colo. L. Rev. 39 (1990). For article, "The H-Bomb Injunction", see 61 U. Colo. L. Rev. 55 (1990). For article, "Constitutional Law", which discuss Tenth Circuit

decisions dealing with freedom of speech, see 67 Den. U. L. Rev. 653 (1990). For article, "Freedom of Speech Versus Cyber Threats", see 29 Colo. Law. 79 (August 2000). For article, "Public Employee Expression Law Under the Colorado and Federal Constitutions", see 34 Colo. Law. 77 (April 2005). For comment, "A Fundamental Right to Read: Reader Privacy Protections in the U.S. Constitution", see 82 U. Colo. L. Rev. 307 (2011).

The first amendment guarantee of freedom of expression includes freedom of association and guarantees the right to associate or refuse to associate with whomever one chooses. Brandon v. Springspree, Inc., 888 P.2d 357 (Colo. App. 1994).

Guarantees against exercise of arbitrary power by any department of government, or agency thereof, are found in this section and section 25 of this article. People v. Harris, 104 Colo. 386, 91 P.2d 989 (1939).

This section provides broader protection for freedom of speech than does the first amendment to the U.S. Constitution, and, therefore, obscenity statutes must be drafted so they are compatible with both constitutions. People v. Seven Thirty-five E. Colfax, Inc., 697 P.2d 348 (Colo. 1985); People v. Ford, 773 P.2d 1059 (Colo. 1989); Bock v. Westminster Mall Co., 819 P.2d 55 (Colo. 1991).

This section secures to the people a full and free discussion of public affairs. Pierce v. St. Vrain Valley Sch. Dist., 944 P.2d 646 (Colo. App. 1997), rev'd on other grounds, 981 P.2d 600 (Colo. 1999).

This section provides greater protection for freedom of speech than does the first amendment. Holliday v. Reg'l Transp. Dist., 43 P.3d 676 (Colo. App. 2001).

But test established by federal first amendment jurisprudence applies where restriction of speech on public property is at issue. Holliday v. Reg'l Transp. Dist., 43 P.3d 676 (Colo. App. 2001).

Three-step test for determining whether a government policy impermissibly excludes speech from a particular forum is whether: (1) The speech at issue is protected and whether the government is involved in its abridgement; (2) the forum is public or nonpublic; and (3) the justification for excluding the speech satisfies the requisite standard. Holliday v. Reg'l Transp. Dist., 43 P.3d 676 (Colo. App. 2001).

Summary judgment for defendant improper: (1) Where plaintiffs' letters that included allegations of conflicts of interest, waste, mismanagement, and cronyism in the operation of the regional transportation district (RTD) addressed matters of public concern and were therefore protected speech; (2) where administrative resources at RTD headquarters were not a public forum; but (3) evidence raised issues of material fact as to whether policy prohibiting the use of RTD administrative resources for purposes not clearly tied to carrying out the RTD's statutory and RTD board-imposed responsibilities was applied in a manner that was retaliatory or tantamount to prohibited viewpoint discrimination. While the government need not subsidize the exercise of free speech, it may not discriminate between speakers on the basis of their viewpoints. Holliday v. Reg'l Transp. Dist., 43 P.3d 676 (Colo. App. 2001).

While this section provides broader protection for freedom of speech in the context of political speech and obscenity than does the first amendment to the U.S. Constitution, it does not provide greater protection in the context of zoning regulations. Z.J. Gifts D-2, L.L.C. v. City of Aurora, 93 P.3d 633 (Colo. App. 2004).

Constitutional guarantees are not always absolute and full exercise thereof is not always possible. Stapleton v. District Court, 179 Colo. 187, 499 P.2d 310 (1972).

Regulation of conduct touching first amendment rights requires careful balancing. The regulation of conduct which touches first amendment rights requires that an appellate court carefully balance the right of a city's exercise of its police power against an ordinance's infringement on protected speech. Williams v. City & County of Denver, 622 P.2d 542 (Colo. 1981).

Freedom of speech includes the individual right to purchase and read whatever books he or she wishes anonymously. This freedom advances the free will of thinking, discovery, and the spread of political truth. Tattered Cover, Inc. v. City of Thornton, 44 P.3d 1044 (Colo. 2002).

When the government seeks to use a search warrant to discover customer book purchase records from an innocent, third-party bookstore, it must demonstrate a compelling need for the information sought. In determining whether government officials have met this standard, the court may consider whether there are reasonable alternative means of satisfying the asserted need, whether the warrant is overly broad, and whether the records are sought for reasons related to the content of the books. If there is a compelling need, then the court must balance law enforcement's need for the records against the harm caused to constitutional interests by execution of the warrant. Tattered Cover, Inc. v. City of Thornton, 44 P.3d 1044 (Colo. 2002).

An innocent, third-party bookstore must be afforded an opportunity for a hearing prior to the execution of any search warrant that seeks to obtain its customers' book-purchasing records. At the hearing, the court will apply the balancing test described above. Tattered Cover, Inc. v. City of Thornton, 44 P.3d 1044 (Colo. 2002).

The department of corrections' regulation that precludes verbal abuse does not violate the first amendment when applied to the inmate's grievance process. The regulation has more than a formalistic logical connection between itself and the department's legitimate penological interest. Alward v. Golder, 148 P.3d 424 (Colo. App. 2006).

Limitation of section's operation. In harmonizing this section with other provisions of the constitution, courts have necessarily limited the operation of this section. Further limitation should not be imposed except in cases of clear necessity. Fort v. People ex rel. Coop. Farmers' Exch., Inc., 81 Colo. 420, 256 P. 325 (1927).

Municipalities may have significant governmental interest in imposing reasonable limitations on the time, place, and manner of presentation of some forms of live, nude entertainment. Marco Lounge, Inc. v. City of Fed. Heights, 625 P.2d 982 (Colo. 1981); City of Colo. Springs v. 2354 Inc., 896 P.2d 272 (Colo. 1995).

Government has substantial interest in preserving the character and quality of residential neighborhoods by insulating these areas from the deleterious secondary effects associated with commercially operated nude entertainment establishments. 7250 Corp. v. Bd. of County Comm'rs, 799 P.2d 917 (Colo. 1990).

Government regulations establishing a system of prior restraint are presumed invalid and must be measured by strict scrutiny. City of Colo. Springs v. 2354 Inc., 896 P.2d 272 (Colo. 1995).

"Prior restraint" describes an administrative or judicial order

that forbids certain communications prior to the communication occurring. Prior restraint of publication is an extraordinary remedy carrying a heavy presumption of unconstitutionality. To justify prior restraint, the state must have an interest of the highest order to protect. The district court's order prohibiting the media from possessing and revealing the content of in camera transcripts that were sent to the media in error is prior restraint. People v. Bryant, 94 P.3d 624 (Colo. 2004).

To determine if the prior restraint is necessary, the measure must protect against an evil that is great and certain that cannot be mitigated by less intrusive measures. There would be a great and certain harm in allowing publication of transcripts of in camera proceedings involving rape shield evidence. First, reporting the information would give a stamp of authenticity as opposed to rumor and speculation because the information was gleaned under oath in court. Second, there is a great interest in upholding the state rape shield law and protecting future sexual assault victims. The state has a very strong interest in protecting the victim through the rape shield law in this case because the victim's sexual conduct is a very private matter. Third, the information is still private. Therefore, there is a minimal burden on the press because the information was not public, so there was no risk in not publishing something others would publish or failing to report public information. In total, these factors indicate the harm would be great and certain if the transcripts were published. The court's order therefore was not an unconstitutional prior restraint, but it was necessary for the supreme court to narrow the order. People v. Bryant, 94 P.3d 624 (Colo. 2004).

Under first amendment, the proper test for permissibility of government-imposed content-neutral restrictions in a public forum is whether they are narrowly tailored to serve a significant state interest and allow for ample alternative channels of communication. Lewis v. Colo. Rockies Baseball Club, 941 P.2d 266 (Colo. 1997).

Any system of prior restraint is subject to heavy presumption against its constitutional validity. People ex rel. McKevitt v. Harvey, 176 Colo. 447, 491 P.2d 563 (1971).

Interest of accused, whose life and liberty are in jeopardy, to fair trial by impartial jury is paramount, and may require, depending on circumstances of case, limitations upon exercise of right of free speech and of press. Stapleton v. District Court, 179 Colo. 187, 499 P.2d 310 (1972).

Abridgement of liberty of discussion can be justified only where clear danger of substantive evils arises under circumstances affording no opportunity to test the merits of ideas by competition for acceptance in the market of public opinion. Pueblo Bldg. & Constr. Trades Council v. Harper Constr. Co., 134 Colo. 469, 307 P.2d 468 (1957).

Duty to prevent encroachment upon constitutional guarantees of liberty and free speech rests not only upon the general assembly but upon the judicial branch of the government. Pueblo Bldg. & Constr. Trades Council v. Harper Constr. Co., 134 Colo. 469, 307 P.2d 468 (1957).

Conditions for upholding such restraint. To be upheld, any restraint which is imposed in advance of a final judicial determination on the merits must be limited to the shortest fixed time period compatible with sound judicial resolution, and the procedure must also assure a prompt, final judicial decision. People ex rel. McKevitt v. Harvey, 176 Colo. 447, 491 P.2d 563 (1971).

Government regulations

that prohibit future dissemination of constitutionally protected speech constitute prior restraints. City of Lakewood v. Colfax Unlimited Ass'n, 634 P.2d 52 (Colo. 1981); City of Colo. Springs v. 2354 Inc., 896 P.2d 272 (Colo. 1995).

In determining whether an ordinance constitutes prior restraint, the court must first decide whether the ordinance contains adequate procedural safeguards to ensure a licensing determination within a defined time period and that prompt judicial review of the determination is available. City of Colo. Springs v. 2354 Inc., 896 P.2d 272 (Colo. 1995).

If procedural safeguards are adequate then the court must determine whether there is a compelling government interest and whether the criteria for issuing licenses is sufficiently narrow, objective, and definite to prohibit the licensing officer from exercising unfettered discretion. City of Colo. Springs v. 2354 Inc., 896 P.2d 272 (Colo. 1995).

Standing to challenge obscenity statutes. The rules of standing are broadened in first amendment cases to permit a party to assert the facial overbreadth of statutes which may chill the constitutionally protected expression of third parties, regardless of whether the statute could be constitutionally applied to the conduct of the party before the court. People v. Seven Thirty-five East Colfax, Inc., 697 P.2d 348 (Colo. 1985); 7250 Corp. v. Bd. of County Comm'rs, 799 P.2d 917 (Colo. 1990).

Construction of injunctive order in doubtful cases. In doubtful cases an injunctive order should not be so construed as to forbid the discussion of matters of public interest, in view of this section. Fort v. People ex rel. Coop. Farmers' Exch., Inc., 81 Colo. 420, 256 P. 325 (1927).

Obscenity statute that defines material that is patently offensive in terms of community standards of tolerance satisfies Colorado and U.S. Constitutions and is not overbroad. People v. Ford, 773 P.2d 1059 (Colo. 1989).

Child pornography is not material which is protected by the first amendment to the U.S. Constitution or by this section. People v. Enea, 665 P.2d 1026 (Colo. 1983).

Child pornography is not protected speech. People v. Batchelor, 800 P.2d 599 (Colo. 1990).

Statutes designed to restrict children's access to sexually explicit material found unconstitutional because overly broad. Tattered Cover, Inc. v. Tooley, 696 P.2d 780 (Colo. 1985).

But excessive sweep of zoning regulation may give state-liquor-licensee standing. Excessive sweep of city's zoning regulation forbidding live, nude entertainment, which applies to more than just state-liquor-licensed establishments, if not supportable as a reasonable time, place and manner restriction, is both real and substantial and a state-liquor-licensee has standing to challenge the zoning ordinance as overbroad. Marco Lounge, Inc. v. City of Fed. Heights, 625 P.2d 982 (Colo. 1981); Williams v. City & County of Denver, 622 P.2d 542 (Colo. 1981).

Section 18-6-403 prohibiting the making of materials depicting a child being used for explicit sexual conduct is not overbroad or vague. The prohibition is definitively limited to material made for the purpose of overt sexual gratification or stimulation of the persons involved and does not reach constitutionally protected materials depicting nude children for family, educational, medical, artistic, or other legitimate purposes. The constitutionally required element of scienter is satisfied by the degree of culpability: "knowingly". People v. Batchelor, 800 P.2d 599 (Colo. 1990).

Nude entertainment in

establishments holding liquor licenses. A state agency regulation proscribing nude entertainment in establishments holding liquor licenses is neither unreasonable nor irrational, and is not unconstitutional under this section. Citizens for Free Enter. v. Dept. of Rev., 649 P.2d 1054 (Colo. 1982).

Nude entertainment ordinance is constitutional. Ordinance placing restrictions on the age of the patrons and the employees of nude entertainment establishments, the physical location of such establishments, and the days and hours of operation of such establishments meets four-part test for constitutionality under the United States and Colorado Constitutions. 7250 Corp. v. Bd. of County Comm'rs, 799 P.2d 917 (Colo. 1990).

Section fixes liability for abuse of liberty of speech. While liberty of speech and of the press is guaranteed by our constitution, by a subsequent clause of the same sentence in which this is declared the responsibility for its abuse is fixed. Cooper v. People ex rel. Wyatt, 13 Colo. 337, 22 P. 790 (1889).

Engaging in news-gathering activities does not guarantee the press a constitutional right of special access to information not generally available to the public. Nor may the press engage in activities that are otherwise illegal for the purpose of reporting the news. People v. Bergen, 883 P.2d 532 (Colo. App. 1994).

Accused's right to fair trial. To strike the proper balance between an accused's right to a fair trial and the freedom of the press, the trial judge may: (1) cause extensive voir dire examination of prospective jurors; (2) change the trial venue to a place less exposed to intense publicity; (3) postpone the trial to allow public attention to subside; (4) empanel veniremen from an area that has not been exposed to intense pretrial publicity; (5) enlarge the size of the jury panel and increase the number of peremptory challenges; or (6) use emphatic and clear instructions on the sworn duty of each juror to decide the issues only on the evidence presented in open court. People v. Botham, 629 P.2d 589 (Colo. 1981).

Where a defendant has not demonstrated the existence of massive, pervasive, and prejudicial publicity, which would create a presumption that he was denied a fair trial, he must establish the denial of a fair trial based upon a nexus between extensive pretrial publicity and the jury panel. People v. Heller, 698 P.2d 1357 (Colo. App. 1984), rev'd on other grounds, 712 P.2d 1023 (Colo. 1986).

Combination of "speech" and "nonspeech" elements in the same course of conduct is a form of expression entitled to some degree of constitutional protection. City of Colo. Springs v. 2354 Inc., 896 P.2d 272 (Colo. 1995).

Four-part test for regulation of conduct with "speech" and "nonspeech" elements. A government regulation is sufficiently justified if: (1) It is within the constitutional power of the government; (2) it furthers an important or substantial governmental interest; (3) the governmental interest is unrelated to the suppression of free expression; and (4) the incidental restriction on alleged first amendment freedoms is no greater than is essential to the furtherance of that interest. 7250 Corp. v. Bd. of County Comm'rs, 799 P.2d 917 (Colo. 1990).

Nature of the property affected by government regulation restricting speech is the first question in a constitutional analysis of the regulation. Denver Publ'g Co. v. City of Aurora, 896 P.2d 306 (Colo. 1995); Lewis v. Colo. Rockies Baseball Club, 941 P.2d 266 (Colo. 1997).

Regulation must be written with particular care when property

affected is traditionally recognized as a forum associated with the dissemination of ideas. Denver Publ'g Co. v. City of Aurora, 896 P.2d 306 (Colo. 1995).

A courtroom is a not a public forum for purposes of the first amendment, and, therefore, a court may restrict speech during court proceedings so long as the restriction is reasonable and viewpoint neutral. Accordingly, an order that a litigant remove a political T-shirt during court proceedings was permissible when the record showed that the court's order was reasonably based on its duty to preserve the courtroom for the presentation of evidence and not to restrict the particular viewpoint espoused by the litigant. People v. Aleem, 149 P.3d 765 (Colo. 2007).

Streets and parks have been traditionally recognized as held in trust for the purpose of assembly and the communication of ideas. Denver Publ'g Co. v. City of Aurora, 896 P.2d 306 (Colo. 1995).

Content-neutral regulations of time, place, and manner of speech may be enforced if they are narrowly tailored to serve a significant government interest and leave ample alternative channels of communication. Denver Publ'g Co. v. City of Aurora, 896 P.2d 306 (Colo. 1995).

Narrow tailoring does not mean the regulation must be the least restrictive alternative. Denver Publ'g Co. v. City of Aurora, 896 P.2d 306 (Colo. 1995).

A regulation is content-neutral if it is justified without reference to the content of the regulated speech. Denver Publ'g Co. v. City of Aurora, 896 P.2d 306 (Colo. 1995).

Presumption of constitutionality of regulation of content-neutral speech modified. Presumption attached to content-neutral ordinance challenged on free speech grounds requires the introduction of competent evidence that the regulation burdens speech. Denver Publ'g Co. v. City of Aurora, 896 P.2d 306 (Colo. 1995).

Government has burden of proving constitutionality of content-neutral ordinance challenged on free speech grounds is constitutional. Denver Publ'g Co. v. City of Aurora, 896 P.2d 306 (Colo. 1995).

The Colorado Clean Indoor Air Act does not violate theaters' rights under the first amendment to the U.S. constitution or this section of the Colorado constitution. Curious Theatre Co. v. Dept. of Pub. Health & Env't, 216 P.3d 71 (Colo. App. 2008), aff'd, 220 P.3d 544 (Colo. 2009).

Smoking on stage during the course of a play is expressive conduct for purposes of the first amendment, and the act does place an incidental burden on this conduct by prohibiting it in indoor theaters. Curious Theatre Co. v. Dept. of Pub. Health & Env't, 216 P.3d 71 (Colo. App. 2008), aff'd on other grounds, 220 P.3d 544 (Colo. 2009).

The act is content neutral, however, because it focuses on the adverse health effects of tobacco smoke, not on expression. Curious Theatre Co. v. Dept. of Pub. Health & Env't, 216 P.3d 71 (Colo. App. 2008), aff'd, 220 P.3d 544 (Colo. 2009).

Because the act is content neutral, it is subject to an intermediate level of scrutiny as set forth in United States v. O'Brien. The four factors of O'Brien are satisfied in this case. First, the statute is within the constitutional power of the government because the legislature has the authority to enact statutes designed to promote the public health. Second, the statute furthers an important or substantial governmental interest by protecting the health of its citizens. Third, the government's interest in establishing the statute is unrelated to the suppression of free expression because

it is content neutral and justified by health concerns unrelated to expression. Finally, the incidental restriction is no greater than necessary to further the interest because it is narrowly tailored by focusing on the one form of conduct, smoking, upon which the state's announced interest in protecting the public's health depends. The statute allows alternative channels of expression, such as outdoor theaters and fake and prop cigarettes. The theaters did not demonstrate that the use of the alternatives is so inadequate as to outweigh the state's overriding interest in protecting the health of its citizens. Curious Theatre Co. v. Dept. of Pub. Health & Env't, 216 P.3d 71 (Colo. App. 2008), aff'd, 220 P.3d 544 (Colo. 2009).

Permit systems are the embodiment of time, place, and manner restrictions on freedom of expression that have long enjoyed the approval of the supreme court. Brandon v. Springspree, Inc., 888 P.2d 357 (Colo. App. 1994).

Private association that held permit from the city had the right to present its festival in accordance with its policy of prohibiting any political, religious, ideological, or social causes and could prevent person from engaging in conduct within its permit area that interfered with association's stated purposes. Brandon v. Springspree, Inc., 888 P.2d 357 (Colo. App. 1994).

The owner of a shopping center may limit free speech conduct to certain locations within the mall. The shopping center's regulation designating the food court for free speech activity meets constitutional muster because it provides an adequate forum in which to convey plaintiffs' ideas to their intended audience while allowing the shopping center to carry on its legitimate business. Robertson v. Westminster Mall Co., 43 P.3d 622 (Colo. App. 2001).

A 48-hour waiting period requirement between an application for, and action approving, the soliciting of shopping center patrons for constitutionally protected purposes that also requires reapplication for each individual solicitation activity is unjustified and unreasonable under the constitution. Robertson v. Westminster Mall Co., 43 P.3d 622 (Colo. App. 2001).

However, a 24-hour waiting period rule that requires only one application every six months and a check-in procedure prior to each individual solicitation activity is reasonable and necessary to protect the legitimate concerns of the mall owner and is therefore justified and reasonable under the constitution and does not violate plaintiff's right of free speech. Robertson v. Westminster Mall Co., 43 P.3d 622 (Colo. App. 2001).

Although signs are, by nature, means of expression and communications within the meaning of the first amendment. Williams v. City & County of Denver, 622 P.2d 542 (Colo. 1981).

Public has concomitant right to be free from intrusive signs and billboards. Williams v. City & County of Denver, 622 P.2d 542 (Colo. 1981).

Ceramic painted and prepared for display in a public school (tile project) constitute school-sponsored speech and are governed by Hazelwood Sch. Dist. v. Kihlmeier, 484 U.S. 260, 108 S. Ct. 562, 98 L. Ed. 2d 592 (1988). Fleming v. Jefferson County Sch. Dist. R-1, 298 F.3d 918 (10th Cir. 2002), cert. denied, 537 U.S. 1110, 123 S. Ct. 893, 154 L. Ed. 2d 783 (2003).

School-sponsored speech means activities that might reasonably be perceived to bear the imprimatur of the school and that involve pedagogical concerns. Fleming v. Jefferson County Sch. Dist. R-1, 298 F.3d 918 (10th Cir. 2002), cert. denied, 537 U.S. 1110, 123 S. Ct.

893, 154 L. Ed. 2d 783 (2003).

If the speech at issue bears the imprimatur of the school and involves pedagogical interests, then it is school-sponsored speech, and the school may impose restrictions on it so long as those restrictions are reasonably related to legitimate pedagogical concerns. Fleming v. Jefferson County Sch. Dist. R-1, 298 F.3d 918 (10th Cir. 2002), cert. denied, 537 U.S. 1110, 123 S. Ct. 893, 154 L. Ed. 2d 783 (2003).

Hazelwood Sch. Dist. v. Kihlmeier allows educators to make viewpoint-based decisions about school-sponsored speech. Fleming v. Jefferson County Sch. Dist. R-1, 298 F.3d 918 (10th Cir. 2002), cert. denied, 537 U.S. 1110, 123 S. Ct. 893, 154 L. Ed. 2d 783 (2003).

Hazelwood Sch. Dist. v. Kihlmeier does not require educators' restrictions on school-sponsored speech to be viewpoint neutral. Fleming v. Jefferson County Sch. Dist. R-1, 298 F.3d 918 (10th Cir. 2002), cert. denied, 537 U.S. 1110, 123 S. Ct. 893, 154 L. Ed. 2d 783 (2003).

Tile project was a nonpublic forum. Fleming v. Jefferson County Sch. Dist. R-1, 298 F.3d 918 (10th Cir. 2002), cert. denied, 537 U.S. 1110, 123 S. Ct. 893, 154 L. Ed. 2d 783 (2003).

Because the school permanently integrated the tiles into the school environment, and was significantly involved in the creation, funding, supervision, and screening process of the tile project, the tiles bore the imprimatur of the school. Fleming v. Jefferson County Sch. Dist. R-1, 298 F.3d 918 (10th Cir. 2002), cert. denied, 537 U.S. 1110, 123 S. Ct. 893, 154 L. Ed. 2d 783 (2003).

The goal of the tile project, allowing participants to take part in the reconstruction of the school, involved the type of pedagogical interests with which Hazelwood Sch. Dist. v. Kihlmeier was concerned. Fleming v. Jefferson County Sch. Dist. R-1, 298 F.3d 918 (10th Cir. 2002), cert. denied, 537 U.S. 1110, 123 S. Ct. 893, 154 L. Ed. 2d 783 (2003).

Prohibition on including the date of the school shooting in tile project was reasonably related to a pedagogical interest. Fleming v. Jefferson County Sch. Dist. R-1, 298 F.3d 918 (10th Cir. 2002), cert. denied, 537 U.S. 1110, 123 S. Ct. 893, 154 L. Ed. 2d 783 (2003).

Restriction on religious symbols in tile project was reasonably related to a pedagogical interest. Fleming v. Jefferson County Sch. Dist. R-1, 298 F.3d 918 (10th Cir. 2002), cert. denied, 537 U.S. 1110, 123 S. Ct. 893, 154 L. Ed. 2d 783 (2003).

School district did not violate valedictorian's first amendment free speech rights by requiring review of valedictory speech prior to presentation. Corder v. Lewis Palmer Sch. Dist. No. 38, 566 F.3d 1219 (10th Cir.), cert. denied, __ U.S. __, 130 S. Ct. 742, 175 L. Ed. 2d 515 (2009).

School district's unwritten policy of reviewing valedictory speeches prior to graduation ceremony was reasonably related to pedagogical concerns. Corder v. Lewis Palmer Sch. Dist. No. 38, 566 F.3d 1219 (10th Cir.), cert. denied, __ U.S. __, 130 S. Ct. 742, 175 L. Ed. 2d 515 (2009).

School district did not violate valedictorian's first amendment free speech rights by compelling her to email an apology prior to receipt of her high school diploma. Corder v. Lewis Palmer Sch. Dist. No. 38, 566 F.3d 1219 (10th Cir.), cert. denied, __ U.S. __, 130 S. Ct. 742, 175 L. Ed. 2d 515 (2009).

Forced apology was reasonably related to pedagogical concerns. Corder v. Lewis Palmer Sch. Dist. No. 38, 566 F.3d 1219 (10th Cir.), cert. denied, __ U.S. __, 130 S. Ct. 742, 175 L. Ed. 2d 515 (2009).

School district did not violate valedictorian's first amendment free exercise of religion rights by disciplining her for presenting a different valedictory speech than the one she gave to principal for prior review. Corder v. Lewis Palmer Sch. Dist. No. 38, 566 F.3d 1219 (10th Cir.), cert. denied, __ U.S. __, 130 S. Ct. 742, 175 L. Ed. 2d 515 (2009).

Freedom of speech does not bar enforcement of government regulations directed at unlawful conduct that manifests no element of protected expression. City of Colo. Springs v. 2354 Inc., 896 P.2d 272 (Colo. 1995).

First amendment protection does not create immunity from criminal prosecution. City of Colo. Springs v. 2354 Inc., 896 P.2d 272 (Colo. 1995).

Truth of published matter is complete defense in libel action. In an action for libel, if the truth of the published matter can be established by evidence, it is a complete justification and defense. Republican Publ'g Co. v. Mosman, 15 Colo. 399, 24 P. 1051 (1890); Rocky Mt. News Printing Co. v. Fridborn, 46 Colo. 440, 104 P. 956 (1909).

Truth is an absolute defense in a libel action, whether civil or criminal. Gomba v. McLaughlin, 180 Colo. 232, 504 P.2d 337 (1972).

Whether allegedly defamatory language is constitutionally privileged is a question of law and a reviewing court must review the record de novo to insure that the trial court's judgment does not constitute a forbidden intrusion on the field of free expression. NBC Subsidiary v. Living Will Center, 879 P.2d 6 (Colo. 1994); McIntyre v. Jones, 194 P.3d 519 (Colo. App. 2008).

Trial court's findings that the statements at issue were false constitute findings of fact. An issue of "constitutional fact" is one that affects whether a statement is subject to constitutional protection. Since the statements at issue were false, they were not entitled to first amendment protection. McIntyre v. Jones, 194 P.3d 519 (Colo. App. 2008).

Appellate court will set aside trial court's findings of fact only if they are clearly erroneous and not supported by the record. Trial court's findings that the statements were false are supported by evidence in the record and were therefore not clearly erroneous. McIntyre v. Jones, 194 P.3d 519 (Colo. App. 2008).

Special defense of truth not required. In an action for damages for alleged libel where the pleadings presented the issue of the truth of the published articles, a special defense of truth was not required. Hadden v. Gateway W. Publ'g Co., 130 Colo. 73, 273 P.2d 733 (1954).

This may be substantial, rather than absolute, truth. The trend of the law is toward the recognition of substantial rather than absolute truth as a defense to allegedly libelous statements. Gomba v. McLaughlin, 180 Colo. 232, 504 P.2d 337 (1972).

A defendant asserting truth as a defense in libel action is not required to justify every word of the alleged defamatory matter; it is sufficient if the substance, the gist, the sting, of the matter is true. Gomba v. McLaughlin, 180 Colo. 232, 504 P.2d 337 (1972).

And burden is on defendant to prove that publication was substantially true. Gomba v. McLaughlin, 180 Colo. 232, 504 P.2d 337 (1972).

Evidence of truth must be relevant and admissible. While in suits and prosecutions for libel, the truth thereof may be given in evidence under the Colorado constitution and laws, the evidence offered for such purpose must by relevant and admissible. Bearman v. People, 91 Colo. 486, 16 P.2d 425 (1932).

While this section and § 18-13-105 provide that in a libel suit the truth of the alleged libel is a defense, the defendant may not establish it by incompetent evidence. Towles v. Meador, 84 Colo. 547, 272 P. 625 (1928).

But evidence is admissible even where libel is per se or publication admittedly false. Evidence of the truth of any allegedly libelous statement is admissible, even where the libel is per se, or where the publication is admittedly false. Gomba v. McLaughlin, 180 Colo. 232, 504 P.2d 337 (1972).

Statements held to constitute slander per se as a matter of law. Pittman v. Larson Distrib. Co., 724 P.2d 1379 (Colo. App. 1986); Keohane v. Wilkerson, 859 P.2d 291 (Colo. App. 1993), aff'd, 882 P.2d 1293 (Colo. 1994).

Statement that a political candidate physically threatened people who disagreed with him was defamatory per se, but was constitutionally privileged because it was printed on a political postcard and could not reasonably be interpreted as stating actual facts about the candidate. Arrington v. Palmer, 971 P.2d 669 (Colo. App. 1998).

As circumstances may be shown to mitigate damages even though publication false. A defendant in a libel action is entitled to give in evidence any circumstances properly in mitigation of said publication, for the purpose of reducing the amount of damages, even if the publication is, in fact, false. Republican Publ'g Co. v. Mosman, 15 Colo. 399, 24 P. 1051 (1890); Rocky Mt. News Printing Co. v. Fridborn, 46 Colo. 440, 104 P. 956 (1909).

Taking § 13-25-125 and the constitutional language of this section together, it is clear that the law requires that the defendant in a libel action be allowed to put in any evidence which is material to proof of justification or which tends to mitigate the damages. Gomba v. McLaughlin, 180 Colo. 232, 504 P.2d 337 (1972).

Question involved where defendant asserts truth as defense. Where the defendant asserts truth as a defense in a libel suit the question, a factual one, is whether there is a substantial difference between the allegedly libelous statement and the truth; or stated differently whether the statement produces a different effect upon the reader than that which would be produced by the literal truth of the matter. Gomba v. McLaughlin, 180 Colo. 232, 504 P.2d 337 (1972).

A defamatory opinion is constitutionally protected if truthful facts supporting the opinion are set forth. Seible v. Denver Post Corp., 782 P.2d 805 (Colo. App. 1989).

Test articulated for evaluating when speech is protected opinion: (1) The statement complained of should be examined to determine if it is cautiously phrased in terms of apparency, e.g., "in my opinion"; (2) the entire published statement must be examined in context, not just the objectionable word or phrase; and (3) all the circumstances surrounding the statement, including the medium of dissemination and the audience to whom it is directed, should be considered. Burns v. McGraw Hill Broad. Co., 659 P.2d 1351 (Colo. 1983).

Burns v. McGraw-Hill dichotomy between "fact" and "opinion" is no longer relevant in determining whether speech is constitutionally privileged. However, the factors identified in the Burns case (phrasing, context, and circumstances) are relevant and must be considered in determining whether a statement can reasonably be understood as declaring or implying a provable assertion of fact. Keohane v. Wilkerson, 859 P.2d 291 (Colo. App. 1993), aff'd, 882 P.2d 1293 (Colo. 1994).

Whether a statement is

actionable depends not on its characterization as fact or opinion, but on whether it (1) contains or implies a verifiable fact about the plaintiff, and (2) is reasonably susceptible to being understood as an actual assertion of fact. Keohane v. Wilkerson, 859 P.2d 291 (Colo. App. 1993), aff'd, 882 P.2d 1293 (Colo. 1994).

Characterization of a statement as a "question" or as "hypothetical" is irrelevant if it reasonably implies a defamatory factual assertion. Keohane v. Wilkerson, 859 P.2d 291 (Colo. App. 1993), aff'd, 882 P.2d 1293 (Colo. 1994).

Defendant's question to reporter about whether judge had been bribed with money or with drugs clearly implied that judge had been bribed; the only question was how. Keohane v. Wilkerson, 859 P.2d 291 (Colo. App. 1993), aff'd, 882 P.2d 1293 (Colo. 1994).

A speculative or conjectural statement, based on truthful, nondefamatory facts which are disclosed or otherwise generally known to the audience, cannot reasonably be understood as an assertion of fact. Keohane v. Wilkerson, 859 P.2d 291 (Colo. App. 1993), aff'd, 882 P.2d 1293 (Colo. 1994).

Defendant's letter to the editor speculating on the existence of a "conspiracy" among leading members of the community but not implying the writer's firsthand knowledge of undisclosed facts supporting such a claim was constitutionally protected speech. Keohane v. Wilkerson, 859 P.2d 291 (Colo. App. 1993), aff'd, 882 P.2d 1293 (Colo. 1994).

Statements made on television talk show that professional athlete had quit and backed out on team during playoffs constituted protected opinion under test. Brooks v. Paige, 773 P.2d 1098 (Colo. App. 1988).

A public figure may not maintain a claim for outrageous conduct when the conduct complained of is expressive behavior directed at his "public persona". Brooks v. Paige, 773 P.2d 1098 (Colo. App. 1988).

Statements made in television news broadcast characterizing sale of living will packets as "scam" and referring to customers of company that sold packets as being "taken" were constitutionally privileged and were not actionable as defamation since broadcasts did not contain or imply verifiable facts nor could they be reasonably understood as assertions of actual fact. NBC Subsidiary v. Living Will Center, 879 P.2d 6 (Colo. 1994).

"Clear and convincing" standard applied to finding of reckless disregard. In a libel action, the "clear and convincing" standard of proof is to be applied to the finding of reckless disregard. Diversified Mgmt., Inc. v. Denver Post, Inc., 653 P.2d 1103 (Colo. 1982).

If plaintiff in a defamation action is a public figure, or an allegedly defamatory statement involved a matter of public concern, plaintiff must prove by clear and convincing evidence that defendant published defamatory statement with actual malice, i.e., with knowledge of falsity or in reckless disregard of the truth. Lewis v. McGraw-Hill Broad., 832 P.2d 1118 (Colo. App. 1992).

As to matters of public concern, which are afforded the comprehensive protection of the first amendment, a heightened burden applies, and a plaintiff is required to prove the statement's falsity by clear and convincing evidence, rather than by a mere preponderance. Williams v. Continental Airlines, Inc., 943 P.2d 10 (Colo. App. 1996).

Where statements do not involve a matter of public concern and plaintiff is not a public figure, plaintiff is required to prove that the statements are false only by a preponderance of

the evidence. McIntyre v. Jones, 194 P.3d 519 (Colo. App. 2008).

First amendment values would be better honored by adopting the same definition of "reckless disregard" used in cases involving public officials and public figures for matters of public or general concern. Diversified Mgmt., Inc. v. Denver Post, Inc., 653 P.2d 1103 (Colo. 1982).

Trial court's finding that defendant abused qualified privilege is supported by evidence and is therefore not clearly erroneous. Defendant willfully chose not to learn the truth, which is sufficient to establish reckless disregard. McIntyre v. Jones, 194 P.3d 519 (Colo. App. 2008).

Publications are constitutionally protected if they concern either a public figure or a matter of public concern, and a showing of actual malice is necessary to defeat the protection and make the defamatory publication actionable. To establish malice, plaintiff must show, with clear and convincing evidence, that the defamation was published with actual knowledge of its falsity or in reckless disregard for its truth or falsity. Seible v. Denver Post Corp., 782 P.2d 805 (Colo. App. 1989).

Trial court correctly determined that plaintiff was a limited purpose public figure. A limited purpose public figure is one who voluntarily injects himself or herself into a particular controversy and thereby becomes a public figure for a limited range of issues such that the person has achieved special prominence in the resolution of public questions. Limited purpose public figure status focuses on two questions: The threshold question of whether the defamatory statement involves a matter of public concern and, more importantly, whether the level of plaintiff's participation in the controversy invites scrutiny. Lewis v. McGraw-Hill Broad., 832 P.2d 1118 (Colo. App. 1992) (citing Gertz v. Robert Welch, Inc. 418 U.S. 323, 94 S. Ct. 2997, 41 L. Ed. 2d 789 (1974)); McIntyre v. Jones, 194 P.3d 519 (Colo. App. 2008).

Statement in television newscast which erroneously implied that plaintiff had been arrested for obstructing justice, indecent exposure, and prostitution prior to shoplifting arrest involved a matter of sufficient public concern to implicate first amendment protection under the United States Constitution where such newscast emerged in the context of a persistent public controversy over department store's policies toward minorities and was partly brought on by plaintiff's attorney who sought to inform the media that his client had never been arrested prior to shoplifting incident. Lewis v. McGraw-Hill Broad., 832 P.2d 1118 (Colo. App. 1992).

When media has an objective basis to rely on the accuracy of an official report relating to a matter of public concern or involving a public figure, then publication need not be delayed in order to investigate its accuracy or to obtain corroboration from all possible sources. Lewis v. McGraw-Hill Broad., 832 P.2d 1118 (Colo. App. 1992).

Purely private libels are in no way impacted by the New York Times v. Sullivan rule that in civil or criminal libel actions brought by public officials, truth is an absolute defense and only false statements made with "actual malice" are subject to sanctions. People v. Ryan, 806 P.2d 935 (Colo. 1991), cert. denied, 502 U.S. 860, 112 S. Ct. 177, 116 L. Ed. 2d 140 (1991).

It is inappropriate to require that defamatory false statements must be made with "actual malice", where one private person disseminates defamatory statements about another private individual in the victim's community. Rather, in a purely private context, a

less restrictive culpability standard may be used to meet the state's legitimate interest in controlling constitutionally unprotected conduct injurious to its citizens. People v. Ryan, 806 P.2d 935 (Colo. 1991), cert. denied, 502 U.S. 860, 112 S. Ct. 177, 116 L. Ed. 2d 140 (1991).

A statement of opinion relating to matters of public concern is fully protected under the constitution when it does not contain provably false factual connotation and cannot be interpreted as stating actual fact about an individual. NBC Subsidiary v. Living Will Center, 879 P.2d 6 (Colo. 1994); Bailey v. Huggins Diagnostic & Rehab., 952 P.2d 768 (Colo. App. 1997).

No legal duty of due care is owed by an author or interviewee on a public television program to those members of the public who may read the book or view the program. Bailey v. Huggins Diagnostic & Rehab., 952 P.2d 768 (Colo. App. 1997).

The question whether a subject is of public concern is a question of law. Williams v. Continental Airlines, Inc., 943 P.2d 10 (Colo. App. 1996); McIntyre v. Jones, 194 P.3d 519 (Colo. App. 2008).

The boundaries of public concern cannot be readily defined, but must be determined on a case-by-case basis. Generally, a matter is of public concern whenever it embraces an issue about which information is needed or is appropriate or when the public may reasonably be expected to have a legitimate interest in what is being published. Williams v. Continental Airlines, Inc., 943 P.2d 10 (Colo. App. 1996); McIntyre v. Jones, 194 P.3d 519 (Colo. App. 2008).

However, the balance should be struck in favor of a private plaintiff if his or her reputation has been injured by a non-media defendant in a purely private context. Williams v. Continental Airlines, Inc., 943 P.2d 10 (Colo. App. 1996); McIntyre v. Jones, 194 P.3d 519 (Colo. App. 2008).

Selecting a bookkeeper for a small homeowners association is not a matter of public concern for purposes of a defamation action. McIntyre v. Jones, 194 P.3d 519 (Colo. App. 2008).

Public official can recover in a defamation suit only if he proves by "clear and convincing evidence" that a false and defamatory statement of fact was published about him by a defendant who, at the time of publication, knew that the statement was false or made it "with reckless disregard of whether it was false or not". Manuel v. Fort Collins Newspapers, Inc., 661 P.2d 289 (Colo. App. 1982); Willis v. Perry, 677 P.2d 961 (Colo. App. 1983).

Police officers are public officials. Willis v. Perry, 677 P.2d 961 (Colo. App. 1983).

Colorado does not recognize the tort of false light invasion of privacy. The tort is highly duplicative of defamation both in interests protected and conduct averted and its subjective component raises the spectre of a chilling effect on first amendment freedoms. Denver Publ'g Co. v. Bueno, 54 P.3d 893 (Colo. 2002).

Tort of invasion of privacy by appropriation of another's name or likeness is cognizable under Colorado law. The elements of the tort are: (1) The defendant used the plaintiff's name or likeness; (2) the use of the plaintiff's name or likeness was for the defendant's own purposes or benefit; (3) the plaintiff suffered damages; and (4) the defendant caused the damages incurred. Such a claim will not succeed, however, if the defendant's use of the plaintiff's name and likeness is constitutionally privileged. Joe Dickerson & Assocs. v. Dittmar, 34 P.3d 995 (Colo. 2001).

Defendant's publication of the details of plaintiff's crime and felony conviction in defendant's

newsletter was privileged because the facts of the crime and felony conviction were a matter of public concern. Joe Dickerson & Assocs. v. Dittmar, 34 P.3d 995 (Colo. 2001).

Statements in a letter to the editor are constitutionally protected where the statements were found to be expressions of opinion and where the statements were not based on undisclosed facts. Sall v. Barber, 782 P.2d 1216 (Colo. App. 1989); Keohane v. Wilkerson, 859 P.2d 291 (Colo. App. 1993), aff'd, 882 P.2d 1293 (Colo. 1994).

De novo review is appropriate when determining the first amendment status of government property. Lewis v. Colo. Rockies Baseball Club, 941 P.2d 266 (Colo. 1997).

The district court's findings of constitutional fact are reviewed de novo, as are its ultimate conclusions of constitutional law. In cases involving activity that may be protected under the free speech clause of the first amendment, an appellate court has an obligation to make an independent examination of the whole record in order to make sure that the judgment does not constitute a forbidden intrusion on the field of free expression. Lytle v. City of Haysville, 138 F.3d 857 (10th Cir. 1998); Fleming v. Jefferson County Sch. Dist. R-1, 298 F.3d 918 (10th Cir. 2002), cert. denied, 537 U.S. 1110, 123 S. Ct. 893, 154 L. Ed. 2d 783 (2003).

De novo standard of review not applied to trial court's factual findings bearing on freedom of speech rights of students who worked on community college newspaper in action in which main issue was the motivation of the student government, the counsel, and the administration in eliminating funding of newspaper which was an factual inquiry. Olson v. State Bd. for Cmty. Colls. and Occupational Educ., 759 P.2d 829 (Colo. App. 1988).

Issues are made up as in other cases and rules of evidence observed. Notwithstanding the provision of this section that the jury in actions for libel shall determine the law and the facts, the issues must by made up as in other cases, and the rules of evidence observed. A verdict based upon evidence which the law declares incompetent will not be allowed to stand. Meeker v. Post Printing & Publ'g Co., 55 Colo. 355, 135 P. 457 (1913).

Error not to award defendant expenses of marshalling evidence. Where the evidence, the marshalling of which created the expenses, was admissible, the trial court erred in not awarding to defendant the reasonable expenses and attorney's fees incurred in disproving the plaintiff's denial of a fact asserted in the allegedly libelous statement. Gomba v. McLaughlin, 180 Colo. 232, 504 P.2d 337 (1972).

Courts have inherent power to punish for contempt as to causes pending. The courts have inherent power and the duty to punish for contempt those who publish newspaper accounts concerning causes pending, the inherent tendency of which is to influence, intimidate, impede, embarrass or obstruct the court in the administration of justice. In re Jameson, 139 Colo. 171, 340 P.2d 423 (1959).

To constitute contempt of court, the publication by a newspaper of an offensive editorial, the inherent tendency of which is to obstruct justice, must amount to a clear and present danger that the evil intended may be accomplished; hence editorial comment on pending cases, even if grossly unfair and false, is not to be adjudged contemptuous unless it constitutes an imminent peril to the administration of justice. In re Jameson, 139 Colo. 171, 340 P.2d 423 (1959).

This section is no defense in proceedings for constructive contempt in newspaper publications; this section of the constitution, and

every other section of the constitution, leaves unimpaired the law of contempts as to pending causes as it existed at common law. People ex rel. Attorney Gen. v. News-Times Publ'g Co., 35 Colo. 253, 84 P. 912 (1906), appeal dismissed for lack of jurisdiction, 205 U.S. 454, 27 S. Ct. 556, 51 L. Ed. 879 (1907).

Power to punish for contempt must be invoked with restraint. The power to punish for contempt shall be invoked only where the adjudicatory process may be hampered or hindered in its calm, detached, and fearless discharge of its duty on the basis of what has been submitted in court. In re Jameson, 139 Colo. 171, 340 P.2d 423 (1959).

Since purpose of power to protect public, not private individuals. The purpose of the power to punish for contempt is to protect immediate litigants and the public from the mischievous danger of an unfree or coerced tribunal. In re Jameson, 139 Colo. 171, 340 P.2d 423 (1959).

The power to punish for constructive criminal contempt finds its genesis in the theory that the acts complained of constitute a public injury or offense, as distinguished from a private injury or offense. In re Jameson, 139 Colo. 171, 340 P.2d 423 (1959).

When case is finished, courts and judges are subject to same criticisms as other people and no comment published in connection with a completed case, however libelous or unjust, is punishable as a contempt of court. In re Jameson, 139 Colo. 171, 340 P.2d 423 (1959).

Subject to the condition that no person can be critical of a judge if the purpose of the criticism is to influence the result of pending litigation, a citizen can praise or condemn conduct of a court, or a judge, being responsible for all abuse of that liberty, to the same extent and through the same procedures applicable to all citizens. In re Petition of Colo. Bar Ass'n, 137 Colo. 357, 325 P.2d 932 (1958).

The remedies of a judge who suffers abuse at the hands of the press when a case is completed are the same as those available to persons outside the judiciary. In re Jameson, 139 Colo. 171, 340 P.2d 423 (1959).

When considering discipline of attorneys who criticize judges, the New York Times standard should be applied because of the interests in protecting attorney speech critical of judges. Under the New York Times standard (New York Times Co. v. Sullivan, 376 U.S. 254 (1964)), a two-part inquiry applies in determining whether an attorney may be disciplined for statements criticizing a judge: (1) Whether the disciplinary authority has proven that the statement was a false statement of fact (or a statement of opinion that necessarily implies an undisclosed false assertion of fact); and (2) assuming the statement is false, whether the attorney uttered the statement with actual malice -- that is, with knowledge that it was false or with reckless disregard as to its truth. In re Green, 11 P.3d 1078 (Colo. 2000).

Peaceful picketing for lawful objective constitutes exercise of constitutionally protected right of free speech, hence denial thereof is repugnant to this section and the first and fourteenth amendments of the constitution of the United States. Pueblo Bldg. & Constr. Trades Council v. Harper Constr. Co., 134 Colo. 469, 307 P.2d 468 (1957).

However state has power to regulate picketing. Recognition of peaceful picketing as an exercise of free speech does not imply that the states must be without power to confine the sphere of communication to that directly related to the dispute. Pueblo Bldg. & Constr. Trades Council v. Harper Constr. Co., 134 Colo. 469, 307 P.2d 468 (1957).

Although cannot prohibit

peaceful picketing. The constitutional guarantee of freedom of discussion is infringed by the policy of a state forbidding resort to peaceful picketing because there is no immediate employer-employee dispute. Pueblo Bldg. & Constr. Trades Council v. Harper Constr. Co., 134 Colo. 469, 307 P.2d 468 (1957).

News reporter not privileged to refuse to respond to subpoena. Where a news reporter, who is a first-hand observer of criminal conduct, is subpoenaed to testify and to produce relevant documents "in the course of a valid grand jury investigation or criminal trial", there is no privilege under the Colorado constitution to refuse to respond to a subpoena. Pankratz v. District Court, 199 Colo. 411, 609 P.2d 1101 (1980).

A tax ordinance that treats newspapers as all other goods is not unconstitutional under this section. Catholic Archdiocese v. City of Denver, 741 P.2d 333 (Colo. 1987).

The right to speak and publish does not create an unfettered and unlimited right to gather information made available solely for discovery purposes. Bowlen v. District Court, 733 P.2d 1179 (Colo. 1987).

Fair report doctrine protects a fair and accurate media report of a defamatory statement made in a public proceeding, because a reporter must be allowed to convey statements that a member of the public would have heard had he or she attended the public proceeding. Wilson v. Meyer, 126 P.3d 276 (Colo. App. 2005).

To be liable for defamation, a defendant must have "published or caused to be published" a defamatory statement, and a defendant's silence in the presence of a defamatory statement made by another does not constitute publication. Wilson v. Meyer, 126 P.3d 276 (Colo. App. 2005).

Restrictions on commercial speech are within ambit of this section and the first amendment of the United States Constitution. Williams v. City & County of Denver, 622 P.2d 542 (Colo. 1981).

Advertising, as commercial speech, protected by first amendment, but not immune to taxation. Advertising may instead be subject to general taxes or economic regulations without necessarily violating the Constitution. Walgreen Co. v. Charnes, 859 P.2d 235 (Colo. App. 1992).

Test for facial overbreadth. A statute is not unconstitutional unless the overbreadth is judged to be substantial in relation to the statute's plainly legitimate sweep. The prohibited conduct must be adequately defined, as written or authoritatively construed, and the category of conduct proscribed must be suitably limited and described to avoid criminalizing an intolerable range of constitutionally protected conduct. People v. Batchelor, 800 P.2d 599 (Colo. 1990).

To determine whether statute facially overbroad, it is necessary to examine the extent to which the statute could prohibit speech beyond the reach of governmental regulation. Whimbush v. People, 869 P.2d 1245 (Colo. 1994); Aguilar v. People, 886 P.2d 725 (Colo. 1994).

Overbreadth doctrine neither compels invalidation of statutes nor confers general standing to challenge. The doctrine of overbreadth does not compel indiscriminate facial invalidation of every statute which may chill protected expression, nor does it confer standing to challenge the facial constitutionality of a statute on every defendant whose conduct falls within its prohibitions. Williams v. City & County of Denver, 622 P.2d 542 (Colo. 1981); Marco Lounge, Inc. v. City of Fed. Heights, 625 P.2d 982 (Colo. 1981).

Former § 18-5-115 (1)(a) unconstitutionally overbroad as

infringing on a charitable organization's freedom of speech where more narrowly tailored means of preventing fraud were available. People v. French, 762 P.2d 1369 (Colo. 1988).

Harassment by stalking. By burdening only those communications furthering, promoting, or advancing an expressed credible threat, § 18-9-111 (4)(a)(II) does not reach protected conduct. People v. Baer, 973 P.2d 1225 (Colo. 1999).

Nor is the provision void for vagueness since a person of ordinary intelligence can know what conduct is proscribed. People v. Baer, 973 P.2d 1225 (Colo. 1999).

A statute that regulates unprotected speech is overbroad if its prohibitions encroach upon protected communications. People v. Ryan, 806 P.2d 935 (Colo. 1991); Aguilar v. People, 886 P.2d 725 (Colo. 1994).

Police department rule proscribing conduct unbecoming an officer is not overbroad. The overbreadth was not "real and substantial", and the rule is not constitutionally infirm. Puzick v. City of Colo. Springs, 680 P.2d 1283 (Colo. App. 1983).

Standing to challenge termination of college newspaper funding. The faculty advisor of a student-run college newspaper has no standing on his own behalf to raise first amendment challenges to the termination of funding for the newspaper but does have third party standing to assert students' first amendment interests. State Bd. for Cmty. Colls. & Occupational Educ. v. Olson, 687 P.2d 429 (Colo. 1984).

For discussion of trial court's refusal to recognize reporter's privilege, see Gagnon v. District Court, 632 P.2d 567 (Colo. 1981).

Right under this section does not extend to permit communication between press and prospective jurors who had been admonished not to discuss the pending case. In re Stone, 703 P.2d 1319 (Colo. App. 1985).

Open meetings law strikes proper balance between the public's right of access to information and a legislator's right to freedom of speech. Cole v. State, 673 P.2d 345 (Colo. 1983).

The right of privacy may be qualified when a policeman's off-duty conduct interferes with the compelling state interest in maintaining an efficient police force. Puzick v. City of Colo. Springs, 680 P.2d 1283 (Colo. App. 1983).

Section 1-40-110 does violate right to free speech. Grant v. Meyer, 828 F.2d 1446 (10th Cir. 1987), aff'd, 486 U.S. 414, 108 S. Ct. 1886, 100 L. Ed. 2d 425 1988 (decided under former version of § 1-40-110).

Order of the district court to give notice to customers of class action lawsuit does not violate Mountain Bell's right to free speech. The notice sent by the defendant in this case was content-neutral and it did not result in the utility being compelled to be associated with a message with which it did not agree. Mountain States v. District Court, 778 P.2d 667 (Colo. 1989), cert. denied, 493 U.S. 983, 110 S. Ct. 519, 107 L. Ed. 2d 520 (1989).

Termination of employee. In determining whether the termination of a school teacher constitutes an unlawful retaliation for the exercise of freedom of expression, the burden is on the plaintiff to show that his conduct was constitutionally protected and that it was a substantial or motivating factor in the employer's decision not to renew employment. Heywood v. Thompson Sch. Dist. R2-J, 703 P.2d 1308 (Colo. App. 1985); Salida Sch. Dist. R-32-J v. Morrison, 732 P.2d 1160 (Colo. 1987); Ridgeway v. Kiowa Sch. Dist. C-2, 794 P. 2d 1020 (Colo. App. 1989).

School teacher has no first amendment right to use nonapproved controversial learning resources in his

classroom without following the school district's controversial materials policy. Where curriculum controls are reasonably related to legitimate pedagogical concerns, they do not violate the free speech rights guaranteed by the first amendment. Bd. of Educ. of Jefferson County v. Wilder, 960 P.2d 695 (Colo. 1998).

The initial determination of whether the conduct is constitutionally protected requires a balancing of the interests of the teacher, as a citizen, in commenting upon matters of public concern, and the interest of the state, as an employer, in promoting the efficiency of the public service it performs through its employees. Ridgeway v. Kiowa Sch. Dist. C-2, 794 P. 2d 1020 (Colo. App. 1989).

If the manner, time, place, and context of an employee's statement, regardless of its otherwise protected content, reveal that the statement constituted a refusal to perform a lawful task within the scope of the employee's duties, it is insubordination and, as such, constitutionally unprotected. Ridgeway v. Kiowa Sch. Dist. C-2, 794 P. 2d 1020 (Colo. App. 1989); Barrett v. Univ. of Colo., 851 P.2d 258 (Colo. App. 1993).

Hiring official's racially derogatory remarks were not constitutionally protected speech where they did not touch upon a matter of public concern, i.e., where they were not directed toward policies pertaining to discrimination, did not tend or seek to expose discriminatory practices, and merely reflected the possible racial bias of an employee in the context of the employer's hiring process. Barrett v. Univ. of Colo., 851 P.2d 258 (Colo. App. 1993).

Four-part test applies to determine whether an employee's constitutional right to free speech has been violated by employer's conduct: (1) The employee must show that the speech touches upon a matter of public concern; (2) if so, the employer has the burden to show that the employer's interests outweigh the employee's interest, as a citizen, in commenting thereon; (3) if the employer's interests do not outweigh the employee's interest, the employee must then show that the protected activity was a substantial or motivating factor in the employer's decision to take the action complained of; and (4) the employer may still prevail if it can show that the same decision would have been made in the absence of the protected conduct. Kemp v. State Bd. of Agric., 803 P.2d 498 (Colo. 1990); Cotter v. Bd. of Trustees of Univ. of Northern Colo., 971 P.2d 687 (Colo. App. 1998).

Public employment cannot be conditioned on a basis that infringes the employee's constitutionally protected interest in freedom of expression. Gabel v. Jefferson County Sch. Dist. R-1, 824 P.2d 26 (Colo. App. 1991); Barrett v. Univ. of Colo., 851 P.2d 258 (Colo. App. 1993).

The determination of whether speech is constitutionally protected is a question of law subject to independent examination by an appellate court in light of the record. Gabel v. Jefferson County Sch. Dist. R-1, 824 P.2d 26 (Colo. App. 1991); Barrett v. Univ. of Colo., 851 P.2d 258 (Colo. App. 1993).

The determination of whether speech touches a matter of public concern, under first part of Kemp four-part test, rests on a particularized examination of each statement to determine whether it can be fairly considered as relating to any matter of political, social, or other concern to the community. Gabel v. Jefferson County Sch. Dist. R-1, 824 P.2d 26 (Colo. App. 1991); Barrett v. Univ. of Colo., 851 P.2d 258 (Colo. App. 1993); Cotter v. Bd. of Trustees of Univ. of Northern Colo., 971 P.2d 687 (Colo. App. 1998); McIntyre v. Jones, 194 P.3d 519 (Colo. App. 2008).

Petitioner has not sustained his burden to prove that his conduct was constitutionally protected

expression by a public employee on a matter of public concern where he asserted that his refusal to perform hall duty stemmed from his belief that such performance would nullify his teaching precepts in the classroom, and that to require hall duty would force him to espouse beliefs he does not hold. Lockhart v. Arapahoe County Sch. Dist. No. 6, 735 P.2d 913 (Colo. App. 1986).

Speech that concerns the use of public funds or discloses evidence of corruption, impropriety, or other malfeasance on the part of public officials or employees touches a matter of public concern, but criticism of internal management decisions made by public officials or employees does not. Cotter v. Bd. of Trustees of Univ. of Northern Colo., 971 P.2d 687 (Colo. App. 1998).

An employer may avoid liability from an employee's civil rights claim for retaliatory discharge upon proving it would have reached the same decision in the absence of the protected conduct or that the relationship between the employer and the employee was of such a personal nature that the employee's conduct materially undermined an overriding governmental interest in the effective administration of state programs. Salida Sch. Dist. R-32-J v. Morrison, 732 P.2d 1160 (Colo. 1987).

This section and the statutory provisions related to open records do not provide a sufficient basis for declaring a confidential termination agreement between a school district and its superintendent void as contrary to public policy. Pierce v. St. Vrain Valley Sch. Dist., 981 P.2d 600 (Colo. 1999).

Where governmental entities or public monies subsidize, approve, or encourage private interests and such private interests restrict the liberty to speak and to dissent, such private restrictions run afoul of the protective scope of this section. Improvements funded by municipal bonds, existence of police substation, patrolling by police officers, existence of recruiting offices of branches of U.S. military, county clerk voter registration drives, and allowance of other public interest groups to congregate at shopping mall created nexus between government and private interests which own mall and effectively precluded mall owners from excluding other political groups from using mall to collect signatures. Bock v. Westminster Mall Co., 819 P.2d 55 (Colo. 1991).

Historical connection between the marketplace of ideas and the market for goods and services is not severed because goods and services today are bought and sold within the confines of a modern mall. To conclude otherwise would be to allow the vagaries of contemporary urban architecture and planning, or the lack thereof, to prevail over our valued tradition of free speech. Bock v. Westminster Mall Co., 819 P.2d 55 (Colo. 1991).

This provision is more inclusive and protective of the rights of citizens than is the first amendment to the federal constitution. In re Canon 35, 132 Colo. 591, 296 P.2d 465 (1956); Pierce v. St. Vrain Valley Sch. Dist., 944 P.2d 646 (Colo. App. 1997), rev'd on other grounds, 981 P.2d 600 (Colo. 1999).

National labor policy does not require unqualified privilege be given employer in a defamation action based upon statements made in a grievance proceeding. Thompson v. Pub. Serv. Co. of Colo., 800 P.2d 1299 (Colo. 1990), cert. denied, 502 U.S. 973, 112 S. Ct. 452, 116 L. Ed. 2d 469 (1991).

A state law defamation action based upon statements made in a grievance or disciplinary proceeding may go forward when a qualified privilege for such statements is recognized. Thompson v. Pub. Serv.

Co. of Colo., 800 P.2d 1299 (Colo. 1990), cert. denied, 502 U.S. 973, 112 S. Ct. 452, 116 L. Ed. 2d 469 (1991).

No violation of right to freedom of expressive association where discovery of names of persons donating to a trust fund was permitted in action for breach of trust in allocating trust moneys. Smith v. District Court, 797 P.2d 1244 (Colo. 1990).

Speech is not protected in the context of employee dismissal controversies unless it relates to a matter of public concern. Salida Sch. Dist. R-32-J v. Morrison, 732 P.2d 1160 (Colo. 1987).

Public employment cannot be conditioned on a basis that infringes the employee's constitutionally protected interest in freedom of expression. If an employee's speech was mainly personal in nature rather than related to public concerns, such speech is not entitled to constitutional protection. Gabel v. Jefferson County Sch. Dist. R-1, 824 P.2d 26 (Colo. App. 1991).

There was no violation of the right to freedom of speech due to the murder of a woman by her husband in a county justice center. Duong v. Arapahoe County Comm'rs, 837 P.2d 226 (Colo. App. 1992).

Distribution of leaflets and cookies by demonstrators in front of a sexually oriented business not protected expressions under this section where the distributions were made on the sidewalk in a privately owned strip shopping center. The court concluded that the shopping center was not the functional equivalent of a downtown business district since it consisted of less than 25 small businesses, had no department stores, had parking for less than 400 cars, had no police substation, no military offices, and no movie theaters. Rouse v. City of Aurora, 901 F. Supp. 1533 (D. Colo. 1995).

Pretrial detainee was not deprived of freedom of speech by jail personnel who monitored his outgoing correspondence to another inmate. The mail was not censored, and a prisoner has fewer free speech rights when corresponding with another prisoner. People v. Whalin, 885 P.2d 293 (Colo. App. 1994).

An inmate has no constitutional right to photocopying services. There is no free speech violation in restricting the photocopying privileges of inmates who otherwise are able to write by hand. Negron v. Golder, 111 P.3d 538 (Colo. App. 2004).

A showing that parent's exercise of free speech threatened the child with physical or emotional harm, or caused such harm, would establish a compelling state interest sufficient to justify a restriction on parent's first amendment free speech rights. In re Newell, 192 P.3d 529 (Colo. App. 2008).

Section 12-47.1-804 (1) did not impose unconstitutional restrictions on ballot access, the right to hold public office, and the right to vote where the state's substantial interest in avoiding corruption and the appearance of corruption in both the gaming industry and local government outweighed the limited burden that § 12-47.1-804 (1) placed on ballot access, the right to hold public office, or on the right to vote. Lorenz v. State, 928 P.2d 1274 (Colo. 1996).

Prospective political candidates lacked standing to challenge § 12-47.1-804 (1) on vagueness grounds where candidates owned a personal interest in gaming licenses or owned corporations that held gaming licenses. Lorenz v. State, 928 P.2d 1274 (Colo. 1996).

For application of Miller v. California test for obscenity, see People v. Seven Thirty-seven East Colfax, Inc., 697 P.2d 348 (Colo. 1985).

Applied in Melcher v.

Beeler, 48 Colo. 233, 110 P. 181, 139 Am. St. R. 273 (1910); People v. UMW, Dist. 15, 70 Colo. 269, 201 P. 54 (1921); Leighton v. People, 90 Colo. 106, 6 P.2d 929 (1931); Dill v. People, 94 Colo. 230, 29 P.2d 1035 (1934); Hamilton v. City of Montrose, 109 Colo. 228, 124 P.2d 757 (1942); Colo. High Sch. Activities Ass'n v. Uncompahgre Broad. Co., 134 Colo. 131, 300 P.2d 968 (1956); Williams v. City & County of Denver, 157 Colo. 374, 402 P.2d 615 (1965); Houston v. Manerbino, 185 Colo. 1, 521 P.2d 166 (1974); People v. Berger, 185 Colo. 85, 521 P.2d 1244 (1974); Bolles v. People, 189 Colo. 394, 541 P.2d 80 (1975); People v. Tabron, 190 Colo. 161, 544 P.2d 380 (1976); Menefee v. City & County of Denver, 190 Colo. 163, 544 P.2d 382 (1976); People v. Hildebrandt, 190 Colo. 167, 544 P.2d 384 (1976); Hansen v. People, 190 Colo. 457, 548 P.2d 1278 (1976); People ex rel. VanMeveren v. County Court, 191 Colo. 201, 551 P.2d 716 (1976); Veterans of Foreign Wars, Post 4264 v. City of Steamboat Springs, 195 Colo. 44, 575 P.2d 835, appeal dismissed, 439 U.S. 809, 99 S. Ct. 66, 58 L. Ed. 2d 101 (1978); Bergstrom v. Ricketts, 495 F. Supp. 210 (D. Colo. 1980); People in Interest of Baby Girl D., 44 Colo. App. 192, 610 P.2d 1086 (1980); In re P.R. v. District Court, 637 P.2d 346 (Colo. 1981); Churchey v. Adolph Coors Co., 759 P.2d 1336 (Colo. 1988); Saint John's Church in the Wilderness v. Scott, 194 P.3d 475 (Colo. App. 2008).

Section 11. Ex post facto laws. No ex post facto law, nor law impairing the obligation of contracts, or retrospective in its operation, or making any irrevocable grant of special privileges, franchises or immunities, shall be passed by the general assembly.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 30.

Cross references: For retrospective laws, see also § 12 of article XV of this constitution.

ANNOTATION

I. General Consideration.
II. Ex Post Facto Laws.
III. Impairment of Obligation of Contracts.
IV. Laws Retrospective in Operation.
V. Irrevocable Privileges and Franchises.

I. GENERAL CONSIDERATION.

Law reviews. For article, "The Case for Billboard Control: Precedent and Prediction", see 36 Dicta 461 (1959). For article, "Constitutional Law", which discusses Tenth Circuit decisions dealing with retroactive legislation under due process clause, see 63 Den. U. L. Rev. 247 (1986). For article, "The DeWitt Test: Determining the Retroactivity of New Civil Legislation in Colorado", see 40 Colo. Law. 73 (July 2011).

Applied in McNichols v. Walton, 120 Colo. 269, 208 P.2d 1156 (1949); Jackson v. Colo., 294 F. Supp. 1065 (D. Colo. 1968); Wasson v. Hogenson, 196 Colo. 183, 583 P.2d 914 (1978); McClanahan v. Am. Gilsonite Co., 494 F. Supp. 1334 (D. Colo. 1980); Denver Urban Renewal Auth. v. Byrne, 618 P.2d 1374 (Colo. 1980); First Lutheran Mission v. Dept. of Rev., 44 Colo. App. 417, 613 P.2d 351 (1980); Sutphin v. Mourning, 642 P.2d 34 (Colo. App. 1981); Thirteenth

St. Corp. v. A-1 Plumbing & Heating Co., 640 P.2d 1130 (Colo. 1982); Bellendir v. Kezer, 648 P.2d 645 (Colo. 1982); Kirby of Southeast Denver, Inc. v. Indus. Comm'n, 732 P.2d 1232 (Colo. App. 1986).

II. EX POST FACTO LAWS.

Definition. Ex post facto laws are defined variously as: Every law that makes an action done before the passing of the law, and which was innocent when done, criminal, and punishes such action; every law that aggravates a crime, or makes it greater than it was, when committed; every law that changes the punishment, and inflicts a greater punishment, than the law annexed to the crime, when committed; every law that alters the legal rules of evidence, and receives less, or different testimony, than the law required at the time of the commission of the offense, in order to convict the offender. Myers v. District Court, 184 Colo. 81, 518 P.2d 836 (1974).

Implication of term "ex post facto". The term "ex post facto" necessarily implies a fact or act done, after which the law in question is passed. French v. Deane, 19 Colo. 504, 36 P. 609, 24 L.R.A. 387 (1894).

Ex post facto legislation is abhorred in criminal law because it stigmatizes with criminality an act entirely innocent when committed. Police Pension & Relief Bd. v. McPhail, 139 Colo. 330, 338 P.2d 694 (1959).

This section applies solely to statutes which take away or impair a vested right. The provisions of this section prohibiting the passage of laws retrospective in operation apply solely to statutes which take away or impair a vested right acquired under existing laws, or which create a new obligation, impose a new duty, or attach a new disability in respect to transactions already passed. Vail v. Denver Bldg. & Constr. Trades Council, 108 Colo. 206, 115 P.2d 389 (1941); Peoples Natural Gas Div. v. Pub. Utils. Comm'n, 197 Colo. 152, 590 P.2d 960 (1979); Gambler's Express v. Pub. Utils. Comm'n, 868 P.2d 405 (Colo. 1994).

Neither an affirmative enactment nor a repealing statute can be so construed under the state constitution as to retroact upon and impair or take away accrued rights, which by the authority of law, and in the manner pointed out by it, had been previously asserted. And especially is this true when such rights have been carried into judgment. Denver S. P. & P. R. R. v. Woodward, 4 Colo. 162 (1878).

And is aimed only at criminal cases. The prohibition against ex post facto laws is aimed at criminal cases, but it cannot be evaded by giving a civil form to that which in its nature is criminal. French v. Deane, 19 Colo. 504, 36 P. 609 (1894).

The phrase "ex post facto" applies only to criminal cases. French v. Deane, 19 Colo. 504, 36 P. 609 (1894); Wood v. Beatrice Foods Co., 813 P.2d 821 (Colo. App. 1991).

The phrase "ex post facto", as used in the constitution of the United States and this section, does not apply to civil laws. Such laws only are ex post facto as provide for the punishment of a party for acts antecedently done which were not punishable at all, or not punishable to the extent or in the manner prescribed. Denver S. P. & P. R. R. v. Woodward, 4 Colo. 162 (1878).

Two critical elements must be present for a criminal statute to be stricken down as an ex post facto law: It must be retrospective, and it must disadvantage the offender affected by it. People v. Billips, 652 P.2d 1060 (Colo. 1982).

Section 18-1.4-102 (8) violates prohibition on ex post facto laws. Allowing the supreme court to

remand cases back for new penalty proceedings violates the ex post facto clause. Subjecting a defendant, sentenced under an unconstitutional death penalty statute, to a new penalty hearing in front of a jury is ex post facto because of the statutory dictate of a life sentence in § 18-1.3-401 (5) and because the defendants in these cases were identifiable targets of the legislation. People v. Woldt, 64 P.3d 256 (Colo. 2003).

The plain language of § 25-14-204 (2) states that a plaintiff who legally expands his cigar-tobacco bar prior to July 1, 2006, would become subject to penalties as of July 1, 2006, for his pre-enactment expansion. This is impermissible ex post facto legislation; however, the challenge to the retroactive law has become moot by the simple passage of time. Coal. for Equal Rights v. Owens, 458 F. Supp. 2d 1251 (D. Colo. 2006), aff'd on other grounds sub nom. Coal. for Equal Rights, Inc. v. Ritter, 517 F.3d 1195 (10th Cir. 2008).

Statute is not ex post facto where it does not enlarge the punishment to which the accused was liable when his crime was committed, nor make any act involved in his offense criminal that was not criminal at the time he committed the crime for which he was found guilty. People v. Bastardo, 646 P.2d 382 (Colo. 1982).

An inmate does not have a vested right in earned time, so the inmate's punishment is not increased by withholding earned time from the inmate for not participating in sex offender treatment. Reeves v. Colo. Dept. of Corr., 155 P.3d 648 (Colo. App. 2007).

Section 18-3-405 (2)(c) was possibly applied ex post facto, therefore, enhancement portion of conviction is reversed where several assaults occurred before this law was enacted, the verdict could have been based on an act that preceded the law's enactment, and the jury was not instructed that the conviction had to be based on an act that occurred after the law's passage. People v. Graham, 876 P.2d 68 (Colo. App. 1994).

Statutory provision tolling the expiration of parole upon the filing of a parole violation complaint does not violate prohibition against ex post facto laws. Goetz v. Gunter, 830 P.2d 1154 (Colo. App. 1992).

The ex post facto clause of the Colorado Constitution operates primarily to prohibit the retroactive application of legislative changes which make previously lawful behavior a criminal offense or which enhance criminal penalties and, by its own terms, said clause does not apply to the judicial branch of the government. The Colorado supreme court's amendment of C.R.C.P. 24(f), which previously required jurors in a capital case to be sequestered, allowed the trial court to determine in its discretion whether to sequester the jurors in a criminal trial and such amendment did not violate the defendant's constitutional rights. People v. Benney, 757 P.2d 1078 (Colo. App. 1987); People v. Graham, 876 P.2d 68 (Colo. App. 1994).

Time at which offense committed governs ex post facto character of law. Whether a law is ex post facto or not relates, in criminal cases, to the time at which the offense charged was committed. If the law complained of was passed before the commission of the act with which the prisoner is charged, it cannot, as to that offense, be an ex post facto law. If passed after the commission of the offense, it is as to that ex post facto, though whether of the class forbidden by the constitution may depend on other matters. French v. Deane, 19 Colo. 504, 36 P. 609 (1894); Zaragoza v. Dept. of Rev., 702 P.2d 274 (Colo. 1985).

So far as the ex post facto character of a law depends on the time of its enactment, it has reference solely to the date at which the offense was

committed to which the new law is sought to be applied. No other time or transaction but this has been in any adjudged case held to govern its ex post facto character. French v. Deane, 19 Colo. 504, 36 P. 609 (1894).

A statute is not rendered unconstitutional as an ex post facto law merely because it might operate on a fact or status preexisting the effective date of the legislation, as long as its punitive features apply only to acts committed after the statutory proscription becomes effective. People v. Billips, 652 P.2d 1060 (Colo. 1982); Gasper v. Gunter, 851 P.2d 912 (Colo. 1993); People v. Graham, 876 P.2d 68 (Colo. App. 1994); Coal. for Equal Rights v. Owens, 458 F. Supp. 2d 1251 (D. Colo. 2006), aff'd on other grounds sub nom. Coal. for Equal Rights, Inc. v. Ritter, 517 F.3d 1195 (10th Cir. 2008).

When defendant pleads guilty and the factual basis provided that defendant committed the acts both during a time period before and after a statute is effective, the defendant cannot claim an ex post facto violation. People v. Bobrik, 87 P.3d 865 (Colo. App. 2003).

This section operates, as to pending causes under a statute, as a saving clause incorporated into the repealing statute. Lundin v. Kansas P. R. R., 4 Colo. 433 (1878); Denver S. P. & P. R. R. v. Woodward, 4 Colo. 162 (1878).

The ex post facto clause is violated when a statute punishes as a crime conduct which was innocent when done, makes more onerous the punishment for a crime after its commission, or deprives a defendant of a defense that was available at the time the crime was committed. People v. District Court (Thomas), 834 P.2d 181 (Colo. 1992); People v. Aguayo, 840 P.2d 336 (Colo. 1992); People v. Bielecki, 964 P.2d 598 (Colo. App. 1998).

The test for determining whether a criminal law is ex post facto is twofold. First, it must be retrospective, that is, it must apply to events occurring before its enactment. Second, it must disadvantage the offender affected by it. In re R.B., 815 P.2d 999 (Colo. App. 1991); People v. Stewart, 926 P.2d 105 (Colo. App. 1996); People v. Bielecki, 964 P.2d 598 (Colo. App. 1998).

An ex post facto law is one which imposes punishment for an act which was not a crime when it was committed or which imposes additional punishment upon acts then proscribed. People v. Grenemyer, 827 P.2d 603 (Colo. App. 1992).

The test for determining whether posting personal information on the internet about convicted sex offenders constitutes additional criminal punishment in violation of the ex post facto clause is the test contained in Kennedy v. Mendoza-Martinez, 372 U.S. 144 (1966). The seven factors are: (1) Whether the sanction involves an affirmative disability or restraint; (2) whether it has historically been regarded as punishment; (3) whether it comes into play only on a finding of scienter; (4) whether its operation will promote the traditional aims of punishment--retribution and deterrence; (5) whether the behavior to which it apples is already a crime; (6) whether an alternative purpose to which it may rationally be connected is assignable for it; and (7) whether it appears excessive in relation to the alternative purpose assigned. People v. Stead, 66 P.3d 117 (Colo. App. 2002).

"Punishment" as referred to in case law discussing ex post facto laws is broader than an increase in the sentence. Punishment in the instant case was increased retrospectively when petitioner was denied the automatic entry of an order limiting access to records relating to the charge against her because of amendment of the statute limiting access after her crime was committed. In re R.B., 815

P.2d 999 (Colo. App. 1991).

Requirement that prisoner participate in sex offender treatment program does not violate ex post facto clause even though program did not exist when prisoner was sentenced since participation in the program is a privilege and does not constitute additional punishment. White v. People, 866 P.2d 1371 (Colo. 1994).

Requirement that offender register as a sex offender does not violate ex post facto clause, because the registration requirement is intended to assist law enforcement officials in investigating future sex crimes and to protect the public safety. As such, it is remedial, not punitive, and does not unconstitutionally enhance the offender's punishment. Jamison v. People, 988 P.2d 177 (Colo. App. 1999).

Since sex offender registration is not punitive, requiring an offender who plead not guilty by reason of insanity to register as a sex offender upon his or her conditional release does not violate the principles of ex post facto. People v. Durapau, 12 COA 67, 280 P.3d 42.

There is no ex post facto violation when a current qualifying sexually violent predator offense was not a qualifying offense at the time it was committed. Since sexually violent predator status is not punishment, there is no constitutional violation. People v. Mendoza, __ P.3d __ (Colo. App. 2011).

Drug offender surcharge created in § 18-19-103 is properly characterized as a punishment rather than as a nonpunitive, compensatory payment. As such, the surcharge is appropriately scrutinized against constitutional provisions prohibiting ex post facto legislation. People v. Stead, 845 P.2d 1156 (Colo. 1993).

Imposition of drug offender surcharge violated prohibition against ex post facto laws where defendant committed offenses before effective date of statute; retroactive application of the statute would make punishment for defendant's crime more onerous after its commission. People v. Stead, 845 P.2d 1156 (Colo. 1993); People v. Ellington, 854 P.2d 223 (Colo. 1993); People v. Brown, 854 P.2d 228 (Colo. 1993); People v. Stead, 854 P.2d 229 (Colo. 1993).

No ex post facto violation where the amount of restitution did not change. Application of new restitution statute changing to whom the payments would be applied did not violate ex post facto clause. The amount of restitution did not change; the court was authorized to order full restitution under either version of the statute. People v. Woodward, 11 P.3d 1090 (Colo. 2000).

For purpose of ex post facto analysis, the court looks to the law annexed to an offense on the date when the defendant is charged with committing the offense at issue. People v. Henry, 845 P.2d 1160 (Colo. 1993).

Extension of statute of limitations. The legislature may extend the statute of limitations for prosecutions not already time-barred as of the effective date of the extension without violating this section, but there should be a clear legislative statement that that was the intent. People v. Holland, 708 P.2d 119 (Colo. 1985).

Thus, legislation that extends the statute of limitations for a particular crime cannot be retroactively applied to revive a previously barred prosecution. People v. Shedd, 702 P.2d 267 (Colo. 1985).

Unless harsh or oppressive, a statute which changes the rules of evidence after the occurrence of an offense so that previously inadmissible evidence is admissible is not an ex post facto law. People v. Koon, 724 P.2d 1367 (Colo. App. 1986).

Judicial ex post facto is based not on this section, which applies only to legislative acts, but on

due process principles. Aue v. Diesslin, 798 P.2d 436 (Colo. 1990); Campbell v. Solano, 807 P.2d 583 (Colo. 1991).

And retroactive application of a parole board's reinterpretation of a statute, where the reinterpretation of the ambiguous statutory language was foreseeable, did not result in a violation of the ex post facto clause or the due process requirements. Lustgarden v. Gunter, 779 F. Supp. 500 (D. Colo. 1991).

Although the prohibitions against ex post facto laws are limitations on the power of the legislature and generally are not construed as being applicable to judicial decisions, such decisions may nevertheless have the effect of ex post facto legislation and, thus, may be found to violate a defendant's rights to due process. People v. Grenemyer, 827 P.2d 603 (Colo. App. 1992).

Colorado will follow the United States supreme court case of Calder v. Bull to determine if there has been a violation of the ex post facto clause. Accordingly, a violation will be found to exist whenever a statute punishes conduct as a crime which conduct was innocent when committed, makes more onerous the punishment for a crime after its commission, or deprives a defendant of a defense that was available at the time the crime was committed. People v. District Court, 834 P.2d 181 (Colo. 1992).

Legislative changes made to language that had been held to be unconstitutional were ameliorative. In fact, the defendant benefitted from the change because it added the possibility that he could receive parole. The court held that the application of this type of change was incapable of violating the ex post facto clause. People v. District Court, 834 P.2d 181 (Colo. 1992).

The fact that the legislature, in reenacting a provision of law, diverts from a more detailed definition does not mean there has been a detrimental change. Not all changes provide grounds for finding that the new language violates the ex post facto clause. People v. District Court, 834 P.2d 181 (Colo. 1992).

Statutory provisions requiring a single trial on sanity and guilt and setting forth procedures after acceptance of a plea of not guilty by reason of insanity, adopted in 1996 to "clarify" statutory provisions enacted in 1995, do not violate constitutional proscription against ex post facto laws. People v. Bielecki, 964 P.2d 598 (Colo. App. 1998).

Applied in Titus v. Titus, 96 Colo. 191, 41 P.2d 244 (1935); White v. District Court, 180 Colo. 152, 503 P.2d 342 (1972); Union P. R. R. v. Heckers, 181 Colo. 374, 509 P.2d 1255 (1973); Carlson v. McCoy, 193 Colo. 391, 566 P.2d 1073 (1977); Perl-Mack Enters. Co. v. City & County of Denver, 194 Colo. 4, 568 P.2d 468 (1977); Estate of Barnhart v. Burkhardt, 38 Colo. App. 544, 563 P.2d 972 (1977); Hammer v. Real Estate Comm'n, 40 Colo. App. 260, 576 P.2d 191 (1977).

III. IMPAIRMENT OF OBLIGATION OF CONTRACTS.

Law reviews. For article, "One Year Review of Contracts", see 37 Dicta 1 (1960).

This section protects vested contract rights from impairment. Police Pension & Relief Bd. v. McPhail, 139 Colo. 330, 338 P.2d 694 (1959).

And protects equally from violation the contracts of states with those entered into between private individuals. Hessick v. Moynihan, 83 Colo. 43, 262 P. 907 (1927).

Only vested contractual rights are protected from statutory impairment. Spradling v. Colo. Dept. of Rev., 870 P.2d 521 (Colo. App.

1993).

This section protects a "contract" as the word is used in its ordinary meaning. Klipping v. McCauley, 143 Colo. 444, 354 P.2d 167 (1960).

Nothing in the language of former § 13-30-103 (1)(k)(I) indicates or implies that the county court judge salary calculation formula was contractual in nature. Because the plaintiff had no vested contractual right to be paid according to the formula set forth in former § 13-30-103, he did not have a right or interest protected by this section of the constitution. Alderton v. State of Colo., 17 P.3d 817 (Colo. App. 2000).

Section does not render unconstitutional employment security statute as an impairment to obligation of contracts between operator and drivers of concrete delivery trucks. Weitzel Redi-mix, Inc. v. Indus. Comm'n, 728 P.2d 364 (Colo. App. 1986).

Contract must be valid in its inception. In order to come within the scope of this section, a contract must be valid in its inception. Klipping v. McCauley, 143 Colo. 444, 354 P.2d 167 (1960).

And lawfully entered into. This section extends only to contracts lawfully entered into. Klipping v. McCauley, 143 Colo. 444, 354 P.2d 167 (1960).

Section does not apply to acts validating contracts theretofore made on behalf of state. Miller v. Limon Nat'l Bank, 88 Colo. 373, 296 P. 796 (1931); Farnik v. Bd. of County Comm'rs, 139 Colo. 481, 341 P.2d 467 (1959).

State may make laws for the enforcement of existing contracts, curing defects in remedies, confirming rights already existing or adding to the means of securing and enforcing them. Titus v. Titus, 96 Colo. 191, 41 P.2d 244 (1935).

Legislative changes can apply only to conditions in future. The permissible changes, amendments and alterations provided for by the general assembly can apply only to conditions in the future, and never to the past; according to the cardinal principle of justice and fair dealings between government and man, as well as between man and man, the parties shall know prior to entering into a business relationship the conditions which shall govern that relationship. Police Pension & Relief Bd. v. McPhail, 139 Colo. 330, 338 P.2d 694 (1959).

A pension has the attributes of a contract. Police Pension & Relief Bd. v. McPhail, 139 Colo. 330, 338 P.2d 694 (1959).

And is therefore entitled to constitutional protection where it is a contributory pension system. Police Pension & Relief Bd. v. McPhail, 139 Colo. 330, 338 P.2d 694 (1959).

Rights which accrue under a pension plan are contractual obligations which are protected under this section and art. I, § 10, of the United States Constitution. Pension plans promote important public policy considerations because they are structured to reward efficiency, to encourage officers to remain in the service, and to give assurance of a decent living upon retirement. Colo. Springs Fire Fighters v. Colo. Springs, 784 P.2d 766 (Colo. 1989).

The public employee's retirement association (PERA) and the Policemen's and Firemen's Pension Reform Act statutory provisions have established a defined benefit contributory pension system in which most public employees are required to participate. By making these contributions, employees obtain a limited vesting of pension rights, which ripen into vested pension rights upon attainment of the respective eligibility requirements. Colo. Springs Fire Fighters v. Colo. Springs, 784 P.2d 766 (Colo. 1989).

On the issue of whether PERA retirees have a contractual right to a specific cost of living increase, the cases of Police Pension & Relief Bd. v. McPhail, 139 Colo. 330, 338 P.2d 694 (1959), and Police Pension & Relief Bd. v. Bills, 148 Colo. 383, 366 P.2d 581 (1961), remain good law. Justus v. People, 2012 COA 169, __ P.3d __.

PERA retirees have a contractual right to the cost of living adjustment (COLA) in effect when their rights vested. Justus v. People, 2012 COA 169, __ P.3d __.

On the issue of whether any adverse change to the COLA for PERA retirees violates this section, contract clause jurisprudence developed after the McPhail and Bills cases in In re Estate of DeWitt, 54 P.3d 849 (Colo. 2002), must be followed. Therefore, in this respect, McPhail and Bills are no longer good law. Justus v. People, 2012 COA 169, __ P.3d __.

Changes to the PERA retirees' COLA under Senate Bill 10-001 do not violate a retiree's rights under this section if the contract right has not been impaired, if any impairment is not substantial, or if the change in the COLA was reasonable and necessary to serve a significant and legitimate public purpose. Justus v. People, 2012 COA 169, __ P.3d __.

Health plan benefits provided for by city were not pension benefits which were subject to vesting where a consistent pattern emerged upon consideration of the Colorado statutory scheme addressing pension benefits, the attributes of the Colorado Springs ordinance, and the Employee Retirement Income Security Act of 1974 (ERISA) provisions. Colo. Springs Fire Fighters v. Colo. Springs, 784 P.2d 766 (1989).

Circumstances surrounding the adoption of a city ordinance and the restrictions imposed by the city charter, established that the council did not intend to create a pension type benefit or a contract when it adopted measure. Instead, the council acted within the bounds of its authority and enacted an employee benefit provision, which was to remain in effect until the council, in the exercise of its discretionary legislative powers, elected to modify it. Colo. Springs Fire Fighters v. Colo. Springs, 784 P.2d 766 (Colo. 1989).

Firemen's pension act does not impair the obligation of contracts of employment in violation of this section. Huff v. Mayor of Colo. Springs, 182 Colo. 108, 512 P.2d 632 (1973).

Frustration of pre-annexation agreement was not impairment of a contract and provisions of §§ 31-12-118.5 and 31-12-118 (2)(b) that provide for abeyance of pending annexation proceedings upon the filing of a petition for incorporation when specified criteria are met does not violate this section. Greenwood Vill. v. Petitioners for Proposed City of Centennial, 3 P.3d 427 (Colo. 2000).

A marriage is not a "contract" within meaning of contract clause. In re Franks, 189 Colo. 499, 542 P.2d 845 (1975), cert. denied, 423 U.S. 1043, 96 S. Ct. 766, 46 L. Ed. 2d 632 (1976).

Where contract and lease do not provide an explicit exemption from the Denver facilities development admissions tax, the claim that the ordinance imposing such tax impairs the obligation of contracts is invalid. Denver Center for Performing Arts v. Briggs, 696 P.2d 299 (Colo. 1985).

The application of the amended Colorado exemption limits set forth in § 13-54-102 to a loan and security agreement that was entered into prior to the enactment of the amended exemption statute does not violate the respective "contracts" clauses of the United States and

Colorado Constitutions. In re Larsen, 260 B.R. 174 (Bankr. D. Colo. 2001).

Applied in Am. Smelting & Ref. Co. v. People ex rel. Lindsley, 204 U.S. 103, 27 S. Ct. 198, 51 L. Ed. 393 (1907); Colo. Farm & Live Stock Co. v. Beerbohm, 43 Colo. 464, 96 P. 443 (1908); Colo. & S. Ry. v. State R. R. Comm'n, 54 Colo. 64, 129 P. 506 (1912); City & County of Denver v. Stenger, 277 F. 865 (8th Cir. 1922); Driverless Car Co. v. Armstrong, 91 Colo. 334, 14 P.2d 1098 (1932); In re Special Assessments for Paving Dist. No. 3, 105 Colo. 158, 95 P.2d 806 (1939); People ex rel. Rogers v. Waterman's Estate, 108 Colo. 263, 116 P.2d 204 (1941); Bd. of Trustees of Firemen's Fund v. People ex rel. Behrman, 119 Colo. 301, 203 P.2d 490 (1949); Colo. Dept. of Pub. Health & Env't v. Bethell, 60 P.3d 779 (Colo. App. 2002).

IV. LAWS RETROSPECTIVE IN OPERATION.

This section prohibits the enactment of any law retrospective in its operation. Spangler v. Green, 21 Colo. 505, 42 P. 674 (1895); Colo. Fuel & Iron Corp. v. Indus. Comm'n, 148 Colo. 557, 367 P.2d 597 (1961); Taylor v. Pub. Employees' Retirement Ass'n, 189 Colo. 486, 542 P.2d 383 (1975); Stewart v. Pub. Employees' Retirement Ass'n, 43 Colo. App. 25, 612 P.2d 1141 (1979).

Prohibition applies to city council as well as to general assembly. The state constitution provides that no law retrospective in its operation shall be passed by the general assembly. What the general assembly cannot do at the state level in this connection, a city council cannot do in municipal affairs. City & County of Denver v. Denver Buick, Inc., 141 Colo. 121, 347 P.2d 919 (1959).

The prohibition against retrospective laws applies to local governments. City of Golden v. Parker, 138 P.3d 285 (Colo. 2006).

Prohibition applies to Denver career service authority board career service rules because the promulgation of such rules is a legislative function delegated by the general assembly to the board. Abromeit v. Denver Career Serv. Bd., 140 P.3d 44 (Colo. App. 2005).

Section is for protection of rights of citizen, not state. Even though a law creates a pensionable status based on services wholly rendered prior to its enactment and in such sense might be considered retrospective in operation it would not offend against this section, for this section, apart of the bill of rights, is for the protection of the rights of the citizen and is not applicable to the state. Bedford v. White, 106 Colo. 439, 106 P.2d 469 (1940).

Prohibition of retrospective legislation parallels provision forbidding ex post facto laws. The purposes of the provisions are similar, viz., to prevent the unfairness entailed in altering the legal consequences of events or transactions after the fact. Peoples Natural Gas Div. v. Pub. Utils. Comm'n, 197 Colo. 152, 590 P.2d 960 (1979).

The word "retrospective" as used in this section has reference to civil cases, and as to such cases it is synonymous with the term "ex post facto", as applied to the criminal law. French v. Deane, 19 Colo. 504, 36 P. 609, 24 L.R.A. 387 (1894).

The term "retrospective", used in this section, was intented to apply to laws which could not properly be said to be included in the description of ex post facto, or laws impairing the obligation of contracts. Denver S. P. & P. R. R. v. Woodward, 4 Colo. 162 (1878).

The term "retrospective", like the term "ex post facto", is a technical term, and that while the latter applies only to criminal cases, and to those only in a particular way, so the former

technically applies only to civil cases, and to those only in a particular way; that if a statute in form affects the remedy only, yet substantially takes away accrued rights, it is unconstitutional and void. Denver S. P. & P. R. R. v. Woodward, 4 Colo. 162 (1878).

Law is applied retrospectively only when it takes away or impairs vested rights acquired under existing laws or creates a new obligation. Stewart v. Pub. Employees' Retirement Ass'n, 43 Colo. App. 25, 612 P.2d 1141 (1979); Bush v. Roche Constructors, Inc., 817 P.2d (Colo. App. 1991); Robinson v. Lynmar Racquet Club, Inc., 851 P.2d 274 (Colo. App. 1993); Am. Comp. Ins. Co. v. McBride, 107 P.3d 973 (Colo. App. 2004).

It includes a statute which takes away or impairs any vested right acquired under existing laws, or creates a new obligation, or imposes a new duty, or attaches a new disability in respect to transactions or considerations already past. Denver S. P. & P. R. R. v. Woodward, 4 Colo. 162 (1878); French v. Deane, 19 Colo. 504, 36 P. 609, 24 L.R.A. 387 (1894); Day v. Madden, 9 Colo. App. 464, 48 P. 1053 (1897); Evans v. City of Denver, 26 Colo. 193, 57 P. 696 (1899); Perry v. City of Denver, 27 Colo. 93, 59 P. 747 (1899); Moore v. Chalmers-Galloway Live Stock Co., 90 Colo. 548, 10 P.2d 950 (1932); California Co. v. State, 141 Colo. 288, 348 P.2d 382 (1959), appeal dismissed, 364 U.S. 285, 81 S. Ct. 42, 5 L. Ed. 2d 37, reh'g denied, 364 U.S. 897, 81 S. Ct. 219, 5 L. Ed. 2d 191 (1960); Spiker v. City of Lakewood, 198 Colo. 528, 603 P.2d 130 (1979); Jefferson County Dept. of Soc. Servs. v. D.A.G., 199 Colo. 315, 607 P.2d 1004 (1980); P-W Invs., Inc. v. City of Westminster, 655 P.2d 1365 (Colo. 1982); Martin v. Bd. of Assessment Appeals, 707 P.2d 348 (Colo. 1985); Ficarra v. Dept. of Reg. Agencies, 849 P.2d 6 (Colo. 1993).

Such as a law that changes ground of action or the nature of defense. The retrospectivity clause was intended to prohibit the making of any law prescribing new rules for the decision of existing causes so as to change the ground of the action or the nature of the defense. Denver S. P. & P. R. R. v. Woodward, 4 Colo. 162 (1878).

A vested right must be something more than a mere expectation based upon an anticipated continuance of existing law, and it must have become a title, legal or equitable, to the present or future enjoyment of property or a demand, or a legal exemption from a demand made by another. Ficarra v. Dept. of Reg. Agencies, 849 P.2d 6 (Colo. 1993); Nye v. Indus. Claim Appeals Office, 883 P.2d 607 (Colo. App. 1994); Am. Comp. Ins. Co. v. McBride, 107 P.3d 973 (Colo. App. 2004).

A vested right is one that is not dependent on the common law or statute but instead has an independent existence. Am. Comp. Ins. Co. v. McBride, 107 P.3d 973 (Colo. App. 2004).

Thus, procedure under old law governs if rights have accrued thereunder. Plaintiff was injured by falling on defendant's sidewalk, about 30 days prior to the new law going into effect, and, after said law had become effective, gave notice to the city of her alleged injuries in accordance with the requirements of the new act. It was held that such injury having been received prior to such law taking effect, plaintiff should have complied with the notice required by the the former law, and, upon her failure so to do, the city was not liable. City of Colo. Springs v. Neville, 42 Colo. 219, 93 P. 1096 (1908).

Expectations of parties to litigation are not vested rights and provisions of §§ 31-12-118.5 and 31-12-118 (2)(b) that provide for abeyance of pending annexation

proceedings upon the filing of a petition for incorporation when specified criteria are met does not impair vested contractual rights or violate this section. Greenwood Vill. v. Petitioners for Proposed City of Centennial, 3 P.3d 427 (Colo. 2000).

In determining whether a retroactive statute impairs or destroys vested rights, the most important questions are whether: (1) The public interest is advanced or retarded; (2) the retroactive provision gives effect to or defeats the bona fide intentions or reasonable expectations of affected persons; or (3) the statute surprises persons who have long relied on a contrary state of law. Ficarra v. Dept. of Reg. Agencies, 849 P.2d 6 (Colo. 1993); In re Larsen, 260 B.R. 174 (Bankr. D. Colo. 2001).

However, there is no fixed formula that measures the content of all the circumstances under which a person is said to possess a vested right, rather, it is a term that sums up a judicial determination that the facts of the case render it inequitable that a state impede the person from taking certain action. Ficarra v. Dept. of Reg. Agencies, 849 P.2d 6 (Colo. 1993).

A retrospective test consists of two inquiries. First, the statute must either (1) impair a vested right or (2) create a new obligation, duty, or disability. If a statute impairs a vested right, the impairment must be balanced against the public interest in the statute. In re Estate of DeWitt, 54 P.3d 849 (Colo. 2002); City of Golden v. Parker, 138 P.3d 285 (Colo. 2006).

All statutes shall be construed prospectively unless a contrary intention is clearly manifest. California Co. v. State, 141 Colo. 288, 348 P.2d 382 (1959), appeal dismissed, 364 U.S. 285, 81 S. Ct. 42, 5 L. Ed. 2d 37, reh'g denied, 364 U.S. 897, 81 S. Ct. 219, 5 L. Ed. 2d 191 (1960).

A statute will not be given retrospective operation, unless this clearly appears to have been the legislative purpose. British Am. Assurance Co. v. Colo. & S. Ry., 52 Colo. 589, 125 P. 508 (1912).

Standard applied in In re Estate of DeWitt, 54 P.3d 849 (Colo. 2002).

The rule is that if it be doubtful whether or not the law is intended to apply to past transactions, the doubt should be resolved against their inclusion. Bonfils v. Pub. Utils. Comm'n, 67 Colo. 563, 189 P. 775 (1920).

Past transactions are to be governed by the statutes in force when the causes of action arose; and if the new governing statute does not fix a time in which the actions are to become subject to the law, they are not to be affected by it by reason of its general terms. Bonfils v. Pub. Utils. Comm'n, 67 Colo. 563, 189 P. 775 (1920).

But retroactive application is permissible where change is procedural. Retroactive application is permissible where the change is procedural or remedial in nature. In re Colo. Mercantile Co., 299 F. Supp. 55 (D. Colo. 1969).

When a law merely affects the remedy or law of procedure, all rights of action will be enforceable under the new procedure without regard to whether they accrued before or after such change of law and without regard to whether the suit has been instituted or not. Smith v. Putnam, 250 F. Supp. 1017 (D. Colo. 1965).

One exception to the constitutional and statutory prohibitions against retroactive legislation, the "substantive-procedural dichotomy", requires a primary characterization of the statute in question as one either "substantive", i.e. creating, destroying, altering vested rights or liabilities, or "procedural", i.e. relating only to remedies or modes of procedure to enforce such rights or liabilities. "Substantive statutes" are resticted to

prospective operation only, whereas "procedural" or "remedial" statutes are permitted retrospective application. Smith v. Putnam, 250 F. Supp. 1017 (D. Colo. 1965).

Application of a statute to a subsisting claim for relief does not violate the prohibition of retroactive legislation where the statute effects a change that is only procedural or remedial in nature. Continental Title Co. v. District Court, 645 P.2d 1310 (Colo. 1982); Bingo Games Supply Co., Inc. v. Meyer, 895 P.2d 1125 (Colo. App. 1995).

Application of a statute is not rendered retroactive and unlawful merely because the facts upon which it operates occurred before adoption of the statute. Continental Title Co. v. District Court, 645 P.2d 1310 (Colo. 1982).

Application of the 1979 amendments to § 13-21-101 does not violate this section. Therefore, plaintiff entitled to interest on damages from date of accident even though it occurred prior to effective date of the amendments. Meller v. Heil Co., 745 F.2d 1297 (10th Cir.), cert. denied, 467 U.S. 1206, 104 S. Ct. 1297, 81 L. Ed. 2d 347 (1984).

The legislature may legitimately provide that the revocation of a license to drive be triggered by the last in a series of offenses without offending the proscription against retrospective legislation. Zaragoza v. Dept. of Rev., 702 P.2d 274 (Colo. 1985).

Changes in procedural law operate retrospectively unless contrary legislative intent is expressed and statutes governing forum for judicial review are procedural. Davis v. Bd. of Psychologist Exam'rs, 791 P.2d 1198 (Colo. App. 1989).

There are no vested rights to invoke certain procedures under statutes governing initiative process and the court may apply subsequently adopted procedures. Committee For Better Health Care v. Meyer, 830 P.2d 884 (Colo. 1992).

Retroactive application of amended career service rules that eliminated the right of employees to appeal pay grade classifications is not unconstitutionally retrospective. The right to such an appeal is procedural and remedial only and is not a vested right. Abromeit v. Denver Career Serv. Bd., 140 P.3d 44 (Colo. App. 2005).

However, where there are substantive amendments relating to claims for workers' compensation benefits, such amendments do not have any retrospective effect. Neodata Serv. v. Indus. Claim Appeals Office, 805 P.2d 1180 (Colo. App. 1991).

Changes to personnel handbook dealing with priority of layoffs and relocation within the institution constituted substantive changes and were therefore unconstitutionally retrospective. Although an employer reserves the right to modify its employment handbook, there are limits if the modifications constitute changes that affect employees retrospectively and substantively. Saxe v. Bd. of Trs. of Metro. State Coll., 179 P.3d 67 (Colo. App. 2007).

Changes to personnel handbook dealing with standards, access to information, and written explanation of termination decisions, however, constituted mere procedural changes and were therefore constitutional even though retrospective. Saxe v. Bd. of Trs. of Metro. State Coll., 179 P.3d 67 (Colo. App. 2007).

The general assembly's legislative powers include enacting generic legislation that clarifies and resolves preexisting issues and applies that resolution to pending cases and controversies. In re Balanson, 107 P.3d 1037 (Colo. App. 2004).

There is no vested right in

remedies. The abolition of an old remedy, or the substitution of a new one, neither constitutes the impairment of a vested right nor the imposition of a new duty, for there is no such thing as a vested right in remedies. Moore v. Chalmers-Galloway Live Stock Co., 90 Colo. 548, 10 P.2d 950 (1932); Jefferson County Dept. of Soc. Servs. v. D.A.G., 199 Colo. 315, 607 P.2d 1004 (1980); Continental Title Co. v. District Court, 645 P.2d 1310 (Colo. 1982); Robinson v. Lynmar Racquet Club, Inc., 851 P.2d 274 (Colo. App. 1993).

Thus, changes in the mode of trial which do not deprive an accused of a defense and which operate only in a limited and unsubstantial manner to his disadvantage are not prohibited by the constitution although adopted after the offense is committed. Kolkman v. People, 89 Colo. 8, 300 P. 575 (1931).

Since there is no vested rights in remedies, § 37-45-153 validating water conservancy districts does not violate this section. Taxpayers for Animas-La Plata v. Animas-La Plata, 739 F.2d 1472 (10th Cir. 1984).

Rights to the benefit of particular procedures or remedial measures do not constitute vested rights. Committee for Better Health Care v. Meyer, 830 P.2d 884 (Colo. 1992).

The statute of limitations may be changed by an extension of the time, or by an entire repeal, and affect existing causes of action, which by the existing law would soon be barred. In such cases the right of action is perfect, and no right of defense has accrued from the time already elapsed. But if a right has become vested and perfect, a law, which afterward annuls or takes it away, is retrospective. Denver S. P. & P. R. R. v. Woodward, 4 Colo. 162 (1878); Jefferson County Dept. of Soc. Servs. v. D.A.G., 199 Colo. 315, 607 P.2d 1004 (1980).

When statutory amendment not retroactive. An amendment to a statute is not retroactively applied if the amendment covers the same subject matter as the original statute and if the person or persons claiming under the amendment had a continuing status under both the original statute and the amendment. Taylor v. Pub. Employees' Retirement Ass'n, 189 Colo. 486, 542 P.2d 383 (1975).

An amended statute, applied to a factual situation which occurred prior to the enactment of the amendment, is not retroactively applied where the act which triggered application of the amended statute occurred after the effective date of the amendment. Nix v. Tice, 44 Colo. App. 42, 607 P.2d 399 (1980).

In public utilities commission action. The fact that there was some lag between a request for a rate increase by a utility and the public utilities commission's decision does not render the commission's action retrospective within the meaning of this section. Peoples Natural Gas Div. v. Pub. Utils. Comm'n, 197 Colo. 152, 590 P.2d 960 (1979).

Retroactive application of enhanced civil remedies in remedial legislation is permissible. Treble-damages provision of Colorado Consumer Protection Act could be applied where health club had violated substantive provisions of act prior to amendment of remedies section, since amendment did not impose new duties on health clubs in relation to their customers. Robinson v. Lynmar Racquet Club, Inc., 851 P.2d 274 (Colo. App. 1993).

No vested right to continue act prohibited under new law where provision of new law is no more restrictive than prohibition contained in regulations promulgated under the former law. Nat'l Advertising Co. v. Dept. of Hwys., 718 P.2d 1038 (Colo. 1986).

A landowner cannot become vested with a right to have property remain outside a local

political subdivision of the state. The state's power over the boundaries of subdivisions is plenary. Jefferson Ctr. Metro. Dist. No. 1 v. N. Jeffco Metro. Recreation & Park Dist., 844 P.2d 1321 (Colo. App. 1992).

Inchoate water rights are not vested rights, and thus may be validly affected by legislation. Chatfield E. Well Co. v. Chatfield E. Prop. Owners Ass'n, 956 P.2d 1260 (Colo. 1998).

Where the operative occurrence happened seven years after the adoption of the statute, there was no retrospective legislation. The rezoning of agricultural land was the operative occurrence. Jefferson Ctr. Metro. Dist. No. 1 v. N. Jeffco Metro. Recreation & Park Dist., 844 P.2d 1321 (Colo. App. 1992).

There is no vested right in public employees to engage in "moonlighting" activities. Himelgrin v. City and County of Denver, 717 P.2d 1006 (Colo. App. 1986).

City permit as foundation for vested right. A city permit can provide the foundation for a vested right, and thus be constitutionally protected from impairment by subsequent legislation, if the permit holder takes steps in reliance upon the permit. P-W Invs., Inc. v. City of Westminster, 655 P.2d 1365 (Colo. 1982).

Retired judge entitled to increased benefits. Judge who retired prior to effective date of 1977 amendment to § 24-51-607 (2)(a) (increasing pension benefit for judges with more than five and less than ten years service) is entitled to increased benefits from the effective date of the amendment, and the increase is not a retroactive application of the amendment. Stewart v. Pub. Employees' Retirement Ass'n, 43 Colo. App. 25, 612 P.2d 1141 (1979).

Ratemaking by the public utilities commission is subject to the prohibition against retrospective legislation. Mountain States Tel. & Tel. Co. v. Pub. Utils. Comm'n, 180 Colo. 74, 502 P.2d 945 (1972); Office of Consumer Counsel v. Pub. Serv. Co., 877 P.2d 867 (Colo. 1994).

The public utilities commission's award of attorney fees is quasi-judicial not quasi-legislative; therefore, the award is not subject to the prohibition against retrospective legislation. Lake Durango Water Co. v. Pub. Utils. Comm'n, 67 P.3d 12 (Colo. 2003).

State interest in preserving finality of criminal convictions subject to constitutional limitations. Even though the Colorado criminal code grants a convicted offender the right to seek collateral review of a constitutionally flawed conviction (§ 18-1-410), the effect of § 16-5-402 (1) is to immediately cut off this right for all persons whose convictions antedate the statute by an interval of time in excess of the statutory limitation period. Such retrospective elimination of an existing statutory right, which the general assembly itself has recognized as a matter of "substantive right" included "within the concept of due process of law", cannot be squared with the constitutional prohibition against retrospectively depriving a person of a statutory right without due process of law. People v. Germany, 674 P.2d 345 (Colo. 1983).

Public records law providing for sealing of criminal records did not create a vested right to such sealing. Thus, repeal of a portion of the public records law took away respondent's unexercised opportunity to seek relief under the statute and denying respondent's request for such sealing made after repeal of the statute did not violate this section. People v. D.K.B., 843 P.2d 1326 (Colo. 1993).

Property assessment by methods used in prior years not a vested right. Property owners have no

vested right to have their taxable property assessed by particular methods employed in prior years. Martin v. Bd. of Assessment Appeals, 707 P.2d 348 (Colo. 1985).

Safety code. Application of a safety code to buildings that were constructed in a different period under different code requirements does not constitute unconstitutional retrospective legislation. Van Sickle v. Boyes, 797 P.2d 1267 (Colo. 1990).

Tenure is a constitutionally protected interest. The Teacher Tenure Act creates a contract between the board and its teachers, and tenure rises to the level of a constitutionally protected interest. As such, it is a vested and substantive right which cannot be impaired by the retrospective application of a statute. Lockhart v. Arapahoe County Sch. Dist. No. 6, 735 P.2d 913 (Colo. App. 1986).

Workers' compensation benefits are not a constitutionally protected interest. Statutory benefits created or allowed under the workers' compensation scheme exist only to the extent allowed and intended by applicable statutes, and legislation prospectively limiting or rescinding benefits does not deprive persons of constitutionally protected property interests. Nye v. Indus. Claim Appeals Office, 883 P.2d 607 (Colo. App. 1994).

Statutory offset against workers' compensation benefits in the amount of claimant's city retirement pension, which was vested, did not affect his entitlement to receive the pension and therefore did not violate this section. Nye v. Indus. Claim Appeals Office, 883 P.2d 607 (Colo. App. 1994).

The gas cost adjustment tariff did not constitute retroactive ratemaking. Colo. Energy Advocacy v. Pub. Serv. Co., 704 P.2d 298 (Colo. 1985).

Renewal of bail bondsman license was not a constitutionally protected property interest where the applicants failed to show a legitimate claim of entitlement in the renewal of their licenses based, for example, on informal rules and mutually explicit understandings, or on state law, but instead placed substantial reliance only upon a unilateral expectation. Ficarra v. Dept. of Reg. Agencies, 849 P.2d 6 (Colo. 1993).

Amendments to provisions governing conditional water rights in nontributary ground water held not to be retrospective when applied to existing conditional water rights. Language of § 37-92-305 (11) authorizes water courts to limit the exercise of conditional water right decrees in nontributary ground water entered before July 1, 1985, by making the doctrine of prior appropriation inapplicable to such conditional water rights, as well as those entered thereafter, removing the reasonable diligence requirement associated with prior appropriation for such water rights, and allowing the water courts to retain jurisdiction over such rights to adjust withdrawal determinations based on local acquifer characteristics. The application of this subsection to conditional water rights entered prior to July 1, 1985, operates as a reasonable limitation on the exercise of a conditional water right and does not operate retrospectively in violation of this section of the constitution. Qualls, Inc. v. Berryman, 789 P.2d 1095 (Colo. 1990).

Application of the 1989 initiative statute amendments to a proposed initiative which was filed prior to enactment of such amendments was not retroactive where the statutes as amended were not applied to initiative procedures which occurred prior to enactment of the amendments and application of the amendments to initiative procedures which occurred after enactment did not result in the creation of new obligations, the imposition of new

duties, or the attachment of new disabilities with respect to those procedures which occurred prior to enactment. Committee for Better Health Care v. Meyer, 830 P.2d 884 (Colo. 1992).

Applying §§ 16-11-801 and 16-11-802 retroactively violates proscription against ex post facto laws where, as a result of the decision in People v. Young, there was no valid death penalty sentencing statute in effect at the time the offenses were committed. People v. Aguayo, 840 P.2d 336 (Colo. 1992).

The plain language of § 25-14-204 (2) states that a plaintiff who legally expands his cigar-tobacco bar prior to July 1, 2006, would become subject to penalties as of July 1, 2006, for his pre-enactment expansion. This is impermissible ex post facto legislation. Coal. for Equal Rights v. Owens, 458 F. Supp. 2d 1251 (D. Colo. 2006), aff'd on other grounds sub nom. Coal. for Equal Rights, Inc. v. Ritter, 517 F.3d 1195 (10th Cir. 2008).

Retroactive application of amendment to § 18-1-105 (10) enacted in 1991 to defendant who committed offense in 1990 violated the provisions of this section. People v. Munoz, 857 P.2d 546 (Colo. App. 1993).

But retrospective application of mandatory parole provisions in § 18-1-105 (1)(a)(V) enacted in 1993 not violative of ex post facto clause where defendant had pleaded guilty to underlying offense with stipulation that the offense occurred within a time frame that happened to include time periods both prior and subsequent to the date such provisions were enacted. People v. Flagg, 18 P.3d 792 (Colo. App. 2000).

Application of statute governing medical utilization review proceeding, § 8-43-501, does not constitute a retroactive application of law contrary to this section of the Colorado Constitution, since claimant's right to treatment was always subject to statutory qualifications. Donn v. Indus. Claim Appeals Office, 865 P.2d 873 (Colo. App. 1993).

Act establishing new procedures for ensuring that water rights are protected and creating different classes of water rights for certain owners and operators of sand and gravel pits does not alter the vested rights of appellants and, therefore, does not constitute retrospective legislation. Central Colo. Water v. Simpson, 877 P.2d 335 (Colo. 1994).

Purpose of ex post facto laws is to ensure that legislative enactments provide fair warning of the effect of such enactments. People v. Bowring, 902 P.2d 911 (Colo. App. 1995).

To be stricken as an ex post facto law, the legislative enactment must (1) be retrospective in effect; and (2) disadvantage the offender. People v. Bowring, 902 P.2d 911 (Colo. App. 1995).

Section 18-3-405 (2)(c) did not violate the prohibition against ex post facto laws since the defendant had the requisite fair warning of the consequences of committing the offense with which he was charged. People v. Bowring, 902 P.2d 911 (Colo. App. 1995).

Prohibition against retrospective legislation with regard to a statutorily vested right not violated by charter amendment requiring voter approval of location and siting of preparole facility for which developer had already received board approval. The charter amendment did not retrospectively impair a vested right because enactment of a law such as the charter amendment was both anticipated and sanctioned in the statute. Villa at Greeley, Inc. v. Hopper, 917 P.2d 350 (Colo. App. 1996).

Real estate developers who enter into economic incentive development agreements have vested contractual rights that cannot be annulled by a later enacted amendment to the city charter requiring voter approval of all new grants of development subsidies or incentives above a certain value. City of Golden v. Parker, 138 P.3d 285 (Colo. 2006).

The policy allowing the state board of agriculture to consider past annual reviews to review faculty performance is not retrospective because the policy does not take away or impair vested rights, create a new obligation, impose a new duty, or attach a new disability. Johnson v. Colo. State Bd. of Ag., 15 P.3d 309 (Colo. App. 2000).

Where attorneys' right to fee award out of common fund established in class action vested before the enactment of § 13-17-203, this section prohibits the retrospective application of § 13-17-203 to defeat class counsel's right to the court-ordered fee. Kuhn v. State, 924 P.2d 1053 (Colo. 1996).

Father's right not to be subjected to an ex post facto law or a retrospective statute was not violated by court order for past due child support retroactive to date of child's birth since the inherent right to child support belongs to the child, both parents have a legal duty to support the child, and this duty existed before the adoption of the specific statutes applied to this case. People ex rel. J.A.E.S., 7 P.3d 1021 (Colo. App. 2000).

There is no violation of prohibition against ex post facto laws where inmate was required to pay interest and attorney fees pursuant to § 16-18.5-103 (4). The restitution act simply facilitates collection from defendant of the sums he was ordered to pay at the time of his sentencing. People v. Lowe, 60 P.3d 753 (Colo. App. 2002).

The application of the amended Colorado exemption limits set forth in § 13-54-102 to a loan and security agreement that was entered into prior to the enactment of the amended exemption statute does not constitute a "retrospective" application of state law in violation of this section and § 2-4-202. In re Larsen, 260 B.R. 174 (Bankr. D. Colo. 2001).

Applied in Virginia Canon Toll-Road Co. v. People ex rel. Vivian, 22 Colo. 429, 45 P. 398 (1896); United Mines Co. v. Hatcher, 79 F. 517 (8th Cir. 1897); Campbell v. Iron-Silver Mining Co., 83 F. 643 (8th Cir. 1897); Paddock v. Staley, 24 Colo. 188, 49 P. 281 (1897); Madden v. Day, 24 Colo. 418, 51 P. 165 (1897); Day v. Madden, 9 Colo. App. 464, 48 P. 1053 (1897); Sipe v. People ex rel. Millikin, 26 Colo. 127, 56 P. 571 (1899); Perry v. City of Denver, 27 Colo. 93, 59 P. 747 (1899); Thomas v. City of Grand Junction, 13 Colo. App. 80, 56 P. 665 (1899); Am. Refrigerator Transit Co. v. Adams, 28 Colo. 119, 63 P. 410 (1900); Bd. of Pub. Works v. Denver Tel. Co., 28 Colo. 401, 65 P. 35 (1901); Evans v. Welch, 29 Colo. 355, 68 P. 776 (1902); Am. Smelting & Ref. Co. v. People ex rel. Lindsley, 34 Colo. 240, 82 P. 531 (1905); Ducey v. Patterson, 37 Colo. 216, 86 P. 109 (1906); Connell v. Clifford, 39 Colo. 121, 88 P. 850 (1907); Kendall v. People ex rel. Hoag, 53 Colo. 100, 125 P. 586 (1912); People ex rel. Tate v. Prevost, 55 Colo. 199, 134 P. 129 (1913); Cobb v. Int'l State Bank, 67 Colo. 488, 186 P. 529 (1919); Hessick v. Moynihan, 83 Colo. 43, 262 P. 907 (1927); Moffat Tunnel Imp. Dist. v. Denver & S. L. Ry., 45 F.2d 715 (10th Cir. 1930); Miller v. Limon Nat'l Bank, 88 Colo. 373, 296 P. 796 (1931); United States Bldg. & Loan Ass'n v. McClelland, 95 Colo. 292, 36 P.2d 164 (1934), cert. denied, 294 U.S. 706, 55 S. Ct. 351, 79 L. Ed. 1241 (1935); Titus v. Titus, 96 Colo. 191, 41 P.2d 244 (1935); Johnson v. McDonald, 97 Colo. 324, 49 P.2d 1017

(1935); People ex rel. Rogers v. Watterman's Estate, 108 Colo. 263, 116 P.2d 204 (1941); People ex rel. Cheyenne Soil Erosion Dist. v. Parker, 118 Colo. 13, 192 P.2d 417 (1948); Peterson v. McNichols, 128 Colo. 137, 260 P.2d 938 (1953); GMC v. Blevins, 144 F. Supp. 381 (D. Colo. 1956); People ex rel. Dunbar v. People ex rel. City & County of Denver, 141 Colo. 459, 349 P.2d 142 (1960); Whitten v. Coit, 153 Colo. 157, 385 P.2d 131 (1963); Hoen v. District Court, 159 Colo. 451, 412 P.2d 428 (1966); City of Englewood v. Mountain States Tel. & Tel. Co., 163 Colo. 400, 431 P.2d 40 (1967); Shell Western E&P v. Dolores County Bd. of Comm'rs, 948 P.2d 1002 (Colo. 1997); Colo. Dept. of Pub. Health & Env't v. Bethell, 60 P.3d 779 (Colo. App. 2002).

V. IRREVOCABLE PRIVILEGES AND FRANCHISES.

Under this section no perpetual franchise of special privilege can be granted. City of Leadville v. Leadville Sewer Co., 47 Colo. 118, 107 P. 801 (1909).

Limitation as to franchises applies to municipalities. Under this section the general assembly is inhibited from making any irrevocable grant of special privileges, franchises or immunities and this limitation also applies to municipalities. Thomas v. City of Grand Junction, 13 Colo. App. 80, 56 P. 665 (1899); Pub. Serv. Co. v. City of Loveland, 79 Colo. 216, 245 P. 493 (1926).

Three-year statute of limitations in § 33-44-111 of the Ski Safety Act based on reasonable grounds and therefore does not violate this section's prohibition against special privileges or immunities. Schafer v. Aspen Skiing Corp., 742 F.2d 580 (10th Cir. 1984).

Statute, on its face, does not violate this section if it contains no "irrevocable grant of special privileges, franchises, or immunities" within its four corners. In re House Bill 91S-1005, 814 P.2d 875 (Colo. 1991).

One-year statute of limitations in §§ 12-46-112.5 and 12-47-128.5 for filing claims against liquor licensees arising from the improper sale, service, or provision of fermented malt and alcoholic beverages to minors or intoxicated persons does not constitute a perpetual or exclusive privilege or franchise and thus neither statute violates the prohibition against special privileges or immunities. Estate of Stevenson v. Hollywood Bar, 832 P.2d 718 (Colo. 1992).

No violation of the prohibition against retrospective laws existed in court's application of two-year statute of repose, rather than prior six-year statute, to homeowners' association's petition for abatement and refund. Woodmoor Imp. v. Prop. Tax Adm'r, 895 P.2d 1087 (Colo. App. 1994).

Applied in Westinghouse Elec. & Mfg. Co. v. Denver Tramway Co., 3 F.2d 285 (D. Colo. 1924); City & County of Denver v. Denver Tramway Corp., 23 F.2d 287 (8th Cir. 1927); Peterson v. McNichols, 128 Colo. 137, 260 P.2d 938 (1953); Enger v. Walker Field, Colo. Pub. Airport Auth., 181 Colo. 253, 508 P.2d 1245 (1973).

Section 12. No imprisonment for debt. No person shall be imprisoned for debt, unless upon refusal to deliver up his estate for the benefit of his creditors in such manner as shall be prescribed by law, or in cases of tort or where there is a strong presumption of fraud.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 30.

The constitutional provision of this section is clear and unambiguous; it prohibits imprisonment for debt in the absence of evidence bringing the case within specific exceptions. Trujillo v. People, 158 Colo. 362, 407 P.2d 36 (1965).

This section does not prohibit punishment of a contempt in refusing to obey lawful orders or decrees, and a commitment for contempt of a husband for refusing to pay a judgment for separate maintenance of his wife is not an imprisonment for debt. In re Popejoy, 26 Colo. 32, 55 P. 1083 (1899).

This section does not prohibit the punishment of a contempt by imprisonment for refusing to obey the lawful orders or decrees of court, the party not being imprisoned for a debt, but for his refusal to obey the lawful order of the court. Harvey v. Harvey, 153 Colo. 15, 384 P.2d 265 (1963).

A commitment to jail for contempt is justified for failure to pay alimony and attorney's fees in a divorce action, but any commitment for failure of the defendant-husband to pay the plaintiff-wife for money loaned is not justified. Harvey v. Harvey, 153 Colo. 15, 384 P.2d 265 (1963).

A consent judgment to pay moneys owed is purely equitable in nature, not a money judgment, and the prohibitions against imprisonment for debt are inapplicable. One held in civil contempt and imprisoned would not be imprisoned for a debt, but rather for his failure to comply with an order of court. Usery v. Fisher, 565 F.2d 137 (10th Cir. 1977).

Arrest upon ne exeat is not prohibited. An arrest and detention upon a writ of ne exeat to prevent a person from going out of the state until he shall give security for his appearance does not constitute imprisonment for debt within the meaning of this section. People ex rel. Porteus v. Barton, 16 Colo. 75, 26 P. 149 (1891).

Intent to defraud determinative of scope of fraud exception. The critical factor in determining whether or not a criminal prosecution falls within the fraud exception to this constitutional prohibition is the existence of the intent to defraud as an element of the offense. People v. Piskula, 197 Colo. 148, 595 P.2d 219 (1979).

Applied in Robertson v. People, 20 Colo. 279, 38 P. 326 (1894); Corryell v. Lawson, 25 Colo. App. 432, 139 P. 25 (1914); Stotts v. Stotts, 83 Colo. 368, 265 P. 911 (1928); Robinson v. Aetna Cas. & Sur. Co., 99 Colo. 150, 60 P.2d 927 (1936); City of Englewood v. Wright, 147 Colo. 537, 364 P.2d 569 (1961); People v. Vinnola, 177 Colo. 405, 494 P.2d 826 (1972); People v. Ausley, 185 Colo. 256, 523 P.2d 460 (1974); Rush v. Baker, 188 Colo. 136, 533 P.2d 36 (1975); Dunlop v. Fisher, 406 F. Supp. 760 (D. Colo. 1976); People v. Washburn, 197 Colo. 419, 593 P.2d 962 (1979).

Section 13. Right to bear arms. The right of no person to keep and bear arms in defense of his home, person and property, or in aid of the civil power when thereto legally summoned, shall be called in question; but nothing herein contained shall be construed to justify the practice of carrying concealed weapons.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 30.

No absolute right to bear arms. The right to bear arms is not absolute, and it can be restricted by the state's valid exercise of its police power. People v. Garcia, 197 Colo. 550, 595 P.2d 228 (1979).

The conflicting rights of the individual's right to bear arms and the state's right, indeed its duty under its inherent police power, to make reasonable regulations for the purpose of protecting the health, safety, and welfare of the people prohibits granting an absolute right to bear arms under all situations. People v. Blue, 190 Colo. 95, 544 P.2d 385 (1975).

The right to bear arms is not absolute as that right is limited to the defense of one's home, person, and property. People v. Ford, 193 Colo. 459, 568 P.2d 26 (1977).

Right to bear arms is not absolute. Douglass v. Kelton, 199 Colo. 446, 610 P.2d 1067 (1980); People v. Pflugbeil, 834 P.2d 843 (Colo. App. 1992).

Convicted felons' rights subject to limitation. Defendants cannot invoke the same constitutionally protected right to bear arms as could others where the right of a convicted felon to bear arms is subject to reasonable legislative regulation and limitation. People v. Blue, 190 Colo. 95, 544 P.2d 385 (1975).

Municipal ordinance making it unlawful to possess a dangerous or deadly weapon was unconstitutionally overbroad. Lakewood v. Pillow, 180 Colo. 20, 501 P.2d 744 (1972).

Affirmative defense. A defendant charged under § 18-12-108 who presents competent evidence showing that his purpose in possessing weapons was the defense of his home, person, and property as recognized by this section thereby raises an affirmative defense. People v. Ford, 193 Colo. 459, 568 P.2d (1977).

Trial court properly excluded affirmative defense based on this section and a proposed jury instruction where the defendant's offer of proof was insufficient to support the proposed affirmative defense. People v. Barger, 732 P.2d 1225 (Colo. App. 1986).

In considering a challenge to the validity of an ordinance regulating the exercise of the right to bear arms, a court need not determine the status of the right to bear arms under this section. The trial court erred in reaching the question of the status of the right guaranteed under this section, and in holding that the right is fundamental. Robertson v. City & County of Denver, 874 P.2d 325 (Colo. 1994).

Trial court erred in reviewing ordinance regulating the exercise of the right to bear arms under the strict scrutiny standard. The right to bear arms may be regulated by the state under its police power in a reasonable manner. Robertson v. City & County of Denver, 874 P.2d 325 (Colo. 1994).

Ordinance is related to a legitimate government interest and is a valid exercise of police power where assault weapons are weapons of choice for drug traffickers and other criminals and where they account for thirty percent of the weapons used by organized crime, gun trafficking, and terrorists and over twelve percent of drug-related crimes nationwide. Robertson v. City & County of Denver, 874 P.2d 325 (Colo. 1994).

Applied in People v. Nakamura, 99 Colo. 262, 62 P.2d 246 (1936); People v. Taylor, 190 Colo. 144, 544 P.2d 392 (1975).

Section 14. Taking private property for private use. Private property shall not be taken for private use unless by consent of the owner, except for private ways of necessity, and except for reservoirs, drains, flumes or ditches on or across the lands of others, for agricultural, mining, milling, domestic or sanitary purposes.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 30.

Cross references: For compensation for taking of private property under this section, see § 15 of this article; for eminent domain, see articles 1 to 7 of title 38.

ANNOTATION

Law reviews. For article, "Legality of the Denver Housing Authority", see 12 Rocky Mt. L. Rev. 30 (1939). For article, "The Case for Billboard Control: Precedent and Prediction", see 36 Dicta 461 (1959). For article, "Constitutional Law: The Validity of Urban Renewal in Colorado", see 39 Dicta 149 (1962). For comment on Rabinoff v. District Court appearing below, see 35 U. Colo. L. Rev. 269 (1963). For article, "Fair Housing in Colorado", see 42 Den. L. Ctr. J. 1 (1965). For note, "A Survey of Colorado Water Law", see 47 Den. L. J. 226 (1970). For comment, "Water: Statewide or Local Concern -- City of Thornton v. Farmers Reservoir & Irrigation Co., 194 Colo. 526, 575 P.2d 382 (1978)", see 56 Den. L.J. 625 (1979). For article, "Access to Mineral Lands in Colorado", see 11 Colo. Law. 870 (1982). For article, "Attacking Regulatory Takings of Natural Resource Property Rights", see 17 Colo. Law. 2155 (1988). For article, "Access at Last: The Use of Private Condemnation", see 29 Colo. Law. 77 (February 2000). For article, "The Reemergence of Property Owners' Rights in Takings Jurisprudence", see 31 Colo. Law. 93 (June 2002). For article, "Eminent Domain Law in Colorado--Part I: The Right to Take Private Property", see 35 Colo. Law. 65 (September 2006). For article, "Unilateral Ditch Modification", see 38 Colo. Law. 37 (February 2009).

This section and the following section protect the individual in his vested rights and prohibit the taking thereof for public or private use without condemnation under proper proceedings and just compensation given therefor. Stuart v. Davis, 25 Colo. App. 568, 139 P. 577 (1914).

Ultimate sources of right of condemnation are this section and § 7 of art. XVI, Colo. Const., which deals with rights-of-way for the transportation of water. Bubb v. Christensen, 200 Colo. 21, 610 P.2d 1343 (1980).

This section is a general inhibition against taking private property for private use without the consent of the owner. Crystal Park Co. v. Morton, 27 Colo. App. 74, 146 P. 566 (1915).

But with certain exceptions. The exceptions are constitutional grants of rights and powers not theretofore existing, namely, the right to take private property for private use, without the consent of the owner, in the instances therein enumerated. Crystal Park Co. v. Morton, 27 Colo. App. 74, 146 P. 566 (1915).

Under this section and title 38, dealing with eminent domain, private persons have the right to take private property for the uses specified in this section. Pine Martin Mining Co. v. Empire Zinc Co., 90 Colo. 529, 11 P.2d 221 (1932).

Because the power to condemn private property is in

derogation of the right to own and keep property, the exceptions in this section must be interpreted narrowly, with any uncertainty in the ambit of the power to condemn resolved against the person asserting the power. Akin v. Four Corners Encampment, 179 P.3d 139 (Colo. App. 2007).

Section copied from state of Missouri. United States v. 161 Acres of Land, 427 F. Supp. 582 (D. Colo. 1977).

It is said that consideration for public welfare enters into purposes enumerated in this section. But even if this view be not tenable, still the cases referred to in this section are sui generis, forming a distinct exception to the general rule, if it be granted that the purposes enumerated in this section are not quasi-public in their nature. Lithgow v. Pearson, 25 Colo. App. 70, 135 P. 759 (1913).

The fact that this section permits private property to be taken for certain specified uses is an implied declaration that such uses are so closely connected with the public interest as to be at least quasi-public, or, in a modified sense, affected with a public interest. Pine Martin Mining Co. v. Empire Zinc Co., 90 Colo. 529, 11 P.2d 221 (1932).

Although the words "private use" occur in this section, it is obvious that they do not mean a strictly private use, that is to say one having no relation to the public interest. Pine Martin Mining Co. v. Empire Zinc Co., 90 Colo. 529, 11 P.2d 221 (1932).

Broad rights of condemnation for private rights-of-way exist under Colorado law. United States v. 161 Acres of Land, 427 F. Supp. 582 (D. Colo. 1977).

Supplement to common law. These provisions are in addition to the common law right of necessity and are not limited thereby. Bear Creek Development Corp. v. Dyer, 790 P.2d 897 (Colo. App. 1990).

"Ways of necessity" does not include construction of private railroads over private property. This section recognizes the right to appropriate private property for private ways of necessity, but not for the construction upon and over it of private railroads. People ex rel. Aspen M. & S. Co. v. District Court, 11 Colo. 147, 17 P. 298 (1887).

The term "milling" in this section is synonymous with "manufacturing", the word "power" as used in the articles of incorporation means the product of a manufacturing establishment, and the phrase "other beneficial uses and purposes" will be held to refer to other uses expressed in this section. Lamborn v. Bell, 18 Colo. 346, 32 P. 989 (1893); Denver Power & Irrigation Co. v. Denver & R. G. R. R., 30 Colo. 204, 69 P. 568 (1902).

Operation of utility generating plant is business conducted for public purpose. The operation of a generating plant in the furtherance of the conduct of a utility business is for service to the public, and is a business conducted for a public purpose. Miller v. Pub. Serv. Co., 129 Colo. 513, 272 P.2d 283 (1954), appeal dismissed, 348 U.S. 923, 75 S. Ct. 338, 99 L. Ed. 724 (1955).

Urban renewal is a public use, ultimate private ownership notwithstanding. Tracy v. City of Boulder, 635 P.2d 907 (Colo. App. 1981).

Easement serves public purpose by providing access to property in the state. Bear Creek Development Corp. v. Dyer, 790 P.2d 897 (Colo. App. 1990).

Condemnation of land by mining company for right-of-way for pipe line held not to be in violation of this section. Pine Martin Mining Co. v. Empire Zinc Co., 90 Colo. 529, 11 P.2d 221 (1932).

But private property may

not be taken for construction of tramway. The right to condemn and appropriate private property, in the present case, being for a private use, no argument is necessary to show that the taking of private property for the construction of a tramway does not fall within the exceptions specified, to which the legislative power is limited by this section. People ex rel. Aspen M. & S. Co. v. District Court, 11 Colo. 147, 17 P. 298 (1887).

And the state of Colorado can create no right to condemn federally owned lands. United States v. 161 Acres of Land, 427 F. Supp. 582 (D. Colo. 1977).

The phrase "private ways of necessity" does not include natural gas pipelines. Phrase is limited to passageways, such as paths, bridges, and tunnels, and roadways that provide legal access connecting landlocked property to a public road. Petitioners do not seek to condemn an easement to provide such access but rather to construct and maintain an underground natural gas pipeline and related equipment and facilities. As such, petition did not identify a purpose for which taking property is permitted under this section and § 38-1-102 (3). Akin v. Four Corners Encampment, 179 P.3d 139 (Colo. App. 2007).

Condemnation power not assertable by oil and gas lessee. The power of condemnation prescribed by this section may not be asserted by a federal oil and gas lessee. Coquina Oil Corp. v. Harry Kourlis Ranch, 643 P.2d 519 (Colo. 1982).

Power not assertable by owner of unpatented mining claim. Precious Offer. Mineral Exch. v. McLain, 194 P.3d 455 (Colo. App. 2008).

Extraterritorial eminent domain not allowable where specifically excluded. A school district may not invoke this constitutional provision to preclude application of § 22-32-111, which prohibits the district from exercising extraterritorial eminent domain. Clear Creek Sch. Dist. RE-1 v. Holmes, 628 P.2d 154 (Colo. App. 1981).

Landowner limited to temporary relief pending outcome of eminent domain proceedings. When a facility for transportation of water is constructed or utilized by one having the right of eminent domain, without prior acquisition of an easement, the remedy of the landowner is limited to temporary relief pending conduct of the eminent domain proceedings by owners of the water right. Bubb v. Christensen, 200 Colo. 21, 610 P.2d 1343 (1980).

The storage and flow of tributary ground water pursuant to an aquifer recharge and water storage rights application did not involve a "reservoir" under this section where the application did not involve the construction of any project facilities on land owned by a third party; hence, there was no trespass or need to exercise a private right of condemnation. Bd. of County Comm'rs v. Park County Sportsmen's Ranch, 45 P.3d 693 (Colo. 2002).

State highway department cannot condemn property for a private way of necessity. Although state highway department has express statutory authority to condemn property for local service roads and for highway construction, the department has no statutory authority to "stand in the shoes" of a private landowner and condemn a private way of necessity. Dept. of Hwys. v. Denver & Rio Grande W.R., 789 P.2d 1088 (Colo. 1990); Bear Creek v. Genesee Found., 919 P.2d 948 (Colo. App. 1996).

An alternative route is not acceptable if it is impractical, unreasonable, or prohibited by cost grossly in excess of the value of the dominant estate. West v. Hinksmon, 857 P.2d 483 (Colo. App. 1992); Bear Creek v. Genesee Found., 919 P.2d 948 (Colo. App. 1996).

The trial court erred in not

finding that a way of necessity should be restricted as the constitutional way of necessity only exists because of necessity and not by reason of implied grant. Because a constitutional way of necessity is not limited by the intent of the grantor, it should accommodate future uses when a condemnor can establish that the way is necessary for such reasonable use, but this is limited by the constitutional requirement of necessity. Bear Creek v. Genesee Found., 919 P.2d 948 (Colo. App. 1996).

The way of necessity must terminate if and when another route is procured to access the land, as condemnation only passes such interest as required to accomplish the purpose of condemnation. When a mere easement or terminable fee is created, the land reverts when condemnor ceases to use the grant for the purposes specified. Bear Creek v. Genesee Found., 919 P.2d 948 (Colo. App. 1996).

Trial court did not err in not instructing the commissioners that residual damages includes both diminution in value of all parcels, as well as present value of future development of all parcels, as the individual property owners in the development were not one economic unit. Bear Creek v. Genesee Found., 919 P.2d 948 (Colo. App. 1996).

In an action to condemn a way of necessity, if the defendant pleads the existence of an alternate route of private access across property not owned by defendant, defendant has the burden of establishing the existence of an acceptable alternate route and of proving that plaintiffs have the present enforceable legal right to use it. West v. Hinksmon, 857 P.2d 483 (Colo. App. 1992).

Trial court's determination in declaratory judgment action brought under this section that defendants failed to rebut plaintiff's showing of an entitlement to a private way of necessity is not clearly erroneous. Trial court held plaintiff may condemn private way of necessity across defendants' property pursuant to this section. Trial court's determinations that plaintiff proved that a way of necessity is reasonably necessary and that defendants did not prove, in any concrete fashion, that plaintiff has either an alternate route of access or a present enforceable legal right to use one are not clearly erroneous. Tieze v. Killam, 179 P.3d 10 (Colo. App. 2007).

Adjacent landowner has no standing to challenge a contract involving a "landlocked" parcel of land on the theory that once the agreement is final, the new owner might seek to condemn a way of necessity across the adjacent owner's land. Brotman v. E. Lake Creek Ranch L.L.P., 31 P.3d 886 (Colo. 2001).

In an action to condemn a way of necessity, defendant should be permitted to show that an alternate route across defendant's property exists that would be less damaging than that proposed by plaintiff. West v. Hinksmon, 857 P.2d 483 (Colo. App. 1992).

When a petitioner seeks to condemn private way of necessity for access to property it wishes to develop in the future, it must demonstrate a purpose for the condemnation that enables the trial court to examine both the scope of and necessity for the proposed condemnation, so that the burden to be imposed upon the condemnee's property may be ascertained and circumscribed through the trial court's condemnation order. Glenelk Ass'n v. Lewis, 260 P.3d 1117 (Colo. App. 2011).

Condemnor failed to articulate a concrete development proposal for the subject property nor did he sufficiently engage the county's land use approval process prior to

initiating the condemnation proceeding. Record fails to clarify condemnor's intended use of the property or size of the planned road with sufficient specificity to allow trial court to analyze necessity of requested easement. Condemnor's failure to sufficiently articulate development plan prevented trial court from determining scope of proposed condemnation sufficiently to determine scope of burden to be imposed upon the property to be condemned. Given evidentiary shortcomings in the record, trial court correctly concluded that it could not determine whether particular way of necessity requested by condemnor was indispensable and, therefore, trial court correctly denied condemnor's request for immediate possession and dismissed the condemnation petition. Glenelk Ass'n v. Lewis, 260 P.3d 1117 (Colo. App. 2011).

Applied in Belknap Sav. Bank v. Lamar Land & Canal Co., 28 Colo. 326, 64 P. 212 (1901); Bd. of Comm'rs v. Otero Irrigation Dist., 56 Colo. 515, 139 P. 546 (1914); Reid v. Montezuma Valley Irrigation Dist., 56 Colo. 527, 139 P. 550 (1914); People ex rel. Bd. of Comm'rs v. Arthur, 67 Colo. 516, 186 P. 516 (1919); Driverless Car Co. v. Armstrong, 91 Colo. 334, 14 P.2d 1098 (1932); Vogts v. Guerrette, 142 Colo. 527, 351 P.2d 851 (1960); Rabinoff v. District Court, 145 Colo. 225, 360 P.2d 114 (1961); Abeyta v. City & County of Denver, 165 Colo. 58, 437 P.2d 67 (1968); Winter v. Tarabino, 173 Colo. 30, 475 P.2d 331 (1970); Buck v. District Court, 199 Colo. 344, 608 P.2d 350 (1980); Shaklee v. District Court, 636 P.2d 715 (Colo. 1981).

Section 15. Taking property for public use - compensation, how ascertained. Private property shall not be taken or damaged, for public or private use, without just compensation. Such compensation shall be ascertained by a board of commissioners, of not less than three freeholders, or by a jury, when required by the owner of the property, in such manner as may be prescribed by law, and until the same shall be paid to the owner, or into court for the owner, the property shall not be needlessly disturbed, or the proprietary rights of the owner therein divested; and whenever an attempt is made to take private property for a use alleged to be public, the question whether the contemplated use be really public shall be a judicial question, and determined as such without regard to any legislative assertion that the use is public.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 30.

Cross references: (1) For judicial aspects of the question of necessity when property is to be taken under this section for public or quasi-public purposes, see: Rothwell v. Coffin, 122 Colo. 140, 220 P.2d 1063 (1950); Pine Martin Mining Co. v. Empire Zinc Co., 90 Colo. 529, 11 P.2d 221 (1932); Jennings v. Bd. of Com. Montrose Co., 85 Colo. 498, 277 P. 467 (1929); Haver v. Matonock, 75 Colo. 301, 225 P. 834 (1924); Colo. & Utah Coal Co. v. Walter, 75 Colo. 489, 226 P. 864 (1924); Snider v. Town of Platteville, 75 Colo. 589, 227 P. 548 (1924); Wassenich v. City & County of Denver, 67 Colo. 456, 186 P. 533 (1919); Lavelle v. Town of Julesburg, 49 Colo. 290, 112 P. 774 (1910); Kirkwood v. School Dist. Summit County, 45 Colo. 368, 101 P. 343 (1909); Schneider v. Schneider, 36 Colo. 518, 86 P. 347 (1906); Union Pac. R. R. v. Colo. Postal Telegraph Co., 30 Colo. 133, 69 P. 594 (1902); Gibson v. Cann, 28 Colo. 499, 66 P. 879 (1901); Warner v. Town of Gunnison, 2 Colo. App. 430, 31 P. 238 (1892). (Compare: Town of Eaton v. Bouslog, 133 Colo. 130, 292 P.2d 343 (1956) and Otero Irr. Dist. v. Enderud, 122 Colo. 136, 220 P.2d 862 (1950); Crystal Park Co. v. Morton, 27

Colo. App. 74, 146 P. 566 (1915); Thompson v. DeWeese-Dye Ditch Co., 25 Colo. 243, 53 P. 507 (1898); Seidler v. Seely, 8 Colo. App. 499, 46 P. 848 (1896); Sand Creek Lateral Irrigation v. Davis, 17 Colo. 326, 29 P. 742 (1892).)

(2) For jurisdiction of federal court, when (properly) invoked, see County of Allegheny v. Frank Mashuda Company, 360 U.S. 185, 79 S. Ct. 1060, 3 L. Ed. 2d 1163 (1959) and Louisiana Power and Light Company v. City of Thibodaux, 360 U.S. 25, 79 S. Ct. 1070, 3 L. Ed. 2d 1058 (1959).

(3) For taking of private property for private use, see § 14 of this article; for deprivation of property without due process of law, see § 25 of this article; for eminent domain, see articles 1 to 7 of title 38.

ANNOTATION

I. GENERAL CONSIDERATION.

Law reviews. For article, "Legality of the Denver Housing Authority", see 12 Rocky Mt. L. Rev. 30 (1939). For article, "Municipal Powers and the Public Purpose Doctrine", see 21 Rocky Mt. L. Rev. 277 (1949). For note, "Expenses of Moving in Eminent Domain Cases", see 30 Dicta 269 (1953). For article, "Recent Developments in Colorado Eminent Domain", see 27 Rocky Mt. L. Rev. 23 (1954). For article, "Condemnation and Redevelopment", see 28 Rocky Mt. L. Rev. 535 (1956). For article, "A Review of the 1959 Constitutional and Administrative Law Decisions", see 37 Dicta 81 (1960). For article, "Constitutional Law: The Validity of Urban Renewal in Colorado", see 39 Dicta 149 (1962). For article, "Urban Renewal--A Partnership of Public and Private Interests for Urban Betterment", see 39 Dicta 291 (1962). For comment on Rabinoff v. District Court appearing below, see 35 U. Colo. L. Rev. 269 (1963). For note, "Ownership of Streets and Rights of Abutting Landowners in Colorado", see 40 Den. L. Ctr. J. 26 (1963). For article, "Water for Recreation: A Plea for Recognition", see 44 Den. L. J. 288 (1967). For article, "An Engineering--Legal Solution to Urban Drainage Problems", see 45 Den. L. J. 381 (1968). For comment, "Water: Statewide or Local Concern -- City of Thornton v. Farmers Reservoir & Irrigation Co., 194 Colo. 526, 575 P.2d 382 (1978)", see 56 Den. L.J. 625 (1979). For comment, "People v. Emmert: A Step Backward for Recreational Water Use in Colorado", see 52 U. Colo. L. Rev. 247 (1981). For article, "The Colorado Supreme Court Redefines Compensable Damages In Condemnation Actions", see 16 Colo. Law. 1829 (1987). For comment, "Eminent Domain: A Case Comment -- Mountain States Legal Foundation v. Hodel", see 65 Den. U. L. Rev. 581 (1988). For article, "Just Compensation in Condemnation Cases", see 18 Colo. Law. 1735 (1989). For article, "Animus Over Animas?--Changes in Regulatory Takings Law in Colorado", see 31 Colo. Law. 69 (April 2002). For article, "The Reemergence of Property Owners' Rights in Takings Jurisprudence", see 31 Colo. Law. 93 (June 2002). For article, "A Systematic Approach to Colorado Takings Law", see 33 Colo. Law. 75 (April 2004). For article, "Eminent Domain Law in Colorado--Part I: The Right to Take Private Property", see 35

Colo. Law. 65 (September 2006). For article, "Kelo Confined--Colorado Safeguards Against Condemnation for Public-Private Transportation Projects", see 37 Colo. Law. 39 (March 2008). For note, "The Right to Float: The Need for the Colorado Legislature to Clarify River Access Rights", see 83 U. Colo. L. Rev. 845 (2012).

This section and fifth amendment to U.S. Constitution prohibit the taking of private property for public use without just compensation. Thompson v. City & County of Denver, 958 P.2d 525 (Colo. App. 1998); Fowler Irrevocable Trust 1992-1 v. City of Boulder, 992 P.2d 1188 (Colo. App. 1999), aff'd, 17 P.3d 797 (Colo. 2001).

This section is merely declaration of law as it stood at time constitution was made. Denver R. R. Land & Coal Co. v. Union P.R.R., 34 F. 386 (D. Colo. 1888).

And guarantees right that exists regardless of constitutional provisions. Not only does this section guarantee the right of a person whose property is taken for public use to receive compensation therefor, but the right exists regardless of constitutional provisions. Chicago B. & Q.R.R. v. Pub. Utils. Comm'n, 69 Colo. 275, 193 P. 726 (1920).

Independent of right of eminent domain. The right of a person owning property to just compensation for the taking or damaging thereof for public use is independent of the state's right of eminent domain. Farmers Irrigation Co. v. Game & Fish Comm'n, 149 Colo. 318, 369 P.2d 557 (1962).

Extension of common-law right. The phrase of this section, "or damaged for public or private use without just compensation", is an extension of the common constitutional provision designed for the protection of private property. It is a recognition of a new right of recovery, which is not limited to cases where an action would have lain at common law. Denver Circle R.R. v. Nestor, 10 Colo. 403, 15 P. 714 (1887); City of Pueblo v. Strait, 20 Colo. 13, 36 P. 789 (1894).

Section affords greater protection than federal constitution. This section affords an aggrieved property owner a greater measure of protection than does the constitution of the United States. The fifth amendment of the United States Constitution requires compensation only where there has been an actual taking. The Colorado Constitution, however, provides for compensation where private property has been taken or damaged. Mosher v. City of Boulder, 225 F. Supp. 32 (D. Colo. 1964).

It is remedial in nature and effect. This section while not intended to disturb vested rights, nor in itself prohibitory of the exercise of powers previously granted by the general assembly, is remedial in its nature and effect respecting existing property rights. Its mandate is that, where they are taken or injuriously affected subsequent to the day on which the constitution went into effect, just compensation shall be made. Denver Circle R.R. v. Nestor, 10 Colo. 403, 15 P. 714 (1887).

And should be liberally construed. This section is remedial in character and, for the purpose of giving property holders additional security and under well settled canons of construction, it should be liberally construed. City of Pueblo v. Strait, 20 Colo. 13, 36 P. 789 (1894); Srb v. Bd. of County Comm'rs, 43 Colo. App. 14, 601 P.2d 1082 (1979).

Purpose of this section of the constitution is to provide a remedy in damages for injury to property, not common to the public, inflicted by the state or one of its political subdivisions; and this section is not limited in application to condemnation proceedings. Srb v. Bd. of County Comm'rs, 43 Colo. App. 14, 601 P.2d 1082 (1979).

The purpose of this section is

to prevent a property owner from being made to suffer an uncompensated injury, not common to the public, as a result of the construction of a public improvement. Such improvements are frequently made or authorized by counties; and to say that because of that fact damages so suffered cannot be recovered is to deny to the language of the constitution its obvious import. Bd. of Comm'rs v. Adler, 69 Colo. 290, 194 P. 621 (1920).

The actual purpose of this section is to place a limitation even upon legislative enactment. Under the restriction of this section the general assembly itself must exercise care in declaring to be a "public use" (and hence entitled to the right of eminent domain) only that which may meet the legal tests of such use as determined by the judiciary. Potashnik v. Pub. Serv. Co., 126 Colo. 98, 247 P.2d 137 (1952).

This section applies to proceedings in eminent domain, and to situations in which such proceedings would be proper; i.e., where condemnation would be necessary were the required property not otherwise acquired. Bd. of Comm'rs v. Adler, 69 Colo. 290, 194 P. 621 (1920).

But applicability of section is not limited to such proceedings. Bd. of Comm'rs v. Adler, 69 Colo. 290, 194 P. 621 (1920).

This provision is not limited in its application to condemnation proceedings. Game & Fish Comm'n v. Farmers Irrigation Co., 162 Colo. 301, 426 P.2d 562 (1967).

It marks boundary beyond which people have forbidden lawmakers to pass and have commanded their courts to hold any such passage illegal. How inviolable that constitutional inhibition is, is demonstrated by the fact that the supreme court once inadvertently permitted its protection to be threatened (North Sterling Irrigation Dist. v. Dickman, 59 Colo. 169, 149 P. 97 (1915)), but at the first opportunity overruled the dangerous precedent and returned to the solid ground of strict construction. Bd. of Comm'rs v. Adler, 69 Colo. 290, 194 P. 621 (1920); San Luis Valley Irrigation Dist. v. Noffsinger, 85 Colo. 202, 274 P. 827 (1929).

Right to condemn private property is creature of statute, pursuant to which it must clearly appear either by express grant or by necessary implication. Game & Fish Comm'n v. Farmers Irrigation Co., 162 Colo. 301, 426 P.2d 562 (1967).

Private property may not be condemned, even for a purpose which is judicially determined to be a public use within the meaning of this section, in the absence of express or necessarily implied statutory condemnation authority. Buck v. District Court, 199 Colo. 344, 608 P.2d 350 (1980); Bd. of County Comm'rs v. Intermountain Rural Elec. Ass'n, 655 P.2d 831 (Colo. 1982); Dept. of Transp. v. Stapleton, 81 P.3d 1105 (Colo. App. 2003), rev'd on other grounds, 97 P.3d 938 (Colo. 2004).

Subject to constitutional guarantees. The power of eminent domain is an attribute of sovereignty, conditioned by the requirement that just compensation be paid for the taking. Colo. ex rel. Watrous v. District Court of United States, 207 F.2d 50 (10th Cir. 1953).

The right of eminent domain recognizes the due process provision of the constitution, provides for the legal and orderly acquisition of private property for public use, and for just compensation for the taking. Town of Sheridan v. Valley San. Dist., 137 Colo. 315, 324 P.2d 1038 (1958).

Whatever may have been the ancient right of condemnation, it has been restrained by constitutional limitations in the protection of individual property rights. Game & Fish Comm'n v. Farmers Irrigation Co., 162 Colo. 301, 426 P.2d 562 (1967).

The Colorado Constitution, as well as the federal constitution, protects against an arbitrary exercise of eminent domain to correct a blighted area by the urban renewal authority. Urban Renewal Auth. v. Daugherty, 271 F. Supp. 729 (D. Colo. 1967).

Deprivation of use must meet standard of reasonableness. Although, under its police power, there are situations in which a government may deprive the owner of a certain use of property and not be in violation of the prohibition against taking private property without just compensation, nevertheless, there must be a recognition that that exercise of the police power can only be valid under--and only under--a standard of reasonableness. Combined Commc'ns Corp. v. City & County of Denver, 189 Colo. 462, 542 P.2d 79 (1975).

Where city compels owner to bring building into compliance with safety code, but does not deprive owner of all reasonable use of the building, such action by city does not constitute a taking. Van Sickle v. Boyes, 797 P.2d 1267 (Colo. 1990).

A governmental regulation that prohibits all reasonable use of property constitutes a taking. Williams v. City of Central, 907 P.2d 701 (Colo. App. 1995).

There can be no "inverse condemnation" where no right exists in governmental agency to proceed under eminent domain. Game & Fish Comm'n v. Farmers Irrigation Co., 162 Colo. 301, 426 P.2d 562 (1967).

Protection of private property in this section presupposes that it is wanted for public use. City & County of Denver v. Denver Buick, Inc., 141 Colo. 121, 347 P.2d 919 (1959).

Whether contemplated use is public is judicial question. If it is public, the necessity or expediency of devoting the property to it is a question for the determination of a city. Colo. Cent. Power Co. v. City of Englewood, 89 F.2d 233 (10th Cir. 1937).

Judicial approval of the purpose for the taking of property as a public use is required. Larson v. Chase Pipe Line Co., 183 Colo. 76, 514 P.2d 1316 (1973).

By the last clause of this section an inquiry may be made by the court as to whether a railroad which is proposed to be built is of a public or private character. Denver R.R. Land & Coal Co. v. Union Pac. Ry., 34 F. 386 (1888).

The general right of eminent domain depends upon, first, legislative authority and, second, judicial approval of the purpose as a public use. Potashnik v. Pub. Serv. Co., 126 Colo. 98, 247 P.2d 137 (1952).

The question of whether a contemplated use is a public use is an issue for judicial determination. Shaklee v. District Court, 636 P.2d 715 (Colo. 1981); Pub. Serv. Co. v. Shaklee, 784 P.2d 314 (Colo. 1989).

Trial court properly dismissed petition by county to condemn a portion of owner's property for use as a public road because county presented no valid public purpose for its condemnation of owner's property. Here, public purpose is to benefit private parties; a few, select members of the public will gain access to a private cemetery. Such a private benefit does not constitute a valid public purpose. Bd. of County Comm'rs v. Kobobel, 176 P.3d 860 (Colo. App. 2007).

As duty of judiciary to safeguard use of property. Neither the executive nor the legislative branches of government have any right whatsoever to deprive anyone of his life, liberty or property without due process or compensation, and under our system of government it was intended that the judicial branch of the government stand open as a haven for the protection of any citizens whose rights have been invaded, whether it be by an individual or by either of the

other branches of our government. Boxberger v. State Hwy. Dept., 126 Colo. 438, 250 P.2d 1007 (1952).

It is the unquestioned duty and responsibility of the judicial branch of government, through the decision of controversies which come before it, to safeguard and maintain the constitutional provisions which guarantee the maximum free and unrestricted use of property by the citizen, and to strike down those enactments which unreasonably and unnecessarily fasten upon him new restraints upon freedom of action in the use and enjoyment thereof. City & County of Denver v. Denver Buick, Inc., 141 Colo. 121, 347 P.2d 919 (1959).

A federal district court with diversity jurisdiction can consider an inverse condemnation claim arising under the Colorado constitution and statutes providing a special judicial procedure for condemnation claims. SK Fin. SA v. La Plata County, Bd. of Comm'rs, 126 F.3d 1272 (10th Cir. 1997).

Supreme court, on its own motion, will take notice of invalidity of municipal ordinance enacted in support of exhorbitant demands and authorizing the taking of private property without due process of law. Town of Sheridan v. Valley San. Dist., 137 Colo. 315, 324 P.2d 1038 (1958).

No formula for determining nature of use. No definition has as yet been formulated which would serve as an infallible test in determining whether a use of property sought to be appropriated under the power of eminent domain is public or private. Buck v. District Court, 199 Colo. 344, 608 P.2d 350 (1980); Pub. Serv. Co. v. Shaklee, 784 P.2d 314 (Colo. 1989).

But court's determination reviewable for arbitrariness. When subject to inquiry as to whether a use is public under this section it must be determined by a board of commissioners appointed by the court. If that determination is not made arbitrarily, or capriciously or in bad faith, it is conclusive and not subject to judicial review. Colo. Cent. Power Co. v. City of Englewood, 89 F.2d 233 (10th Cir. 1937).

If primary purpose of condemnation is to advance private interests, the existence of an incidental public benefit does not prevent a court from finding "bad faith" and invalidating a condemning authority's determination that a particular acquisition is necessary. Denver W. Metro. Dist. v. Geudner, 786 P.2d 434 (Colo. App. 1989).

Owner of property to be condemned has burden of proving that taking of property is not for a public purpose. Pub. Serv. Co. v. Shaklee, 784 P.2d 314 (Colo. 1989).

Proposed urban renewal project is public and not private where the underlying object is to eliminate blighted areas and prevent the spread and recurrence of blight conditions and where the grant is to a public agency which acquires the lands in question under a master plan of rehabilitation; the fact that when redevelopment is achieved the properties are sold to private individuals for the purpose of development does not rob the undertaking of its public purpose. Rabinoff v. District Court, 145 Colo. 225, 360 P.2d 114 (1961).

Urban renewal is a public use, ultimate private ownership notwithstanding. Tracy v. City of Boulder, 635 P.2d 907 (Colo. App. 1981).

Even though a private developer may benefit from the city's project, the record supports the trial court's determination that the condemnation of the property was for a valid public purpose and was not incidental. City & County of Denver v. Eat Out, Inc., 75 P.3d 1141 (Colo. App. 2003).

Taking of water for use in

operation of hatchery is for public purpose. Farmers Irrigation Co. v. Game & Fish Comm'n, 149 Colo. 318, 369 P.2d 557 (1962).

Construction of dust levees for protection of railroad tracks is public use such as would justify condemnation of private property. Buck v. District Court, 199 Colo. 344, 608 P.2d 350 (1980).

Condemnation of right-of-way across land to construct transmission lines constitutes a public use since others have same right to access to use power from transmission lines on the same terms as the company for which such lines were originally constructed. Pub. Serv. Co. v. Shaklee, 784 P.2d 314 (Colo. 1989).

Urban renewal is a substantial state interest that can justify taking property dedicated to religious uses. Pillar of Fire v. Denver Urban Renewal Auth., 181 Colo. 411, 509 P.2d 1250 (1973).

Remand necessary so trial court can independently examine the public purpose of the condemnation based on the record of proceedings before urban renewal authority and, without either deferring to the authority's blight determination or considering bad faith, make findings from the existing record reflecting that examination. Sheridan Redev. Agency v. Knightsbridge Land Co., 166 P.3d 259 (Colo. App. 2007).

Counties unable to acquire office space by eminent domain. The general assembly has not impliedly delegated the power of eminent domain to counties for the purpose of acquiring office space for authorized county purposes. Bd. of County Comm'rs v. Intermountain Rural Elec. Ass'n, 655 P.2d 831 (Colo. 1982).

Sanitation district has power to condemn land. Under the constitutional provisions establishing the right of eminent domain and the several statutes enacted pursuant thereto, a sanitation district has power and authority to condemn land. Town of Sheridan v. Valley San. Dist., 137 Colo. 315, 324 P.2d 1038 (1958).

And property so acquired cannot be lost by operation of law. Property acquired under the constitution and statutes by exercise of the right of eminent domain, cannot be lost by operation of a municipal ordinance. The legal entity condemning the property obtains the absolute right, title and interest thereto; an ordinance of a municipality providing that all right, title and interest in a sanitary sewer constructed through such municipality pursuant to condemnation of a right-of-way therefor shall vest, not in the sewer district acquiring the right-of-way, but in the town at the expiration of five years, is void. Town of Sheridan v. Valley San. Dist., 137 Colo. 315, 324 P.2d 1038 (1958).

Special assessment without benefit violates section. To enforce a special assessment for a purpose which does not confer a special benefit upon the property upon which it is levied would result in taking property without compensation, and without due process of law. Pomroy v. Bd. of Pub. Waterworks, Dist. No. 2, 55 Colo. 476, 136 P. 78 (1913); Santa Fe Land Imp. Co. v. City & County of Denver, 89 Colo. 309, 2 P.2d 238 (1931); City & County of Denver v. Greenspoon, 140 Colo. 402, 344 P.2d 679 (1959).

As do excessive assessments. An assessment for local improvements apportioned on the area basis insofar as it exceeds the benefits is violative of this section. Ross v. City & County of Denver, 89 Colo. 317, 2 P.2d 241 (1931).

Where taxes result in a flagrant inequality between the burden imposed and the benefit received, they are confiscatory and unconstitutional. Ochs v. Town of Hot Sulphur Springs, 158 Colo. 456, 407 P.2d 677 (1965).

Refusal to enforce racial covenant does not deprive owner of

property. The trial court's refusal to recognize the vested interest in defendant and to enforce forfeiture of the property for failure to comply with a racial restrictive covenant did not deprive defendant of property without just compensation and without due process of law. Capitol Fed. Sav. & Loan Ass'n v. Smith, 136 Colo. 265, 316 P.2d 252 (1957).

Actions of the city requiring a mobile home park owner to bring the park into compliance with the city code do not constitute a taking because enforcement of the code does not deprive the owner of all use of the property. Trailer Haven MHP, LLC v. City of Aurora, 81 P.3d 1132 (Colo. App. 2003).

Inverse condemnation action is based on this section. Ossman v. Mountain States Tel. & Tel. Co., 184 Colo. 360, 520 P.2d 738 (1974).

In order to pursue an inverse condemnation claim under the Colorado Constitution, that is, to compel the state to exercise its power of eminent domain, a plaintiff must establish: (1) That there has been a taking or damaging of property interest, (2) for a public purpose without just compensation, (3) by a governmental or public entity that has the power of eminent domain but which has refused to exercise it. Thompson v. City & County of Denver, 958 P.2d 525 (Colo. App. 1998).

Inverse condemnation proceeding is ordinarily only remedy available to a litigant whose property has been taken for a public use without just compensation. Collopy v. Wildlife Comm'n, 625 P.2d 994 (Colo. 1981).

To pursue an inverse condemnation claim under the Colorado Constitution, i.e., to compel a public entity to provide compensation to a property owner, the property owner must establish: (1) There has been a taking or damaging of a property interest; (2) for a public purpose; (3) without just compensation; (4) by a governmental or public entity that has the power of eminent domain but which has refused to exercise that power. Thompson v. City & County of Denver, 958 P.2d 525 (Colo. App. 1998); Fowler Irrevocable Trust 1992-1 v. City of Boulder, 992 P.2d 1188 (Colo. App. 1999), aff'd in part and rev'd in part on other grounds, 17 P.3d 797 (Colo. 2001); Betterview Invs., LLC v. Pub. Serv. Co., 198 P.3d 1258 (Colo. App. 2008); Colo. Springs v. Andersen Mahon Enters., 260 P.3d 29 (Colo. App. 2010).

In a regulatory inverse condemnation case, there is a two-tiered inquiry. First, a court must determine whether a per se taking has occurred. Second, if a landowner is unable to prove a per se compensable takings claim (because the regulation has a legitimate purpose and the owner's land has not been rendered economically idle), the landowner may still be able to prove a takings has occurred under a fact-specific inquiry. Animas Valley Sand & Gravel, Inc. v. Bd. of County Comm'rs of La Plata, 38 P.3d 59 (Colo. 2001).

Where a regulation places limitations on land that fall far short of eliminating all economically beneficial use, a taking nonetheless may have occurred, depending on a number of complex factors including the regulation's economic effect on the landowner, the extent to which the regulation interferes with reasonable investment-backed expectations, and the character of the government action. No one factor is dispositive. Each case must be decided on its own facts. Animas Valley Sand & Gravel, Inc. v. Bd. of County Comm'rs of La Plata, 38 P.3d 59 (Colo. 2001).

In a regulatory takings case, a court must determine the regulation's effects on the full rights in the land. Thus, in assessing a takings claim, a court must look to the regulation's effect on the property as a whole, not

simply the portion affected by the exaction. Animas Valley Sand & Gravel, Inc. v. Bd. of County Comm'rs of La Plata, 38 P.3d 59 (Colo. 2001).

An inverse condemnation action is to be tried as if it were eminent domain proceeding. Ossman v. Mountain States Tel. & Tel. Co., 184 Colo. 360, 520 P.2d 738 (1974).

An inverse condemnation action based on this section is to be treated as an eminent domain proceeding, conducted strictly according to the procedures set out in section 38-1-101. Hayden v. Bd. of County Comm'rs, 41 Colo. App. 102, 580 P.2d 830 (1978); Linnebur v. Pub. Serv. Co. of Colo., 716 P.2d 1120 (Colo. 1986).

However, an inverse condemnation action is appropriate only where the state entity has eminent domain powers at the time of the taking. In this case, since the department of health did not have condemnation powers until after the regulatory taking, the inverse condemnation claim was dismissed. Dept. of Health v. The Mill, 809 P.2d 434 (Colo. 1991).

Physical condemnation is not required for a property owner to state a claim for relief in an inverse condemnation proceeding, but the owner must show a legal interference that substantially impairs his or her use or possession of the property. Colo. Springs v. Andersen Mahon Enters., 260 P.3d 29 (Colo. App. 2010).

Exhaustion of administrative remedies, notice of claims, and sovereign immunity are not defenses available to the state in an inverse condemnation action. The Mill v. State Dept. of Health, 787 P.2d 176 (Colo. App. 1989).

Governmental immunity inapplicable to inverse condemnation. Given the constitutional genesis of a claim for inverse condemnation and the special nature of the right upon which the claim is founded, the claim is not subject to the limitations of the Governmental Immunity Act. Jorgenson v. City of Aurora, 767 P.2d 756 (Colo. App. 1988).

Section 1983 federal civil rights claim is premature so long as possibility of inverse condemnation exists. Until inverse condemnation has been pursued, where possible, and has failed, there is no taking without compensation that could constitute a deprivation of civil rights. Jorgenson v. City of Aurora, 767 P.2d 756 (Colo. App. 1988).

State statute prohibiting municipality from exacting a fee from telecommunications providers for the use of public rights-of-way, beyond costs directly incurred by the municipality, does not authorize a taking of property for which the municipality would be entitled to compensation by inverse condemnation. A municipality controls public rights-of-way in its governmental capacity, and such property is not "private" for purposes of a takings analysis. City & County of Denver v. Qwest Corp., 18 P.3d 748 (Colo. 2001).

A government entity's entry onto private property for survey purposes prior to initiating eminent domain proceedings does not constitute a compensable taking. San Miguel County Bd. of County Comm'rs v. Roberts, 159 P.3d 800 (Colo. App. 2006).

Application of § 43-2-201 does not constitute a governmental taking for which compensation is required. Bd. of County Comm'rs v. Flickinger, 687 P.2d 985 (Colo. 1984).

Redemption interest under § 39-12-103 (3) is a penalty, and when the government exacts a penalty, it may deduct the penalty from a money judgment without effecting a taking. Because the taxpayers had no reasonable expectation that they were exempt from this penalty, the

redemption interest charged by the county implicates no property interest and there is no violation of the takings clauses. Dove Valley Bus. Park v. County Comm'rs, 945 P.2d 395 (Colo. 1997).

Exemptions allowed in act regarding the obtainment of well permits and augmentation plans by owners and operators of sand and gravel pits will somewhat decrease the amount of water available in the river for use, but this fact alone does not establish substantial damage to any particular water right owner. There is no violation of the takings clause of the Colorado constitution. Central Colo. Water v. Simpson, 877 P.2d 335 (Colo. 1994).

A claim for wrongful taking under this section must be based on some right of the property owner to exercise or use its property during the period in question. Where the owner had leased the property and the lessee had declared bankruptcy, the owner had no possessory interest in the property during the time the property was held by a receiver and therefore had no claim for injury based on the receiver's actions. Spencer Invs., Inc. v. Bohn, 923 P.2d 140 (Colo. App. 1995).

Landowners have no right to pollute a stream or use property in a manner that could result in the spread of radioactive contamination. A landowner cannot reasonably expect to put property to a use that constitutes a nuisance, even if that is the only economically viable use for the property. Under such circumstances, a government need not pay even for complete takeover or destruction of property if it is justified by the owner's insistence on using the property to injure other people or their property. Aztec Minerals Corp. v. Romer, 940 P.2d 1025 (Colo. App. 1996).

The mere remediation of a contaminated site, even if it resulted in physical damage to the property, could not result in a taking for public or private use. Aztec Minerals Corp. v. Romer, 940 P.2d 1025 (Colo. App. 1996).

Applied in Knoth v. Barclay, 8 Colo. 300, 6 P. 924 (1885); People ex rel. Aspen M. & S. Co. v. District Court, 11 Colo. 147, 17 P. 298 (1887); Searl v. Sch. Dist. No. 2, 133 U.S. 553, 10 S. Ct. 374, 33 L. Ed. 740 (1890); Colo. Cent. R.R. v. Humphreys, 16 Colo. 34, 26 P. 165 (1891); Strickler v. City of Colo. Springs, 16 Colo. 61, 26 P. 313 (1891); In re Substitute for Senate Bill No. 83, 21 Colo. 69, 39 P. 1088 (1895); Broadmoor Land Co. v. Curr, 142 F. 421 (8th Cir. 1905); Hildreth v. City of Longmont, 47 Colo. 79, 105 P. 107 (1909); Crystal Park Co. v. Morton, 27 Colo. App. 74, 146 P. 566 (1915); Sternberger v. Continental Mines Power & Reduction Co., 68 Colo. 129, 186 P. 910 (1920); Averch v. City & County of Denver, 78 Colo. 246, 242 P. 47 (1925); Pub. Serv. Co. v. City of Loveland, 79 Colo. 216, 245 P. 493 (1926); Colby v. Bd. of Adjustment, 81 Colo. 344, 255 P. 443 (1927); La Plata River & Cherry Creek Ditch Co. v. Hinderlider, 93 Colo. 128, 25 P.2d 187 (1933); Driverless Car Co. v. Armstrong, 91 Colo. 334, 14 P.2d 1098 (1934); Pub. Utils. Comm'n v. Manley, 99 Colo. 153, 60 P.2d 913 (1936); Rinn v. Bedford, 102 Colo. 475, 84 P.2d 827 (1938); Union Exploration Co. v. Moffat Tunnel Imp. Dist., 104 Colo. 109, 89 P.2d 257 (1939); Gordon v. Wheatridge Water Dist., 107 Colo. 128, 109 P.2d 899 (1941); Vogts v. Guerrette, 142 Colo. 527, 351 P.2d 851 (1960); Overhill Corp. v. City of Grand Junction, 186 F. Supp. 69 (D. Colo. 1960); Stark v. Poudre Sch. Dist. R-1, 192 Colo. 396, 560 P.2d 77 (1977); Coquina Oil Corp. v. Harry Kourlis Ranch, 643 P.2d 519 (Colo. 1982); Brubaker v. Bd. of County Comm'rs, 652 P.2d 1050 (Colo. 1982); Good Fund, Ltd.-1972 v. Church, 540 F. Supp. 519 (D. Colo. 1982); Direct Mail Servs., Inc. v. Colo., 557 F. Supp. 851 (D. Colo. 1983);

Herring v. Platte River Power Auth., 728 P.2d 709 (Colo. 1986).

II. PROPERTY RIGHTS PROTECTED.

Section protects private property or some right peculiar to owner. It is only when some specific private property, or some right or interest therein or incident thereto, peculiar to the owner, is taken or damaged for public or private use that the constitution guarantees compensation therefor. Gilbert v. Greeley, S. L. & Pac. Ry., 13 Colo. 501, 22 P. 814 (1889).

Property interests are defined by existing rules or understandings that stem from an independent source such as state law. Dove Valley Bus. Park v. County Comm'rs, 945 P.2d 395 (Colo. 1997).

Property includes right to freely possess, use and alienate chattel or land. Property, in its broader and more appropriate sense, is not alone the chattel or the land itself, but the right to freely possess, use and alienate the same; and many things are considered property which have no tangible existence, but which are necessary to the satisfactory use and enjoyment of that which is tangible. City of Denver v. Bayer, 7 Colo. 113, 2 P. 6 (1883).

Property is more than the mere thing which a person owns. It is elemental that it includes the right to acquire, use, and dispose of it. The constitution protects these essential attributes of property. City & County of Denver v. Denver Buick, Inc., 141 Colo. 121, 347 P.2d 919 (1959).

But section does not guarantee most profitable use of property. The due process and just compensation clauses of the federal and state constitutions do not require that a landowner be permitted to make the best, maximum, or most profitable use of his property. Baum v. City & County of Denver, 147 Colo. 104, 363 P.2d 688 (1961); Madis v. Higginson, 164 Colo. 320, 434 P.2d 705 (1967); Wright v. City of Littleton, 174 Colo. 318, 483 P.2d 953 (1971).

There is simply no constitutionally protected right under the federal or state constitutions to gain the maximum profit from the use of property. Nopro v. Town of Cherry Hills Vill., 180 Colo. 217, 504 P.2d 344 (1972).

The due process and just compensation clauses do not require that zoning ordinances permit a landowner to make the most profitable use of his property. Bird v. City of Colo. Springs, 176 Colo. 32, 489 P.2d 324 (1971).

All private property is held subject to reasonable police powers of state as exercised through properly constituted authorities; and, certainly all public property is held under no less a power. Asphalt Paving Co. v. Bd. of County Comm'rs, 162 Colo. 254, 425 P.2d 289 (1967).

To provide for public welfare and security. One of the essential elements of property is the right to its unrestricted use and enjoyment, and that use cannot be interfered with beyond what is necessary to provide for the welfare and general security of the public. City & County of Denver v. Denver Buick, Inc., 141 Colo. 121, 347 P.2d 919 (1959); Wright v. City of Littleton, 174 Colo. 318, 483 P.2d 953 (1971).

Easements deemed property. Incorporeal hereditaments, particularly those denominated easements, have always been considered property, both by the civil and the common law. They are generally attached to things corporeal, and are said to "issue out of or concern" them. City of Denver v. Bayer, 7 Colo. 113, 2 P. 6 (1883).

Such an easement of abutting owner in street. An easement in a street connected with the lot of an

abutting owner is property within the meaning of this and the preceding section, and any interference therewith, which results in injury to the realty, must, with exceptions, be justly compensated. City of Denver v. Bayer, 7 Colo. 113, 2 P. 6 (1883).

Right of access is subject to reasonable control and limitation. Troiano v. Colo. Dept. of Hwys., 170 Colo. 484, 463 P.2d 448 (1969); Thornton v. City of Colo. Springs, 173 Colo. 357, 478 P.2d 665 (1970); Shaklee v. Bd. of County Comm'rs, 176 Colo. 559, 491 P.2d 1366 (1971).

And improvements or inconvenience may be damnum absque injuria. Sometimes interferences and the resulting injury may properly be held to be damnum absque injuria, where they are occasioned by a reasonable improvement of the street by the proper authorities for the greater convenience of the public; or where a temporary inconvenience or injury results from a legitimate use thereof by the public. City of Denver v. Bayer, 7 Colo. 113, 2 P. 6 (1883).

For injuries resulting from reasonable and ordinary or usual change and improvement of the street by the municipality, the abutting owner cannot recover, provided the change or improvement is made in a careful and skillful manner for the benefit of the public. City of Pueblo v. Strait, 20 Colo. 13, 36 P. 789 (1894); City of Colo. Springs v. Stark, 57 Colo. 384, 140 P. 794 (1914).

Although doctrine of damnum absque injuria has not been applied where municipal authorities have made an unreasonable change in the street, or put it, or allowed it to be put, to an extraordinary or unusual use. City of Pueblo v. Strait, 20 Colo. 13, 36 P. 789 (1906).

Consent to reasonable changes presumed. In purchasing his lot or dedicating the easement to the public, the abutting owner is conclusively presumed to have contemplated the power and authority of the city council to skillfully make reasonable changes and improvements, by raising or lowering the grade, or otherwise. City of Denver v. Bayer, 7 Colo. 113, 2 P. 6 (1883); City of Denver v. Vernia, 8 Colo. 399, 8 P. 656 (1885).

Including bridges or street railways. Bridges, culverts, and even street railways, but not ordinary railroads, are matters contemplated by the lot owner when he purchases. City of Denver v. Bayer, 7 Colo. 113, 2 P. 6 (1883).

But not viaducts obstructing access to property. The building of a viaduct in a public street over railroad tracks is such an extraordinary use of the street as could not have been reasonably anticipated at the time of the dedication. And under this section, both principle and authority unite in support of the rule allowing the owner of abutting property to recover damages when the means of ingress and egress to his property is obstructed or injured thereby. City of Pueblo v. Strait, 20 Colo. 13, 36 P. 789 (1906).

Right to hunt wild game not enforceable property right. The right to hunt wild game upon one's own land is not a property right enforceable against the state under this section. Collopy v. Wildlife Comm'n, 625 P.2d 994 (Colo. 1981).

City ordinances banning billboards unconstitutional. Where the combined effect of two city ordinances would be to eliminate the billboard business in Denver, by enforcing the prohibition against the erection of any new billboards, and by forcing the removal of existing signs, the city ordinances were unconstitutional. Combined Commc'ns Corp. v. City & County of Denver, 189 Colo. 462, 542 P.2d 79 (1975).

Right to use of water acquired by priority of

appropriation deemed property right. The people and the courts of Colorado treat as property the right to a use of water acquired by priority of appropriation. The right of user would, of course, be of no value without the water; but it is this right that is mainly the subject of ownership. City of Denver v. Bayer, 7 Colo. 113, 2 P. 6 (1883).

The right to the use of water secured by legal appropriation is property, and a proper construction of §§ 5 and 6 of art. XVI, Colo. Const., dealing with the public nature of water and the diversion of unappropriated water for irrigation purposes harmonized these provisions with the declaration of this section "that private property shall not be taken or damaged for public or private use without just compensation". Armstrong v. Larimer County Ditch Co., 1 Colo. App. 49, 27 P. 235 (1891).

Rights to the use of water for a beneficial purpose, whatever the use may be, are property, in the full sense of that term, and are protected by this section. Sterling v. Pawnee Ditch Extension Co., 42 Colo. 421, 94 P. 339, 15 L.R.A. 238 (1908).

A priority to the use of water for irrigation or domestic purposes is a property right and as such is fully protected by the constitutional guarantees relating to property in general. Game & Fish Comm'n v. Farmers Irrigation Co., 162 Colo. 301, 426 P.2d 562 (1967).

If a lessee's unexpired leasehold interest is subjected to condemnation, the lessee generally is entitled to compensation. Fibreglas Fabricators, Inc. v. Kylberg, 799 P.2d 371 (Colo. 1990).

An exemplary damages award is a private property right, and the statutory requirement that one-third of all damages collected pursuant to § 13-21-102 be paid into the state general fund constitutes a taking of a judgment creditor's private property without just compensation in violation of the fifth and fourteenth amendments to the United States constitution and this section of the constitution. Kirk v. Denver Pub. Co., 818 P.2d 262 (Colo. 1991).

Church property is private property which can be taken by eminent domain for paramount public use. Pillar of Fire v. Denver Urban Renewal Auth., 181 Colo. 411, 509 P.2d 1250 (1973).

Fixtures are part of realty for which compensation must be paid to the owner by the condemning authority. Denver Urban Renewal Auth. v. Steiner Am. Corp., 31 Colo. App. 125, 500 P.2d 983 (1972).

Items presumed fixtures. Where the identity of the specific items of property not taken by urban renewal authority is not reflected in the record, and the affidavit stands uncontroverted, it must be presumed that the items for which landowner was awarded compensation were fixtures and equipment used in the condemned plant and that for purposes of eminent domain such fixtures and equipment had become a part of the building. Denver Urban Renewal Auth. v. Steiner Am. Corp., 31 Colo. App. 125, 500 P. 2d 983 (1972).

Where urban renewal authority does not litigate landowner's allegation that machinery and equipment not taken by urban renewal authority are fixtures, urban renewal authority cannot avoid liability for property owner for expenses incurred in moving and relocating the machinery and equipment on the theory that they consist only of personal property. Denver Urban Renewal Auth. v. Steiner Am. Corp., 31 Colo. App. 125, 500 P.2d 983 (1972).

III. DAMAGING OR TAKING OF PROPERTY.

A taking of property occurs when the entity clothed with the

power of eminent domain substantially deprives a property owner of the use and enjoyment of that property. A taking can be effected by a legal interference with the physical use, possession, disposition, or enjoyment of the property, or by acts which constitute an exercise of dominion and control by a governmental entity. A taking also occurs if an owner is required to forego all economically beneficial use of his or her property. Clare v. Florissant Water & San. Dist., 879 P.2d 471 (Colo. App. 1994); Thompson v. City & County of Denver, 958 P.2d 525 (Colo. App. 1998); Fowler Irrevocable Trust 1992-1 v. City of Boulder, 992 P.2d 1188 (Colo. App. 1999), aff'd in part and rev'd in part on other grounds, 17 P.3d 797 (Colo. 2001).

Physical taking of private property for public use need not be shown in order to entitle owner to compensation. Harrison v. Denver City Tramway Co., 54 Colo. 593, 131 P. 409 (1913).

As this section makes compensable both taking and damages inflicted by the state of Colorado or one of its agencies or constituent parts. Mosher v. City of Boulder, 225 F. Supp. 32 (D. Colo. 1964).

Purpose of inserting word "damaged" in this section was to add additional right of action. City of Pueblo v. Strait, 20 Colo. 13, 36 P. 789 (1894).

And it encompasses results of improvements by eminent domain. The use of the word "damaged" in this section, in connection with the word "taken", indicates clearly that the damage contemplated was such as would result from the making of an improvement in which the right of eminent domain might be called into use. Bd. of Comm'rs v. Adler, 69 Colo. 290, 194 P. 621 (1920).

Intent of including the word "damaged" in this section was to grant relief to property owners who have been substantially damaged by the creation of public improvements abutting their lands, but whose land had not been physically taken by the government. Thompson v. City & County of Denver, 958 P.2d 525 (Colo. App. 1998).

A taking cannot result from simple negligence by a governmental entity. For governmental action to result in a taking, the taking must be a reasonably foreseeable consequence of an authorized action. The government must have the intent to take the property or to do an act that has the natural consequence of taking the property. Hence, the consequence of the action alleged to be a taking must be a "direct, natural, probable result of that action". Trinity Broad. of Denver, Inc. v. City of Westminster, 848 P.2d 916 (Colo. 1993); Fowler Irrevocable Trust 1992-1 v. City of Boulder, 992 P.2d 1188 (Colo. App. 1999), aff'd in part and rev'd in part on other grounds, 17 P.3d 797 (Colo. 2001).

However, a governmental entity can be held liable for a taking even if the actual conduct complained of was performed by another person or entity. Fowler Irrevocable Trust 1992-1 v. City of Boulder, 992 P.2d 1188 (Colo. App. 1999), aff'd in part and rev'd in part on other grounds, 17 P.3d 797 (Colo. 2001).

The two-pronged test of Trinity Broad. of Denver, Inc. v. City of Westminster, annotated above, is presented in the disjunctive, so it provides a property owner with two separate grounds for establishing a taking. The first prong focuses on the subjective intent of the defendant, while the second prong focuses on objective causation. Under the second prong, a property owner may prevail on an inverse condemnation claim by proving not that the governmental entity subjectively intended to effect a taking but that the government's action had the natural consequence of taking

the property. Scott v. County of Custer, 178 P.3d 1240 (Colo. App. 2007).

Property may be damaged though land not appropriated. Although it has been said that property cannot be "taken", within the meaning of this section, except by an appropriation of the land itself, no such limitation is applicable to the clause relating to damages. Mollandin v. Union Pac. Ry., 14 F. 394 (D. Colo. 1882), aff'd in part and rev'd in part on other grounds, 17 P.3d 797 (Colo. 2001).

Temporary taking differs from a permanent taking in that, once the period of the taking expires, the landowner's legal interest and occupation of the property are reestablished and the taking is for a definite period of time. Fowler Irrevocable Trust 1992-1 v. City of Boulder, 17 P.3d 797 (Colo. 2001).

Just compensation must be paid for a temporary, as well as a permanent, taking. Fowler Irrevocable Trust 1992-1 v. City of Boulder, 992 P.2d 1188 (Colo. App. 1999), aff'd, 17 P.3d 797 (Colo. 2001).

Temporary taking differs from a permanent taking in that, once the period of the taking expires, the landowner's legal interest and occupation of the property are reestablished and the taking is for a definite period to time. Fowler Irrevocable Trust 1992-1 v. City of Boulder, 17 P.3d 797 (Colo. 2001).

Property owner need not provide proof that public entity specifically authorized the precise invasion complained of; rather, property owner must establish that public entity's actions were more than mere negligence and that the use of the parcel was a direct, natural and probable result of actions that public entity specifically authorized its contractors to take. Record supports trial court's finding that use of particular parcel was not authorized by its owner and that public entity temporarily possessed the parcel for a period of 26 months. Fowler Irrevocable Trust 1992-1 v. City of Boulder, 992 P.2d 1188 (Colo. App. 1999), aff'd in part and rev'd in part on other grounds, 17 P.3d 797 (Colo. 2001).

In the case of a temporary taking, landowner is entitled to just compensation for fair rental value of property at its highest and best use, taking into consideration any existing land use restrictions, during the period of temporary taking. In determining fair rental value, the trial court and the jury must assume a free bargaining transaction between a hypothetical lessor and lessee. Changes in land use restrictions may only be considered if they probably could have occurred during the temporary taking period. Fowler Irrevocable Trust 1992-1 v. City of Boulder, 17 P.3d 797 (Colo. 2001).

Mere ownership of wild game does not expose state to landowner crop loss. Landowners unquestionably possess a cognizable property interest in their crops and residues, but it does not follow, however, that mere state ownership of wild game exposes it to liability for wildlife-caused crop losses. Collopy v. Wildlife Comm'n, 625 P.2d 994 (Colo. 1981).

Right or interest in property must be impaired. It must appear that some right, or interest, whether public or private, pertaining to the property has been destroyed or impaired, before an action can be maintained. Harrison v. Denver City Tramway Co., 54 Colo. 593, 131 P. 409 (1913).

Damage sustained by owner must differ in kind from that suffered by public generally. Under this section the damage must be to the property or its appurtenances; or it must affect some right or interest which the owner enjoys in connection with the property, not shared or enjoyed by the

public generally. The damage must differ in kind, not merely in degree. Gilbert v. Greeley, S.L. & Pac. Ry., 13 Colo. 501, 22 P. 814 (1889); Gayton v. Dept. of Hwys., 149 Colo. 72, 367 P.2d 899 (1962); Troiano v. Colo. Dept. of Hwys., 170 Colo. 484, 463 P.2d 448 (1969); Hayutin v. Colo. State Dept. of Hwys., 175 Colo. 83, 485 P.2d 896, cert. denied, 404 U.S. 991, 92 S. Ct. 553, 30 L. Ed. 2d 542 (1971); Thompson v. City & County of Denver, 958 P.2d 525 (Colo. App. 1998); Claassen v. City & County of Denver, 30 P.3d 710 (Colo. App. 2000).

For any injury and annoyance occasioned by an ordinary railroad, which are peculiar to an abutting owner, and not shared by the general public -- which affect his property and impair its value without injuring that of his neighbor -- he ought to receive compensation. City of Denver v. Bayer, 7 Colo. 113, 2 P. 6 (1883).

Where an obstruction resulting from the laying of railroad tracks was not shown to affect ingress or egress from plaintiff's property and did not cause special damage different from that suffered in common by the general public, he may not recover for loss sustained. Gilbert v. Greeley, S.L. & Pac. Ry., 13 Colo. 501, 22 P. 814 (1889).

The annoyance, discomfort, and injury arising from the noise, exhaust pollutants, and vibrations that originate from flights of aircraft arriving and departing from Denver international airport are the same effects, except in degree, as suffered by the public in general; therefore, no compensable damage has occurred. Thompson v. City & County of Denver, 958 P.2d 525 (Colo. App. 1998).

A plaintiff is entitled to recovery in cases where the damages suffered are different in kind from those suffered by the general public, while a recovery is denied for those damages common to all. City of Pueblo v. Strait, 20 Colo. 13, 36 P. 789 (1894).

The right disturbed must be a right enjoyed in connection with the property, not shared with the public generally, a right which gives it an additional value and by the disturbance of which the property itself is damaged. Harrison v. Denver City Tramway Co., 54 Colo. 593, 131 P. 409 (1913).

A nonabutting owner's right to recover has to rest upon an extension of the rule which permits recovery only when an owner can allege and prove special damage to his property which differs in kind, and not merely in degree, from that sustained by the public generally. The test is not whether the property abuts, but whether there is special injury. Radinsky v. City & County of Denver, 159 Colo. 134, 410 P.2d 644 (1966).

Where no compensable taking. Where a governmental entity has made no physical ouster of the owners from the property, and has not interfered in any way with the owners' power of disposition or use of the property, there has been no taking which would warrant compensation. Lipson v. Colo. State Dept. of Hwys., 41 Colo. App. 568, 588 P.2d 390 (1978); Colo. Springs v. Andersen Mahon Enters., 260 P.3d 29 (Colo. App. 2010).

Municipal ordinance which imposed reasonable limitations on billboards on private property, thereby requiring modification of said billboards, did not constitute a taking for which just compensation must be paid. Nat'l Adver. v. Bd. of Adjustment of City & County of Denver, 800 P.2d 1349 (Colo. App. 1990).

Seizure of property under tax lien is not a taking. An exercise of the power to assess and collect taxes is distinguishable from the power to take private property for a public use under this section. Burtkin Assocs. v. Tipton, 845 P.2d 525 (Colo. 1993).

Property owners are not entitled to obtain the highest and best use of their property or to gain

maximum profits from its use. Van Sickle v. Boyes, 797 P.2d 1267 (Colo. 1990); Nat'l Adver. v. Bd. of Adjustment of City & County of Denver, 800 P.2d 1349 (Colo. App. 1990).

For purposes of calculating and modifying child support, trial court did not impermissibly interfere with husband's constitutional property rights by including in gross income an amount which a one-time post-decree inheritance could be expected to yield. In re Armstrong, 831 P.2d 501 (Colo. App. 1992).

Destruction of access to property compensable. The destruction or infringement of an easement or right of access appurtenant to a landowner's lots is a loss or damage different in kind from that suffered by the rest of the community, and for such damage compensation may be recovered under this section. City of Pueblo v. Strait, 20 Colo. 13, 36 P. 789 (1894); Denver Union Term. Ry. v. Glodt, 67 Colo. 115, 186 P. 904 (1919); Minnequa Lumber Co. v. City & County of Denver, 67 Colo. 472, 186 P. 539 (1919).

Whatever permanently prevents the adjacent owner's free use of the street for ingress or egress to or from his lot, and whatever interference with the street permanently diminishes the value of his premises, is as much a damage to his private property as though some direct physical injury were inflicted thereon. City of Denver v. Bayer, 7 Colo. 113, 2 P. 6 (1883); City of Denver v. Vernia, 8 Colo. 399, 8 P. 656 (1885).

Right of access to and from a general street system must be substantially impaired, not merely inconvenienced, by modification of the system. Hayutin v. Colo. State Dept. of Hwys., 175 Colo. 83, 485 P.2d 896, cert. denied, 404 U.S. 991, 92 S. Ct. 533, 30 L. Ed. 2d 542 (1971).

A landowner could not recover for any general inconvenience occasioned by a complete blockade of the intersection by railway cars; but for the special and peculiar damage shown by the loss of the intersection which was sole access to plaintiff's street, he is entitled to compensation. Jackson v. Kiel, 13 Colo. 378, 22 P. 504 (1889).

Under this section where a landowner has no fee in the land occupied as a highway, but his land abuts on it, and he has rights therein not shared in common with the general public for purposes of travel and use, a person using or appropriating such highway or a portion of it for other and different purposes than the one contemplated, whereby the highway is obstructed and impaired as a means of ingress and egress, is liable to the abutting owner for any consequential damages arising from such appropriation and use depreciating the value of the property. Town of Longmont v. Parker, 14 Colo. 386, 23 P. 443 (1890); Radinsky v. City & County of Denver, 159 Colo. 134, 410 P.2d 644 (1966).

The general rule is that an abutting landowner is entitled to compensation for limitation or loss of access only if the limitation or loss substantially interferes with his means of ingress and egress to and from his property. State Dept. of Hwys. v. Davis, 626 P.2d 661 (Colo. 1981).

But partial loss of access is not compensable if landowner retains reasonable means of access to and from his property. Troiano v. Colo. Dept. of Hwys., 170 Colo. 484, 463 P.2d 448 (1969); Thornton v. City of Colo. Springs, 173 Colo. 357, 478 P.2d 665 (1970); Shaklee v. Bd. of County Comm'rs, 176 Colo. 559, 491 P.2d 1366 (1971).

When a landowner has free and convenient access to his property and the improvements on it and his means of egress and ingress are not substantially interfered with by a limitation of access, he has no cause for complaint, nor is he entitled to any

compensation. Shaklee v. Bd. of County Comm'rs, 176 Colo. 559, 491 P.2d 1366 (1971).

Factors to consider in determining whether or not there has been a compensable taking of access rights to a highway include whether the property is a single economic unit or consists of separate units with particular access needs, the use of the property, the location of improvements, the contiguity to the highway, the land's topography, and all pertinent characteristics of the property which may be relevant to its access needs. Shaklee v. Bd. of County Comm'rs, 176 Colo. 559, 491 P.2d 1366 (1971).

The fact that a municipality may under its police power interfere to a certain extent with access to and from premises does not mean necessarily that such interference constitutes a "taking" for which under amendments 5 and 14, U.S. Const., and under § 25 of art. II, Colo. Const., and this section there must be compensation. Rather, to constitute such a taking there must be an unreasonable or substantial deprivation of access. City of Boulder v. Kahn's, Inc., 190 Colo. 90, 543 P.2d 711 (1975).

Determination whether access has been substantially impaired is question of law and, thus, subject to review on appeal. State Dept. of Hwys. v. Davis, 626 P.2d 661 (Colo. 1981).

Inconvenience of less direct route not compensable. The inconvenience to a lot owner in having to adopt a less direct route to reach certain points from the construction of a freeway interchange is an injury of the same kind as that suffered by the general public. Radinsky v. City & County of Denver, 159 Colo. 134, 410 P.2d 644 (1966).

Mere inconvenience and mere circuity of route necessary for access or egress occasioned by a public improvement are not compensable items of damage. Troiano v. Colo. Dept. of Hwys., 170 Colo. 484, 463 P.2d 448 (1969); Thornton v. City of Colo. Springs, 173 Colo. 357, 478 P.2d 665 (1970).

Where there is mere inconvenience resulting from a more circuitous route and from the diversion of traffic, diminution of value is not compensable. Thornton v. City of Colo. Springs, 173 Colo. 357, 478 P.2d 665 (1970).

Compensation is not permitted for damage caused by circuity of route where the properties involved were used for business purposes such as motels, restaurants, and gas stations, and where the inability of the traveling public to get to the property conveniently had, in effect, diminished the value of the business property. Troiano v. Colo. Dept. of Hwys., 170 Colo. 484, 463 P.2d 448 (1969).

There is not a "taking" where pedestrians are deprived of the right to approach establishments after alighting from a vehicle on street in front of or near the establishments. City of Boulder v. Kahn's, Inc., 190 Colo. 90, 543 P.2d 711 (1975).

In determining whether there has been substantial interference with a landowner's access, inconvenience caused by the required use of a more circuitous route to gain access to property does not constitute substantial impairment of access. State Dept. of Hwys. v. Davis, 626 P.2d 661 (Colo. 1981).

Nor limiting access to specific points. There is no taking of private property which would be subject to compensation when a landowner's access rights to a state highway are limited to two access points of his own choosing. Shaklee v. Bd. of County Comm'rs, 176 Colo. 559, 491 P.2d 1366 (1971).

Access to a highway may not be unreasonably cut off without payment of compensation, but an owner is not entitled, as against the

public, to access to his land at every point on the property line adjacent to the highway. Shaklee v. Bd. of County Comm'rs, 176 Colo. 559, 491 P.2d 1366 (1971).

No right to compensation found in case in which one of two access points to the public streets is taken by condemnation. Per se rule requiring compensation whenever a landowner's access to a particular street is completely taken is rejected. Dept. of Hwys. v. Interstate-Denver West, 791 P.2d 1119 (Colo. 1990).

Nor paying additional ton-mile taxes because of longer routes. As to plaintiffs' contention that they will have to pay additional ton-mile taxes because of the longer routes they must now follow--this is an inconvenience to be borne by all alike who are in the reasonably defined class. Asphalt Paving Co. v. Bd. of County Comm'rs, 162 Colo. 254, 425 P.2d 289 (1967).

Nor loss of business value by diversion of traffic. When vehicular traffic was routed away from improvements and business and onto the new highway, and the old highway remained in existence and use, the damage to market value of the business property by diversion of traffic is not compensable. No person has a vested right in the maintenance of the public highway in any particular place. Troiano v. Colo. Dept. of Hwys., 170 Colo. 484, 463 P.2d 448 (1969).

Nor loss of view of property by public. Since a property owner has no right to have the traveling public pass his property, he has no right to have the traveling public afforded a clear view of his property. Loss of view from the property caused by the construction of a viaduct is not compensable. Troiano v. Colo. Dept. of Hwys., 170 Colo. 484, 463 P.2d 448 (1969).

Motorists' visibility of property not a compensable right. Because a landowner has no continued right to traffic passing the property, the landowner likewise has no right in the continued motorists' visibility of the property from a transit corridor. Dept. of Transp. v. Marilyn Hickey Ministries, 159 P.3d 111 (Colo. 2007).

Construction of solid median does not violate right of access to and use of the entire roadway of abutting landowners. Thornton v. City of Colo. Springs, 173 Colo. 357, 478 P.2d 665 (1970).

Purchaser of land with indirect access entitled to damages arising subsequent to sale. In an inverse condemnation action by a landowner against the board of county commissioners and department of highways alleging confiscation of its right of access to and from freeway, the reviewing court concluded that plaintiff bought the property in question subject to a burden of indirect access to freeway and cannot now recover compensation for loss of such direct access; rather, it is limited in its recovery to damages that have arisen since it acquired the property. Majestic Heights Co. v. Bd. of County Comm'rs, 173 Colo. 178, 476 P.2d 745 (1970).

Possible right to damages for change of street grade. Under this section a municipality is liable for consequential damages to the owner of a lot abutting on the street on account of the raising or lowering of the grade of the street where such change of grade is unreasonable or has been negligently made. Leiper v. City & County of Denver, 36 Colo. 110, 85 P. 849 (1906).

Under this section where the grade of a street is established by a city and abutting lot owners improve their property in conformity with the established grade, the city is liable for damage to such property caused by a subsequent change of the grade of the street. City of Denver v. Bonesteel, 30 Colo. 107, 69 P. 595 (1902).

Where a city unlawfully attempts to delegate authority to

establish street grades, an abutting lot owner was entitled to damages to property caused by reducing the level of the street except for property on the city's right-of-way. Gidley v. City of Colo. Springs, 160 Colo. 482, 418 P.2d 291 (1966).

Use of street damaged by construction of railroad. The use of a street is a right of property in the abutting property owner, which if not "taken" is certainly "damaged", within the meaning of this section, by the act of a railroad company in building its road through that street. Mollandin v. Union Pac. Ry., 14 F. 394 (D. Colo. 1882).

Where liable for damage by licensed subway. A city is liable for injuries occasioned to private property by the construction of a subway, in a public street, which allows passage by the public under the tracks of a railway company. The fact that the railway company constructs the improvement under license of the city does not change the result. Where an improvement is made for the benefit of the public the cost incurred should be generally distributed. City of Colo. Springs v. Stark, 57 Colo. 384, 140 P. 794 (1914).

Vacation of highway does not deprive one who dedicated plats. One dedicating highways to the public by filing plats showing highways located thereon is not unconstitutionally deprived of its property by § 43-2-302 which provides that upon vacation of the highway the title shall vest in the abutting owner. Buell v. Sears, Roebuck & Co., 205 F. Supp. 865 (D. Colo. 1962), aff'd, 321 F.2d 468 (10th Cir. 1963).

Excessive regulation deemed taking. While property may be regulated to a certain extent, if regulation goes too far it will be recognized as a taking. City & County of Denver v. Denver Buick, Inc., 141 Colo. 121, 347 P.2d 919 (1959).

Only when zoning is confiscatory does it rise to a "taking". Gold Run, Ltd. v. Bd. of County Comm'rs, 38 Colo. App. 44, 554 P.2d 317 (1976).

Zoning upheld where any reasonable or lawful use of property allowed. If the land in question is susceptible to any reasonable or lawful use under the classification imposed by a city, the ordinance will be allowed to stand. Bird v. City of Colo. Springs, 176 Colo. 32, 489 P.2d 324 (1971).

Proof that property was not suitable for any use under intermediate zoning categories must be had as a prerequisite to a determination that the property was being unconstitutionally confiscated. Bd. of County Comm'rs v. Simmons, 177 Colo. 347, 494 P.2d 85 (1972).

Zoning ordinances or regulations will not be declared unreasonable and arbitrary unless plainly and palpably so, or if enforced the consequent restrictions will preclude the use of the property for any purpose to which it is reasonably adapted, and if the reasonableness thereof is fairly debatable such ordinance must be upheld. Bird v. City of Colo. Springs, 176 Colo. 32, 489 P.2d 324 (1971).

So zoning which precludes all reasonable uses invalid. To sustain an attack upon the validity of the ordinance an aggrieved property owner must show that if the ordinance is enforced the subsequent restrictions upon his property preclude its use for any purpose to which it is reasonably adapted. Baum v. City & County of Denver, 147 Colo. 104, 363 P.2d 688 (1961).

Where the plaintiffs offered no evidence to prove that it was not possible to use and develop the property for any or all of the uses enumerated in the city's zoning ordinance, there was no showing that the city's zoning deprived the plaintiffs of their property without just compensation, nor without due process.

Wright v. City of Littleton, 174 Colo. 318, 483 P.2d 953 (1971).

A zoning ordinance which amended the existing zoning and imposed a more restrictive classification on developers' property by changing the minimum lot size from one-half to two and one-half acres was held unconstitutional as applied to developers' property in that its enforcement would preclude the use of developers' property for any purpose to which it is reasonably adaptable and was therefore confiscatory. Trans-Robles Corp. v. City of Cherry Hills Vill., 30 Colo. App. 511, 497 P.2d 335 (1972), aff'd, 181 Colo. 356, 509 P.2d 797 (1973).

And restriction of legitimate, harmless use by zoning is deprivation. Where the provisions of a zoning ordinance do not deprive a party of title to his lots and do not oust him of possession, but do deprive him of the right to put his lots to a legitimate use which does not injure the public, without compensation or any provision therefor, the ordinance clearly deprives him of his property without compensation, and without due process of law. City & County of Denver v. Denver Buick, Inc., 141 Colo. 121, 347 P.2d 919 (1959).

Under no circumstances can an ordinance amending the zoning map in a way that would deprive the owner of all economic use be upheld. City of Fort Collins v. Dooney, 178 Colo. 25, 496 P.2d 316 (1972).

A city may not confiscate property under pretense of zoning. No power exists in a city to take private property for public use without compensation to the owner thereof, and it may not confiscate such property without compensation under the pretense of zoning. City & County of Denver v. Denver Buick, Inc., 141 Colo. 121, 347 P.2d 919 (1959).

Owner's rights are same whether action is by city council or by people acting directly. The constitutional rights of a property owner are the same whether zoning is denied or granted by the action of the elected representatives of the people (city council) or by the people acting directly by initiative or referendum. City of Fort Collins v. Dooney, 178 Colo. 25, 496 P.2d 316 (1972).

Effect of zoning ordinance on value of land for one use as compared with another not controlling. Accepting as a fact that land anywhere available for development for commercial purposes has a higher potential value than land restricted to residential use, the effect of the zoning ordinance on the value of plaintiffs' land for one use as compared to another is not the controlling or decisive factor. Baum v. City & County of Denver, 147 Colo. 104, 363 P.2d 688 (1961).

The fact that the plaintiff may have paid more than the land was worth under existing zoning in the hope of securing a zoning change is generally not a factor to be considered in the plaintiff's favor in analyzing a taking claim. Cottonwood Farms v. Bd. of County Comm'rs, 763 P.2d 551 (Colo. 1988).

The fact that state action diminishes the value of private property, or that the diminution is quantifiable with certainty, does not by itself command compensation. Dept. of Hwys. v. Interstate-Denver West, 791 P.2d 1119 (Colo. 1990).

Off-street parking requirements are not per se unconstitutional as taking of property without just compensation. In these days of environmental concern, it is not unconstitutional to require those who invite large numbers of people to their establishments--who in turn clog the streets, air, and ears of the citizens--to provide parking facilities so that automobiles may be placed in a stall and stilled. Stroud v. City of Aspen, 188 Colo. 1, 532 P.2d 720 (1975).

Improvement district cannot be deprived of right it does not have. The taking of lots within improvement district by a housing authority and releasing them from the liens of the district's tax claims was no violation of the fifth amendment of the federal constitution, or this section, as the property which it is said was taken without compensation was a right to tax which the law never gave them. Moffat Tunnel Imp. Dist. v. Hous. Auth., 109 Colo. 357, 125 P.2d 138 (1942).

Sale of public utility's facilities constitutes taking. The public utility commission may order the lines frozen to present customers. But to order the sale of facilities would constitute a taking of property without just compensation. Pub. Utils. Comm'n v. Home Light & Power Co., 163 Colo. 72, 428 P.2d 928 (1967).

Condemnation of easement entitles owners to compensation for the easement and damages to the residue of their property. Madis v. Higginson, 164 Colo. 320, 434 P.2d 705 (1967).

But conveyance of easement was not taking. The limitation on plaintiffs' use of their property was brought about by their own voluntary act in giving the easement for the dam, rather than by the zoning ordinances. They gave the easement with complete knowledge of what uses they were giving up by making the conveyance and resulting damages to the residue. Madis v. Higginson, 164 Colo. 320, 434 P.2d 705 (1967).

Channeling water so as to overflow land not taking. The channeling of water from a higher area to a place contiguous to the land of the plaintiffs so as to overflow on the land of the plaintiffs does not constitute a taking within this constitutional provision. City of Englewood v. Linkenheil, 146 Colo. 493, 362 P.2d 186 (1961).

Flooding preventable at property owner's expense is not taking. No private property was "taken" when a county, at the request of property owners, designed and graded streets that resulted in some flooding of plaintiff's home, because there was neither a change in the use of the streets, nor a new appropriation of private property; and flooding which can be prevented at the expense of adjustments to the property by the property owner does not constitute a taking. Kratzenstein v. Bd. of County Comm'rs, 674 P.2d 1009 (Colo. App. 1983).

Water leaking from a municipal water system storage tank into groundwater, saturating the soil, and causing damage to the foundation of an adjacent building does not effect a taking because the leakage was not a direct, natural, or probable result of locating and operating a water storage tank where the tanks were located but instead an incidental and consequential injury inflicted by the municipality's operation of the water tanks. Trinity Broad. of Denver, Inc. v. City of Westminster, 848 P.2d 916 (Colo. 1993).

No triable issue of fact in inverse condemnation claim where building owner claimant failed to show any evidence that municipality intended to act, or refused to act, in such a way that the natural consequence of its acts would result in a taking of claimant's media center because municipality's water saturated the soil beneath the building. Trinity Broad. of Denver, Inc. v. City of Westminster, 848 P.2d 916 (Colo. 1993).

Construction of drainage pipe not a taking. There was no taking of property by implementation of floodway restrictions after construction of underground flood control drainage pipe, where there was no flooding of property from time pipe was completed to time of trial, pipe resulted in thirty percent reduction of flood restrictions on property, only change in use of property was reduction of restrictions

in favor of owners, and there was no new appropriation of private property. Morrison v. City of Aurora, 745 P.2d 1042 (Colo. App. 1987).

But diversion resulting in pollution of water compensable damage. When the game and fish commission diverted water from a creek and channeled it through a hatchery where it was so polluted as to render it unfit for the purposes to which it had theretofore been applied by plaintiffs, plaintiffs' property rights therein were destroyed or seriously damaged. Farmers Irrigation Co. v. Game & Fish Comm'n, 149 Colo. 318, 369 P.2d 557 (1962).

Confiscation of excess water. Strict application of the "used and useful" rule of water appropriation might operate to confiscate a utility's property without just compensation where the utility reasonably acquired excess water to guarantee future needs. Pub. Utils. Comm'n v. Northwest Water Corp., 168 Colo. 154, 451 P.2d 266 (1969).

A decree of abandonment of a water right is not a taking because water rights are usufructuary in nature. In re Revised Abandonment List, 2012 CO 35, 276 P.3d 571.

A valid state engineer well curtailment order is not a taking because a water right is always subject to the rights of senior water right owners and there is no compensable right to injure other vested water rights. Allowing the wells to divert without the depletions being replaced by a valid plan for augmentation or substitute water supply plan would injure other vested water rights. The fact that the wells' priority predates the 1969 water right adjudication legislation is irrelevant because the wells have always been subject to the constitution's provisions on prior appropriation. Kobobel v. State, 249 P.3d 1127 (Colo. 2011).

Self-inflicted hardship doctrine does not invariably prevent an owner who purchased property with knowledge of applicable zoning regulations from subsequently attacking the validity of those regulations on the ground that they effect an unconstitutional taking of the property. Cottonwood Farms v. Bd. of County Comm'rs, 763 P.2d 551 (Colo. 1988).

To show damage in a case for inverse condemnation plaintiff must show legal interference that substantially impairs his use or possession of the property and physical ouster is not necessary. City's unauthorized drilling and subsequent unauthorized and erroneous report on the coal content of plaintiff's land severely diminished the price plaintiff could get for his land and therefore constituted a taking by the city. Grynberg v. City of Northglenn, 829 P.2d 473 (Colo. App. 1991), rev'd on other grounds, 846 P.2d 175 (Colo. 1993).

Taking occurs when the actions of a governmental subdivision, in excluding a private competitor from the market, reduces a person's business to worthlessness. Clare v. Florissant Water & Sanitation Dist., 879 P.2d 471 (Colo. App. 1994).

If business owner's equipment or physical property cannot be removed from the exclusive service area of a special district where the business owner may no longer compete, the district has, as a practical matter, condemned those facilities. Clare v. Florissant Water & Sanitation Dist., 879 P.2d 471 (Colo. App. 1994).

Absent a physical invasion into the airspace above property that is below the navigable airspace, there can be no physical taking. Claassen v. City & County of Denver, 30 P.3d 710 (Colo. App. 2000).

Temporary limitation or interim regulation on property use, resulting from the otherwise good faith, reasonable institution of a moratorium in order to bring about effective

governmental decision making does not result in a categorical taking. Williams v. City of Central, 907 P.2d 701 (Colo. App. 1995).

In determining whether a temporary, non-categorical taking entitles the owner to compensation, the court must consider the character of the challenged governmental action, its economic impact, and the extent to which the regulation has interfered with the reasonable investment-backed expectations of the landowner. Williams v. City of Central, 907 P.2d 701 (Colo. App. 1995).

Application of city ordinance requiring relocation underground of overhead electricity and communications facilities by owners and operators at their own cost did not constitute a taking of telecommunications provider's property where its franchise was subject to the city's reasonable exercise of police power and to future regulations governing the location of the provider's facilities in the interest of the public health and welfare. U S West Commc'ns v. City of Longmont, 924 P.2d 1071 (Colo. App. 1995), aff'd on other grounds, 948 P.2d 509 (Colo. 1997).

The application of the amended Colorado exemption limits set forth in § 13-54-102 to a loan and security agreement that was entered into prior to the enactment of the amended exemption statute does not constitute an unconstitutional "taking" of the loan collateral under the fifth amendment to the United States Constitution and the constitution of the state of Colorado. The property interest impairment arises from a valid state regulation and does not rise to the level of a taking requiring just compensation. In re Larsen, 260 B.R. 174 (Bankr. D. Colo. 2001).

The public utilities commission's award of attorney fees was not quasi-legislative, did not have an unreasonable economic impact, and did not interfere with any reasonable economic expectation; therefore, the award was not a taking. Lake Durango Water Co. v. Pub. Utils. Comm'n, 67 P.3d 12 (Colo. 2003).

IV. JUST COMPENSATION.

A. Measure of Compensation.

Provision for just compensation was designed for benefit of landowner and should be construed so as to give him its benefit to the full extent. Keller v. Miller, 63 Colo. 304, 165 P. 774 (1917).

Primary objective of condemnation proceedings is to satisfy the constitutional guaranty of just compensation and damages to the owner of private property taken for public use. Denver Joint Stock Land Bank v. Bd. of County Comm'rs, 105 Colo. 366, 98 P.2d 283 (1940).

General assembly may provide manner of determining compensation due. When the right to take is asserted and adjudged, the question of compensation, a matter entirely independent of the right, still remains for determination. The general assembly may provide under what circumstances and in what manner this compensation shall be determined. Colo. Midland Ry. v. Jones, 29 F. 193 (D. Colo. 1886).

Similar rules in damage suits and condemnation proceedings. This section is inseparably connected with the exercise of the power of eminent domain, and in suits for damages similar rules and tests, so far as applicable, should be applied as in condemnation proceedings. Middelkamp v. Bessemer Irrigating Co., 46 Colo. 102, 103 P. 280 (1909).

But not necessarily measure of damages. Plaintiffs, in demanding relief in the form of damages covering the loss sustained by them, are not

forced to accept the measure of damages usually applicable to a condemnation case. Game & Fish Comm'n v. Farmers Irrigation Co., 162 Colo. 301, 426 P.2d 562 (1967).

Public should make good loss to individual occasioned by public improvement. Under this section when it became necessary to inflict damage upon private property in connection with public improvements, the public should make good the loss to the individual. City of Ft. Collins v. Wallace, 23 Colo. App. 452, 130 P. 69 (1913).

Owner entitled to just, not token, compensation. Under this section it is not token that the landowner is entitled to receive; it is just compensation. Swift v. Smith, 119 Colo. 126, 201 P.2d 609 (1948).

General rule is that assessment of damages should include all damages arising to the owner of land from any and every physical effect produced by the construction and use of the canal, if constructed according to the provisions of the statute and with proper care and skill, whether they are damages to be clearly seen and easily estimated, or are uncertain and of doubtful result (except such as result from its negligent construction or use). Middelkamp v. Bessemer Irrigating Co., 46 Colo. 102, 103 P. 280 (1909).

Just compensation equals value of the loss sustained. The just compensation required by this section to be made to the owner is the loss sustained by him by the appropriation. He is entitled to receive the value of what he has been deprived of, and nothing more. Alexander v. City & County of Denver, 51 Colo. 140, 116 P. 342 (1911).

The measure of compensation is the actual diminution in the market value of the premises, for any use to which they may reasonably be put, occasioned by the construction and operation of the railroad through the adjacent street. City of Denver v. Bayer, 7 Colo. 113, 2 P. 6 (1883).

While the authorities differ as to the rule for the ascertainment of damages due to damaged property rights under varying circumstances, it is everywhere admitted that the rule to be applied should be such as will enable the jury to determine, as near as may be, the actual loss suffered. Game & Fish Comm'n v. Farmers Irrigation Co., 162 Colo. 301, 426 P.2d 562 (1967).

The phrase "just compensation" as applied to eminent domain has been commonly defined as payment to the owner of the fair and reasonable market value of his property. Leadville Water Co. v. Parkville Water Dist., 164 Colo. 362, 436 P.2d 659 (1967).

Not value to taker. In a condemnation action the question is, what has the owner lost, not what has the taker gained. Thus value to the taker, or to his neighbors, must be rejected as the measure of compensation. Williams v. City & County of Denver, 147 Colo. 195, 363 P.2d 171 (1961).

When a portion of a landowner's property is taken for public use, just compensation includes payment for the portion actually taken and compensation for injury to the remainder of the property. La Plata Elec. Ass'n v. Cummings, 728 P.2d 696 (Colo. 1986); E-470 Pub. Hwy. Auth. v. 455 Co., 983 P.2d 149 (Colo. App. 1999), aff'd, 3 P.3d 18 (Colo. 2000); Story v. Bly, 217 P.3d 872 (Colo. App. 2008), aff'd, 241 P.3d 529 (Colo. 2010).

Market value ordinarily means the price the property would bring if sold in the open market under ordinary and usual circumstances, for cash, assuming that the owner is willing to sell and the purchaser willing to buy, but neither under any obligation to do so. Williams v. City & County of Denver, 147 Colo. 195, 363 P.2d 171 (1961).

Major factors to be considered in determining market value of real estate in condemnation proceedings are: (a) A view of the premises and their surroundings; (b) a description of the physical characteristics of the property and its situation in relation to points of importance in the neighborhood; (c) the price at which the land was bought, if sufficiently recent to throw light on present value; (d) the price at which similar neighboring land has sold at about the time of the taking; (e) the opinion of competent experts; (f) a consideration of the uses for which the land is adapted and for which it is available; (g) the cost of the improvements if they are such as to increase the value of the land; and (h) the net income from the land, if the property is devoted to one of the uses to which it could be most advantageously and profitably applied. United States v. 25.02 Acres of Land, More or Less, 495 F.2d 1398 (10th Cir. 1974).

If there exists a reasonable probability that land taken by a condemning authority would have been rezoned in the future, so that land could later have been devoted to uses that present zoning would not allow, such probability would likely affect the present value that a willing seller and a willing buyer would place upon the property. As such, the probability of rezoning may be considered by the commissioners insofar as it would reasonably be reflected in present market value. Stark v. Poudre Sch. Dist. R-1, 192 Colo. 396, 560 P.2d 77 (1977); Fowler Irrevocable Trust 1992-1 v. City of Boulder, 992 P.2d 1188 (Colo. App. 1999), aff'd, 17 P.3d 797 (Colo. 2001).

In applying this rule, it is improper to evaluate the subject property by assuming that the subject property is not presently subject to pertinent use restrictions. Rather, it is only to the extent that the prospect of future additional uses for the property has an influence upon its present market value that such prospect is relevant. Fowler Irrevocable Trust 1992-1 v. City of Boulder, 992 P.2d 1188 (Colo. App. 1999), aff'd in part and rev'd in part on other grounds, 17 P.3d 797 (Colo. 2001).

If a condemning authority takes a permanent interest in the property, the transaction resembles the sale of an interest in the property. In such cases, the value of the estate transferred may be influenced, in part, by the probability that the transferee will be able to use the property in the future for purposes for which it cannot presently be used. In contrast, a temporary taking of a parcel resembles the creation of a leasehold interest in the condemning authority more than it does the conveyance of a permanent estate to it. Consequently, the standard that should be used in determining the compensation due an owner for a temporary taking is the fair rental value of the property during the time the condemning authority possessed it. Fowler Irrevocable Trust 1992-1 v. City of Boulder, 992 P.2d 1188 (Colo. App. 1999), aff'd, 17 P.3d 797 (Colo. 2001).

Evidence that the floodplain restrictions in effect during the time of the temporary taking of the subject parcel might be removed sometime in the future could have no impact upon the parcel's fair rental value during the time of possession. Accordingly, evidence with respect to this subject should not have been considered for any purpose in determining the proper compensation to be paid to the owner for the temporary taking of the parcel. Fowler Irrevocable Trust 1992-1 v. City of Boulder, 992 P.2d 1188 (Colo. App. 1999), aff'd, 17 P.3d 797 (Colo. 2001).

Evidence of sales of comparable property. In determining the fair market value of real property in condemnation, i.e., that which an owner willing, but not compelled to

sell, will take, and what a buyer willing, but not compelled to buy, will give for such property, the best evidence is found in sales of comparable property within a reasonable time before the taking. United States v. 25.02 Acres of Land, More or Less, 495 F.2d 1398 (10th Cir. 1974).

Fair compensation in condemnation cases does not include speculative values either lowering or raising the compensation to be paid. Williams v. City & County of Denver, 147 Colo. 195, 363 P.2d 171 (1961).

Just compensation cannot include any increment arising from the very fact of acquisition of the subject property. If the land were sold in the open market under ordinary and usual circumstances, factors relating to public acquisition would have to be excluded from consideration. In such a case there would be no condemnation at issue. Williams v. City & County of Denver, 147 Colo. 195, 363 P.2d 171 (1961).

And goodwill and profits are not regarded as elements of just compensation under either the due process or just compensation clauses of the federal and state constitutions. Auraria Businessmen Against Confiscation, Inc. v. Denver Urban Renewal Auth., 183 Colo. 441, 517 P.2d 845 (1974).

"Just compensation" includes payment of costs. The phrase "just compensation" in this section has been interpreted to mean not only payment to the owner of the market value of his property, but also payment of his costs. Denver Urban Renewal Auth. v. Hayutin, 40 Colo. App. 559, 583 P.2d 296 (1978).

The loss sustained to property rights which have been damaged by the state necessarily includes out-of-pocket expenses incurred by those suffering the damage in an effort to avoid the consequences of the defendants' acts resulting in the loss. Game & Fish Comm'n v. Farmers Irrigation Co., 162 Colo. 301, 426 P.2d 562 (1967).

In condemnation proceedings, the landowner is entitled to compensation for all reasonable costs incurred. Expenses necessarily incurred by reason of the litigation are correctly viewed as such costs. City of Colo. Springs v. Berl, 658 P.2d 280 (Colo. App. 1982).

And inconvenience factors are elements of damage. The inconvenience, discomfort and annoyance occasioned by the pollution of the domestic water supply of various of the plaintiffs is a factor to be taken into consideration by the trial court. The trial court should make a reasonable allowance on account of the foregoing elements of damage. Game & Fish Comm'n v. Farmers Irrigation Co., 162 Colo. 301, 426 P.2d 562 (1967).

Property owner is entitled to additional compensation for physical damage to surface of parcel that was temporarily taken. Absent special circumstances, it is the difference in market value and not the cost of restoration that is the proper measure for compensation. A court may deviate from this standard if conditions exist that would render the award of compensation under this standard unfair or inappropriate. However, any court authorizing such a deviation must be careful to assure that the damages awarded are not a windfall to the landowner and, in any case, must articulate the reasons for its decision so as to facilitate effective appellate review. Fowler Irrevocable Trust 1992-1 v. City of Boulder, 992 P.2d 1188 (Colo. App. 1999), aff'd, 17 P.3d 797 (Colo. 2001).

Where the damage done was susceptible to repair at a reasonably certain cost based on bids placed into evidence, the owner was entitled to the amount awarded by the jury upon such evidence. Fowler Irrevocable Trust 1992-1 v. City of Boulder, 17 P.3d 797

(Colo. 2001).

But attorney fees are not allowed as costs in condemnation actions, and in such cases, are not an element of just compensation. Denver Urban Renewal Auth. v. Hayutin, 40 Colo. App. 559, 583 P.2d 296 (1978).

Nor expenses incurred presenting case. "Costs", as an element of just compensation, includes only those items usually taxed as costs and does not include any and all expenses which an owner may see fit to incur in preparing for and in presenting his side of the case. Denver Urban Renewal Auth. v. Hayutin, 40 Colo. App. 559, 583 P.2d 296 (1978).

Failure to compensate where imminent necessity. When property is taken by the state or one of its political subdivisions under circumstances of imminent necessity, the failure justly to compensate the owner does not violate this section. Srb v. Bd. of County Comm'rs, 43 Colo. App. 14, 601 P.2d 1082 (1979).

State highway department held to have discharged its obligation. Where the state highway department paid into court the amount of an award in condemnation proceedings, it discharged its obligation and was relieved of further responsibility for an unpaid city tax lien assessed for the creation of a local public improvement district. Southworth v. Dept. of Hwys., 176 Colo. 82, 489 P.2d 204 (1971).

Extent of coal reserves prior to city's unauthorized drilling and subsequent unauthorized erroneous report which severely diminished the value of those reserves and what a willing purchaser would have paid for the property at the time it was damaged was proper measure of damages. Grynberg v. City of Northglenn, 829 P.2d 473 (Colo. App. 1991).

Requiring owners of condemned land to pay the city's costs under the offer of settlement provision of § 13-17-202 violates the owners' constitutional right to just compensation as determined by a jury or board of commissioners. City of Westminster v. Hart, 928 P.2d 758 (Colo. App. 1996).

All evidence relevant to the determination of the present market value of condemned property is admissible, including evidence of the most advantageous potential future use of the entire property, even if the condemned property would need to be dedicated as part of annexation and rezoning of the entire property in the future. Palizzi v. City of Brighton, 228 P.3d 957 (Colo. 2010).

Evidence of the value of the condemned portion as a part of the whole is admissible and should be evaluated by the fact finder when determining just compensation. Palizzi v. City of Brighton, 228 P.3d 957 (Colo. 2010).

Trial court erred in excluding estimate of the construction cost of a new driveway as evidence relevant to the determination of the value of a nonexclusive access easement over an existing driveway, but failure to admit such evidence was not an abuse of discretion warranting reversal of the trial court's decision where it could not be said with fair assurance that the error substantially influenced the jury's determination of easement value or impaired the basic fairness of the trial. Bly v. Story, 241 P.3d 529 (Colo. 2010).

B. Procedure.

Procedure not limitation on protection. The first sentence of this section prohibiting taking or damaging of private property without just compensation is in no way limited by the following provisions which prescribe the procedure in the appropriation of private property to a public use. Bd. of Comm'rs v. Adler, 69 Colo. 290, 194 P. 621 (1920).

Constitutional objections to eminent domain proceedings should be raised in those proceedings and be determined by the court in limine and not by way of a collateral injunction proceeding. Auraria Businessmen Against Confiscation, Inc. v. Denver Urban Renewal Auth., 183 Colo. 441, 517 P.2d 845 (1974).

This section is consent by state to bringing of suits against county, for damages to property incurred by the construction of county projects. Bd. of Comm'rs v. Adler, 69 Colo. 290, 194 P. 621 (1920).

But not consent to suit against state. While this section imposes a liability on the state for an uncompensated injury or taking, it does not constitute a consent by the state to a suit against it to enforce such liability and such consent is not given by the eminent domain authority of the state highway board under § 43-1-208. Colo. ex rel. Watrous v. District Court of United States, 207 F.2d 50 (10th Cir. 1953).

Right of action not taken away by governmental immunity. A "right of action" cannot be unconstitutionally taken away or damaged by the application of sovereign immunity to a tort claim, since there is no "right" in the absence of a statute granting such. Abeyta v. City & County of Denver, 165 Colo. 58, 437 P.2d 67 (1968).

As just compensation clause creates exception to doctrine of governmental immunity. Srb v. Bd. of County Comm'rs, 43 Colo. App. 14, 601 P.2d 1082 (1979).

Individual or agency inflicting damage responsible for loss. Whosoever damages the property of another, whether he be an individual or an agency of the state, must be held responsible in damages for the loss caused thereby. Game & Fish Comm'n v. Farmers Irrigation Co., 162 Colo. 301, 426 P.2d 562 (1967).

If, in the execution of any power, no matter what it is, the government, federal or state, finds it necessary to take private property for public use, it must obey the constitutional injunction to make or secure just compensation to the owner. City & County of Denver v. Denver Buick, Inc., 141 Colo. 121, 347 P.2d 919 (1959).

Board of directors of an irrigation district must pay for all lands acquired under the authority of § 37-41-114. San Luis Valley Irrigation Dist. v. Noffsinger, 85 Colo. 202, 274 P. 827 (1929).

Unlawful taking not act of state. When a state agency enters upon land or injures land within the meaning of this section without paying just compensation therefor, or without having commenced condemnation proceedings to ascertain the compensation due for the taking or injury, the act of the state agency is unauthorized and unlawful and is not the act of the state of Colorado. Colo. ex rel. Watrous v. District Court of United States, 207 F.2d 50 (10th Cir. 1953).

And remedy lies against individual state officer. The remedy in Colorado for an unauthorized and unlawful taking or injury of private land for public use without compensation by a state agency is against the state officer, individually, to prevent his unlawful act or for appropriate redress if it has been consummated. Colo. ex rel. Watrous v. District Court of United States, 207 F.2d 50 (10th Cir. 1953).

Action lies despite claim of immunity. Notwithstanding a claim of sovereign immunity from a suit for damages resulting from the torts of agents of the state, upon a showing that the water rights of plaintiffs had been taken or damaged by the game and fish commission through pollution of the water, plaintiffs were entitled to relief in the form of "just compensation" for the property so taken or damaged, and

to injunctive relief against a continuance thereof. Farmers Irrigation Co. v. Game & Fish Comm'n, 149 Colo. 318, 369 P.2d 557 (1962).

Action for damages for taking of property right is personal to owner for the property in question, unless it is specifically assigned to the grantee of the property. Majestic Heights Co. v. Bd. of County Comm'rs, 173 Colo. 178, 476 P.2d 745 (1970).

The right to compensation for the value of land taken and damages to the residue is a personal one belonging to the owner which does not pass by deed, and where there is no evidence that purchaser ever acquired such right by assignment from the owner, he takes the land in the condition it was in when he acquired title and his right in this action is limited to the damages, if any, which have since accrued. Majestic Heights Co. v. Bd. of County Comm'rs, 173 Colo. 178, 476 P.2d 745 (1970); Enke v. City of Greeley, 31 Colo. App. 337, 504 P.2d 1112 (1972).

But change of form of res does not affect rights of owner. In a condemnation proceeding when the condemnor pays the amount of the award for the condemned property into the registry of the court, the change of the form of the res from property to money does not affect the relative rights of the owner and other claimants in the res. Southworth v. Dept. of Hwys., 176 Colo. 82, 489 P.2d 204 (1971).

For injuries to property of abutting landowners, single recovery can be had for the whole damage to result from the act. City of Denver v. Bayer, 7 Colo. 113, 2 P. 6 (1883).

Jury or board of commissioners must ascertain damages. By the terms of this section the compensation for taking or damaging private property against the owner's consent must be ascertained by a jury or board of commissioners; this requirement is imperative, and the general assembly is powerless to dispense with it. Trippe v. Overacker, 7 Colo. 72, 1 P. 695 (1883).

But party cannot have damages assessed by both. Under this section and the eminent domain act, defendant in an eminent domain proceeding is not entitled to have his damages assessed twice, first by a commission, and then by a jury. Where a jury trial is allowed, it is in lieu of an assessment of damages by a commission. Snider v. Town of Platteville, 75 Colo. 589, 227 P. 548 (1924).

Stipulation reserving compensable nature of property for determination by court and board of commissioners. Where urban renewal authority elects to enter into a stipulation which reserves for determination by a court and board of commissioners the compensable nature of property, it could not now complain that the award of compensation was made in proceedings conducted consistent with that stipulation. Denver Urban Renewal Auth. v. Steiner Am. Corp., 31 Colo. App. 125, 500 P.2d 983 (1972).

Provision for jury at request of party other than owner would contravene express terms of section. Southwestern Land Co. v. Hickory Jackson Ditch Co., 18 Colo. 489, 33 P. 275 (1893).

Jury of freeholders held not waived. Where, although the owner of property involved in a condemnation proceeding requested merely a "jury of six" and the trial court attempted to qualify the jury as freeholders, a juror did not hear the question and thus it was not discovered that he was not a freeholder, there is no waiver of a jury made up of freeholders. The case must be retried before a properly constituted jury. State Dept. of Hwys. v. Ogden, 638 P.2d 832 (Colo. App. 1981).

Landowners waived constitutional right to have just compensation determined by a jury

of freeholders. Having agreed to entry of directed verdict and to dismiss jury before any valuation evidence could be considered by it, landowners waived their constitutional rights to have a jury determine just compensation for their properties. Sinclair Transp. Co. v. Sandberg, 228 P.3d 198 (Colo. App. 2009), rev'd on other grounds sub nom. Larson v. Sinclair Transp. Co., 2012 CO 36, 284 P.3d 42.

Party seeking to condemn property must pay costs of ascertaining damages. If the parties cannot agree upon the amount of just compensation, it must be ascertained in the manner provided by law. The duty of ascertaining the amount is necessarily cast upon the party seeking to condemn the property, and he should pay all the expenses which attach to the process. Any law which casts this burden upon the owner should be held to be unconstitutional and void. Keller v. Miller, 63 Colo. 304, 165 P. 774 (1917); Southwestern Land Co. v. Hickory Jackson Ditch Co., 18 Colo. 489, 33 P. 275 (1893).

An owner whose property is sought to be taken cannot be required to pay any portion of his reasonable costs necessarily incidental to the trial of the issues on his part, or any part of the costs of the plaintiff; for to require him to do this would reduce the just compensation awarded by the jury by a sum equal to that paid by him for such costs. Dolores No. 2 Land & Canal Co. v. Hartman, 17 Colo. 138, 29 P. 378 (1891); Keller v. Miller, 63 Colo. 304, 165 P. 774 (1917); Leadville Water Co. v. Parkville Water Dist., 164 Colo. 362, 436 P.2d 659 (1967).

This section guarantees the owner a jury trial for ascertaining the value of the land taken and the damages to the residue, and if any part of such costs is taxed to him, his just compensation will be reduced equal to the amount he has to pay out for a jury, and that amounts to depriving him to that extent of the guaranteed just compensation. Wassenich v. City & County of Denver, 67 Colo. 456, 186 P. 533 (1919); Dept. of Hwys. v. Kelley, 151 Colo. 517, 379 P.2d 386 (1963).

But attorney fees not recoverable as costs. The constitution clearly covers only the class of expenses usually taxed as costs. Attorney fees do not fall within that category. Dolores No. 2 Land & Canal Co. v. Hartman, 17 Colo. 138, 29 P. 378 (1891); Leadville Water Co. v. Parkville Water Dist., 164 Colo. 362, 436 P.2d 659 (1967); City of Holyoke v. Schlachter Farms R.L.L.P., 22 P.3d 960 (Colo. App. 2001).

Attorney fees are not included within the meaning of "costs" as applied to this section and are not recoverable in eminent domain proceedings. Dept. of Hwys. v. Intermountain Term. Co., 164 Colo. 354, 435 P.2d 391 (1967).

Adding interest to sum found by jury. When there is nothing in the record from which it can be definitely ascertained that the jury did not take into consideration the question of interest in fixing the amount of their verdict in a condemnation proceeding, even if no instructions in regard to interest were given, the supreme court cannot add interest to the sum found by the jury and the refusal to do so does not contravene this section. Fishel v. City & County of Denver, 106 Colo. 576, 108 P.2d 236 (1940).

Compensation must be made in money. This section and the eminent domain act contemplate a compensation in money to one whose lands are condemned for railroad purposes. Burlington & C. R. R. v. Schweikart, 10 Colo. 178, 14 P. 329 (1887).

This section contemplates compensation to the landowner in money. That is conclusive upon the courts. Great W. Ry. v. Ackroyd, 44 Colo. 454, 98 P. 726 (1908).

Application of § 40-9.5-204, which sets forth a formula for

compensating a cooperative electric association whose service territory is taken by a municipality does not violate this section. Such section simply provides a jury under this section with parameters for determining just compensation. Poudre Valley Rural Elec. v. Loveland, 807 P.2d 547 (Colo. 1991).

Judgment for assessment of damages in condemnation proceedings is final and conclusive, and the owner of the land cannot maintain a subsequent action for damages which should have been, but were not, considered or assessed by the jury. Middelkamp v. Bessemer Irrigating Co., 46 Colo. 102, 103 P. 280 (1909).

Money to be paid or deposited before property disturbed. Until the compensation ascertained in one of the two ways provided shall have been first paid or deposited, the title or proprietary rights of the owner cannot be divested, nor can the property be needlessly disturbed. McClain v. People, 9 Colo. 190, 11 P. 85 (1886).

The owner is entitled to receive compensation for property taken for public use before his property is taken or his possession disturbed. Keller v. Miller, 63 Colo. 304, 165 P. 774 (1917).

Although prior payment unnecessary if disturbance necessary. The insertion of the provision relating to needless disturbances of property in this section is a recognition of the fact that there may be needful disturbances thereof; also that such needful disturbances may take place without the prior payment or deposit of compensation ascertained in one of the two methods designated. McClain v. People, 9 Colo. 190, 193, 11 P. 85 (1886).

And necessity determined by general assembly. As to what needful disturbances are, the constitution is silent; therefore the duty of naming them must have been left with the general assembly to recognize, in some general way, a class or classes of disturbances which might be needful in particular cases. McClain v. People, 9 Colo. 190, 11 P. 85 (1886).

Thus statutes may validly provide for preliminary possession of property. San Luis Land, Canal & Imp. Co. v. Kenilworth Canal Co., 3 Colo. App. 244, 32 P. 860 (1893).

Under § 38-1-105(6) the general assembly has determined that, in some instances, the occupancy and use of premises by petitioner, pending condemnation proceedings, may be needful disturbances, within the meaning of the constitution. The exclusive possession and enjoyment of property are undoubtedly "proprietary rights"; but by this statute these rights are not "divested"--they are merely suspended. Every disturbance of property almost of necessity involves the interference with some proprietary right--in many cases the temporary suspension thereof. McClain v. People, 9 Colo. 190, 11 P. 85 (1886).

But court has discretion in particular cases. The use of the word "needlessly" in § 38-1-105 providing for preliminary possession, implies an investigation of some sort. A disturbance which in one case might be deemed needful, in another might, with equal propriety, be adjudged needless. But it is clearly impossible for the general assembly to sit in judgment upon each particular case, and ascertain whether or not the various disturbances sought are needful. While that body has determined that a preliminary possession and use may be a needful disturbance, it has delegated to certain courts, and the judges thereof, the duty of passing upon this question in particular cases as they arise. The statutory expression in section 38-1-105(6) that "the court by rule, may authorize the petitioner to take possession", confers upon the court a discretionary power; and the word

"may" does not mean "shall". McClain v. People, 9 Colo. 190, 11 P. 85 (1886).

Injunction improper where damages provide adequate remedy. Courts will not enjoin the vacation of a street until an abutting property owner has been compensated for his damage for loss of access where access is available by another public road, such owner having an adequate remedy at law for damages. City of Colo. Springs v. Crumb, 148 Colo. 32, 364 P.2d 1053 (1961).

Or where possession before payment authorized. Where the only property right which will be impaired by vacation of a street is the easement or right of ingress and egress to and from an abutting owner's premises, the abutting owner cannot enjoin the vacation merely because damages are not compensated in advance, if the city be acting under sufficient legislative municipal authority. City of Colo. Springs v. Crumb, 148 Colo. 32, 364 P.2d 1053 (1961).

Injunctive relief is an appropriate remedy to prevent pollution and contamination of stream to the injury of appropriators of water from that stream. Game & Fish Comm'n v. Farmers Irrigation Co., 162 Colo. 301, 426 P.2d 562 (1967).

Mandamus will not lie to compel bringing of condemnation proceedings by state agency for the unauthorized act of the state agency in taking or injuring property without the payment of compensation therefor and without first bringing condemnation proceedings to determine the amount of compensation due, because to do so would be to require the state to take affirmative action in the exercise of its sovereign power of eminent domain. Colo. ex rel. Watrous v. District Court of United States, 207 F.2d 50 (10th Cir. 1953).

Burden of proof. In order for plaintiff to be compensated for loss of access it was incumbent upon her to establish to the satisfaction of the trial court that she no longer retains a reasonable means of access to and from her property and the general system of public streets. The property owner has the burden of proof with regard to establishing the existence of damages and the amount of compensation therefor. Troiano v. Colo. Dept. of Hwys., 170 Colo. 484, 463 P.2d 448 (1969).

In order for there to be a taking, the burden rests upon the landowner to show that he has been deprived of all reasonable uses of his land. Bird v. City of Colo. Springs, 176 Colo. 32, 489 P.2d 324 (1971).

Burden rests upon the owner to establish by competent evidence his right to substantial compensation. United States v. 25.02 Acres of Land, More or Less, 495 F.2d 1398 (10th Cir. 1974).

Where a solid median strip across a roadway has been constructed, in order to be compensated for loss of access to the roadway, a claimant must establish that a reasonable means of access to and from her property no longer exists. Thornton v. City of Colo. Springs, 173 Colo. 357, 478 P.2d 665 (1970).

Zoning ordinances, like other legislative enactments, are presumed to be valid, and anyone alleging the invalidity of a zoning ordinance has the burden of proving it beyond a reasonable doubt. Bd. of County Comm'rs v. Simmons, 177 Colo. 347, 494 P.2d 85 (1972).

Burden not met. Where contentions regarding the actions of a zoning board were debatable and where there was no showing that the property was not suitable for use under intermediate zoning categories, the burden of proving the invalidity of a zoning ordinance beyond a reasonable doubt was not met. Bd. of County Comm'rs v. Simmons, 177 Colo. 347, 494 P.2d 85 (1972).

Passage of initiated measure amending a city charter by

requiring voter approval of location and siting of preparole facility did not divest developers of vested property right but suspended the developer's unqualified fulfillment of that right pending an affirmative vote of the county electorate. Villa at Greeley, Inc. v. Hopper, 917 P.2d 350 (Colo. App. 1996

Section 16. Criminal prosecutions - rights of defendant. In criminal prosecutions the accused shall have the right to appear and defend in person and by counsel; to demand the nature and cause of the accusation; to meet the witnesses against him face to face; to have process to compel the attendance of witnesses in his behalf, and a speedy public trial by an impartial jury of the county or district in which the offense is alleged to have *been committed.*

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 31.

Editor's note: In a United States supreme court case (Escobedo v. State of Illinois, 378 U.S. 478, 84 S. Ct. 1758, 12 L. Ed. 2d 977 (1964)) the court held that "where the investigation is no longer a matter of general inquiry into an unsolved crime, but has begun to focus on a particular suspect, the suspect has been taken into police custody, the police carry out a process of interrogations that lends itself to incriminating statements, the suspect has requested and been denied an opportunity to consult with his lawyer and the police have not effectively warned him of his absolute constitutional right to remain silent" such suspect had been denied his constitutional rights and his confession was not admissible.

In Washington v. People, 158 Colo. 115, 405 P.2d 735 (1965), the Colorado supreme court held the Escobedo case did not apply where accused made a voluntary confession to a friend prior to police interrogation as the Escobedo case was concerned with police tactics during interrogation.

In Ruark v. People, 158 Colo. 110, 405 P.2d 751 (1965), the Colorado supreme court held the Escobedo case did not apply retrospectively to entitle one to relief in case that had been previously decided.

Cross references: For duty of court to inform an accused of his right to counsel and the nature of the charges against him, see Crim. P. 5(a)(2) and § 16-7-207; for accused's right to compel attendance of witnesses, see § 16-9-101; for dismissal of criminal case for failure to bring to trial within time period, see Crim. P. 48(b)(1) and (b)(5); for self-incrimination and double jeopardy, see § 18 of this article; for right to trial by jury in criminal cases, see § 23 of this article; for due process in criminal proceedings, see § 25 of this article.

ANNOTATION

I. GENERAL CONSIDERATION.

Law reviews. For article, "Report of the Denver Bar Association's Committee on the Administration of Criminal Justice in Colorado", see 2 Den. B. Ass'n Rec. 2 (Feb. 1925). For note, "Right of a Federal Prisoner to a Speedy Trial on a State Charge", see 12 Rocky Mt. L. Rev. 214 (1940). For note, "A Non-Judicial Dissent to Amendment of Canon 35", see 34 Dicta 55 (1957). For article, "One Year Review of Criminal Law and Procedure", see 35 Dicta 26 (1958). For article, "Municipal Penal Ordinances in Colorado", see 30 Rocky Mt. L. Rev. 267 (1958). For article, "Incriminating Evidence: What to do With a Hot Potato", see 11 Colo. Law. 880 (1982). For article, "Some Observations on the Swinging Courthouse Doors of Gannett and Richmond Newspapers", see 59 Den. L.J. 721 (1982). For article, "Standards

of Effectiveness of Criminal Counsel", see 12 Colo. Law. 264 (1983). For article, "Criminal Procedure", which discusses Tenth Circuit decisions dealing with rights of accused, see 63 Den. U. L. Rev. 343 (1986). For a discussion of Tenth Circuit decisions dealing with criminal procedure, see 66 Den. U. L. Rev. 739 (1989). For a discussion of Tenth Circuit decisions dealing with questions of criminal procedure, see 67 Den. U. L. Rev. 701 (1990). For article, "Crawford at Two: Testimonial Hearsay and the Confrontation Clause", see 35 Colo. Law. 47 (May 2006). For article, "Pro Se Defendants and the Appointment of Advisory Counsel", see 35 Colo. Law. 29 (December 2006).

Annotator's notes. (1) In People v. Parada, 188 Colo. 230, 533 P.2d 1121 (1975), the Colorado supreme court determined that the United States supreme court, in Miranda v. Arizona, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 694 (1966), substituted a "custodial interrogation" requirement for the "focus of the investigation" test which had been enunciated in the Escobedo case.

(2) For other annotations concerning legal counsel for the indigent, see § 18-1-403 and Crim. P. 44. For other annotations concerning speedy trials, see § 18-1-405 and Crim. P. 48.

This section is congruent to the sixth amendment to the United States Constitution. Lucero v. People, 173 Colo. 94, 476 P.2d 257 (1970).

Defendant's guilty plea was unconstitutional since he was illiterate, was told by the interpreter to sign the plea advisement form without having it read to him, had difficulty hearing the interpreter during the plea hearing, was pro se, and lacked the knowledge or understanding of the criminal justice system and process. The guilty plea was not made based on a voluntary and intelligent choice among alternative courses of action. Sanchez-Martinez v. People, 250 P.3d 1248 (Colo. 2011).

The terms "criminal prosecution" and "criminal cases", as used in the constitution, refer to cases which, at the time of the adoption of the constitution, were recognized as criminal or cases which are thereafter made criminal by statute. Austin v. City & County of Denver, 170 Colo. 448, 462 P.2d 600 (1969), cert. denied, 398 U.S. 910, 90 S. Ct. 1703, 26 L. Ed. 2d 69 (1970).

This section does not apply to contempt proceedings either of a civil or criminal nature. Wyatt v. People, 17 Colo. 252, 28 P. 961 (1892); People ex rel. Attorney Gen. v. News-Times Publ'g Co., 35 Colo. 253, 84 P. 912 (1906), appeal dismissed for lack of jurisdiction, 205 U.S. 454, 27 S. Ct. 556, 51 L. Ed. 879 (1907); Guiraud v. Nevada Canal Co., 79 Colo. 289, 245 P. 485 (1926).

This section confers rights for the benefit of accused. The provisions of this section to the effect that in criminal prosecutions the accused shall have the right to "a speedy public trial by an impartial jury of the county or district in which the offense is alleged to have been committed", confer a right solely for the benefit of the accused. Vigil v. People, 135 Colo. 313, 310 P.2d 552 (1957).

And such rights may be waived. The right to trial by jury, the right to counsel, the right not to incriminate one's self, and related matters are known as alienable constitutional rights or as rights in the nature of personal privilege for the benefit of the person who may seek their protection. Such rights, whenever assertable, may be waived. Geer v. Alaniz, 138 Colo. 177, 331 P.2d 260 (1958).

Defendant is entitled to a fair trial, but not a perfect trial. People v. Sanchez, 184 Colo. 25, 518 P.2d 818 (1974).

Aim of a criminal trial is that the guilty shall not escape nor the innocent suffer an unjust conviction. People v. Rogers, 187 Colo. 128, 528 P.2d 1309 (1974).

Constitutional guaranties protected by this section relate to trial and not to proceedings thereafter unless a new trial is granted. Agnes v. People, 104 Colo. 527, 93 P.2d 891 (1939).

Summary procedure in police courts may not override constitutional rights. While summary procedure in police court cases has been countenanced from the standpoint of expediency, expedience may not override the constitution and dethrone rights guaranteed thereunder. City of Canon City v. Merris, 137 Colo. 169, 323 P.2d 614 (1958).

When sanctions imposed for violation of a municipal ordinance are penal in nature, defendant is entitled to all rights accorded one in a criminal proceeding. Austin v. City & County of Denver, 170 Colo. 448, 462 P.2d 600 (1969), cert. denied, 398 U.S. 910, 90 S. Ct. 1703, 26 L. Ed. 2d 69 (1970).

Municipal power to imprison is criminal sanction. In prosecutions for violation of municipal ordinances, even though considered as in the nature of civil actions, where the effects and consequences are criminal in fact, the power to imprison is a criminal sanction. City of Canon City v. Merris, 137 Colo. 169, 323 P.2d 614 (1958).

Denial of motion for preliminary hearing held not error. People v. Moreno, 181 Colo. 106, 507 P.2d 857 (1973).

This section, by its terms, relates to "criminal prosecutions" only. People in Interest of A.M.D., 648 P.2d 625 (Colo. 1982).

Protection of innocent and preservation of integrity of society. Both the United States and the Colorado Constitutions accord an accused substantive and procedural rights that are binding on the government in a criminal prosecution. Such procedures as are found in this section have been constitutionalized not only to protect the innocent from an unjust conviction but, of equal importance, to preserve the integrity of society itself by keeping sound and wholesome the process by which it visits its condemnation on a wrongdoer. People v. Germany, 674 P.2d 345 (Colo. 1983).

Preliminary hearing to determine probable cause issues should be conducted without regard to whether or not evidence meets standards of constitutional admissibility. People v. Connelly, 702 P.2d 722 (Colo. 1985).

Constitutional protections not necessarily provided to licensees in administrative proceeding. The constitutional protections afforded criminal defendants need not be provided to licensees in an administrative proceeding to revoke a driver's license. People v. McKnight, 200 Colo. 486, 617 P.2d 1178 (1980).

County or district. Words "county" and "district" are not synonymous in Colorado, and, therefore, criminal trial may be held within the same judicial district in a county other than the one in which the offense occurred. People v. Wafai, 713 P.2d 1354 (Colo. App. 1985).

Reversal is mandated if numerous formal irregularities, each of which in itself might be deemed harmless, in the aggregate show the absence of a fair trial. People v. Vialpando, 809 P.2d 1082 (Colo. App. 1990).

In determining whether prosecutorial impropriety mandates a new trial, appellate courts are obliged to evaluate the severity and frequency of the misconduct, any curative measures taken to alleviate the misconduct, and the likelihood that the misconduct constituted a material

factor leading to defendant's conviction. People v. Jones, 832 P.2d 1036 (Colo. App. 1991).

Reversible error exists if there are grounds for believing that the jury was substantially prejudiced by improper conduct. Where the prosecutor's ill-advised and improper comments were so numerous and highly prejudicial, the defendant was deprived of a fair trial requiring that the judgment of conviction be reversed. People v. Jones, 832 P.2d 1036 (Colo. App. 1991).

When a defendant asserts on appeal that there is an error of constitutional dimension and where no contemporaneous objection was made, the court must first determine whether there was an error and, if so, whether it was plain and whether it affected the defendant's substantive rights. If the court finds that there was plain error that affected substantial rights, reversal is required unless the court is convinced beyond a reasonable doubt that the error is harmless beyond a reasonable doubt. People v. Petschow, 119 P.3d 495 (Colo. App. 2004).

Harmless beyond a reasonable doubt standard applies where excluded alternative suspect evidence was directly relevant to an essential element of the crime charged and favorable to defendant's defense. People v. Muniz, 190 P.3d 774 (Colo. App. 2008).

There was a reasonable probability that exclusion of alternative suspect evidence prejudiced defendant. Therefore, defendant's convictions must be reversed. People v. Muniz, 190 P.3d 774 (Colo. App. 2008).

Trial court did not abuse discretion in concluding that suppression of defendant's statements to police was adequate remedy and that dismissal of all charges was not necessary where police officers had acted improperly by: Failing to read defendant his Miranda rights; failing to determine whether defendant was represented by counsel before interviewing him; failing to determine whether defendant understood his right to counsel; continuing to interrogate defendant after he invoked his right to counsel; and making promises and threats constituting coercive police conduct. People v. Medina, 51 P.3d 1006 (Colo. App. 2001), aff'd on other grounds, 71 P.3d 973 (Colo. 2003).

Jury instructions correctly described the four-step process for death penalty sentencing in Colorado. Contrary to defendant's argument, Colorado does not have a presumption of life imprisonment. The "beyond a reasonable doubt" standard at the third and fourth steps refers to a standard imposed on the jury, not a burden placed on either party. The phrase "beyond a reasonable doubt" as used in this context simply conveys the level of certainty the jury must possess before returning a death sentence. The instructions repeatedly stated that a death sentence could only be returned if the jury unanimously agreed beyond a reasonable doubt that death was the appropriate penalty. The instructions were not erroneous because they stated that the jury should impose a life sentence if convinced that life was the appropriate penalty. Dunlap v. People, 173 P.3d 1054 (Colo. 2007), cert. denied, 552 U.S. 1105, 128 S. Ct. 882, 169 L. Ed. 2d 740 (2008).

When a defendant places his mental health capacity at issue, the prosecution may rebut the defense with psychological evidence, even if that evidence includes statements not taken in compliance with Miranda. Dunlap v. People, 173 P.3d 1054 (Colo. 2007), cert. denied, 552 U.S. 1105, 128 S. Ct. 882, 169 L. Ed. 2d 740 (2008).

The decision to enter a guilty plea or withdraw one is among the few fundamental choices that must be decided by the defendant alone. People v. Davis, 2012 COA 1,

__ P.3d __.

Applied in City of Durango v. Reinsberg, 16 Colo. 327, 26 P. 820 (1891); Bd. of Comm'rs v. Wilson, 3 Colo. App. 492, 34 P. 265 (1893); Henwood v. People, 57 Colo. 544, 143 P. 373 (1914); Ex parte Snyder, 110 Colo. 35, 129 P.2d 672 (1942); Emerick v. People, 110 Colo. 572, 136 P.2d 668 (1943); Wright v. People, 116 Colo. 306, 181 P.2d 447 (1947); Tate v. People, 125 Colo. 527, 247 P.2d 665 (1952); Gallegos v. People, 139 Colo. 166, 337 P.2d 961 (1959); Hammons v. People, 153 Colo. 193, 385 P.2d 592 (1963); Allen v. People, 157 Colo. 582, 404 P.2d 266 (1965); Buckles v. People, 162 Colo. 51, 424 P.2d 774 (1967); People v. Brown, 174 Colo. 513, 485 P.2d 500 (1971); Chambers v. District Court, 180 Colo. 241, 504 P.2d 340 (1972); People v. Stephenson, 187 Colo. 120, 528 P.2d 1313 (1974); Les v. Meredith, 193 Colo. 3, 561 P.2d 1256 (1977); People v. Gould, 193 Colo. 176, 563 P.2d 945 (1977); Gelfand v. People, 196 Colo. 487, 586 P.2d 1331 (1978); Broughall v. Black Forest Dev. Co., 196 Colo. 503, 593 P.2d 314 (1978); People v. Swazo, 199 Colo. 486, 610 P.2d 1072 (1980); People v. Mascarenas, 632 P.2d 1028 (Colo. 1981); People ex rel. Hunter v. District Court, 634 P.2d 44 (Colo. 1981); In re P.R. v. District Court, 637 P.2d 346 (Colo. 1981); People v. Mack, 638 P.2d 257 (Colo. 1981); People v. Aragon, 643 P.2d 43 (Colo. 1982); People v. District Court, 647 P.2d 1206 (Colo. 1982); People v. Sanchez, 649 P.2d 1049 (Colo. 1982); People v. Bean, 650 P.2d 565 (Colo. 1982); City of Aurora ex rel. People v. Erwin, 706 F.2d 295 (10th Cir. 1983); People v. Rivers, 727 P.2d 394 (Colo. App. 1986).

II. RIGHT TO APPEAR AND DEFEND IN PERSON AND BY COUNSEL.

Law reviews. For note, "Right to Counsel in Colorado", see 34 Rocky Mt. L. Rev. 343 (1962). For article, "The Power to Expel a Criminal Defendant from His Own Trial: A Comparative View", see 36 U. Colo. L. Rev. 171 (1964). For article, "Criminal Procedure", which discusses Tenth Circuit decisions dealing with effective assistance of counsel, see 61 Den. L.J. 303 (1984). For article, "Criminal Procedure", which discusses Tenth Circuit decisions dealing with effective assistance of counsel, see 62 Den. U. L. Rev. 172 (1985). For article, "Criminal Procedure", which discusses Tenth Circuit decisions dealing with effective assistance of counsel, see 63 Den. U. L. Rev. 343 (1986). For article, "United States Supreme Court Review of Tenth Circuit Decisions", which discusses attorney misconduct as harmless error, see 63 Den. U. L. Rev. 473 (1986). For article, "Pronouncements of the U.S. Supreme Court Relating to the Criminal Law Field: 1985-1986", which discusses cases relating to the right to counsel, see 15 Colo. Law. 1578 (1986). For article, "Criminal Procedure", which discusses Tenth Circuit decisions dealing with effective assistance of counsel, see 64 Den. U. L. Rev. 245 (1987). For comment, "Limiting Prosecutorial Discovery Under the Sixth Amendment Right to Effective Assistance of Counsel: Hutchinson v. People", see 66 Den. U. L. Rev. 123 (1988). For article, "The Implied Waiver of Right to Counsel", see 17 Colo. Law. 1533 (1988). For article, "Court-Appointed Attorneys: Old Problems and New Solutions", see 19 Colo. Law. 437 (1990).

A. Right to Be Present.

Prisoner, in cases of felony, must be present at every step in proceedings, or the proceedings will be invalid. Penney v. People, 146 Colo. 95, 360 P.2d 671 (1961); People ex rel. Farina v. District Court, 185 Colo. 118, 522 P.2d 589 (1974).

Prisoner is guaranteed the right to be present at all critical stages of the trial, including closing arguments and giving instructions to the jury. People v. Luu, 813 P.2d 826 (Colo. App. 1991), aff'd, 841 P.2d 271 (Colo. 1992).

Right to be present and of allocution at sentencing. A defendant must be notified when sentence will be pronounced, and has a right to be present in the court with legal counsel at that time; he has a right of allocution before sentence is handed down which cannot be withheld from him; and the failure of the court to properly insure these rights of a defendant renders invalid a sentence pronounced under those circumstances. People v. Emig, 177 Colo. 174, 493 P.2d 368 (1972).

Defendant must be notified when sentence will be pronounced. People v. Emig, 177 Colo. 174, 493 P.2d 368 (1972).

Defendant has right to be present at every critical stage of criminal proceeding; however, that right does not extend if defendant's presence would be useless or only slightly beneficial. People v. Richardson, 181 P.3d 340 (Colo. App. 2007).

There was no violation of the right to be present when defendant was not present at the hearing on a motion for a continuance. The basis of the motion was counsel's unpreparedness, so the court did not need to consult defendant to determine whether counsel was prepared for trial or not. People v. Richardson, 181 P.3d 340 (Colo. App. 2007).

There was no violation of the right when defendant was not present when the court responded to a jury question. The defendant would not have been useful in helping the court answer the jury's legal question. People v. Richardson, 181 P.3d 340 (Colo. App. 2007).

No right to be present after conviction and sentencing. There is nothing in this section giving one convicted of a felony the right to be present during court proceedings affecting his case subsequent to conviction and sentence; consequently he is without cause for complaint if he is taken to, and confined in the penitentiary before such proceedings are consummated. Agnes v. People, 104 Colo. 527, 93 P.2d 891 (1939).

And defendant may be excluded from hearings on matters of law. Where the question raised by a motion concerns only matters of law, the exclusion of the defendant from such a hearing does not violate the constitutional right to be present at every stage of the trial. Schott v. People, 174 Colo. 15, 482 P.2d 101 (1971).

Thus, defendant is not entitled to have his motion for acquittal heard in open court in his presence and not in chambers in his absence. Schott v. People, 174 Colo. 15, 482 P.2d 101 (1971).

Duty to appear at requested preliminary hearing. When a defendant requests a preliminary hearing, he has not only the constitutional right to be present, but is under an affirmative obligation and duty to appear at the hearing. When the defendant is present, the court, in its discretion, can determine the procedures which should be followed to insure that justice is done. People ex rel. Farina v. District Court, 185 Colo. 118, 522 P.2d 589 (1974).

Prejudice from communications between judge and jury outside of accused's presence not presumed. Although communications between a judge and the jury outside of the presence of the party on trial are frowned upon, prejudice is not to be presumed therefrom. People v. Lovato, 181 Colo. 99, 507 P.2d 860 (1973).

Trial court's denial of jury's request for a transcript in absence of defendant and his counsel was violative

of his rights, but, with no showing that defendant's case was in any way prejudiced, this was harmless error beyond a reasonable doubt. Franklin v. People, 734 P.2d 133 (Colo. App. 1986).

Rather, prejudice must be established before any verdict of guilt can be reversed on that ground. People v. Lovato, 181 Colo. 99, 507 P.2d 860 (1973).

Court's statement to jury held not prejudicial error. Where the trial court's communication to the jury in the absence of defendant or his counsel did not relate to any matter that the jury would have to consider in reaching its verdict, the court's statement did not constitute prejudicial error. People v. Lovato, 181 Colo. 99, 507 P.2d 860 (1973).

Trial court's failure to notify defense counsel before responding to jury's question was harmless error because the error did not contribute to the verdict. People v. Trujillo, 114 P.3d 27 (Colo. App. 2004).

A hearing in which the only action taken by the court was to accede to defendant's request to proceed with a providency hearing with one, not two, competency evaluations was not a critical stage and defendant's absence from such hearing did not constitute a deprivation of defendant's constitutional right to be present. People v. White, 870 P.2d 424 (Colo. 1994).

The defendant's right to be present was not violated when the defendant did not attend a general orientation session upon the recommendation of the defendant's defense counsel. People v. Dunlap, 124 P.3d 780 (Colo. App. 2004).

Defendant forfeited his right to be present when he was disruptive, contumacious, and stubbornly defiant. People v. Cohn, 160 P.3d 336 (Colo. App. 2007).

Where defendant does not speak English, the absence of his interpreter at critical stages of the trial is tantamount to his not being present at all. People v. Luu, 813 P.2d 826 (Colo. App. 1991), aff'd, 841 P.2d 271 (Colo. 1992).

The error in not having an interpreter present at closing arguments and instructions to the jury is harmless where defendant does not allege that the interpreter's absence caused him to forego any jury instructions, there was overwhelming evidence of guilt, and closing arguments were consistent with the evidence. People v. Luu, 813 P.2d 826 (Colo. App. 1991), aff'd, 841 P.2d 271 (Colo. 1992).

Defendant's right to be present at trial violated when trial court held in camera proceedings in defendant's absence during which defendant's attorneys discussed defendant's potential desire to terminate their representation and repeatedly disclosed damaging and attorney-client privileged information. People v. Ragusa, 220 P.3d 1002 (Colo. App. 2009).

Allegations of denial of the right to be present at trial are scrutinized under the harmless error doctrine. Luu v. People, 841 P.2d 271 (Colo. 1992).

Any error suffered by defendant was harmless where there was no evidence that the absence of an interpreter interfered with the defendant's ability to cross-examine witnesses nor was there any indication in the record that the absence of an interpreter during closing arguments and the giving of jury instructions compromised the basic fairness of the trial. Luu v. People, 841 P.2d 271 (Colo. 1992).

The standard to apply in analyzing deprivations of the right to be present when the court responds to jury questions is harmless beyond a reasonable doubt. If the court's response is the same regardless of whether the defendant is present, the error is harmless. Further, it is harmless

error if the defendant's counsel is present and does not object to the court's proper response. People v. Grace, 55 P.3d 165 (Colo. App. 2001).

When the defendant's counsel is present and has an opportunity to review and object to the jury's question, and the court properly responds to the question, there is no prejudice, and the defendant's absence is harmless beyond a reasonable doubt. People v. Wilford, 111 P.3d 512 (Colo. App. 2004).

Failure to afford defendant the opportunity to be present and heard before a juror is excused is not grounds for reversal without a showing of prejudice. Replacing a juror with an alternate is more in the nature of an administrative task. People v. Anderson, 183 P.3d 649 (Colo. App. 2007).

B. Waiver of Right to Appear and Be Present.

Counsel cannot waive prisoner's right. The right of a prisoner to be present at every step in the proceedings is so important that, except in cases of misdemeanor, it cannot be waived by counsel. Penney v. People, 146 Colo. 95, 360 P.2d 671 (1961); People v. Luu, 813 P.2d 826 (Colo. App. 1991), aff'd, 841 P.2d 271 (Colo. 1992).

Waiver must be knowing, intelligent, and voluntary. Waiver is knowing and intelligent when a defendant has had notice of the consequences of not appearing. People v. Stephenson, 165 P.3d 860 (Colo. App. 2007).

Absence from trial compelled by medical necessity may generally be deemed voluntary, and the determination of whether defendant is "voluntarily absent" requires a fact-specific inquiry into the type of medical condition, the circumstances surrounding the absence, and defendant's conduct and statements. People v. Stephenson, 165 P.3d 860 (Colo. App. 2007).

Implied waiver extinguishing right to requested preliminary hearing. Where the judge of the county court advised counsel that the failure of the defendant to appear would constitute a waiver, the defendant's subsequent refusal to appear constituted an implied waiver and extinguished the defendant's right to a preliminary hearing in the county court. People ex rel. Farina v. District Court, 185 Colo. 118, 522 P.2d 589 (1974).

Where offense is not capital and accused is not in custody, the prevailing rule has been that if, after the trial has begun in his presence, he voluntarily absents himself, this does not nullify what has been done or prevent the completion of the trial, but, on the contrary, operates as a waiver of his right to be present, and leaves the court free to proceed with the trial in like manner and with like effect as if he were present. People v. Thorpe, 40 Colo. App. 159, 570 P.2d 1311 (1977).

C. Right to Testify.

Before a defendant may voluntarily waive his constitutional right to testify, the trial court must advise defendant on the record that if cross-examination by the prosecution reveals prior felony convictions, those convictions may be considered only as to credibility. People v. Curtis, 681 P.2d 504 (Colo. 1984); People v. Turley, 870 P.2d 498 (Colo. App. 1993).

Except that, it is error for a trial court to advise a defendant that elicited prior convictions will be used only to impeach credibility when those prior convictions are an element of the crime. Prior felonies are an element of habitual criminal charges and evidence of prior felonies, including those elicited by a defendant on the witness stand, are admissible substantive evidence during habitual

criminal proceedings. People v. Ziglar, 45 P.3d 1266 (Colo. 2002).

But trial court need not give a modified re-advisement during the habitual phase of a trial reflecting that the defendant's admissions can be used as substantive evidence during that phase. People v. Ziglar, 45 P.3d 1266 (Colo. 2002).

Defendant's waiver of the right to testify must be voluntary, knowing and intentional, the court must advise defendant on the record that the prosecution will be permitted to cross-examine defendant if defendant chooses to testify and that if a felony conviction is disclosed to the jury on cross-examination the jury will be instructed to consider it only as it bears on defendant's credibility. People v. Akers, 870 P.2d 528 (Colo. App. 1993).

Trial court's advisement on defendant's right to testify was defective where trial court went beyond the Curtis advisement and misstated the law. When cross-examining a defendant, prosecutor may not ask whether a prior felony conviction arose from a plea or a trial. People v. Gomez, 211 P.3d 53 (Colo. App. 2008).

Defendant was fully aware of the relevant consequences of testifying. Because of the prosecutor's promise not to use defendant's prior conviction and the court's intent to enforce the promise, there was no possibility the previous conviction could have been used; therefore defendant was not left to speculate, nor was he misled, as to the consequences of testifying. People v. McDaniel, 74 P.3d 454 (Colo. App. 2003).

Defendant's fifth amendment right not to testify was not violated when the trial court was unwilling to limit the prosecution's cross-examination after defendant was going to testify regarding the involuntariness of his statements. The prosecution's proffered questions regarding how the alleged coercion could have caused the alleged involuntary statements were within the scope of the proposed direct examination of defendant. The court properly used its discretion in ruling it would allow the prosecution's proffered cross-examination if defendant testified regarding his alleged involuntary statements. People v. Gomez-Garcia, 224 P.3d 1019 (Colo. App. 2009).

Defense counsel may not so completely contradict or wholly undermine defendant's testimony as to nullify defendant's constitutional right to testify. However, defendant has no right to offer perjured testimony or have it accommodated by the attorney's representations or trial strategy. People v. Bergerud, 223 P.3d 686 (Colo. 2010).

D. Right to Defend in Person.

Denial of defendant's request to address jury was not error. Where defendant made no objection to representation by counsel during the presentation of evidence, the record revealed that counsel for the defendant diligently conducted the defense, and defendant himself took the stand and told his story to the jury, the supreme court could find no error in the denial of the defendant's request to address the jury. Moore v. People, 171 Colo. 338, 467 P.2d 50 (1970).

A defendant has a constitutional right to defend himself under this section. Moore v. People, 171 Colo. 338, 467 P.2d 50 (1970); Martinez v. People, 172 Colo. 82, 470 P.2d 26 (1970); People v. Rice, 40 Colo. App. 357, 579 P.2d 647, cert. denied, 439 U.S. 898, 99 S. Ct. 261, 58 L. Ed. 2d 245 (1978).

A criminal defendant is constitutionally entitled to defend himself, provided he has an intelligent understanding of the consequences of so doing. People v. Moody, 630 P.2d 74 (Colo. 1981); People v. Rocha, 872

P.2d 1285 (Colo. App. 1993).

A criminally accused clearly has the right of self-representation. People v. Lucero, 200 Colo. 335, 615 P.2d 660 (1980); People v. Mogul, 812 P.2d 705 (Colo. App. 1991).

A defendant has a constitutional right to defend himself under this section. People v. Price, 903 P.2d 1190 (Colo. App. 1995).

Providing trial judge shall find him competent to conduct his own defense. Moore v. People, 171 Colo. 338, 467 P.2d 50 (1970).

The federal courts have recognized the right of a defendant to proceed without counsel only if he has an intelligent understanding of the consequences of so doing. Martinez v. People, 172 Colo. 82, 470 P.2d 26 (1970); Reliford v. People, 195 Colo. 549, 579 P.2d 1145 (1978).

Inept pro se defense resulted in lack of due process. Where the defendant was so inept that he did not and could not conduct a proper defense for himself, the absence of defense counsel and the total ineptness of the defendant to conduct a defense for himself actually resulted in a lack of due process. Martinez v. People, 172 Colo. 82, 470 P.2d 26 (1970).

Exclusion of pro se defendant from courtroom because of his misconduct was constitutional error. Constitutional error occurs when defendant is deprived of the presence of counsel at critical stages of the proceedings where there is more than a minimal risk that counsel's absence will undermine the defendant's right to a fair trial. People v. Cohn, 160 P.3d 336 (Colo. App. 2007).

Excluding pro se defendant from the portion of the proceedings concerning the exercise of peremptory challenges is inherently prejudicial and cannot be considered harmless. People v. Cohn, 160 P.3d 336 (Colo. App. 2007).

A defendant's right to counsel will be preserved by appointing standby counsel to be ready to step in should the trial court find it necessary (1) to make a finding that the defendant, by his conduct, has waived the right to self-representation, and (2) to exclude the defendant from the courtroom when disruptive behavior occurs. People v. Cohn, 160 P.3d 336 (Colo. App. 2007).

Accused cannot defend both by counsel and himself. This section does not mean that a defendant has the right during trial both to accept the services of counsel and to conduct his own defense at the same time, or alternating at defendant's pleasure. Moore v. People, 171 Colo. 338, 467 P.2d 50 (1970).

So long as defendant is represented by counsel at the trial, he has no right to be heard by himself. Moore v. People, 171 Colo. 338, 467 P.2d 50 (1970).

Pro se defendant must accept burdens of defense. Any person has the constitutional right to defend a criminal action "in person and by counsel", but one who elects to act as his own attorney must accept the burden and hazards incident thereto. Dyer v. People, 148 Colo. 22, 364 P.2d 1062 (1961); Reliford v. People, 195 Colo. 549, 579 P.2d 1145 (1978); People v. Rice, 40 Colo. App. 357, 579 P.2d 647, cert. denied, 439 U.S. 898, 99 S. Ct. 261, 58 L. Ed. 2d 245 (1978).

Where the record established that the defendant, fully understanding his constitutional right to counsel, knowingly, intelligently, and voluntarily relinquished the benefits of counsel and elected to represent himself, the defendant could not, thereafter, whipsaw the court between his constitutional right of self-representation and his own ineffectiveness at trial. People v. Lucero, 200 Colo. 335, 615 P.2d 660 (1980).

Action of trial court does not constitute violation of due process,

where trial court denied defendant's motion for continuance of criminal trial for misdemeanor theft and defendant asserted that he had been unable to prepare pro se case in two weeks. The court's action was taken after defendant requested the withdrawal of his public defender, and the court granted the request only after extended discussion regarding the defendant's right to counsel, the disadvantages of self-representation, and notice that the trial would proceed as scheduled. People v. Denton, 757 P.2d 637 (Colo. App. 1988).

The wisdom of defendant's election to proceed pro se in a first-degree murder trial was not the question before the trial court; it was proper to accept defendant's choice of self-representation, where defendant intelligently and understandingly waived his right to counsel. People v. Reliford, 39 Colo. App. 474, 568 P.2d 496 (1977), aff'd, 195 Colo. 549, 579 P.2d 1145 (1978), cert. denied, 439 U.S. 1076, 99 S. Ct. 851, 59 L. Ed. 2d 43 (1979).

But court must instruct jury on elements of defense. Where the defendant was proceeding without counsel the trial court should have recognized drunkenness as an element in defense of the charge and should have instructed the jury on the manner of voluntary drunkenness. Martinez v. People, 172 Colo. 82, 470 P.2d 26 (1970).

But not where defendant conditions exercise of right upon mistrial. Although a criminal defendant has a constitutional right to defend himself, there is no violation of that right where the defendant conditions the exercise of that right upon the trial court's grant of a motion for mistrial. People v. Moody, 630 P.2d 74 (Colo. 1981).

Burden rests upon defendant to show satisfactory cause for a late request to proceed pro se and trial court, in exercising its discretion whether to deny or grant request, must first determine if request is timely. People v. Mogul, 812 P.2d 705 (Colo. App. 1991).

Unless request to represent self is made in ample time prior to trial date, trial court must determine whether request is made for purposes of delay or to gain tactical advantage and whether lateness of request may hinder administration of justice. People v. Mogul, 812 P.2d 705 (Colo. App. 1991).

Request for self-representation must be unequivocal and must constitute a valid, knowing, and voluntary waiver of right to counsel. In order to make such a determination, the trial court must first enter into dialogue with defendant to explain consequences of self-representation as well as its dangers and disadvantages. People v. Mogul, 812 P.2d 705 (Colo. App. 1991); People v. Bolton, 859 P.2d 303 (Colo. App. 1993).

The right to self-representation is not self-executing, therefore, the defendant must make a continuing unequivocal request to trigger it. Defendant's request was not unequivocal since it was tied to a properly refused demand for an immediate trial. When defendant was informed he would not receive the immediate trial, he abandoned his request for self-representation indicating he wanted to continue with his lawyer. People v. Abdu, 215 P.3d 1265 (Colo. App. 2009).

Defendant's equivocal statements that he wished to proceed pro se "only for today" and, on another occasion, to "speak in my own defense along with the attorney" were not effective as a request for self-representation. People v. Bolton, 859 P.2d 303 (Colo. App. 1993).

Defendant's request that he or she proceed pro se "against my will" rendered his or her request not

unequivocal and was, therefore, not granted because the thrust of his or request was the appointment of new counsel and a continuance. People v. King, 121 P.3d 234 (Colo. App. 2005).

Defendant's statement at pretrial hearing that he was ready to continue pro se, after which he did not object to the appointment of a new counsel, was not an unequivocal demand to represent himself. People v. Shepard, 989 P.2d 183 (Colo. App. 1999).

Defendant did not make an unequivocal request to proceed pro se when the defendant first indicated a willingness to go to trial with or without counsel but later appeared for trial with counsel and did not object to the new counsel. People v. Edwards, 101 P.3d 1118 (Colo. App. 2004), aff'd on other grounds, 129 P.3d 977 (Colo. 2006).

A defendant who is not capable of knowingly, intelligently, and voluntarily waiving representation is not, for that reason, incompetent to stand trial. Trial court did not err in summarily denying defendant's request to dismiss his attorney, based on defendant's statement that antibiotics were preventing him from thinking clearly, and proceeding with the trial. People v. Bolton, 859 P.2d 303 (Colo. App. 1993).

Defendant's technical legal knowledge is not factor under consideration by trial court in determining whether to grant or deny motion for pro se representation. However, court is not obligated to put up with disruption or intemperate conduct or with defendant's ignoring of procedural or substantive rules of law and may appoint advisory counsel, over objections of defendant, to insure orderly proceedings and to provide assistance to the defendant. People v. Mogul, 812 P.2d 705 (Colo. App. 1991).

A defendant proceeding pro se is subject to the same rules, procedures, and substantive law as a licensed attorney. People v. Bolton, 859 P.2d 311 (Colo. App. 1993).

Advisory counsel can assist self-representing defendant only when requested. Where the defendant exercises his constitutional right of self-representation, advisory counsel can assist the defendant only if and when the defendant requests such assistance. People v. Lucero, 200 Colo. 335, 615 P.2d 660 (1980).

Trial court's failure to direct advisory counsel to take control of case when defendant voluntarily absented himself did not violate defendant's right to counsel. Without a request from defendant, or obstreperous conduct justifying termination of self-representation, trial court's sua sponte appointment of counsel could have violated defendant's right to self-representation. People v. Brante, 232 P.3d 204 (Colo. App. 2009).

But may not be used to impede efficient administration of justice. People v. Mogul, 812 P.2d 705 (Colo. App. 1991); People v. Bolton, 859 P.2d 303 (Colo. App. 1993).

No constitutional right to appointment of advisory counsel to assist pro se defendant. People v. Romero, 694 P.2d 1256 (Colo. 1985).

Accused cannot be defended both by counsel and by himself. Denial of defendant's request to represent himself as cocounsel was proper. People v. Avila, 770 P.2d 1330 (Colo. App. 1988); People v. Bolton, 859 P.2d 303 (Colo. App. 1993).

Court not required to instruct on affirmative defense of self-induced intoxication when pro se defendant does not present evidence raising such defense. People v. Romero, 694 P.2d 1256 (Colo. 1985).

When an indigent defendant voices objections to court-appointed counsel, the trial

court has the obligation to inquire into the reasons for the dissatisfaction; however, once the court has appropriately determined that a substitution of counsel is not warranted, the court can insist that the defendant choose between continued representation by existing counsel and appearing pro se. People v. Arguello, 772 P.2d 87 (Colo. 1989); People v. Rocha, 872 P.2d 1285 (Colo. App. 1993); People v. Arko, 159 P.3d 713 (Colo. App. 2006), rev'd on other grounds, 183 P.3d 555 (Colo. 2008).

The standard for an appellate review of a claim of the denial of the right to self-representation is de novo. People v. Abdu, 215 P.3d 1265 (Colo. App. 2009).

E. Right to Counsel.

Law reviews. For article, "The Colorado Counsel Conundrum: Plea Bargaining, Misdemeanors, and the Right to Counsel", see 89 Denv. U.L. Rev. 327 (2012).

Defendant in criminal trial has constitutional right to be assisted and represented by counsel. Moore v. People, 171 Colo. 338, 467 P.2d 50 (1970).

Constitutional right to counsel of choice violated, even though defendant did not move for entry of a particular counsel or expressly object to counsel during trial, where defendant's attorneys purposefully kept defendant ignorant of the nature of in camera proceedings and the disclosure of privileged information attorneys made during those proceedings. Attorneys' conduct, which was compounded by the court permitting defendant to be excluded from the proceedings, effectively and wrongfully deprived defendant of a knowing exercise of defendant's choice of counsel. People v. Ragusa, 220 P.3d 1002 (Colo. App. 2009).

To determine whether a court may deny the appearance of defendant's newly chosen counsel, the court must balance defendant's right to be represented by his or her counsel of choice against the court's interest in the orderly administration of justice. The factors that a court should consider are: Whether the defendant's motive is dilatory or contrived, the availability of the new counsel, the impact on the court's docket, and the prejudice to the prosecution. In this case, the court abused its discretion in denying the entry of new counsel since the court's only consideration was that witnesses had been subpoenaed multiple times before. People v. Brown, __ P.3d __ (Colo. App. 2011).

Presence of counsel in extradition proceedings. The language of § 16-19-111, dealing with the rights of fugitives in extradition proceedings, establishes a right to the presence of legal counsel, and due process requirements prohibit the denial of this right to indigents, when it has been made available to those able to afford counsel. Mora v. District Court, 177 Colo. 381, 494 P.2d 596 (1972).

Indigent defendant entitled to appointed counsel at state expense. By reason of this section of the Colorado Constitution and the sixth amendment to the United States Constitution, an indigent defendant in a criminal proceeding is entitled to have counsel appointed at the expense of the state to assist him in his defense. Martinez v. People, 173 Colo. 515, 480 P.2d 843 (1971); People v. Cardenas, 62 P.3d 621 (Colo. 2002).

And a conviction obtained in violation of a defendant's right to counsel cannot be used in subsequent sentencing for felony conviction to deny defendant probation pursuant to § 16-11-201 (2). People v. McIntosh, 695 P.2d 795 (Colo. App. 1984).

But this right does not carry the right in the indigent defendant to choose counsel. Valarde

v. People, 156 Colo. 375, 399 P.2d 245 (1965); Martinez v. People, 172 Colo. 82, 470 P.2d 26 (1970); People v. Shook, 186 Colo. 339, 527 P.2d 815 (1974).

The defendant's right to counsel does not grant the defendant the right to pick the public defender of his choice. Maynes v. People, 178 Colo. 88, 495 P.2d 551 (1972).

While an indigent defendant has no right to choose court-appointed counsel, an indigent defendant does have a presumptive right to continued representation by court-appointed counsel absent a factual and legal basis to terminate that appointment. People v. Harlan, 54 P.3d 871 (Colo. 2002).

Defendant has the right to have conflict-free counsel appointed to pursue post-conviction remedies for the prior conviction. People v. Cross, 114 P.3d 1 (Colo. App. 2004), rev'd on other grounds, 127 P.3d 71 (Colo. 2006).

Standby, advisory counsel discretionary with judge. While the appointment of advisory counsel is generally a fair and commendable practice, even the most persuasive authority does not mandate the appointment of standby counsel in all cases, but rather leaves the decision to the trial judge's sound discretion. Reliford v. People, 195 Colo. 549, 579 P.2d 1145 (1978).

Trial court's failure to direct advisory counsel to take control of case when defendant voluntarily absented himself did not violate defendant's right to counsel. Without a request from defendant, or obstreperous conduct justifying termination of self-representation, trial court's sua sponte appointment of counsel could have violated defendant's right to self-representation. People v. Brante, 232 P.3d 204 (Colo. App. 2009).

Courts may require reasonable proof of indigency. Where the right to counsel is conditioned upon indigency of the defendant, it is the right of the trial courts to set reasonable rules as to the manner in which the indigency must be proved. Adargo v. People, 159 Colo. 321, 411 P.2d 245 (1966).

Such proof may be affidavit of indigency and should accompany a petition for appointment of counsel to prosecute a writ of error. Adargo v. People, 159 Colo. 321, 411 P.2d 245 (1966).

It is abuse of discretion not to grant defendant's request for assistance of counsel even though no affidavit of indigency is filed where there is a lack of funds to retain counsel to prosecute writ of error and time for prosecuting appeal is rapidly running out. Adargo v. People, 159 Colo. 321, 411 P.2d 245 (1966).

Record need not show that accused was informed of right to counsel. Santo v. Santo, 120 Colo. 13, 206 P.2d 341 (1949).

Right to have counsel present at interrogation is indispensable. Miranda v. Arizona, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).

The right to counsel under the sixth amendment, particularly in light of the fifth amendment privilege, includes not merely the right to consult with counsel prior to questioning, but also to have counsel present during any questioning if the defendant so desires. People v. Pierson, 633 P.2d 485 (Colo. App. 1981), aff'd in part and rev'd in part on other grounds, 670 P.2d 770 (Colo. 1983).

And accused must be clearly informed of this right. An individual held for interrogation must be clearly informed that he has the right to consult a lawyer and to have the lawyer with him during interrogation. This warning is an absolute prerequisite to interrogation. Miranda v. Arizona, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).

Accused must also be

warned that if indigent, counsel will be appointed. In order fully to apprise a person interrogated of the extent of his rights under this system, it is necessary to warn him not only that he has the right to consult with an attorney, but also that if he is indigent a lawyer will be appointed to represent him. Miranda v. Arizona, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).

The purpose of the Miranda rule is to protect a suspect against investigative interrogation and not from the routine gathering of basic identifying data needed for booking and arraignment. People v. Anderson, 837 P.2d 293 (Colo. App. 1992).

Right to counsel at confrontations for identification after June 12, 1967. Vigil v. People, 174 Colo. 164, 482 P.2d 983 (1971).

Right to counsel when the court is instructing the jury is fundamental. Nieto v. People, 160 Colo. 179, 415 P.2d 531 (1966).

As is right to counsel during sentencing. The nature and possibilities of this important and critical stage of the proceedings, i.e. the time of sentence, are such as make the absence of counsel at this time presumably prejudicial. Doe v. People, 160 Colo. 215, 416 P.2d 376 (1966).

Preparatory steps do not require counsel. The United States supreme court distinguished "mere preparatory" steps in the gathering of evidence from those stages described as critical stages, such as line-up, where the accused has a right to counsel. Sandoval v. People, 172 Colo. 383, 473 P.2d 722 (1970).

The denial of a right to have accused's counsel present at scientific or technical analyses does not violate the sixth amendment or this section; they are not critical stages since there is minimal risk that counsel's absence at such stages might derogate from the right to a fair trial. Sandoval v. People, 172 Colo. 383, 473 P.2d 722 (1970).

Scientific analyses of accused's fingerprints, blood samples, clothing, hair, etc., are preparatory steps. Sandoval v. People, 172 Colo. 383, 473 P.2d 722 (1970).

As is photographing accused to preserve his appearance. The photographing of an accused to preserve visually his appearance at a time near that of the alleged commission of the offense is not in a critical stage of the proceeding, entitling the accused to the assistance of counsel. Sandoval v. People, 172 Colo. 383, 473 P.2d 722 (1970).

Right to effective counsel extends throughout plea negotiations. Carmichael v. People, 206 P.3d 800 (Colo. 2009).

Decision to exercise right of appeal is personal to convicted person. Cruz v. Patterson, 253 F. Supp. 805 (D. Colo.), aff'd, 363 F.2d 879 (10th Cir.), cert. denied, 385 U.S. 975, 87 S. Ct. 501, 17 L. Ed. 2d 438 (1966).

And does not reside in his counsel. Cruz v. Patterson, 253 F. Supp. 805 (D. Colo.), aff'd, 363 F.2d 879 (10th Cir.), cert. denied, 385 U.S. 975, 87 S. Ct. 501, 17 L. Ed. 2d 438 (1966).

Screening procedures by counsel deny appellate rights of indigent defendants. Screening procedures by counsel, such as appointment of counsel to determine whether any reversible error occurred during trial, have been found to be incompatible with the constitutional requirement that the criminal defendant, asserting his right to appeal, be accorded equal protection of the law despite his financial condition. In such procedures, counsel assumes primarily the role of an advisor to the court as to whether the case warrants further consideration, rather than the role of advocate. Cruz v. Patterson, 253 F. Supp. 805 (D. Colo.), aff'd, 363 F.2d 879 (10th Cir.), cert. denied, 385 U.S. 975, 87 S. Ct. 501, 17 L. Ed. 2d 438

(1966).

An attorney who entered appearance in behalf of accused cannot withdraw his appearance on day set for trial. Altobella v. Priest, 153 Colo. 309, 385 P.2d 585 (1963).

Unless granted permission to do so for good cause. Altobella v. Priest, 153 Colo. 309, 385 P.2d 585 (1963).

No right to appointed counsel in civil proceeding. There is no constitutional right to appointed counsel for an indigent litigant in a civil proceeding brought by a private party involving only property interests. In re McCue, 645 P.2d 854 (Colo. App. 1982).

Sophisticated request not necessary for right to counsel. Neither a "sophisticated" request nor a "legally proper form" is necessary to invoke the right to counsel. People v. Cook, 665 P.2d 640 (Colo. App. 1983).

Right to counsel attaches at or after time adversary judicial proceedings are initiated against defendant. People v. Anderson, 842 P.2d 621 (Colo. 1992).

Right to counsel improperly denied where trial court made factual finding that although, defendant's income exceeded income eligibility guidelines, defendant was still financially unable to retain private counsel. People v. Tellez, 890 P.2d 197 (Colo. App. 1994), cert. denied, 909 P.2d 1105 (Colo. 1996).

Waiver of counsel cannot be voluntary if based upon impermissible choice. Where attorney's actions are constitutionally deficient, the trial court's improper denial of motion for substitute counsel effectively forces defendant to choose between his right to counsel and other trial rights. People v. Bergerud, 223 P.3d 686 (Colo. 2010).

Where defendant proceeds pro se after erroneous denial of request for new counsel, any violation of sixth amendment rights results in a complete denial of right to counsel. Such complete violations constitute structural errors in the trial process and warrant a new trial. People v. Bergerud, 223 P.3d 686 (Colo. 2010).

Defendant's request for new counsel requires inquiry into four factors: (1) The timeliness of the motion, (2) the adequacy of the court's inquiry into the defendant's complaint, (3) whether the attorney-client conflict results in a total lack of communication or prevents an adequate defense, and (4) the extent to which the defendant substantially and unreasonably contributed to the underlying conflict with the attorney. People v. Bergerud, 223 P.3d 686 (Colo. 2010).

Tape recording of defendant's conversation with accomplice made without his knowledge in the back of police car did not violate his sixth amendment right to counsel since that right does not attach until the initiation of adversary judicial criminal proceedings and the defendant had not yet been charged at the time of the recording. People v. Palmer, 888 P.2d 348 (Colo. App. 1994).

Defendant's right to counsel violated but no reversible error occurred where prosecution introduced in case-in-chief evidence obtained from defendant in her counsel's absence and without waiver after formal proceedings had been initiated against her triggering her right to counsel. People v. Ridley, 872 P.2d 1377 (Colo. App. 1994).

Even though the court should not have allowed evidence of the defendant's drug enforcement administration cooperative activities in the prosecution's case-in-chief because defendant's right to counsel had been violated, since it was clearly admissible in rebuttal to impeach defendant's claim of entrapment, any error by the trial court in admitting the evidence out of order was harmless beyond a reasonable doubt. People v.

Ridley, 872 P.2d 1377 (Colo. App. 1994).

No violation of right to counsel where defendant's incriminating statements to undercover agent were obtained pursuant to defendant's express invitation. People v. Battle, 694 P.2d 359 (Colo. App. 1984).

Or where defendant's incriminating statements to district attorney were made before bribery charges were pending against him, since no right to counsel yet existed on the bribery charges. People v. Hyun Soo Son, 723 P.2d 1337 (Colo. 1986).

Or where defendant, two days before she was formally charged with aggravated distribution of cocaine, met with drug enforcement administration agents, agreed to become an informant and broker large drug deals in that capacity, signed a cooperative agreement, and gave them certain information. People v. Ridley, 872 P.2d 1377 (Colo. App. 1994).

No impermissible use by prosecution of defendant's invocation of the right to counsel where defendant was asked what he meant when he told a deputy "I've got a lot to get off my chest but I'd be cutting my own throat" and he answered, "Probably only that it would be foolish of me to talk to the police very much without first talking to an attorney," because he knew that he had committed a crime "of sorts", since defendant was not invoking his right to counsel when he made spontaneous incriminating statements to the deputy in a restroom, without any interrogation by the deputy. People v. Gordon, 32 P.3d 575 (Colo. App. 2001).

While defendant has constitutional right to counsel, there is no right to a particular counsel. People v. Anaya, 732 P.2d 1241 (Colo. App. 1986), rev'd on other grounds, 764 P.2d 779 (Colo. 1988).

However, where original counsel of choice was erroneously disqualified, defendant need not demonstrate constitutionally ineffective assistance of trial attorney before receiving a new trial. Anaya v. People, 764 P.2d 779 (Colo. 1988).

The right to be represented by counsel exists at every critical stage of a criminal trial including jury deliberations. People v. Key, 851 P.2d 228 (Colo. App. 1992); People v. Vega, 870 P.2d 549 (Colo. App. 1993); People v. Loyd, 902 P.2d 889 (Colo. App. 1995).

In camera proceedings in defendant's absence were a critical stage of criminal trial. In camera proceedings in defendant's absence during which defendant's attorneys discussed defendant's potential desire to terminate their representation and repeatedly disclosed damaging and attorney-client privileged information were critical. People v. Ragusa, 220 P.3d 1002 (Colo. App. 2009).

Defendant's absence was not harmless beyond a reasonable doubt. People v. Ragusa, 220 P.3d 1002 (Colo. App. 2009).

An in camera proceeding is a critical stage of the proceedings at which the right to counsel attaches. People v. Delgadillo, 2012 COA 33, 275 P.3d 772.

A sentencing hearing is a critical stage of a criminal proceeding. People v. Loyd, 902 P.2d 889 (Colo. App. 1995).

This section does not create a constitutional right to counsel in a Crim. P. 35 hearing. People v. Duran, 757 P.2d 1096 (Colo. App. 1988).

Right to counsel not dependent on classification of crime. The right to counsel does not depend upon the general assembly's classification of the crime charged. People v. Roybal, 618 P.2d 1121 (Colo. 1980).

This section does not create a constitutional right to counsel to appeal a conviction when the only sentence was a fine. An indigent

defendant has a constitutional right to appointed counsel only when, if the defendant loses, the defendant may be deprived of his or her physical liberty. Knapper v. Aurora Mun. Court, 985 P.2d 105 (Colo. App. 1999).

Because neither party requested a hearing, the motion to extend probation was not a critical stage that would require the presence of counsel. Therefore, court rejected defendant's claim that the motion to extend probation was invalid because defendant signed the motion without the benefit of legal counsel. People v. Romero, 198 P.3d 1209 (Colo. App. 2007).

Right to counsel in contempt proceedings. The right to counsel must be extended to all contempt proceedings, whether labeled civil or criminal, which result in the imprisonment of the witness. Padilla v. Padilla, 645 P.2d 1327 (Colo. App. 1982); In re Wyatt, 728 P.2d 734 (Colo. App. 1986); Griffin v. Jackson, 759 P.2d 839 (Colo. App. 1988).

If a husband cited for contempt for failure to make child support payments to his former wife was refused legal services by at least two private attorneys because he was unable to pay requested fee, he was entitled to have his assets examined and considered by court in determining eligibility for court-appointed counsel under supreme court indigency guidelines. In re Wyatt, 728 P.2d 734 (Colo. App. 1986).

Right to counsel extends to the following critical stages: Jury deliberation and return of verdict. People v. Johnson, 802 P.2d 1105 (Colo. App. 1990), rev'd on other grounds, 815 P.2d 427 (Colo. 1991).

Filing of detainer against an incarcerated defendant pursuant to the Interstate Agreement on Detainers is not a critical stage of the proceedings, and therefore, defendant's constitutional right to counsel is not implicated. People v. Evans, 971 P.2d 229 (Colo. App. 1998).

Critical stage of criminal proceeding requires that there be more than a minimal risk that the absence of counsel might impair a defendant's right to a fair trial. Key v. People, 865 P.2d 822 (Colo. 1994).

An ex parte scheduling conference with jurors during deliberations occurred at a critical stage of the criminal proceedings. Key v. People, 865 P.2d 822 (Colo. 1994).

Although trial court's actions in conducting a scheduling conference without defendant's counsel present constituted error, it was harmless considering the totality of all facts and circumstances and did not warrant an automatic reversal. People v. Key, 851 P.2d 228 (Colo. App. 1992).

Court's speaking to jury concerning the status of deliberations without counsel present harmless error where there was no suggestion of coercion. People v. Urrutia, 893 P.2d 1338 (Colo. App. 1994).

There was no suggestion of coercion where trial court, outside the presence of defense counsel, answered jury question concerning unanimity of verdict with its own question as to whether further deliberations would assist the jury to arrive at a verdict. People v. Trujillo, 114 P.3d 27 (Colo. App. 2004).

The court's failure to allow the defendant and the defendant's counsel the opportunity to appear and review the jury's request to review the trial transcript was harmless error. Since the court is vested with the discretion to allow the jury to review transcripts and the defendant cannot show that this case was prejudiced by allowing the jury to review the transcript, there is no reversible error. People v. Dunlap, 124 P.3d 780 (Colo. App. 2004).

Court ordered competency examination is a critical stage of aggregate adversary proceedings for

purposes of right to counsel. A criminal defendant must be given the opportunity to consult with counsel prior to submitting to a court-ordered competency examination under § 16-8-106. People v. Branch, 786 P.2d 441 (Colo. App. 1989).

If a court-ordered competency examination is required, the trial court must provide the defendant with adequate safeguards calculated to ensure protection not only of the defendant's privilege against self-incrimination but also such defendant's right to counsel. People v. Branch, 805 P.2d 1075 (Colo. 1991).

However, the sixth amendment does not guarantee an absolute right to counsel of choice in all cases. When a defendant's desire to retain a particular attorney would significantly undermine public confidence in the impartiality and fairness of the judicial process because of the circumstances of the case, the defendant may be precluded from retaining attorney. Rodriguez v. District Court, 719 P.2d 699 (Colo. 1986).

The trial court must use a balancing approach and evaluate the defendant's preference for particular counsel, the witness' right to confidentiality of communications, and the public's interest in maintaining the integrity of the judicial process as well as the nature of the particular conflict of interest involved. Rodriguez v. District Court, 719 P.2d 699 (Colo. 1986).

The interest of the public in the fair and proper administration of justice includes concerns that trials be conducted in an evenhanded manner; that the participants in the adversary process, including witnesses, be protected from unfair tactics; and that the courts maintain the integrity of the judicial system and the highest standards of the legal profession. Rodriguez v. District Court, 719 P.2d 699 (Colo. 1986).

For a defendant to invoke his or her right of self-representation, the right must be asserted timely and unequivocally. Defendant's requests for self-representation was secondary to his or her request for conflict-free counsel. Since the court appointed conflict-free counsel, defendant's requests for self-representation were not unequivocal. People v. Shreck, 107 P.3d 1048 (Colo. App. 2004).

Court may pay the cost of a defendant's expert when defendant is represented by a private attorney and defendant meets the requisite constitutional showing for obtaining state-funded support services. Court payment of defendant's support costs is appropriate if: (1) The defendant becomes indigent during the case; (2) defendant has insufficient funds to pay the costs; and (3) appointment of a public defender or alternate defense counsel would be too disruptive to the proceedings. People v. Orozco, 210 P.3d 472 (Colo. App. 2009).

F. Waiver of Right to Counsel.

Valid waiver will not be presumed from silence of accused. An express statement that an individual is willing to make a statement and does not want an attorney followed closely by a statement could constitute a waiver, but a valid waiver will not be presumed simply from the silence of an accused after warnings are given or simply from the fact that a confession was in fact eventually obtained. Constantine v. People, 178 Colo. 16, 495 P.2d 208 (1972).

Guilty plea does not create presumption of waiver. A plea of guilty has some probative value in determining waiver of counsel. Although a plea of guilty of itself creates no presumption of waiver, it may be considered where there is no claim of innocence. Martinez v. People, 166 Colo. 132, 442 P.2d 422, cert. denied, 393 U.S. 990, 89 S. Ct. 474, 21

L. Ed. 2d 453 (1968).

Threshold question in interrogation was whether waiver was made. Whether or not the police ignored the fact that the defendant had an attorney in another case, when they questioned him in a separate case, the threshold question was whether, as a matter of law, the defendant made a knowing and intelligent waiver of his right to counsel before he made any statement to the police. Constantine v. People, 178 Colo. 16, 495 P.2d 208 (1972).

Judicial determination. The matter of comprehension of constitutional rights is the very essence of the broader determination of voluntariness and admissibility, and these issues, in the first instance, must be determined by the trial court at an in camera hearing. Constantine v. People, 178 Colo. 16, 495 P.2d 208 (1972).

Considerations of court in passing on waiver issue. In passing on whether a statement is voluntary and whether the accused waived his right to counsel, the court must consider and examine the totality of the facts and circumstances of the case, and also the conduct of the accused. Duncan v. People, 178 Colo. 314, 497 P.2d 1029 (1972); People v. Romero, 953 P.2d 550 (Colo. 1998).

Right to counsel held waived. Where a defendant is able to understand fully the meaning of explanations given him and thereafter enters a plea of guilty to a charge contained in an information, and at no time indicates that he is without funds to employ counsel, and does not request that counsel be appointed to represent him, his action amounts to a waiver of the right to appointed counsel. Little v. People, 138 Colo. 572, 335 P.2d 863 (1959); People v. Litsey, 192 Colo. 19, 555 P.2d 974 (1976).

Where defendant acknowledged he understood what his rights were and specifically stated he did not want an attorney and where conversations yielding incriminating admissions were spontaneously initiated by defendant and were not the result of any investigative interrogation, the record amply demonstrates that proper Miranda warnings were given the defendant and that he knowingly and intelligently waived his right to an attorney. Gass v. People, 177 Colo. 232, 493 P.2d 654 (1972).

Juvenile defendant's execution of financial eligibility form and interview by member of public defender's office did not constitute an unambiguous invocation of the right to counsel. Under totality of the circumstances, statement by juvenile's mother to police concerning public defender representation simply indicated mother's concern over legal representation in light of financial circumstances, and was not a clear assertion of right to counsel. People v. Grant, 30 P.3d 667 (Colo. App. 2000), aff'd on other grounds, 48 P.3d 543 (Colo. 2002).

No effective waiver of right to counsel during interrogation can be recognized unless specifically made after Miranda warning is given. Constantine v. People, 178 Colo. 16, 495 P.2d 208 (1972).

Burden is on state to prove waiver of right to counsel. If interrogation continues without the presence of an attorney and a statement is taken, a heavy burden rests on the government to demonstrate that the defendant knowingly and intelligently waived his privilege against self-incrimination and his right to retained or appointed counsel. Miranda v. Arizona, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).

When police officers interrogate a defendant without the presence of an attorney, and a statement is taken, the burden is on the people to demonstrate that the defendant knowingly and intelligently

waived his privilege against self-incrimination and his right to retained or appointed counsel. Neitz v. People, 170 Colo. 428, 462 P.2d 498 (1969).

The burden of proving that a waiver of counsel is knowingly and intelligently made is on the prosecution. People v. Bowen, 176 Colo. 302, 490 P.2d 295 (1971).

To constitute an express waiver, the attendant facts must show clearly and convincingly that the accused did relinquish his constitutional rights knowingly, intelligently and voluntarily. Constantine v. People, 178 Colo. 16, 495 P.2d 208 (1972).

Warnings and waiver of rights are prerequisite to admissibility of statements by defendant. Miranda v. Arizona, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966); Perez v. People, 176 Colo. 505, 491 P.2d 969 (1971).

Miranda requirements not met. Where the defendant, a high school student who came from a poor family who spoke broken English and whose home was a small rural community, was not informed that he had a right to have an attorney present before any questioning; and secondly, he was not informed that if he desired to have an attorney present but could not afford one, one would be appointed for him without charge, the requirements of Miranda were not met. People v. Vigil, 175 Colo. 373, 489 P.2d 588 (1971).

Evidence held sufficient that defendant waived Miranda rights. Massey v. People, 179 Colo. 167, 498 P.2d 953 (1972).

Defendant's Miranda waiver was not coerced. There was no evidence in the record that waiver was the product of intimidation, coercion, or deception. People v. Madrid, 179 P.3d 1010 (Colo. 2008).

Waiver must be made knowingly and intelligently. Once it is established that a defendant has a right to counsel, the court must establish that any waiver of the constitutional right is made knowingly and intelligently. Padilla v. Padilla, 645 P.2d 1327 (Colo. App. 1982); People v. Romero, 694 P.2d 1256 (Colo. 1986); People v. Arguello, 772 P.2d 87 (Colo. 1989); People v. Trujillo, 773 P.2d 1086 (Colo. 1989); People v. Martinez, 789 P.2d 420 (Colo. 1990).

Defendant voluntarily, knowingly, and intelligently waived right to counsel where record showed that he did so in order to choose his own trial strategy. It was irrelevant that the court failed to conduct a specific colloquy as to each of the areas of inquiry specified in case law. Further the record showed that any shortcoming in the colloquy was the result of defendant's obstreperous and disruptive conduct. People v. Smith, 881 P.2d 385 (Colo. App. 1994); People v. Smith, 77 P.3d 751 (Colo. App. 2003).

And may be made without attorney's presence. There is no rule that whenever a defendant is represented by an attorney, she may not waive her right to counsel without the presence of the attorney. People v. Mann, 646 P.2d 352 (Colo. 1982).

Waiver of counsel cannot be voluntary if based upon impermissible choice. Where attorney's actions are constitutionally deficient, trial court's improper denial of motion for substitute counsel effectively forces defendant to choose between his right to counsel and other trial rights. People v. Bergerud, 223 P.3d 686 (Colo. 2010).

Where defendant proceeds pro se after erroneous denial of request for new counsel, any violation of sixth amendment rights results in a complete denial of right to counsel. Such complete violations constitute structural errors in the trial process and warrant a new trial. People v. Bergerud, 223 P.3d 686 (Colo. 2010).

In addition, an accused may knowingly, intelligently, and voluntarily waive the right to conflict-free counsel. But a court on notice of a conflict has a duty to inquire into the propriety of continued representation by current counsel. People v. Campbell, 58 P.3d 1148 (Colo. App. 2002).

Although there is no per se rule requiring reversal if the court fails to inquire into counsel's conflict of interest, reversal is required if the defendant shows a conflict of interest that adversely affects counsel's representation. People v. Campbell, 58 P.3d 1148 (Colo. App. 2002).

Waiver of counsel cannot be voluntary if based upon impermissible choice. Where attorney's actions are constitutionally deficient, trial court's improper denial of motion for substitute counsel effectively forces defendant to choose between his right to counsel and other trial rights. People v. Bergerud, 223 P.3d 686 (Colo. 2010).

Where defendant proceeds pro se after erroneous denial of request for new counsel, any violation of sixth amendment rights results in a complete denial of right to counsel. Such complete violations constitute structural errors in the trial process and warrant a new trial. People v. Bergerud, 223 P.3d 686 (Colo. 2010).

Waiver may take the form of an express statement or may be implied from the circumstances. King v. People, 728 P.2d 1264 (Colo. 1986).

Waiver not found where evidence showed defendant's repeated assertions of his desire to be represented by counsel at trial and repeated seeking of assistance of privately retained or court-appointed counsel. King v. People, 728 P.2d 1264 (Colo. 1986).

But before the court permits a waiver of counsel, the defendant should be made aware of the dangers and disadvantages of self-representation, so that the record will establish that he knows what he is doing and his choice is made with eyes open. People v. Campbell, 58 P.3d 1148 (Colo. App. 2002).

To conclude that defendant made an implied waiver, the record as a whole must establish that the defendant knowingly and voluntarily undertook a course of conduct that shows an unequivocal intent to abandon legal representation. The record may include those reasons proffered by the defendant, together with his or her background, experience, and conduct. King v. People, 728 P.2d 1264 (Colo. 1986); People v. Stanley, 56 P.3d 1241 (Colo. App. 2002); People v. Alengi, 114 P.3d 883 (Colo. App. 2004), rev'd on other grounds, 148 P.3d 154 (Colo. 2006).

Waiver of right to counsel not upheld where conduct of defendant might imply a "voluntary" waiver of right to counsel, but where the record did not establish that the implied waiver was knowing and intelligent, where the defendant's status as co-counsel or pro se party was never clarified or decisively determined by the court, and where the defendant clearly expressed his desire for counsel at every possible opportunity. People v. Arguello, 772 P.2d 87 (Colo. 1989).

Although every possible presumption against waiver of the right to representation should be indulged, a waiver may be implied if it is shown that a defendant knowingly and willingly undertook a course of conduct that revealed his intent to relinquish that right. People v. Rocha, 872 P.2d 1285 (Colo. App. 1993).

Absent waiver, no imprisonment unless representation by counsel. Absent a knowing and intelligent waiver, no person may be imprisoned for any offense however classified unless he was represented by counsel at his trial. People v. Roybal, 618 P.2d 1121 (Colo. 1980).

Court's responsibility to

ascertain accused's intelligent waiver of right to counsel. The responsibility of the trial court when confronted with a request for self-representation is to ascertain whether the accused knowingly and intelligently decides to forego the traditional benefits associated with the right to counsel. People v. Lucero, 200 Colo. 335, 615 P.2d 660 (1980).

A court must make a careful inquiry of a defendant who, having previously indicated a desire to be represented, appears without counsel. This duty to inquire does not require the trial court to maintain a continuing vigilance over the financial affairs of the accused. People v. Alengi, 114 P.3d 883 (Colo. App. 2004), aff'd, 148 P.3d 154 (Colo. 2006).

A defendant may not manipulate the right to counsel in a manner that will impede the effective and efficient administration of justice. People v. Alengi, 114 P.3d 883 (Colo. App. 2004), aff'd, 148 P.3d 154 (Colo. 2006).

A trial court is not compelled to grant a criminal defendant's request to withdraw a valid waiver of the right to counsel, but must exercise its discretion in evaluating the circumstances surrounding the request. People v. Price, 903 P.2d 1190 (Colo. App. 1995).

If a defendant relinquishes the right to representation by counsel, that defendant also relinquishes the right to pursue any claim of ineffective assistance in the event that advisory counsel is appointed. People v. Downey, 994 P.2d 452 (Colo. App. 1999), aff'd, 25 P.3d 1200 (Colo. 2001).

However, defendant may assert an ineffective assistance of counsel claim if advisory counsel exceeds his role as advisory counsel and exercises a degree of control appropriate for legal representation. Limits imposed upon advisory counsel's unsolicited participation: (1) A pro se defendant must be allowed to control the organization and content of his own defense; and (2) advisory counsel may not, through unrequested participation, destroy the jury's perception that the defendant represents himself. Downey v. People, 25 P.3d 1200 (Colo. 2001).

Appropriate standard for appellate review of the validity of an in-court waiver of the right to counsel requires that, when defendant asserts such a waiver was invalid, the prosecution must establish a prima facie case that the waiver was effective. When the prima facie case has been established, the defendant may overcome it by presenting evidence from which it could be reasonably inferred that the waiver was not voluntary, knowing, and intentional. Prosecution need not demonstrate validity of waiver by clear and convincing evidence. People v. Arguello, 772 P.2d 87 (Colo. 1989); People v. Stanley, 56 P.3d 1241 (Colo. App. 2002).

A waiver cannot be knowing and intelligent unless the record clearly establishes that the defendant understands: The nature of the charges; the statutory offenses included within them; the range of allowable punishments; possible defenses to the charges and circumstances in mitigation; all of the facts essential to a broad understanding of the whole matter; and the requirement of complying with the rules of procedure at trial. People v. Arguello, 772 P.2d 87 (Colo. 1989); People v. Stanley, 56 P.3d 1241 (Colo. App. 2002).

The trial judge's benchbook provides several questions a trial court should ask every defendant who seeks to proceed pro se. People v. Arguello, 772 P.2d 87 (Colo. 1989); People v. Stanley, 56 P.3d 1241 (Colo. App. 2002).

In determining whether

defendant's waiver is knowing and intelligent, the court must not only look at the advisement but also weigh the totality of the circumstances. People v. Arguello, 772 P.2d 87 (Colo. 1989); People v. Stanley, 56 P.3d 1241 (Colo. App. 2002); People v. Alengi, 114 P.3d 883 (Colo. App. 2004), rev'd on other grounds, 148 P.3d 154 (Colo. 2006).

A defendant's statement that he is aware of the right to counsel and desires to waive the right does not automatically end the court's responsibility. People v. Stanley, 56 P.3d 1241 (Colo. App. 2002).

Defendant's express waiver held invalid where the trial court's inquiries were not adequate to establish that defendant was aware of the dangers and disadvantages of self-representation. But a court's failure substantially to comply with this requirement does not alone preclude a valid implied waiver. People v. Arguello, 772 P.2d 87 (Colo. 1989); People v. Stanley, 56 P.3d 1241 (Colo. App. 2002).

Trial court did not adequately ascertain that defendant knowingly, intelligently, and voluntarily decided to represent himself or herself. Defendant did not impliedly waive his or her right to counsel where, under the totality of the circumstances, defendant's conduct did not show an unequivocal intent to give up his or her right. People v. Rawson, 97 P.3d 315 (Colo. App. 2004).

Competency to stand trial is not a substitute for the level of inquiry and degree of competency necessary for a valid waiver of counsel. People v. Rawson, 97 P.3d 315 (Colo. App. 2004).

Trial court erred by denying request for appointment of conflict-free counsel at state expense for sentencing hearing. Defendant neither expressly nor impliedly waived his right to counsel; he merely stated that he did not want to represent himself. Defendant did not knowingly and willingly undertake a course of conduct that demonstrated an unequivocal intent to relinquish his right to representation. People v. Wallin, 167 P.3d 183 (Colo. App. 2007).

When a competent, but mentally ill defendant requests to represent himself or herself, the trial court must determine whether defendant is so mentally ill at the time of the request that defendant is incompetent to conduct the trial without the assistance of counsel. The court must consider whether the defendant is able to carry out the basic tasks needed to present his or her defense in the absence of counsel. People v. Davis, 2012 COA 1, __ P.3d __.

G. Miranda Rights and Exclusion of Evidence for Violation.

Exclusion of incriminating statements given without assistance of counsel. Under Escobedo v. Illinois, 378 U.S. 478, 84 S. Ct. 1758, 12 L. Ed. 2d 977 (1964), where an investigation is no longer a general inquiry into an unsolved crime but has begun to focus on a particular suspect, the suspect has been taken into police custody, the police carry out a process of interrogations that lends itself to eliciting incriminating statements, the suspect has requested and been denied an opportunity to consult with his lawyer, and the police have not effectively warned him of his absolute constitutional right to remain silent, the accused has been denied the assistance of counsel and no statement elicited by the police during the interrogation may be used against him at a criminal trial. Bean v. People, 164 Colo. 593, 436 P.2d 678 (1968).

Before statement from suspect in custody is excluded from evidence by reason of Escobedo rule, there must be (1) interrogation by

police, (2) a denial of the accused's request to consult with counsel, and (3) a failure to warn. Bean v. People, 164 Colo. 593, 436 P.2d 678 (1968).

Miranda warning does not automatically apply when a defendant is interrogated by foreign officials in a foreign jurisdiction. Generally voluntary statements elicited by foreign officials are admissible. People v. Gomez-Garcia, 224 P.3d 1019 (Colo. App. 2009).

There is a joint venture exception to the general rule that Miranda warnings are not required by foreign officials in a foreign country. The exception applies when American agents actively participate in questioning conducted by foreign officials or somehow use foreign officials as their interrogation agents to circumvent a Miranda warning. In this case, the American official's role was limited to providing intelligence to the foreign officials and being present when the suspect made the statements to the foreign officials. The American official did not participate in the limited questioning by the foreign officials, so there was no joint venture. People v. Gomez-Garcia, 224 P.3d 1019 (Colo. App. 2009).

While an officer is obligated to ensure that a suspect is aware of and understands his or her constitutional rights, an officer is under no obligation to provide a lengthier explanation of the rights or the consequences of waiving those rights when the suspect clearly indicates he or she understands the rights. The officer told the suspect that the victim died after the suspect indicated she understood the Miranda warning, therefore, it had no bearing on the suspect's ability to understand her constitutional rights or her ability to make a knowing and intelligent waiver of her rights. People v. Humphrey, 132 P.3d 352 (Colo. 2006).

Officer gave defendant a sufficient Miranda advisement, and defendant was sufficiently coherent to validly waive his Miranda rights. People v. Grenier, 200 P.3d 1062 (Colo. App. 2008).

A request for counsel must be clear, unequivocal, and unambiguous. The court uses an objective inquiry to determine whether the request was clear, unequivocal, and unambiguous. In this case, defendant's statements related to an attorney were ambiguous. People v. Grenier, 200 P.3d 1062 (Colo. App. 2008).

"When can I talk to a lawyer?" is an unambiguous request for counsel. People v. Lynn, 2012 CO 45, 278 P.3d 365.

Defendant's invocation of the right to remain silent must be clear and unequivocal. Defendant did not clearly, unambiguously, and unequivocally invoke his right to remain silent. People v. Grenier, 200 P.3d 1062 (Colo. App. 2008).

Whether a statement is voluntary depends on the totality of the circumstances, which must demonstrate that the accused's statement is the product of his or her free will and rational choice. People v. Baird, 66 P.3d 183 (Colo. App. 2002).

Trial court erred in excluding statements based solely on the defendant's intoxication. Intoxication is only one factor the court can consider when considering the totality of circumstances. The record supports the defendant made a knowing and voluntary waiver of his or her rights despite his or her intoxication. People v. Platt, 81 P.3d 1060 (Colo. 2004).

Defendant's statements were not voluntary. Defendant was interrogated by police in his hospital bed after repeatedly indicating that he wanted to speak to an attorney and did not want to answer their questions, the officers informed him that he was not entitled to an attorney because he was not in custody, and a police officer was posted outside his hospital room during his stay; in total these circumstances

indicate that defendant' statements were not voluntary. Effland v. People, 240 P.3d 868 (Colo. 2010).

Based on the totality of the circumstances, police violated defendant's right to remain silent by continuing to conduct a custodial interrogation after defendant invoked his right to remain silent. Detective did not scrupulously honor defendant's right to remain silent. During the three interviews, defendant was in a "harried emotional state". Detective failed to immediately cease questioning once defendant invoked his right, detective failed to give new Miranda warnings before the second interview or the beginning of the third interview, defendant was questioned about the same crime in all three interviews, and detective cast doubt on the usefulness of having an attorney present. In total, detective's words and actions demonstrated defendant's right to remain silent would not be respected. People v. Bonilla-Barraza, 209 P.3d 1090 (Colo. 2009).

Defendant's statements were knowingly and voluntarily made and were not the product of custodial interrogation. People v. Patnode, 126 P.3d 249 (Colo. App. 2005).

Defendant's statements were voluntary since the record does not indicate there was any coercion in getting defendant to make the statements. The trial court's concern over the lack of a videotape of the interrogation, the quick initiation of the questioning after securing the Miranda waiver, and the abrupt end to the audiotape do not suggest that the defendant was coerced into making any statements. People v. Gonzales-Zamora, 251 P.3d 1070 (Colo. 2011).

Defendant did not make a knowing and intelligent waiver of his Miranda rights because of the combined effects of translator's inadequate translation, substantial miscommunication between parties, and defendant's cultural background and limited intellectual functioning. People v. Redgebol, 184 P.3d 86 (Colo. 2008).

Translator did not adequately translate because of her own lack of understanding of the meaning of the rights. Translation was also flawed because the translator interrupted defendant, improperly summarized his responses, and did not always effectively explain instructions to him. People v. Redgebol, 184 P.3d 86 (Colo. 2008).

Miscommunication demonstrated that parties "frequently had no idea what the other was talking about". Miscommunication between parties took two forms: Interruptions by the interrogating officer and the interpreter, and unresponsive and nonsensical answers by the defendant. People v. Redgebol, 184 P.3d 86 (Colo. 2008).

Where defendant was functionally illiterate and had recently emigrated to the United States from a culture that had an entirely different cultural conception of legal disputes, defendant's cultural background and limited intellectual ability contributed to his inability to understand his Miranda rights. People v. Redgebol, 184 P.3d 86 (Colo. 2008).

In considering the intoxication factor, the following issues are relevant: Whether the defendant seemed oriented to the surroundings and situation; whether the defendant's answers were responsive and appeared to be the product of a rational thought process; whether the defendant was able to appreciate the seriousness of the situation; whether the defendant had the foresight to attempt to deceive police in hopes of avoiding prosecution; whether the defendant expressed remorse for his or her actions; and whether the defendant expressly stated he or she understood their rights. People v. Platt, 81 P.3d

1060 (Colo. 2004).

Volunteered statements not in response to interrogation not excluded. Where defendant, having been given the full warning of his constitutional rights on numerous occasions, requests to have an attorney before a lie detector test is disclosed, such request does not foreclose police from offering testimony concerning volunteered statements not in response to interrogation, made by defendant after he came face-to-face with person he had accused of participating in the robbery-murder. People v. Smith, 179 Colo. 413, 500 P.2d 1177 (1972).

Where defendant made an incriminating statement voluntarily and not in response to a question, his rights were not violated by its use at trial, even though he was not accompanied by counsel at the time he made the statement. Olguin v. People, 179 Colo. 26, 497 P.2d 1254 (1972).

Where defendant, after being informed of his Miranda rights and requesting counsel, asked a detective a question and then made an incriminating statement in response to the detective's answer, the response was voluntary and not a product of interrogation and, therefore, was admissible. People v. Knight, 167 P.3d 147 (Colo. App. 2006).

Defendant not subject to interrogation before receiving Miranda warning because detective's statements were not the functional equivalent of direct questioning. Detective's pre-Miranda warning statements were not intended to elicit an incriminating response, should not have been recognized as likely to elicit an incriminating response, and did not in fact elicit an incriminating response. Instead, detective's statements appear to have been an explanation of why defendant was being interviewed. People v. Madrid, 179 P.3d 1010 (Colo. 2008).

Where defendant made voluntary, knowing and intelligent waiver of his right to counsel and his right to remain silent, the trial court's ruling that the oral statement of the defendant was admissible is not error. Dyett v. People, 177 Colo. 370, 494 P.2d 94 (1972); People v. Blessett, 155 P.3d 388 (Colo. App. 2006).

Defendant's course of conduct indicated that he knowingly, intelligently, and voluntarily waived his Miranda rights. Defendant acknowledged that he understood his rights, answered the officer's questions without hesitation, had numerous opportunities to pause and invoke his rights and failed to do so until the officer told him that witnesses had identified him as the shooter. People v. Martin, 222 P.3d 331 (Colo. 2010).

Defendant's waiver was voluntary since the record lacked any evidence of government intimidation, misconduct, or trickery. Defendant's waiver was knowing and intelligent even though he did not provide any verbal responses, and defendant's non-verbal cues indicated that he was aware of and comprehending the rights he was waiving. People v. Gonzales-Zamora, 251 P.3d 1070 (Colo. 2011).

The trial court erred as a matter of law finding that the defendant's statements were involuntary. The court must find that the defendant's will had been overborne by coercive official action to make a finding that the defendant's statements were involuntary. People v. Wood, 135 P.3d 744 (Colo. 2006).

Record supports trial court's finding that defendant's will was not overborne by police conduct or coercion and that his waiver and subsequent statements were voluntary. Although the interview began in a confrontational manner and officers were initially aggressive with defendant, after that initial tension, interrogation became civil and calm. People v. McGlotten, 166 P.3d 182 (Colo. App. 2007).

Defendant's failure to request counsel did not bar application of Escobedo rule. Nez v. People, 167 Colo. 23, 445 P.2d 68 (1968); People v. Vigil, 175 Colo. 373, 489 P.2d 588 (1971).

Alleged error in introducing defendant's admission at trial held not reviewable on appeal. Alleged error in introducing at trial, through the testimony of a police officer, defendant's post-arrest admission of his age, which was made without benefit of counsel, was not reviewable on appeal where no contemporaneous objection was made to the evidence and the alleged error was not raised in the motion for new trial. People v. Chavez, 179 Colo. 316, 500 P.2d 365 (1972).

No reason exists for exclusion of evidence obtained from uncounseled witness so long as the evidence obtained is not offered against that witness. People v. Knapp, 180 Colo. 280, 505 P.2d 7 (1973).

Whether one is in custody for purposes of Miranda rights is a factual determination to be made by the trial court. If defendant was not in custody, he may not have statements suppressed. People v. Braxton, 807 P.2d 1214 (Colo. App. 1990).

But for purposes of appeal, determining whether a person is in custody for Miranda purposes is a mixed question of law and fact that requires de novo review by the appellate courts. People v. Matheny, 46 P.3d 453 (Colo. 2002); People v. Elmarr, 181 P.3d 1157 (Colo. 2008).

The court erred by applying the standard for fourth amendment seizures to the question of custody for Miranda purposes. People v. Hughes, 252 P.3d 1118 (Colo. 2011).

Miranda warnings are not required in routine traffic stops, especially where the offense for which the defendant was stopped will result in only the issuance of a summons. People v. Clements, 665 P.2d 624 (Colo. 1983).

Miranda warnings are not required when the interrogation occurs over the telephone. People v. Platt, 81 P.3d 1060 (Colo. 2004).

In determining whether interaction between police and a suspect constitutes interrogation under Miranda, the primary focus is on the perceptions of the suspect, but the intent of the police may have a bearing on whether the police should have known that their words or actions were reasonably likely to evoke an incriminating response. People v. Shetewi, 679 P.2d 1107 (Colo. App. 1983).

Defendant's statement was not result of the custodial interrogation. Defendant stated "I done bad" while holding a knife to his throat after the officer asked him "What are you doing?" Under the totality of circumstances, there was no custodial interrogation. People v. Vigil, 104 P.3d 258 (Colo. App. 2004), rev'd on other grounds, 127 P.3d 916 (Colo. 2006).

The police did not pose any question to the defendant that prompted the statement about the fanny pack, nor did they make any statements or take any actions that they should have known were reasonably likely to elicit an incriminating response, thus there was no Miranda violation as to that statement. People v. Milligan, 77 P.3d 771 (Colo. App. 2003).

Nontestimonial evidence obtained after defendant initiates further communication and makes a voluntary statement about the evidence's location is admissible, even after law enforcement issues a Miranda advisement and defendant states that he does not want to speak further. People v. Dunlap, 124 P.3d 780 (Colo. App. 2004).

In determining whether questioning of an inmate was

"custodial" for purposes of a Miranda advisement, a different standard must be applied. The court must look at the totality of the circumstances to determine whether the questioning involved an added imposition on the inmate's freedom of movement. People v. Parsons, 15 P.3d 799 (Colo. App. 2000).

Defendant should have been advised of his Miranda rights because he was in custody when officer proceeded to interrogate him after finding pot pipe during valid consensual pat down search. People v. Thomas, 839 P.2d 1174 (Colo. 1992).

Routine police encounter turned into a custodial situation following a failed sobriety test; defendant was physically surrounded by officers, was not free to go during questioning, and had "objective reasons to believe that he was under arrest"; such circumstances constituted custody. Incriminating statements made by defendant prior to being advised of his Miranda rights were consequently suppressed. People v. Null, 233 P.3d 670 (Colo. 2010).

Court erred in finding defendant was not in custody during interview. The record shows defendant had been arrested, handcuffed, and transported to a secure interview room with officers where he was interviewed for about two hours. A reasonable person in that situation would believe that he was not free to leave, even though defendant was questioned about offenses other than those for which he was arrested. People v. McGlotten, 166 P.3d 182 (Colo. App. 2007).

Trial court erred by failing to consider the totality of the circumstances in determining that defendant was in custody. The trial court cannot suppress defendant's statements made in response to police interrogation without a Miranda warning based solely on the fact that, after the polygraph test, the detective told defendant that she failed and that she lied. People v. Pittman, 2012 CO 55, 284 P.3d 59.

Defendant's incriminating statements were obtained in violation of his Miranda rights, and trial court's order to suppress the statements was appropriate. A reasonable person in defendant's circumstances would have felt deprived of his or her freedom of action in a manner similar to a formal arrest. Therefore, defendant was in custody and subject to interrogation without being advised of his Miranda rights. People v. Holt, 233 P.3d 1194 (Colo. 2010).

Record supports court's finding that defendant was not in custody during second interview. Defendant was interviewed after being released while assisting the police as a confidential informant. People v. McGlotten, 166 P.3d 182 (Colo. App. 2007).

Miranda warnings not required when defendant was not in custody at time of detective's brief questioning. Defendant was not in custody when police officers asked him to sit outside his home with other occupants of the home while the officers searched it. People v. Mumford, 275 P.3d 667 (Colo. App. 2010), aff'd, 2012 CO 2, 270 P.3d 953.

Defendant was not in custody when a consensual interview took place at the defendant's residence and in the presence of defendant's wife. People v. Cowart, 244 P.3d 1199 (Colo. 2010).

Defendant not in custody. The interrogation took place in broad daylight and lasted less than 15 to 20 minutes. The deputies spoke in normal tones, did not display their weapons, and did not threaten or accuse the defendant. Based on the totality of the circumstances, a reasonable person would not have found his or her freedom of action deprived to the degree associated with a formal arrest. People v. Allman, 2012 COA 212, __

P.3d __.

Statements made by the defendant to a police informant are admissible and did not violate the defendant's right to counsel. People v. Aalbu, 696 P.2d 796 (Colo. 1985).

It was harmless error for the judge to conduct an ex parte interview of a child victim prior to a sentencing hearing under circumstances in which the record of the interview demonstrated that the child's statements were already available to the court through other means. People v. Loyd, 902 P.2d 889 (Colo. App. 1995).

Questioning must cease upon request for counsel. Once the accused has asked for counsel, questioning by law enforcement officers must be terminated immediately and may not be resumed until counsel is present. People v. Pierson, 633 P.2d 485 (Colo. App. 1981), aff'd in part and rev'd in part on other grounds, 670 P.2d 770 (Colo. 1983); People v. Benjamin, 732 P.2d 1167 (Colo. 1987).

Police questioning should immediately cease when the defendant expresses a need to consult an attorney. People v. Cook, 665 P.2d 640 (Colo. App. 1983); People v. Martinez, 789 P.2d 420 (Colo. 1990).

Where defendant's request for counsel pursuant to Miranda was ambiguous and equivocal, interrogating officer's subsequent clarifying questions were permissible. People v. Broder, 222 P.3d 323 (Colo. 2010).

Statement by defendant's attorney in a proceeding unrelated to an investigation did not constitute a request for counsel. This conclusion is based upon the following: The supreme court has never held that a person can invoke his or her Miranda rights anticipatorily in a context other than custodial interrogation; the fifth amendment right to counsel is a personal right that may be invoked only by suspect; counsel's statement was made to a court and not to an investigatory law enforcement authority; and the invocation of the sixth amendment right to counsel does not invoke the fifth amendment right to counsel. People v. Vasquez, 155 P.3d 588 (Colo. App. 2006).

"I should talk to a lawyer . . . because I want to go to trial on this." was a sufficient request for counsel under the totality of the circumstances. Oral and written statements made after the request must be suppressed. People v. District Court, 953 P.2d 184 (Colo. 1998).

Thirty-second pause did not constitute the cessation of interrogation by police and the voluntary resumption by defendant. People v. Redgebol, 184 P.3d 86 (Colo. 2008).

Defendant's statements that "I'm going to have to talk to an attorney about that" and response of "well, yeah" when asked if he wanted "to talk to a lawyer now" constituted an unambiguous and unequivocal request for counsel during interrogation, and the trial court properly suppressed defendant's subsequent incriminating statements. People v. Bradshaw, 156 P.3d 452 (Colo. 2007).

When an accused makes an ambiguous statement that might reasonably be construed as a request for counsel, interrogation must cease immediately except for very limited questions to clarify the ambiguous statement or to clarify the defendant's wishes regarding the presence of counsel. People v. Benjamin, 732 P.2d 1167 (Colo. 1987).

Defendant's initial request for counsel not ambiguous and police officer's assurance that defendant was not being questioned about a specific crime and that he did not need an attorney to answer questions about that crime did not render the request for counsel ambiguous. People v. Kleber, 859 P.2d 1361 (Colo. 1991).

Fact that the police deliberately failed to disclose to the defendant the subject matter of the interrogation cannot transform defendant's clear request for counsel into an ambiguous statement. People v. Kleber, 859 P.2d 1361 (Colo. 1993).

Else statements inadmissible. Once the accused has requested counsel, any statements made in response to further interrogation by the law enforcement officers are inadmissible. People v. Pierson, 633 P.2d 485 (Colo. App. 1981), aff'd in part and rev'd in part on other grounds, 670 P.2d 770 (Colo. 1983).

Defendant's statement to police made after request for counsel was result of unlawful interrogation, and, since such statement contained the only evidence of an element of the crime (forgery), use of the statement at trial constituted prejudicial error. People v. Johnson, 712 P.2d 1048 (Colo. App. 1985).

Reinterrogation after release from custody. Defendant's request for counsel, made while in police custody and prior to release, does not prohibit police interrogation at a later time if defendant is properly advised of his rights before any subsequent interrogation; however, such reinterrogation is not permissible if the defendant's release was contrived, pretextual, or done in bad faith. People v. Trujillo, 773 P.2d 1086 (Colo. 1989).

Evidence held inadmissible where it was obtained after police officer told defendant not to talk to his attorney. People v. Hyun Soo Son, 723 P.2d 1337 (Colo. 1986).

Unless the court determines that the statements made were voluntary and that the statements themselves denote an intent to waive the right to counsel. Where an accused initiates further conversations with the police and makes additional statements after the police have ceased questioning him, a valid waiver of the right to counsel may be determined by the totality of the circumstances. People v. Fox, 691 P.2d 349 (Colo. App. 1984); People v. Martinez, 789 P.2d 420 (Colo. 1990).

Unless defendant initiates conversation. However, where defendant, properly advised of his rights, initiated a conversation with detective and the detective's response was not custodial interrogation, the trial court did not err in admitting the defendant's statements into evidence. People v. Morgan, 681 P.2d 970 (Colo. App. 1984).

Trial court erred in suppressing voluntary statements made by arrestee to police investigator. Arrestee initiated conversation with the investigator and the investigator did not deliberately elicit statements from the arrestee. The court, upon finding that the arrestee was not being subjected to interrogation, need not have considered whether the arrestee waived his fifth or sixth amendment rights. People v. Ross, 821 P.2d 816 (Colo. 1992).

No readvisement of Miranda rights required for voluntary statement made after police ended interrogation because of request for counsel. People v. Rivas, 13 P.3d 315 (Colo. 2000).

Case remanded for further findings of fact to determine whether the questioned statement was obtained as a product of custodial interrogation in violation of Edwards and Miranda. People v. Martinez, 789 P.2d 420 (Colo. 1990).

Two inquiries must be made when the defendant seeks to suppress statements on the basis that governmental officials improperly ignored a request for counsel: (1) Whether an accused actually invoked his right to counsel; and (2) if so, whether that request was scrupulously honored. People v. Benjamin, 732 P.2d 1167 (Colo. 1987).

Where defendant's lawyer was denied access to defendant during interrogation in which

confessions were obtained, defendant was denied the right to counsel, and all of defendant's statements made after defendant's counsel arrived at police station to see him were inadmissible. People v. Harris, 703 P.2d 667 (Colo. App. 1985).

The general rule is that statements will be admitted after retention of counsel where the accused initiates the conversation, there is a valid waiver of the right to counsel and the right to remain silent, and the defendant's statements were voluntary. People v. Tafoya, 703 P.2d 663 (Colo. App. 1985).

Reading Miranda rights not necessarily sufficient to purge taint of initial illegal questioning. Simply reading a defendant his Miranda rights is not necessarily sufficient to purge the taint of an initial illegal questioning by breaking the causal chain between that questioning and the statement obtained subsequent to the time the defendant received his Miranda rights. People v. Lowe, 200 Colo. 470, 616 P.2d 118 (1980).

However, the United States supreme court in Oregon v. Elstad, 105 U.S. 1285, 105 S. Ct. 1285, 84 L. Ed. 2d 222 (1985), ruled that a careful and thorough administration of Miranda warnings may cure the condition that rendered the previous unwarned statement inadmissible. People v. Harris, 703 P.2d 667 (Colo. App. 1985).

Even though defendant's initial voluntary statements to police officer prior to Miranda warnings were not admissible, defendant's subsequent confession, made after belated Miranda warnings were read to defendant, was admissible where there was no evidence that either the environment or the manner of the initial interrogation was coercive and, although belated, the reading of defendant's rights was complete and was completed three times. People v. Harris, 703 P.2d 667 (Colo. App. 1985).

Defendant's execution of a request for a determination of indigency form and fact that defendant was interviewed by an investigator from the public defender's office was not sufficient to constitute an unambiguous invocation of his right to counsel; therefore, subsequent voluntary waiver of right to counsel after being readvised of his rights by officer with no knowledge of earlier events was not obtained by impermissible police conduct and was not subject to suppression. People v. Benjamin, 732 P.2d 1167 (Colo. 1987).

Even if defendant was placed under arrest without probable cause, defendant knowingly and voluntarily waived his right to remain silent, and, thus, his second statement to police chief did not require suppression as product of illegal arrest, where probable cause to arrest existed within minutes after arrest and defendant received full and complete Miranda advisement before giving second statement. People v. Koolbeck, 703 P.2d 673 (Colo. App. 1985).

In determining whether a person is in custody for purposes of Miranda rights, a court must consider whether a reasonable person in the suspect's position would consider himself significantly deprived of his liberty. People v. Johnson, 671 P.2d 958 (Colo. 1983); People v. Thiret, 685 P.2d 193 (Colo. 1984); People v. Black, 698 P.2d 766 (Colo. 1984); People v. Gordon, 738 P.2d 404 (Colo. App. 1987); People v. Fury, 872 P.2d 1280 (Colo. App. 1993); People v. Baird, 66 P.3d 183 (Colo. App. 2002); People v. Trujillo, 75 P.3d 1133 (Colo. App. 2003); People v. Milligan, 77 P.3d 771 (Colo. App. 2003); People v. Howard, 92 P.3d 445 (Colo. 2004).

In deciding whether a reasonable person would believe himself or herself to be deprived of his or her freedom of action, the court must consider the totality of circumstances.

The factors the court should consider are: The time, place, and purpose of the encounter; the persons present during the interrogation; the words spoken by the officer to the defendant; the officer's tone of voice and general demeanor; the length and mood of the interrogation; whether any limitation of movement or other form of restraint was placed on the defendant during the interrogation; the officer's response to any questions asked by the defendant; whether directions were given to the defendant during the interrogation; and the defendant's verbal or nonverbal response to such directions. People v. Howard, 92 P.3d 445 (Colo. 2004); People v. Elmarr, 181 P.3d 1157 (Colo. 2008).

Subjective intent of police officer is not a factor to consider in determining whether a suspect is in custody for purposes of Miranda warning. Court may not rest its conclusion that a defendant is in custody based upon a police officer's unarticulated plan to arrest the defendant. The standard is whether, after analyzing the totality of the circumstances, a reasonable person in the defendant's position would have felt deprived of freedom to the degree associated with a formal arrest. People v. Klinck, 259 P.3d 489 (Colo. 2011).

Voluntary statements made in violation of Miranda may be used for impeachment purposes. People v. Klinck, 259 P.3d 489 (Colo. 2011).

And the police officer's subjective state of mind is not an appropriate standard for determining whether an individual has been deprived of his freedom of movement in any significant way under the fifth amendment of the U.S. Constitution. People v. Black, 698 P.2d 766 (Colo. 1984); People v. Howard, 92 P.3d 445 (Colo. 2004); People v. Klinck, 259 P.3d 489 (Colo. 2011).

Defendant was in custody for purposes of Miranda. Defendant was interrogated by police in his hospital bed after repeatedly indicating that he wanted to speak to an attorney and did not want to answer their questions, the officers informed him that he was not entitled to an attorney because he was not in custody, and a police officer was posted outside his hospital room during his stay; in total these circumstances indicate that defendant was in custody. Effland v. People, 240 P.3d 868 (Colo. 2010).

Not in custody for Miranda purposes. People v. Howard, 92 P.3d 445 (Colo. 2004).

Interrogation, for purposes of the Miranda rule, does not include questions "normally attendant to arrest and custody" such as the routine gathering of basic identifying data needed for booking and arraignment. People v. Anderson, 837 P.2d 293 (Colo. App. 1992).

A defendant is not subject to "custodial" questioning when the detectives tell the defendant he or she is free to leave before the questioning begins and remind the defendant during the questioning. People v. Blessett, 155 P.3d 388 (Colo. App. 2006).

Detective's questioning to elicit incriminating response constituted custodial interrogation. Where detective intended to elicit an incriminating response from the defendant, detective's initial question to the defendant, "Do you know why you are here?", constituted custodial interrogation. People v. Lowe, 200 Colo. 470, 616 P.2d 118 (1980).

Whether an interrogation is custodial determined from totality of circumstances. People v. Thiret, 685 P.2d 193 (Colo. 1984).

Trial court's findings that police officers were dishonest with the defendant, that questioning took place in a private room, that the officers physically separated the defendant from the door, that significant portions of the interview were highly confrontational and accusatory, and that interrogating

officer's questions provided all the details of the incident and were designed essentially to force agreement from the defendant were sufficient, under the totality of the circumstances, for the defendant to reasonably believe that he was in custody, despite officer's belief that defendant was not in custody until warrant was executed. People v. Minjarez, 81 P.3d 348 (Colo. 2003).

Interrogation includes any words or actions on the part of an interrogating officer that he or she should know are reasonably likely to elicit an incriminating response from the defendant. To determine if an officer should have known his or her actions or words were reasonably likely to elicit a response, the totality of the circumstances surrounding the statement are considered. The focus of inquiry is on whether the officer reasonably should have known his or her words or actions would cause the defendant to perceive that he or she was being interrogated. In this instance, the defendant's statements were in response to the detective's "relationship building" efforts, in response to information presented by the detective about the investigation, and in response to the detective's desire to get defendant's side of the story. In totality, the statements were the product of a custodial interrogation. People v. Wood, 135 P.3d 744 (Colo. 2006).

The transportation officer's questions did not constitute interrogation. The officer's questions were asked to determine the cooperation level of the defendant, and the officer had no reason to expect the questions would elicit an incriminating response. People v. Wilson, 2012 COA 163M, __ P.3d __.

Validity of waiver based on totality of circumstances. The ultimate question in situations where an initial Miranda advisement was given and a waiver obtained followed by a later interrogation not preceded by another Miranda advisement is whether, considering the totality of the circumstances, the defendant was sufficiently aware of the continuing nature of his constitutional rights as to render any subsequent statement the result of a knowing, intelligent, and voluntary waiver of those rights. People v. Chase, 719 P.2d 718 (Colo. 1986).

No violation of Miranda rights. Defendant was sufficiently advised of his Miranda rights after receiving three separate Miranda advisements, each of which were individually sufficient. Defendant's waiver was knowing and intelligent based on his questions regarding his rights and his indication that he understood his rights. Further, there is no evidence that his alleged intoxication precluded a knowing and intelligent waiver: The defendant was oriented to his surroundings and provided answers to the detective's questions and asked his own questions. Finally, defendant's waiver was voluntary since he did not face any societal or subjective pressures any different from anyone else in a similar situation. People v. Clayton, 207 P.3d 831 (Colo. 2009).

Defendant's statement after waiving his Miranda right was voluntary. People v. Al-Yousif, 206 P.3d 824 (Colo. App. 2006).

Intoxication does not per se preclude a defendant from making a voluntary waiver of his or her Miranda rights. The court must consider the totality of circumstances to determine whether the defendant was capable of understanding the nature and consequences of the rights being waived. People v. Cardenas, 25 P.3d 1258 (Colo. App. 2000).

Record required to show waiver of Miranda rights. A knowing, intelligent, and voluntary waiver of Miranda rights requires more than a silent record. People v. Chavez, 632 P.2d 574 (Colo. 1981).

Evidence held insufficient that defendant waived Miranda

rights. People v. Chavez, 632 P.2d 574 (Colo. 1981).

When demand for counsel akin to effort to forestall trial. Prior rejection of the court's repeated offers to appoint counsel and continued opposition to any assistance from advisory counsel at all times made defendant's request for counsel on the day of trial more akin to a calculated effort to forestall the trial than to a legitimate request for legal assistance. People v. Lucero, 200 Colo. 335, 615 P.2d 660 (1980).

Interrogation by police in employer's office was custodial interrogation considering totality of circumstances including purpose of the interview, the words used by the officers, the setting and duration of the interview, and that defendant was never informed that he was free to leave. People v. LaFrankie, 858 P.2d 702 (Colo. 1993).

Physical evidence collected by swabbing of defendant's mouth following a Miranda violation properly admitted because the fruit of the poisonous tree doctrine does not apply to Miranda violations and the swabs were not collected in violation of the fourth or fifth amendment. People v. Bradshaw, 156 P.3d 452 (Colo. 2007).

For a confession to be involuntary, police coercion must play a significant role in obtaining it. The test is whether defendant's will was overborne by mentally or physically coercive conduct. Under the totality of circumstances, any threats or promises made during interrogation did not play a significant role in inducing defendant to confess. People v. Blessett, 155 P.3d 388 (Colo. App. 2006).

Coercive governmental action to render a statement involuntary means more than just misstatements or refusing to stop an interrogation when a defendant is upset. People v. Speer, 216 P.3d 18 (Colo. App. 2007).

Interrogation by the booking officer after defendant confessed did not require a new Miranda warning since the questioning was similar to the original questioning and was sought to clarify the previous statement. People v. Blessett, 155 P.3d 388 (Colo. App. 2006).

A defendant's spontaneous utterance will not be excluded where there is no interrogation. The defendant's statements recorded by a video camera while the detective was out of the room are admissible. The defendant does not have to consent to the recording before the statements may be admissible. People v. Wood, 135 P.3d 744 (Colo. 2006).

H. Right to Counsel During Line-up.

It is constitutional error to conduct a line-up for identification purposes without presence of counsel unless waived by the suspect. Brady v. People, 175 Colo. 252, 486 P.2d 436 (1971).

Juvenile suspect is to be afforded same rights as adult with respect to line-up procedures. In re Rules by Juvenile Court, 178 Colo. 268, 496 P.2d 1014 (1972).

Line-up identification made prior to filing of charges is not tainted by the absence of defendant's consent or the absence of a warning to the defendant concerning the possible consequences of the line-up and the function of counsel. Massey v. People, 179 Colo. 167, 498 P.2d 953 (1972).

Line-up on unrelated charge with counsel present. A person properly detained on an unrelated charge can be exhibited in a line-up where he is advised of his rights and represented by counsel. People v. Hodge, 186 Colo. 189, 526 P.2d 309 (1974).

Where in-court identifications have source independent from line-up. Assuming

absence of counsel at line-up, unfair suggestiveness that might lead to irreparable in-court misidentification does not result where the record supports an informed judgment that the in-court identifications have an independent source, separate and apart from the line-up. People v. Duncan, 179 Colo. 253, 500 P.2d 137 (1972).

Line-up information sheet found inadequate to advise accused of his right to counsel. People v. Bowen, 176 Colo. 302, 490 P.2d 295 (1971).

Line-up testimony properly excluded where the state did not meet its burden of showing by clear and convincing evidence that defendant was represented by counsel at the line-up. Fresquez v. People, 178 Colo. 220, 497 P.2d 1246 (1972).

Defendant not denied effective assistance of counsel at pretrial line-up when the attorney who represented him also appeared for a codefendant at the line-up and was later appointed to represent a codefendant who elected to testify for the prosecution if there was no evidence that counsel failed to safeguard the rights of the defendant or that counsel was ineffective in eliminating the hazards which make the line-up a critical stage of the proceedings. Ortega v. People, 178 Colo. 419, 498 P.2d 1121 (1972).

Where an attorney actually participated in the events that led up to the presentation of the participants in the line-up, that is, where he was permitted to confer with two of the persons who were placed for viewing; he conferred with the defendant; his efforts resulted in the defendant being viewed as clean-shaven, with his hair combed, to conform with that aspect of the appearance of the other members of the line-up; he was successful in having all such members placed in jackets to conform with the fact that defendant was wearing a jacket, albeit the defendant's was plaid; and he never objected as to the manner in which the line-up was conducted nor objected to the line-up itself, defendant could not claim that his right to counsel had been abridged. Edmisten v. People, 176 Colo. 262, 490 P.2d 58 (1971).

Where counsel for defendant was not allowed to be present during a police post line-up interrogation of an eyewitness, but where the court disregarded the line-up identification in rendering its decision, defendant was not deprived of his right to counsel. Stewart v. People, 175 Colo. 304, 487 P.2d 371 (1971).

Where the defendant asserts that the identification which occurred at the line-up was tainted because he had not been taken before a magistrate in accordance with the requirements of Crim. P. 5, and had, therefore, not been properly advised of his rights, he overlooked the fact that he signed advisement forms which fully complied with the dictates of Miranda and he was also represented by the public defender at the line-up and reversal, therefore, was not called for. People v. Bugarin, 181 Colo. 57, 507 P.2d 879 (1973).

Counsel need not be provided for photographic identification procedures. People v. Barker, 180 Colo. 28, 501 P.2d 1041 (1972); People v. Knapp, 180 Colo. 280, 505 P.2d 7 (1973).

Counsel is not required at a photographic display or line-up which takes place during the investigative stage of the criminal proceeding. Brown v. People, 177 Colo. 397, 494 P.2d 587 (1972); People v. Bugarin, 181 Colo. 57, 507 P.2d 879 (1973); People v. Moreno, 181 Colo. 106, 507 P.2d 857 (1973); People v. Renfro, 181 Colo. 159, 508 P.2d 396 (1973); People v. Ortega, 181 Colo. 223, 508 P.2d 784 (1973).

Photographic identification while a criminal case is in the investigatory stage must be approved if the procedures used are not suggestive and do not coerce identification. Brown

v. People, 177 Colo. 397, 494 P.2d 587 (1972).

Where a photographic line-up occurred more than one month prior to the filing of a formal charge, the issue of provision of counsel is shorn of its significance because counsel need not be provided to an accused at a line-up when the line-up occurred at the investigatory stage of the proceedings and before the commencement of the adversary criminal proceedings. People v. Barker, 180 Colo. 28, 501 P.2d 1041 (1972).

Where the record showed that all photographic displays and line-ups were conducted during the investigative stages of the case, several months prior to the indictment of appellant, appellant was not, therefore, entitled to counsel either at the photographic displays or at the line-ups under these circumstances. People v. Lowe, 184 Colo. 182, 519 P.2d 344 (1974).

Where face-to-face identification preceded filing of information, there was no requirement of provision of counsel. People v. Barker, 180 Colo. 28, 501 P.2d 1041 (1972).

I. Effective Assistance of Counsel.

Law reviews. For comment, "Ineffective Assistance of Counsel Under People v. Pozo: Advising Non-Citizen Criminal Defendants of Possible Immigration Consequences in Criminal Plea Agreements", see 80 Colo. L. Rev. 793 (2009).

Competent counsel and defense satisfy court's obligation. When the state provides competent counsel, and that counsel ably and competently conducts the defense, the state has satisfied its constitutional obligation. Valarde v. People, 156 Colo. 375, 399 P.2d 245 (1965); Martinez v. People, 173 Colo. 515, 480 P.2d 843 (1971).

If the court appoints one attorney, that is sufficient, and the judge may assume his duty is fulfilled unless the defendant makes known some good reason why the counsel appointed could not fairly or properly represent him, or something comes to the court's attention which might reasonably so indicate. Martinez v. People, 173 Colo. 515, 480 P.2d 843 (1971).

Right of indigent defendant to assistance of counsel during critical stages of criminal proceeding is absolute, beginning with the accusatory stage, continuing through the arraignment, the actual trial on the merits of the cause, and culminating in the appellate phases of the criminal proceeding. Cruz v. Patterson, 253 F. Supp. 805 (D. Colo.), aff'd, 363 F.2d 879 (10th Cir.), cert. denied, 385 U.S. 975, 87 S. Ct. 501, 17 L. Ed. 2d 438 (1966).

In addition to an accused's guaranteed right to the presence of counsel at trial, such right is available to him at any stage of the prosecution, formal or informal, where the absence of counsel might derogate from his right to a fair trial. Edmisten v. People, 176 Colo. 262, 490 P.2d 58 (1971).

Indigent defendants convicted of a crime are entitled to have counsel appointed at state expense to represent them at trial and on review. Stanmore v. People, 157 Colo. 207, 401 P.2d 829, cert. denied, 380 U.S. 985, 85 S. Ct. 1355, 14 L. Ed. 2d 277 (1965); Adargo v. People, 159 Colo. 321, 411 P.2d 245 (1966).

Where the merits of the one and only appeal an indigent has as of right are decided without benefit of counsel, an unconstitutional line has been drawn between rich and poor. In re Griffin, 152 Colo. 347, 382 P.2d 202 (1963).

This principle is clear and unambiguous. Cruz v. Patterson, 253 F. Supp. 805 (D. Colo.), aff'd, 363 F.2d 879 (10th Cir.), cert. denied, 385 U.S. 975, 87 S. Ct. 501, 17 L. Ed. 2d 438 (1966).

The rationale is twofold: (1) The presence of a defense-oriented professional might serve to prevent the use of prejudicial identification measures, and (2) the absence of counsel at a line-up might deprive an accused of the ability effectively to reconstruct at trial any unfairness that occurred at the line-up and thus deprive him of his only opportunity meaningfully to attack the credibility of the witnesses' courtroom identification. Edmisten v. People, 176 Colo. 262, 490 P.2d 58 (1971).

Right to counsel requires effective assistance of advocate. The indigent, like the nonindigent, is entitled to the benefit of counsel's examination into the record, research of the law, and marshalling of arguments on his behalf. The indigent is entitled to the full and complete assistance of counsel at all phases of the appellate review. It is inherent in such guarantee that counsel so appointed by the state shall be effective counsel. For counsel to be an effective representative of his client, he must be an advocate of that client's cause. Cruz v. Patterson, 253 F. Supp. 805 (D. Colo.), aff'd, 363 F.2d 879 (10th Cir.), cert. denied, 385 U.S. 975, 87 S. Ct. 501, 17 L. Ed. 2d 438 (1966).

Effective assistance of counsel is one of defendant's most fundamental rights. People v. O'Neill, 185 Colo. 202, 523 P.2d 123 (1974).

The constitutional right to counsel requires that defense counsel render reasonably effective assistance. People v. Stroup, 624 P.2d 913 (Colo. App. 1980), rev'd in application of principle, 656 P.2d 680 (Colo. 1982).

A criminal defendant is entitled to receive the reasonably effective assistance of an attorney acting as his diligent and conscientious advocate. People v. Norman, 703 P. 2d 1261 (Colo. 1985); People v. Benney, 757 P.2d 1078 (Colo. App. 1987).

And lack impairs other rights. Defendant's ability to assert any right may be seriously impaired by lack of effective assistance of counsel. People v. O'Neill, 185 Colo. 202, 523 P.2d 123 (1974).

The mere presence of an attorney does not constitute effective representation of counsel. Edmisten v. People, 176 Colo. 262, 490 P.2d 58 (1971).

A defendant who expressly waives his or her right to assert ineffective assistance of counsel in a plea agreement can still raise that challenge on the question of whether the guilty plea was knowing, voluntary, and intelligent. People v. Stovall, 2012 COA 7M, 284 P.3d 151.

In order to allege ineffective assistance of counsel, the defendant must demonstrate to the trial court that his trial counsel was guilty of palpable malfeasance, misfeasance or nonfeasance. Valdez v. District Court, 171 Colo. 436, 467 P.2d 825 (1970); People v. O'Neill, 185 Colo. 202, 523 P.2d 123 (1974).

Bad faith, sham, or farcical representation would have to appear to sustain a collateral attack against the conviction upon the theory of denial of effective assistance of counsel. Melton v. People, 157 Colo. 169, 401 P.2d 605 (1965), cert. denied, 382 U.S. 624, 86 S. Ct. 624, 15 L. Ed. 2d 528 (1966).

To prove a claim of ineffective assistance of counsel, defendant must establish: (1) Counsel's performance fell below the level of reasonably competent assistance demanded of attorneys in criminal cases; and (2) the deficient performance prejudiced the defense. To establish prejudice, the defendant must demonstrate a reasonable probability that, but for the counsel's unprofessional errors, the result of the proceeding would have been different. People v. Dunlap, 124 P.3d 780 (Colo. App. 2004); People v. Vieyra, 169 P.3d 205 (Colo. App. 2007); People v. Carmichael, 179 P.3d 47 (Colo. App.

2007), rev'd on other grounds, 206 P.3d 800 (Colo. 2009).

There is no dispute that trial counsel rendered deficient performance; therefore, defendant must establish he was prejudiced by that performance. To establish prejudice, defendant must provide some objective evidence supporting his self-serving claims of prejudice. There are three pieces of objective corroborating sources of evidence. First, defendant's attorney testified that he believed defendant rejected the plea bargain based on the attorney's deficient advice. Second, there was a large disparity in the sentence exposure that defendant's attorney told him he was facing compared to the actual sentence exposure. Finally, defendant was pursuing a plea bargain despite his claims of innocence. Carmichael v. People, 206 P.3d 800 (Colo. 2009).

The appropriate remedy in this case in which defendant's attorney provided ineffective assistance of counsel during plea negotiations is a new trial. A new trial will restore the defendant to the position he enjoyed prior to his attorney's flawed performance, allowing the defendant to reengage in plea negotiations. Carmichael v. People, 206 P.3d 800 (Colo. 2009).

Counsel's failure to exercise peremptory challenges does not amount to ineffective assistance of counsel absent a showing that defendant was prejudiced by counsel's failure to exercise the challenges. People v. Vieyra, 169 P.3d 205 (Colo. App. 2007).

Incompetency of counsel. When trial counsel fails to prepare his client's case and offers representation that is no more than a sham and a facade and constitutes a mockery of justice, the claim of incompetency of counsel is well-founded. People v. White, 182 Colo. 417, 514 P.2d 69 (1973).

Competency of counsel. Defendant was not denied his constitutional right to the effective assistance of counsel. Defense counsel performed a sufficient investigation and follow-up of the mental health mitigation evidence. Defense counsel made a reasonable decision not to present the mental health mitigation evidence considering it would open the door to damaging malingering evidence. Assuming arguendo that the decision not to present the evidence was deficient, there was no prejudice to the alleged error since the strength of the evidence against defendant at the guilt and penalty phase was overwhelming. Dunlap v. People, 173 P.3d 1054 (Colo. 2007), cert. denied, 552 U.S. 1105, 128 S. Ct. 882, 169 L. Ed. 2d 740 (2008).

The right to effective assistance of counsel includes the right to conflict-free counsel. That right can be waived, however, by the defendant through a voluntary, knowing, and intelligent waiver. In this case, defendant provided a written waiver, and the court questioned defendant in regard to the waiver, finding defendant's waiver was voluntary, knowing, and intelligent. In addition, defendant's right to retain counsel of choice is entitled to great deference. Dunlap v. People, 173 P.3d 1054 (Colo. 2007), cert. denied, 552 U.S. 1105, 128 S. Ct. 882, 169 L. Ed. 2d 740 (2008).

Defense counsel made a reasonable decision not to present evidence that defendant would be housed at a maximum security facility if sentenced to life imprisonment since the prosecution had contrary videotape evidence of convicted murderers in less secure facilities. Although defendant disagreed with the strategic choice, he did not prove that the decision fell below the "wide range of reasonable professional assistance". Dunlap v. People, 173 P.3d 1054 (Colo. 2007), cert. denied, 552 U.S. 1105, 128 S. Ct. 882, 169 L. Ed. 2d 740 (2008).

The record does not support

defendant's argument that the guilt phase opening statement fell below an objective standard of reasonableness. The strategic changes by the defense during trial that deviated from the opening statement were reasonable decisions considering the circumstances of the trial. Even if the guilt phase opening statement was deficient, defendant was not prejudiced. Dunlap v. People, 173 P.3d 1054 (Colo. 2007), cert. denied, 552 U.S. 1105, 128 S. Ct. 882, 169 L. Ed. 2d 740 (2008).

The record does not support defendant's argument that the opening statement during the penalty phase fell below an objective standard of reasonableness. The fact that the witnesses did not provide as graphic and effective testimony as hoped for does not render counsel's representation ineffective. Even if the penalty phase opening statement was deficient, defendant was not prejudiced. Dunlap v. People, 173 P.3d 1054 (Colo. 2007), cert. denied, 552 U.S. 1105, 128 S. Ct. 882, 169 L. Ed. 2d 740 (2008).

Defense counsel's expression of dislike of defendant during the closing was part of a reasonable strategy to empower at least one juror to pick a life sentence instead of the death penalty. Dunlap v. People, 173 P.3d 1054 (Colo. 2007), cert. denied, 552 U.S. 1105, 128 S. Ct. 882, 169 L. Ed. 2d 740 (2008).

Defense counsel's stipulation to defendant's gang affiliation was reasonable since it fit into the defense's theory that peer influence contributed to the crime. Dunlap v. People, 173 P.3d 1054 (Colo. 2007), cert. denied, 552 U.S. 1105, 128 S. Ct. 882, 169 L. Ed. 2d 740 (2008).

Defense counsel devised a reasonable strategy not to object at every potential opportunity during the trial in order to maintain credibility with the jury and not call undue attention to the objectionable material. Dunlap v. People, 173 P.3d 1054 (Colo. 2007), cert. denied, 552 U.S. 1105, 128 S. Ct. 882, 169 L. Ed. 2d 740 (2008).

Trial counsel's failure to exhaust all of defendant's peremptory challenges was not ineffective assistance of counsel. Defense counsel made a reasonable decision to accept the jury prior to exhausting all of the peremptory challenges to ensure he would be able to strike anyone the prosecution might add later. Defense counsel made a strategic choice entitled to deference. Dunlap v. People, 173 P.3d 1054 (Colo. 2007), cert. denied, 552 U.S. 1105, 128 S. Ct. 882, 169 L. Ed. 2d 740 (2008).

Because defendant was advised orally or in writing of each of the asserted counsel errors, there was no deficient performance by counsel or prejudice. People v. Aguilar, 2012 COA 181, __ P.3d __.

Although counsel may have made some errors in advising the defendant to confess the motion to revoke the deferred judgment so that defendant could have the opportunity to go to a community corrections program, the alternative of contesting the revocation of the deferred judgment would not have been a reasonable option for the defendant. People v. Finney, 2012 COA 38, __ P.3d __.

Attorney serving coconspirators not ineffective. Record fails to support any conclusion of ineffective assistance of counsel by the simple fact that the attorney involved served both conspirators. People v. Gutierrez, 182 Colo. 55, 511 P.2d 20 (1973).

The fact that others employ attorney for defendant does not necessarily result in conflict of interest, especially when defendant has full knowledge of the circumstances of the employment and when he knows he could have court-appointed counsel. Bresnahan v. Patterson, 352 F. Supp. 1180 (D. Colo. 1973).

One who has knowledge that he could have court appoint counsel if desired and consents to representation

by counsel employed by another for him cannot complain that counsel was ineffective without a showing of substantial prejudice to the defendant because of counsel's representation. Bresnahan v. People, 175 Colo. 286, 487 P.2d 551 (1971).

Defense counsel is responsible for trial strategy, and the defendant will not be heard to complain when trial strategy falls short of accomplishing an acquittal. People v. Moreno, 181 Colo. 106, 507 P.2d 857 (1973); People v. Shook, 186 Colo. 339, 527 P.2d 815 (1974).

Right to assistance of counsel is not guarantee against mistakes of strategy or exercise of judgment in the course of a trial as viewed through the 20-20 vision of hindsight following the return of a verdict in a criminal case. Dolan v. People, 168 Colo. 19, 449 P.2d 828 (1969); Valdez v. District Court, 171 Colo. 436, 467 P.2d 825 (1970); LaBlanc v. People, 177 Colo. 250, 493 P.2d 1089 (1972); Steward v. People, 179 Colo. 31, 498 P.2d 933 (1972); People v. Shook, 186 Colo. 339, 527 P.2d 815 (1974); People v. Stroup, 624 P.2d 913 (Colo. App. 1980), rev'd in application of principle, 656 P.2d 680 (Colo. 1982).

When the alleged mistakes of appointed counsel are those of strategy or judgment only, a defendant's constitutional right to effective assistance of counsel is not in any way infringed. Evans v. People, 175 Colo. 269, 486 P.2d 1062 (1971).

Justice does not require errorless representation, but it does demand that counsel render reasonably effective assistance. People v. White, 182 Colo. 417, 514 P.2d 69 (1973).

The requirement for effective assistance of counsel does not mean that the defendant is constitutionally guaranteed such assistance as will result in his acquittal at trial. People v. Johnson, 638 P.2d 61 (Colo. 1981).

And does not guarantee attorney with whose advice defendant can agree. The standard of effective assistance of counsel does not guarantee a defendant an attorney with whose advice he can agree. Martinez v. People, 173 Colo. 515, 480 P.2d 843 (1971).

Mere disagreement as to trial strategy does not equate with ineffective assistance of counsel. People v. McCormick, 181 Colo. 162, 508 P.2d 1270 (1973).

Trial court made adequate inquiry into defendant's ineffective assistance of counsel and conflict of interest claims before rejecting the request. The trial court found with record support that defendant's dissatisfaction with trial counsel related to matters of trial preparation, strategy, and tactics, which are left to the discretion of counsel. In addition, trial counsel informed the court that she could continue representing defendant despite defendant's ethics complaint against her. People v. Davis, 2012 COA 1, __ P.3d __.

Acts and omissions of attorney during trial are binding upon his client, particularly where the client cannot specify a constitutional right of which he was deprived by the inaction of his attorney. Valdez v. District Court, 171 Colo. 436, 467 P.2d 825 (1970).

Pretrial investigation necessary to effective counsel. In the absence of adequate pretrial investigation--both factual and legal--knowledgeable preparation for trial is impossible, and without knowledgeable trial preparation, defense counsel cannot reliably exercise legal judgment and, therefore, cannot render reasonably effective assistance to his client. People v. White, 182 Colo. 417, 514 P.2d 69 (1973).

Whenever defense counsel commits errors at trial which are a direct result of inadequate pretrial investigation or self-imposed ignorance

of the law, his representation is incompetent and relief must be granted. People v. White, 182 Colo. 417, 514 P.2d 69 (1973).

Failure to investigate thoroughly the background of a key prosecution witness fell below the level of a reasonably competent attorney. People v. Davis, 759 P.2d 742 (Colo. App. 1988).

Client cannot require attorney to call witnesses, if there is no likelihood of the truth of the testimony that will be elicited and where the attorney's well-founded judgment is that its production at the trial would do more harm than good. Martinez v. People, 173 Colo. 515, 480 P.2d 843 (1971).

And failure to call them does not constitute reversible error. Failure of counsel to call to the stand and examine witnesses as desired by the defendant does not constitute reversible error. Stone v. People, 174 Colo. 504, 485 P.2d 495 (1971).

A refusal to call a particular witness because of an obedience to ethical standards which prohibit the presentation of fabricated testimony does not constitute ineffective assistance of counsel. People v. Schultheis, 638 P.2d 8 (Colo. 1981).

Failure of trial counsel to call certain witnesses or to propound certain hypothetical questions do not amount to ineffective assistance of counsel. People v. McCormick, 181 Colo. 162, 508 P.2d 1270 (1973).

When and whether counsel has properly raised objections during trial is matter of trial strategy and technique. Valdez v. District Court, 171 Colo. 436, 467 P.2d 825 (1970).

Supreme court cannot second-guess petitioner's counsel insofar as valid defenses are concerned, particularly when the court is not informed as to the specific defense. Valdez v. District Court, 171 Colo. 436, 467 P.2d 825 (1970).

Court, and not defendant, will determine from record whether defense has been adequate. Valarde v. People, 156 Colo. 375, 399 P.2d 245 (1965).

But defendant controls three areas. There are three areas in which the will of the defendant must be allowed to prevail, namely: whether to plead guilty, whether to waive jury trial, and whether to testify; moreover, in making each of these decisions, the accused should have the full and careful advice of his lawyer. Martinez v. People, 173 Colo. 515, 480 P.2d 843 (1971); McClendon v. People, 174 Colo. 7, 481 P.2d 715 (1971).

Failure to object to effectiveness of counsel bars claim. The client will not be heard to complain that he was denied the effective assistance of counsel if he stands by, permits the case to be tried, and objects for the first time after receiving an adverse decision. Thompson v. People, 139 Colo. 15, 336 P.2d 93 (1959), cert. denied, 361 U.S. 972, 80 S. Ct. 606, 4 L. Ed. 2d 552 (1960); Valdez v. District Court, 171 Colo. 436, 467 P.2d 825 (1970).

Able representation of the defense of a criminal charge by associate counsel, where an attorney originally employed is engaged in another trial making discharge of his duty impossible, is not an impropriety, and defendants who make no complaint or objection to such representation until the filing of a motion for a new trial after conviction, are in no position to complain, their failure to apprise the court of their objection in good time amounting to acquiescence. Thompson v. People, 139 Colo. 15, 336 P.2d 93 (1959), cert. denied, 361 U.S. 972, 80 S. Ct. 606, 4 L. Ed. 2d 552 (1960).

Availability of remedy of trial de novo bars claim of ineffective assistance on counsel. Defendant, a 14 year old who was found guilty of reckless driving and sentenced to 90 days in jail, was not entitled to habeas corpus relief on the ground of alleged violation of his right to counsel where

he did not appeal to county court where adequate remedy of trial de novo was available, but instead proceeded immediately by way of habeas corpus. Garrett v. Knight, 173 Colo. 419, 480 P.2d 569 (1971).

Failure of defense attorneys to present evidence favorable to defendant. Where defendant failed to receive a fair trial because of the failure of his trial attorneys to present any of the evidence favorable to the defendant which was clearly available and discoverable by even rudimentary investigation, and, as a result, the damaging prosecution's version of the incident was allowed to remain uncontradicted and unimpeached, even though there was evidence to challenge it, the defendant was denied his constitutional right to a fair trial which requires that the defendant's conviction be vacated and that he be afforded a new trial. People v. Moya, 180 Colo. 228, 504 P.2d 352 (1972).

Counsel sufficiently prosecuted appeal. In considering the questions of when the public defender is required to prosecute an appeal and the duties which he has on appeal, the Colorado supreme court held that since the public defender had prepared a brief presenting each of the points that the defendant urged as a basis for appeal, he had carried out the highest standards of the advocate in presenting his client's case. McClendon v. People, 174 Colo. 7, 481 P.2d 715 (1971).

Effective assistance of counsel is not denied when a trial court refuses to grant a short continuance after a mistrial. Padilla v. People, 171 Colo. 521, 470 P.2d 846 (1970).

A criminal defendant does not have a constitutional right to counsel to pursue applications for review in the U.S. supreme court. Thus, a defendant cannot be deprived of the effective assistance of counsel by counsel's failure to timely file an application. People v. Dunlap, 124 P.3d 780 (Colo. App. 2004).

Where following the refusal of the trial court to allow counsel to withdraw, counsel presented himself at the time scheduled for trial and ably and competently conducted the defense, and where the attorney appointed for the defendant had some 17 years experience, there is no evidence that defendant was denied a fair trial or that counsel failed in any way to adequately represent the defendant during the course and conduct of the trial. Martinez v. People, 173 Colo. 515, 480 P.2d 843 (1971).

Effective assistance of counsel was not denied defendant where there is no evidence to support the assertion that counsel did not keep defendant informed or that anything but full consideration was given to his case. People v. Crater, 182 Colo. 248, 512 P.2d 623 (1973).

When a different member of the public defender's staff assumes responsibility for a trial a few days prior to its commencement, and he has access to all of the records and investigatory materials which have been compiled after counsel has been appointed for defendant, the defendant is adequately represented even though the defendant contends that his new counsel failed to make proper investigation prior to trial and was unprepared to defend him. Maynes v. People, 178 Colo. 88, 495 P.2d 551 (1972).

When a trial court considers a defendant's contention that he has been denied effective assistance of counsel before denying a motion for new trial, and new counsel is appointed to assist the defendant on appeal, defendant has not been denied effective assistance of counsel on the theory that the trial court failed to provide him with separate counsel at a new trial hearing to present his claim as to the denial of effective assistance of counsel at trial. Maynes v. People, 178 Colo. 88, 495 P.2d 551 (1972).

Where jailer accidentally and not by planned eavesdropping or monitoring overhears defendant's admission of guilt to an attorney, defendant's constitutional right to effective representation of counsel is not denied. People v. Gallegos, 179 Colo. 211, 499 P.2d 315 (1972).

Where record discloses that one day before trial defendant's counsel informed the court that she was prepared for trial, where the tactical decision not to call an expert witness was within the discretion of trial counsel, and where defendant voluntarily testified after advisement. People v. Bradley, 25 P.3d 1271 (Colo. App. 2001).

Sections 16-8-103.6, 16-8-106, and 16-8-107 do not violate a defendant's fundamental right to present a defense or the right to effective assistance of counsel. A defendant can present a defense if he or she complies with the statutes. People v. Bondurant, 2012 COA 50, __ P.3d __.

In general, a defendant who knowingly and voluntarily waives his right to counsel and chooses to proceed pro se cannot later claim ineffective assistance of counsel. However, defendant may assert an ineffective assistance of counsel claim if advisory counsel exceeds his role as advisory counsel and exercises a degree of control appropriate for legal representation. Limits imposed upon advisory counsel's unsolicited participation: (1) A pro se defendant must be allowed to control the organization and content of his own defense; and (2) advisory counsel may not, through unrequested participation, destroy the jury's perception that the defendant represents himself. Downey v. People, 25 P.3d 1200 (Colo. 2001).

When appointment of successive attorneys amounts to denial of effective counsel. Before the appointment of the successive attorneys may amount to a denial of the right to effective counsel, it must be shown that the ultimate trial counsel has been deprived of his opportunity to protect adequately the defendant's constitutional rights or prepare for trial. The burden of making such a showing, under Colorado law, rests on the defendant. People v. O'Neill, 185 Colo. 202, 523 P.2d 123 (1974).

Sufficient time to prepare for trial. The "effective assistance of counsel" encompasses a guarantee that defense counsel shall have sufficient time to prepare adequately for trial. People v. O'Neill, 185 Colo. 202, 523 P.2d 123 (1974).

Defendant who neglects to prepare for trial at appointed time, where sufficient time has been provided therefor, cannot complain if trial is had at time appointed. Altobella v. Priest, 153 Colo. 309, 385 P.2d 585 (1963).

Postconviction testimony of attorney, contacted but not retained on behalf of defendant, as to statements made by defendant, but not in a process of interrogation that lends itself to eliciting incriminating statements, disclosed no violation of defendant's constitutional right to counsel. LaBlanc v. People, 177 Colo. 250, 493 P.2d 1089 (1972).

And right to effective assistance of counsel extends to appellate process. People v. Stroup, 624 P.2d 913 (Colo. App. 1980), rev'd in application of principle, 656 P.2d 680 (Colo. 1982).

Right to counsel not violated where attorney unlicensed for failure to take oath. A criminal defendant's right to counsel is not violated where the accused unwittingly retains a representative for trial who is in all respects qualified to practice law in Colorado, yet remains unlicensed due to his failure to take the mandatory oath for admission. Wilson v. People, 652 P.2d 595 (Colo.), cert. denied, 459 U.S. 1218, 103 S. Ct. 1221, 75 L. Ed. 2d 457 (1983).

Right to reasonably effective assistance of counsel. A defendant is not constitutionally entitled to errorless counsel but rather to reasonably effective assistance of counsel. People v. Velasquez, 641 P.2d 943 (Colo.), appeal dismissed, 459 U.S. 809, 103 S. Ct. 28, 74 L. Ed. 2d 43 (1982), reh'g denied, 459 U.S. 1138, 103 S. Ct. 774, 74 L. Ed. 2d 986 (1983); People v. Norman, 703 P.2d 1261 (Colo. 1985).

Failure of counsel to interview witnesses, do legal research, and otherwise prepare for trial violated right to effective assistance of counsel. People v. Cole, 775 P.2d 551 (Colo. 1989).

Mere strategic or judgmental errors do not constitute incompetent representation. People v. Wimer, 681 P.2d 967 (Colo. App. 1983).

Admission of testimony of defense-retained handwriting expert called by prosecution constitutes denial of effective assistance of counsel. Perez v. People, 745 P.2d 650 (Colo. 1987).

Judicial scrutiny of counsel's performance must be highly deferential and, where trial court concluded that the outcome of the trial would not have been different had the attorney done everything that the defendant's experts now say he should have done, the claim of ineffectiveness can and should be disposed of on the basis of lack of sufficient prejudice. People v. Fulton, 754 P.2d 398 (Colo. App. 1987); People v. Rivas, 77 P.3d 882 (Colo. App. 2003).

Right to reasonably effective assistance of counsel violated. Prosecution's use in its case-in-chief of defense-retained handwriting expert, absent compelling justification or waiver, violates defendant's right to effective assistance of counsel where prejudice to defendant is found. Hutchinson v. People, 742 P.2d 875 (Colo. 1987); Perez v. People, 745 P.2d 650 (Colo. 1987).

Defense-retained expert able to testify favorably for prosecution not a compelling reason to allow exception to rule against use of defense-retained expert and use in trial violated defendant's right to effective assistance of counsel. Perez v. People, 745 P.2d 650 (Colo. 1987).

Calling expert to testify at a Crim. P. 32(d) hearing to set aside plea does not constitute waiver of defendant's right to object to prosecutor's use of same expert at trial. Perez v. People, 745 P.2d 650 (Colo. 1987).

Defendant's statement to psychiatrist that was provided to the prosecution under Crim. P. 16 loses its confidential nature and cross-examination of the defendant concerning such statements as prior inconsistent statements is proper impeachment, even if the psychiatrist did not testify at the defendant's trial. Use of such statements do not violate the attorney-client privilege or the right to effective assistance of counsel. People v. Lanari, 811 P.2d 399 (Colo. App. 1989), aff'd, 827 P.2d 495 (Colo. 1992).

In addition, it does not violate the attorney-client privilege or the right to effective assistance of counsel when a defendant places his or her mental condition at issue and the prosecution is allowed to use the testimony of a physician or psychologist retained by the defense but whom the defense does not intend to use as a witness at trial. In fact, the prosecution may use pre-offense or post-offense information concerning the defendant's mental condition. Gray v. District Ct., 884 P.2d 286 (Colo. 1994).

The authoritative standard for evaluating an ineffective-assistance claim was formulated by the U.S. supreme court in Strickland v. Washington. This standard consists of two components: whether defense counsel's

performance was constitutionally deficient and whether the deficient performance prejudiced the defense. People v. Naranjo, 840 P.2d 319 (Colo. 1992); People v. Sparks, 914 P.2d 544 (Colo. App. 1996); People v. Russell, 36 P.3d 92 (Colo. App. 2001); People v. Rivas, 77 P.3d 882 (Colo. App. 2003).

A defendant's assertion that had he known that plea counsel had not thoroughly reviewed the evidence and interviewed witnesses he would not have pleaded guilty is entirely speculative and insufficient to meet the burden of alleging facts that would allow the postconviction court to find he was prejudiced by counsel's alleged failure to investigate. People v. Stovall, 2012 COA 7M, 284 P.3d 151.

Representation must be within range of competence. In order to meet the constitutional requirement of effective assistance of counsel, the level of representation furnished to a defendant must be within the range of competence demanded of attorneys in criminal cases. People v. Stroup, 624 P.2d 913 (Colo. App. 1980), rev'd in application of principle, 656 P.2d 913 (Colo. App. 1980); People v. Dillard, 680 P.2d 243 (Colo. App. 1984); People v. Loggins, 709 P.2d 25 (Colo. App. 1985); People v. Rivers, 727 P.2d 394 (Colo. App. 1986).

Defendant was deprived of effective assistance of counsel where: (1) The only significant evidence against him came from codefendants in the case, who had made various inconsistent statements, but no adequate attempt was made to impeach the witnesses; (2) several witnesses who were in possession of relevant facts were not interviewed; and (3) during closing argument defense counsel abandoned theory of defense on which case had been tried and essentially admitted conduct on part of defendant constituting first-degree felony murder. People v. Dillon, 739 P.2d 919 (Colo. App. 1987).

Record conclusive as justification for denial of defendant's motion for a new trial based on ineffective assistance of counsel. People v. Loggins, 709 P.2d 25 (Colo. App. 1985).

Benchmark for judging claim of ineffective assistance of counsel is whether counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result. People v. Davis, 849 P.2d 857 (Colo. App. 1992), aff'd, 871 P.2d 769 (Colo. 1994).

And an error by counsel which does not undermine the functioning of the trial such that it cannot be relied upon as having produced a just result does not violate the defendant's right to effective assistance of counsel. Banks v. People, 696 P.2d 293 (Colo. 1985).

And determination of whether defendant has received his constitutional entitlement must be based on a review of all circumstances surrounding the proceedings. People v. Wimer, 681 P.2d 967 (Colo. App. 1983).

Evidentiary hearing is necessary to resolve the defendant's claim of ineffective assistance of counsel where defendant asserted that attorney's failure to pursue collateral attack on prior felony conviction prevented him from testifying on his own behalf and where defendant did not testify at trial and did not make an offer of proof as to what his testimony would have been. Cummings v. People, 785 P.2d 920 (Colo. 1990).

Defendant entitled to a hearing on his claim that counsel was ineffective by erroneously advising him about his eligibility for parole; at the hearing, defendant will have the burden of proving that counsel gave inaccurate advice and that there is a reasonably probability that but for the counsel's error, the defendant would not have entered in his guilty pleas and

would have insisted on going to trial on all the original charges. People v. Sudduth, 991 P.2d 315 (Colo. 1999).

Defendant could not be deprived of opportunity to prove counsel's choices lacked sound strategic motive unless the existing record clearly established otherwise or those choices could not have been prejudicial in any event. Ardolino v. People, 69 P.3d 73 (Colo. App. 2003).

Defendant entitled to evidentiary hearing as long as the allegations of his motion, in light of the existing record, were not clearly insufficient to undermine confidence in the outcome of the trial by demonstrating a reasonable probability that but for counsel's challenged conduct, the defendant would not have been convicted. Ardolino v. People, 69 P.3d 73 (Colo. App. 2003).

Trial court proper in dismissing ineffective assistance of counsel claims without hearing since defendant failed to allege that potential appellate issues that were not raised were stronger or had a better chance of prevailing than issues raised by appellate counsel in direct appeal. People v. Trujillo, 169 P.3d 235 (Colo. App. 2007).

Failure to hold hearing on motion, if error, was harmless where defendant's sole contention on appeal was that a hearing was required, but defendant did not contend that representation was ineffective or that he was denied fundamental fairness. People v. Bolton, 859 P.2d 303 (Colo. App. 1993); People v. Bolton, 859 P.2d 311 (Colo. App. 1993).

Strickland ineffective assistance standard requires that the court evaluate the evidence from the perspective of defense counsel as of the time of the representation in question and to indulge a strong presumption that defense counsel's efforts constituted effective assistance. People v. Naranjo, 840 P.2d 319 (Colo. 1992).

Defendant's disagreement with counsel about strategy decisions not sufficient to prove ineffective assistance of counsel. People v. Swainson, 674 P.2d 984 (Colo. App. 1983); People v. Bossert, 722 P.2d 998 (Colo. 1986); People v. Rivers, 727 P.2d 394 (Colo. App. 1986); People v. Bowman, 738 P.2d 387 (Colo. App. 1987); People v. Tackett, 742 P.2d 957 (Colo. App. 1987); People v. Davis, 849 P.2d 857 (Colo. App. 1992), aff'd, 871 P.2d 769 (Colo. 1994).

While defendant is entitled to pretrial investigation sufficient to reveal potential defenses and the facts relevant to guilt or penalty, mere disagreement as to trial strategy will not support a claim of ineffectiveness of counsel. People v. Apodaca, 998 P.2d 25 (Colo. App. 1999).

And while counsel may not prevent a defendant from presenting an alibi during his own testimony without a voluntary, knowing, and intentional waiver of his right to testify, where defendant's alibi is to be established by testimony of witnesses other than defendant, the decision whether to present such defense is a strategic and tactical decision is within the exclusive province of defense counsel. People v. Tackett, 742 P.2d 957 (Colo. App. 1987).

"Decisions of trial strategy" available to defense attorney are limited by fundamental, constitutional choices by defendant, the requirement of honesty and integrity imposed upon court officers, and standards of professional reasonableness. People v. Bergerud, 223 P.3d 686 (Colo. 2010).

Where a defendant and his attorney disagree about whether a lesser nonincluded offense instruction should be submitted to the jury, and both the defendant and his attorney make their respective positions clear to the court, and the prosecution is not entitled to such an instruction or, if entitled to it, did not request it, the court should accede to

the defendant's request. The decision whether to request a lesser nonincluded offense instruction implicates a defendant's fundamental rights, and, therefore, belongs to the defendant. People v. Arko, 159 P.3d 713 (Colo. App. 2006).

The decision whether to request a lesser offense instruction is a matter to be decided by counsel after consultation with the defendant. Arko v. People, 183 P.3d 555 (Colo. 2008).

Failure to present mitigating evidence at a capital sentencing hearing is not always defective performance of counsel. People v. Davis, 849 P.2d 857 (Colo. App. 1992), aff'd, 871 P.2d 769 (Colo. 1994).

For pre-Curtis cases, the right to effective assistance of counsel provides the appropriate legal norm for resolving defendant's claim that he was not adequately advised by counsel of his right to testify. People v. Naranjo, 840 P.2d 319 (Colo. 1992).

Inquiry into question of effectiveness of counsel. Where guilty plea subjected defendant to deportation proceedings, inquiry must begin with initial determination that defense counsel in criminal case was aware that his client was an alien, and therefore was reasonably required to research relevant immigration law. People v. Pozo, 746 P.2d 523 (Colo. 1987).

But representation is not inadequate where defendant, though not informed of mandatory deportation, was nevertheless warned of possible deportation before entering guilty plea. People v. Paul, 759 P.2d 740 (Colo. App. 1988).

Proper standard for determining if counsel's performance prejudiced the defense is whether there is reasonable probability that, but for the counsel's errors, the defendant would not have pleaded guilty but would have insisted on going to trial. People v. Garcia, 815 P.2d 937 (Colo. 1991).

Requiring a defendant to proceed pro se after he or she has alleged that current counsel is ineffective, without further inquiry by the court, violates the defendant's right to counsel and necessitates a new trial. People v. Campbell, 58 P.3d 1148 (Colo. App. 2002).

Burden on defendant to show inadequate representation. A conviction will not be set aside unless the defendant can show there was a denial of fundamental fairness. People v. Dillard, 680 P.2d 243 (Colo. App. 1984); People v. Benney, 757 P.2d 1078 (Colo. App. 1987).

And defendant must overcome presumption that alleged errors can be considered part of trial strategy. People v. Oliner, 745 P.2d 222 (Colo. 1987).

Substandard performance and actual prejudice to defendant must be demonstrated to prove ineffective assistance of counsel. Defendant failed to establish substandard performance and actual prejudice due to state limits on fees payable to appointed counsel. People v. District Court, 761 P.2d 206 (Colo. 1988).

Prejudice must be established to prove ineffective assistance of counsel. People v. Drake, 785 P.2d 1257 (Colo. 1990).

To demonstrate that counsel's assistance was so defective as to require reversal of a conviction, a defendant must show: (1) That his attorney's performance fell below an objective standard of reasonableness, and (2) that the deficient performance resulted in prejudice to the defendant. Reasonableness of the attorney's performance must be judged on the facts of the particular case viewed as of the time of the attorney's conduct. People v. Ball, 813 P.2d 759 (Colo. App. 1990).

Representation by attorney adequate. Although advice defendant

received concerning parole was no longer correct, it did reflect the actual practice of the parole board at the time it was given and did not fall beneath the standards prevailing in the community. Eligibility for parole is a collateral consequence of defendant's pleas and there is no requirement that defendant be advised on this subject. People v. Moore, 844 P.2d 1261 (Colo. App. 1992).

Defendant was not deprived of effective assistance of counsel when less experienced public defender was required to go forward with trial while more experienced public defender was unavailable, because defendant failed to show any particular acts or omissions of counsel that fell outside the range of reasonably competent representation, and failed to show that, but for trial counsel's performance, the result of his trial would have been different. People v. Ball, 813 P.2d 759 (Colo. App. 1990).

Application of the Strickland v. Washington two-part test in resolving an ineffective assistance claim obviates any need to engage in harmless error analysis. People v. Naranjo, 840 P.2d 319 (Colo. 1992).

Claim of ineffective assistance of counsel by court-appointed attorney is premature before representation has occurred and, therefore, attorney was not entitled to withdraw from case. Stern v. County Court, 773 P.2d 1074 (Colo. 1989).

Facts sufficient to show ineffective assistance of counsel. People v. Danley, 758 P.2d 686 (Colo. App. 1988).

Court order requiring defendant's counsel to turn over her entire file to counsel for defendant in another case did not deny defendant effective assistance of counsel even though prosecutors were the same in both cases where the trial court issued order designed to remedy the alleged error and render it harmless. Had the prosecution taken steps to separate the two prosecutorial functions there could have been no claim made by defendant that the turnover order resulted in prejudice. Furthermore, even in an instance of deliberate governmental interference with the attorney-client relationship, dismissal of the charge is not mandated absent demonstrable prejudice. People v. Reali, 895 P.2d 161 (Colo. App. 1994).

Effective assistance of counsel may be violated by conflict of interest. The right to effective assistance of counsel may be violated by representation that is intrinsically improper due to a conflict of interest. People v. Castro, 657 P.2d 932 (Colo. 1983).

Defendant's right to conflict-free counsel violated when defendant's trial attorneys undermined the attorney-client relationship by disclosing privileged communications and concealing the disclosure from defendant. People v. Ragusa, 220 P.3d 1002 (Colo. App. 2009).

Actual conflict of interest existed at trial when defense counsel represented two defendants and could not properly refer to the disparate charges of criminal conduct or comment about this state of evidence to the jury. Armstrong v. People, 701 P.2d 17 (Colo. 1985).

Actual conflict of interest that adversely affected attorney's performance existed where attorney represented two defendants accused of sexually assaulting the same victim. People v. Miera, 183 P.3d 672 (Colo. App. 2008).

Combining the roles of advocate and witness can create a conflict of interest between the attorney and the client, because a lawyer cannot act as an advocate on behalf of his client and yet give testimony adverse to the interests of that client in the same proceeding. People v. Finley, 141 P.3d 911 (Colo.

App. 2006).

When defendant alleges denial of his or her right to conflict-free counsel, establishes an actual conflict of interest, and establishes that the conflict adversely affected counsel's performance, defendant need not show actual prejudice. People v. Curren, 228 P.3d 253 (Colo. App. 2009).

An actual conflict of interest arises when it places counsel in the position of having to simultaneously defend his or her client and himself or herself, particularly in those instances in which counsel faces potential professional and criminal sanctions. People v. Curren, 228 P.3d 253 (Colo. App. 2009).

Attorney representing both husband and wife not ineffective even where attorney moved for an acquittal for wife and not for husband. People v. Drake, 785 P.2d 1257 (Colo. 1990).

And showing of actual prejudice not required for relief. If an accused demonstrates that his lawyer labored under an actual conflict of interest during the trial, a showing of actual prejudice is not a condition for relief. People v. Castro, 657 P.2d 932 (Colo. 1983); People v. Miera, 183 P.3d 672 (Colo. App. 2008).

The defense attorney's representation of the district attorney in separate litigation, while simultaneously representing the defendant, creates a conflict of interest which denies him effective assistance of counsel. People v. Castro, 657 P.2d 932 (Colo. 1983).

Viewing all of the following actions in combination, defense counsel had an actual conflict of interest: The swearing-in of defense counsel to testify about communications he had with defendant pertaining to ongoing representation; the possibility that the prosecution could have obtained material from defense counsel to impeach defendant during the questioning; defense counsel's disclosure of attorney-client privileged information and defense strategy during the questioning; and the specter of an ineffective assistance of counsel claim. People v. Delgadillo, 2012 COA 33, 275 P.3d 772.

Defense counsel's conflict of interest adversely affected the adequacy of defendant's representation, and thus the only remedy is a new trial. Defense counsel and the court failed to disclose the conflict to the defendant, and defense counsel disclosed privileged communications and defense strategies during the in camera proceedings. The in camera proceeding gave the impression that defense counsel lost sight of his responsibilities to defendant and thus his conduct adversely affected the quality of representation. Further, defendant was without the assistance of counsel during the in camera proceedings, which was a critical stage of the proceedings. People v. Delgadillo, 2012 COA 33, 275 P.3d 772.

But potential conflict of interest insufficient. A mere potential conflict of interest, however, is not the equivalent of ineffective assistance of counsel. People v. Castro, 657 P.2d 932 (Colo. 1983).

No actual conflict of interest was found to exist when defendant's attorney was charged with the traffic offense of failure to obey a traffic signal and failure to produce proof of insurance. People v. Mata, 56 P.3d 1169 (Colo. App. 2002).

Defendant may waive right to conflict-free representation. If the court, upon inquiry of the defendant, is satisfied that he voluntarily, knowingly, and intelligently waives all conflicts that are reasonably foreseeable, it may accept the waiver, even though it views the defendant's decision as an improvident one. Rodriguez v. District Court, 719 P.2d 699 (Colo. 1986); People v. Czemerynski, 786 P.2d 1100

(1990).

Defendant who is properly counseled and advised understandingly waived his right to conflict-free representation where second chair defense counsel formerly represented prosecution witness concerning a separate legal matter. Such a waiver is not prohibited by any public policy. People v. Czemerynski, 786 P.2d 1100 (Colo. 1990).

Given that the potential conflict in this case is waivable, an informed and knowing waiver must be recognized. However, if right to conflict-free counsel is not waived, the court may then properly order disqualification. People v. Harlan, 54 P.3d 871 (Colo. 2002).

Defendant voluntarily, knowingly, and intelligently waived his right to conflict-free representation where the court, the attorneys, and the defendant all considered the implications of defendant's attorney's conflicts of interest; during the course of multiple discussions among the court, the prosecution, defense counsel, special counsel, and defendants, the conflicts were fully explained to the defendant; the discussions were particularized, specific, and detailed; each of three conflicts was addressed and the court questioned defendant regarding whether he waived the conflicts; at the last conference, defendant indicated that he understood all of the ramifications of the conflicts and all of his questions regarding the conflicts had been answered; and, based on his central concern of establishing his innocence as quickly as possible, defendant waived the conflicts in order to expedite the trial. People v. Martinez, 869 P.2d 519 (Colo. 1994).

District court's order directing retained attorney representing both husband and wife to represent neither deprived them of the right to counsel of their choice where there was full disclosure by the court and husband and wife signed waivers and affidavits indicating the court's advisement of a potential conflict of interest and evincing their intent to have their retained attorney represent both their interest. Tyson v. District Ct. for the Fourth Jud. Dist., 891 P.2d 984 (Colo. 1995).

By waiving their right to conflict-free representation, defendants waived their right to later assert a claim for effective assistance of counsel as caused by the conflict of interest. Tyson v. District Ct. for the Fourth Jud. Dist., 891 P.2d 984 (Colo. 1995).

Although defendant privately expressed desire to have attorney who was subject to an actual conflict of interest continue to represent him after the conflict was disclosed, a waiver was not made on the record, and there was no proper advisement by the court. The trial court was precluded from finding that defendant made a knowing, free, and voluntary relinquishment of the right to conflict-free counsel. People v. Miera, 183 P.3d 672 (Colo. App. 2008).

Even though defendant failed to object to attorneys' representation in the context of a Curtis advisement, defendant could not have knowingly or intelligently waived the right to conflict-free representation because attorneys concealed from defendant their disclosure of privileged communications to the court and the nature of the representation they provided defendant. People v. Ragusa, 220 P.3d 1002 (Colo. App. 2009).

A defense attorney's erroneous assessment of a probable sentence does not constitute ineffective assistance of counsel. Absent a showing of a deliberate misrepresentation that induced a defendant's guilty plea, counsel's erroneous assessment concerning sentencing does not constitute ineffective assistance of counsel.

People v. Zuniga, 80 P.3d 965 (Colo. App. 2003).

Requirement for postconviction claim of conflict of interest. When no objection has been raised during trial concerning the alleged conflict, a constitutional predicate for a postconviction claim of ineffective assistance of counsel requires a showing that the attorney's representation of the defendant conflicted with some other interest that the attorney also had professionally undertaken to serve. People v. Castro, 657 P.2d 932 (Colo. 1983).

Justifiable excuse or excusable neglect would be established if the public defender's failure to file a motion for post-conviction relief on behalf of defendant was the result of ineffective counsel. People v. Chang, 179 P.3d 240 (Colo. App. 2007).

Effective assistance of counsel right extends to appeal. The constitutional right to reasonably competent assistance of counsel extends to counsel's assistance and advice with regard to the pursuit of appeal rights made available by state procedure. Stroup v. People, 656 P.2d 680 (Colo. 1982); People v. Long, 126 P.3d 284 (Colo. App. 2005).

The Strickland two-part test applies to claims of ineffective assistance of appellate counsel. People v. Long, 126 P.3d 284 (Colo. App. 2005).

Under this test, a defendant must show (1) that counsel's representation fell below an objective standard of reasonableness and (2) that counsel's deficient performance prejudiced the defendant. People v. Long, 126 P.3d 284 (Colo. App. 2005).

The test will vary in its application, however, depending on the type of claim presented. People v. Long, 126 P.3d 284 (Colo. App. 2005).

One type of claim is based on counsel's representation during the course of a perfected appeal that resulted in a judgment on the merits. A typical example would involve allegations that counsel overlooked a meritorious argument. To demonstrate error in this context, the defendant must show that counsel failed to present the case effectively. To demonstrate prejudice, the defendant must show a reasonable probability that, but for counsel's errors, he or she would have prevailed on the appeal. People v. Long, 126 P.3d 284 (Colo. App. 2005).

A different type of claim is based on counsel's failure to perfect an appeal. A lawyer who disregards specific instructions from the defendant to file a notice of appeal acts in a manner that is professionally unreasonable. The prejudice resulting from the failure to file a notice of appeal is not in the outcome of the proceeding but in the forfeiture of the proceeding itself. Accordingly, the defendant need not show a likelihood of success on appeal. Thus, for example, a defendant who shows that counsel disregarded specific instructions to appeal will have established both prongs of the Strickland test. People v. Long, 126 P.3d 284 (Colo. App. 2005).

The sole remedy for a defendant deprived of the right to appeal caused by ineffective assistance of counsel is reinstatement of this right. People v. Long, 126 P.3d 284 (Colo. App. 2005).

What constitutes effective assistance on appeal. To render reasonably effective assistance, an attorney must at a minimum advise the defendant of possible grounds for appeal that counsel deems meritorious without interjecting extraneous considerations. Stroup v. People, 656 P.2d 680 (Colo. 1982).

There is not a constitutionally mandated standard that appellate counsel must advise the defendant regarding opportunities for statutory postconviction relief or federal

habeas corpus, especially absent evidence that counsel had reason to believe such relief would succeed or that defendant indicated an interest in such efforts. People v. Alexander, 129 P.3d 1051 (Colo. App. 2005).

Joint representation does not result in a per se violation of the right to effective counsel. Since neither defendant testified, defense counsel was not faced with the possibility of commenting on the credibility of one to the detriment of the other. People v. Tafoya, 833 P.2d 841 (Colo. App. 1992).

Conviction against unrepresented defendant not usable to establish habitual traffic offender status. Absent a valid waiver of the right to counsel, a conviction obtained against a defendant who is not represented by counsel may not be used to establish habitual traffic offender status for the purpose of imposing punishment for driving after judgment prohibited. People v. Roybal, 618 P.2d 1121 (Colo. 1980); People v. Hampton, 619 P.2d 48 (Colo. 1980).

But prohibition on use of uncounseled convictions not absolute. The United States Constitution does not always prohibit collateral use of uncounseled convictions to increase the penalty for subsequent criminal misconduct, but should be interpreted so that only in the clearest of cases will a statute be construed to permit such use. People v. Roybal, 618 P.2d 1121 (Colo. 1980).

III. RIGHT TO DEMAND NATURE AND CAUSE OF ACCUSATION.

This section is substantially redeclaration and affirmation of ancient rule of common law that no one shall be held to answer to an indictment or information unless the crime with which it is intended to charge him is set forth with precision and fullness, to the end that he may have opportunity to make his defense and avail himself of his conviction or acquittal in a subsequent prosecution for the same cause. Fehringer v. People, 59 Colo. 3, 147 P. 361 (1915).

The right to demand the nature and cause of the accusation is interwoven into the fundamental principles of the common law, embodied in Magna Charta, and guaranteed in both the state and federal constitutions. Fehringer v. People, 59 Colo. 3, 147 P. 361 (1915).

Notice of charges foundation of due process. The right of an accused to notice of the charges which have been made against him constitutes a fundamental constitutional guarantee and lies at the foundation of due process of law. People v. Cooke, 186 Colo. 44, 525 P.2d 426 (1974).

Purpose of sufficient notice. The notice given must be sufficient to advise the accused of the charges, to give him a fair and adequate opportunity to prepare his defense, and to ensure that he is not taken by surprise because of evidence offered at the time of trial. People v. Cooke, 186 Colo. 44, 525 P.2d 426 (1974).

Defendant is only required to meet specific accusation made against him. A defendant on trial for a specific offense is not expected or required to meet anything other than the specific accusation made against him, for an accused has the right to know precisely what he has to defend against. Edmisten v. People, 176 Colo. 262, 490 P.2d 58 (1971).

Denial of defendant's motion for a bill of particulars was proper where defendant was on notice from the charging document, the probable cause affidavit, and the preliminary hearing. People v. Quintano, 81 P.3d 1093 (Colo. App. 2003), aff'd, 105 P.3d 585 (Colo. 2005).

Where accused knows general nature of the crime involved, he can make an effective waiver of

his constitutional rights. People v. Weaver, 179 Colo. 331, 500 P.2d 980 (1972).

Defendant must be made aware of elements of crime with which he is charged before guilty plea may be accepted. People v. Musser, 187 Colo. 198, 529 P.2d 626 (1974).

Evidence held sufficient to show advisement of charge before waiver of rights. An information charging possession of narcotics with intent to sell was sufficient to advise the defendant that he must be prepared to controvert evidence of possession and to defend on that charge. Because possession is an essential element of possession with intent to sell, the defendant can scarcely claim surprise by the introduction of evidence establishing possession. McClain v. People, 178 Colo. 103, 495 P.2d 542 (1972); People v. Cooke, 186 Colo. 44, 525 P.2d 426 (1974).

Power to prescribe sufficiency of indictment subject to this section. Without questioning the power of the general assembly, within certain limits, to prescribe the technical sufficiency of an indictment or information, its power in that regard cannot deprive a defendant of his right to demand and have furnished the nature and cause of the accusation against him. Fehringer v. People, 59 Colo. 3, 147 P. 361 (1915).

Thus, provisions as to form of indictment apply except where they fail to give nature and cause of action. Statutory provisions dealing with the sufficiency of allegations in indictments were intended to apply to all informations except where in so doing they fail to give the defendant the nature and cause of the accusation as required by this section of the constitution. Highley v. People, 65 Colo. 497, 177 P. 975 (1918).

Pleading charging offense must set forth sufficient facts to adequately identify transaction and to enable the court to determine whether the facts alleged are sufficient in law to constitute the acts inhibited by the statute. This has not been done when the indictment or information fails to set forth any of the particulars essential to constitute the crime. Fehringer v. People, 59 Colo. 3, 147 P. 361 (1915).

Essential elements of crime must be included in information. An information is sufficient to apprise a defendant of the charge he faces if it sets forth the essential elements to be included in an information charging the crime. Howe v. People, 178 Colo. 248, 496 P.2d 1040 (1972).

There is no requirement, either constitutional or statutory, that every element of theft be alleged in information. People v. Ingersoll, 181 Colo. 1, 506 P.2d 364 (1973).

Complaint must be filed when violation of ordinance may include imprisonment. Where a judgment against a defendant under an ordinance may include imprisonment in the first instance, the failure to file a complaint giving adequate notice of the charge is inexcusable, especially where violations of city ordinances are held to be in the nature of civil cases although of a quasi-criminal or penal nature where imprisonment may be inflicted. City of Canon City v. Merris, 137 Colo. 169, 323 P.2d 614 (1958).

Indefinite legislation denies right. Indefiniteness which leaves to officer, court, or jury the determination of standards in a case-by-case process invalidates legislation as being violative of due process, as contravening the mandate that an accused be advised of the nature and cause of the accusation, and as constituting an unlawful delegation of legislative power to courts or enforcement agencies. Dominguez v. City & County of Denver, 147 Colo. 233, 363 P.2d 661 (1961).

Effect of material variance between allegations and proof. The allegations and the proof must

correspond, and if in some matter essential to the charge there is a discrepancy between the averments and the proof, there is a variance. If the variance is material, as where it misleads accused in making his defense or exposes him to the danger of being again put in jeopardy for the same offense, the variance is fatal to a conviction. Skidmore v. People, 154 Colo. 363, 390 P.2d 944 (1964).

Information held sufficient to inform defendant of nature and cause of accusation. An information which charged that defendant aided a prisoner to escape, though no attempt to escape was actually made, by conveying or causing to be delivered to the prisoner instruments to facilitate his escape, held to sufficiently inform defendant of the nature and cause of the accusation. Compton v. People, 84 Colo. 106, 268 P. 577 (1928).

The contention of counsel for the optometrist that the terms, "immoral", "unprofessional", and "dishonorable" are so vague and indefinite as to unconstitutionally deprive the holder of a license of his right to be fully apprised of charges against him, is without merit. Cardamon v. State Bd. of Optometric Exam'rs, 165 Colo. 520, 441 P.2d 25 (1968).

Information held insufficient. The property answering the description contained in the information, a dwelling, was never burned, and yet the defendant stands convicted of burning it. Such conviction cannot stand. The defendant was never notified or informed of the fact that he was accused of burning a building other than the dwelling named in the information, and therefore the "nature" of the offense with which he was never charged was never disclosed to him. Skidmore v. People, 154 Colo. 363, 390 P.2d 944 (1964).

Indictment held insufficient. Where an indictment for second-degree official misconduct set forth the failure to perform a duty, but failed to specify the source of the legal duty alleged to have been breached, the defendant was not given effective notice of the crime charged and therefore was not afforded adequate opportunity to prepare a defense. People v. Beruman, 638 P.2d 789 (Colo. 1982).

Lesser included offense instruction may be given. Where the lesser included offense upon which the prosecution requested an instruction is (1) easily ascertainable from the charging instrument, and (2) not so remote in degree from the offense charged that the prosecution's request appears to be an attempt to salvage a conviction from a case which has proven to be weak, the prosecution may obtain a lesser included offense instruction over the defendant's objection. People v. Cooke, 186 Colo. 44, 525 P.2d 426 (1974).

Lesser included offense doctrine places some burden upon the defendant to determine specific charges. People v. Cooke, 186 Colo. 44, 525 P.2d 426 (1974).

Where investigating officer was not aware of possible forgery charge against defendant, he cannot be expected to have anticipated the charge, and defendant's rights were not violated by the fact that he was not apprised of the charge before making a statement. Duncan v. People, 178 Colo. 314, 497 P.2d 1029 (1972).

Accessory to crime may be charged as principal. All participants in a crime, whether accessory or principal, are made alike guilty of the crime and therefore when properly charged with the crime, they are sufficiently advised of the accusation against them, within the requirement of this constitutional provision. Mulligan v. People, 68 Colo. 17, 189 P. 5 (1920).

Defendant held informed of reason for arrest. The advice given the defendant at the outset--that he was held in connection with a shooting that

occurred that evening--was adequate information as to the reason for his arrest under Miranda. Carroll v. People, 177 Colo. 288, 494 P.2d 80 (1972).

Where court allowed prosecution to amend information one week before trial and then denied defendants' motions for continuance, the defendants were not thereby denied a fair trial where their counsel knew of the amendment two weeks before trial, where the trial was reset so as to grant a week's continuance, where the amendment added nothing substantial to the original charge, and where there was no showing in the record that defendants were prejudiced by the denial. People v. Buckner, 180 Colo. 65, 504 P.2d 669 (1972).

Applied in Bizup v. Tinsley, 211 F. Supp. 545 (D. Colo. 1962); Municipal Court v. Brown, 175 Colo. 433, 488 P.2d 61 (1971).

IV. RIGHT OF CONFRONTATION; RIGHT TO COMPEL ATTENDANCE OF WITNESSES.

Law reviews. For article, "Criminal Procedure", which discusses a Tenth Circuit decision dealing with co-conspirators and voir dire, see 61 Den. L.J. 310 (1984). For article, "Confrontation and Co-conspirators in Colorado", see 14 Colo. Law. 385 (1985). For article, "Criminal Procedure", which discusses Tenth Circuit decisions dealing with confrontation and co-conspirators, see 63 Den. U. L. Rev. 343 (1986). For article, "Pronouncements of the U.S. Supreme Court Relating to the Criminal Law Field: 1985-1986", which discusses cases relating to confrontation of witnesses, see 15 Colo. Law. 1587 (1986). For article, "Criminal Procedure", which discusses a Tenth Circuit decision dealing with the prosecutor's duty to disclose favorable evidence to defendant, see 65 Den. U. L. Rev. 557 (1988). For article, "The Right to Confront Witnesses After Crawford v. Washington", see 33 Colo. Law. 83 (September 2004). For comment, "Crawford v. Washington: Child Victims of Sex Crimes in Colorado and the United States Supreme Court's Revised Approach to the Confrontation Clause", see 82 Den. U.L. Rev. 427 (2004).

A. Right to Confrontation and Cross-Examination.

Right to confront witnesses is a fundamental right. Morse v. People, 180 Colo. 49, 501 P.2d 1328 (1972).

The right of cross-examination is a valuable constitutional right guaranteed to all defendants. Simms v. People, 174 Colo. 85, 482 P.2d 974 (1971); People v. Fresquez, 186 Colo. 146, 526 P.2d 146 (1974).

Cross-examination is a fundamental right, and not a mere privilege. Puncec v. City & County of Denver, 28 Colo. App. 542, 475 P.2d 359 (1970).

Statutory child hearsay exception created in § 13-25-129 for statements by sexual assault victims violates the confrontation clause of the sixth amendment of the U.S. Constitution where the statements admitted are testimonial in nature and where defendant has not been afforded the opportunity to cross-examine the witness. People v. Moreno, 160 P.3d 242 (Colo. 2007).

Where a child's hearsay statement offered under § 13-25-129 is nontestimonial, the federal confrontational clause is not implicated. People v. Phillips, 2012 COA 176, __ P.3d __.

Even if the statement is testimonial, where the defendant is afforded an opportunity to cross-examine the child at trial, the

federal confrontation clause also is not implicated. People v. Phillips, 2012 COA 176, __ P.3d __.

To use the forfeiture doctrine to deprive a defendant of the protection of the confrontation clause, the prosecution must show that defendant's wrongful conduct was designed, at least in part, to subvert the criminal justice system by depriving that system of the evidence upon which it depends. The people must prove that the defendant intended to prevent or dissuade the child from testifying against him or her. People v. Moreno, 162 P.3d 242 (Colo. 2007).

Testimonial hearsay statements are admissible only if: (1) The declarant is unavailable to testify and (2) the defendant had a previous opportunity to cross-examine the declarant. The juvenile victim's statement to an investigating officer in a question and answer format is a testimonial statement. Since the defendant did not have an opportunity to cross-examine the juvenile victim, the statement is inadmissible. People ex rel. R.A.S., 111 P.3d 487 (Colo. App. 2004).

A nontestifying witness's out-of-court testimonial statement, regardless of its reliability, may be admitted against an accused only if the witness is unavailable and the accused had an opportunity to cross-examine the witness when the statement was made. People v. Couillard, 131 P.3d 1146 (Colo. App. 2005).

Testimonial hearsay statements of confidential informant are admissible at a pretrial suppression hearing without demonstrating declarant unavailability and prior opportunity to cross-examine declarant. The protections afforded by the confrontation clause apply at a criminal trial but not at the pretrial stage. People v. Felder, 129 P.3d 1072 (Colo. App. 2005).

A criminal defendant does not have a constitutional right to testify at a pretrial suppression hearing where his counsel decides not to call him as a witness. Unlike the decision whether to go to trial, the decision whether to move to suppress evidence is a strategic one for counsel to make in the exercise of professional discretion. Additionally, the reasons for allowing a defendant to decide whether he will testify at trial do not apply in the suppression hearing context. People v. Krueger, 2012 COA 80, __ P.3d __.

Out-of-court statement offered against an accused is constitutionally admissible only if the prosecution demonstrates that the declarant is unavailable and that the statement either falls within a firmly rooted hearsay exception or bears particularized guarantees of trustworthiness. People v. Stephenson, 56 P.3d 1112 (Colo. App. 2001).

And wife's statement against penal interest made to police did not fall within a firmly rooted exception to the hearsay rule. People v. Stephenson, 56 P.3d 1112 (Colo. App. 2001).

And wife's statement against penal interest did not bear particularized guarantees of trustworthiness because it was presumptively unreliable as a statement by an accomplice that implicated another accused. People v. Stephenson, 56 P.3d 1112 (Colo. App. 2001).

And improper admission of wife's statement against penal interest was not harmless error as there was a reasonable probability that the defendant was prejudiced by the error. People v. Stephenson, 56 P.3d 1112 (Colo. App. 2001).

The juvenile victim's statement to his father and father's friend made immediately after incident were an excited utterance. The statements were made while the child was upset, did not have any formal character, and were made to persons unassociated with the government.

People v. Vigil, 104 P.3d 258 (Colo. App. 2004).

Although unsuccessful, the prosecution made all reasonable efforts to secure the witness for trial, so the witness was unavailable for confrontation clause purposes. People v. Banks, 2012 COA 157, __ P.3d __.

The defendant's confrontation rights were not violated since officer's testimony regarding the unavailable informant was not hearsay. Informant's statements regarding drug deal's arrangements, the suppliers and their street names, and identifying them when they arrived at the scene were introduced to show why the officers went to that particular location to arrest defendant, not for the truthfulness of those statements. People v. Robinson, 226 P.3d 1145 (Colo. App. 2009).

Two-part test to determine whether questioning by someone other than a law enforcement officer constitutes the functional equivalent of police interrogation. The test directs courts to examine (1) whether and to what extent government officials were involved in producing the statements; and then (2) whether their purpose was to develop testimony for trial. People v. Vigil, 127 P.3d 916 (Colo. 2006); People v. Sharp, 155 P.3d 577 (Colo. App. 2006).

This determination is fact specific and must be made on a case-by-case basis. People v. Vigil, 127 P.3d 916 (Colo. 2006); People v. Sharp, 155 P.3d 577 (Colo. App. 2006).

Statements made during the functional equivalent of police interrogation are testimonial. People v. Sharp, 155 P.3d 577 (Colo. App. 2006).

In order to determine if a doctor's questions, as part of a sexual assault examination, constitute the functional equivalent of police interrogation, a court must consider to what extent government officials were involved in producing the statement and whether the purpose was to develop testimony for trial. In this case, the doctor's questions were intended to help the doctor's diagnosis and treat the patient and were not directed by a government official, and a government official was not present during the questioning. Therefore, the questioning did not constitute the equivalent of a police interrogation. People v. Vigil, 127 P.3d 916 (Colo. 2006).

The test in determining whether a child's out-of-court statement is testimonial depends on whether an objective person in the child's position would believe his or her statements would lead to punishment of the defendant. People v. Sharp, 143 P.3d 1047 (Colo. App. 2005).

Factors to be considered in determining whether a child declarant would reasonably believe his or her statements could be used by the prosecution at trial include: (1) The declarant's age; (2) the declarant's awareness of government involvement; and (3) the declarant's awareness that the defendant faces the possibility of criminal punishment. People v. Sharp, 143 P.3d 1047 (Colo. App. 2005).

Applying the "objective witness" test, the child victim's statements to the doctor were not testimonial. The objective witness test asks whether a reasonable person making the statements would believe their statements would be used at trial. In this case, a reasonable child victim would expect that his or her statements would be used to provide a diagnosis for the child and to make the child feel better, not for prosecution at a trial. People v. Vigil, 127 P.3d 916 (Colo. 2006).

Applying the "objective witness" test, the child victim's statements to his father and father's friend were not testimonial. The statements were not made under circumstances that a reasonable seven-year-old boy would believe his

statements would be used at trial. People v. Vigil, 127 P.3d 916 (Colo. 2006).

The functional equivalent of police interrogation test is separate and in addition to the objective witness test. If a child victim makes a statement to a government agent as part of a police interrogation, his or her statement is testimonial irrespective of the child's expectations regarding whether the statement will be available for use at a later trial. People v. Sharp, 155 P.3d 577 (Colo. App. 2006).

Child victim's videotaped statements to private forensic interviewer were the functional equivalent of police interrogation and were testimonial. The police detective arranged and, to a certain extent, directed the interview even though the detective was not physically present in the room. Moreover, the purpose of the interview was to elicit statements that would be used at a later criminal trial to convict the perpetrator. People v. Sharp, 155 P.3d 577 (Colo. App. 2006).

Defendant's constitutional rights were violated by the introduction of child victim's videotaped statements at trial. The prosecutor admitted child victim's videotaped statements in lieu of her testimony because the child was unavailable. Defendant did not have an opportunity, however, to cross-examine the child either during the videotaped interview or during trial. People v. Sharp, 155 P.3d 577 (Colo. App. 2006).

Plea allocutions are testimonial and, thus, inadmissible unless the defendant has had an opportunity to cross-examine the declarant. People v. Couillard, 131 P.3d 1146 (Colo. App. 2005).

For out-of-court statements that are not testimonial, the prosecution must make a two-part showing to demonstrate compliance with the state constitution. First, the prosecution must either produce the declarant or show that he or she is unavailable for trial. Second, if the declarant is unavailable, the government may use the out-of-court statements only if they bear sufficient indicia of reliability. People v. Couillard, 131 P.3d 1146 (Colo. App. 2005).

Criminal laboratory reports are testimonial statements subject to the U.S. supreme court's decision in Crawford v. Washington, 541 U.S. 36 (2004). Hinojos-Mendoza v. People, 169 P.3d 662 (Colo. 2007).

The laboratory report was introduced at trial to establish the elements of the offense with which defendant was charged, and, under such circumstances, the report is testimonial in nature. Hinojos-Mendoza v. People, 169 P.3d 662 (Colo. 2007).

Booking reports and mittimus not "testimonial" and thus did not trigger defendant's confrontation rights. Trial court did not err in admitting them as public records. People v. Warrick, 284 P.3d 139 (Colo. App. 2011).

Essence of right to confront one's accusers is to meet adverse witnesses face-to-face and to have opportunity to cross-examine them. People v. Bastardo, 191 Colo. 521, 554 P.2d 297 (1976).

The right to confront witnesses under this section translates into the right of cross-examination. D.W. v. District Court, 193 Colo. 194, 564 P.2d 949 (1976); People v. Thurman, 787 P.2d 646 (Colo. 1990).

The admission of hearsay evidence does not violate the sixth amendment when the declarant's truthfulness is so clear from the surrounding circumstances that the test of cross-examination would be of marginal utility. Generally, hearsay meets the requirements of the confrontation clause only when the statement bears either adequate indicia of reliability or has particularized guarantees of trustworthiness. People v.

Gilmore, 97 P.3d 123 (Colo. App. 2003).

Purpose of right of confrontation and cross-examination is to prevent conviction by ex parte affidavits, to sift the conscience of the witness, and to test his recollection to see if his story is worthy of belief. People v. Scheidt, 182 Colo. 374, 513 P.2d 446 (1973); People v. Bastardo, 191 Colo. 521, 554 P.2d 297 (1976).

And waiver of such right is not to be lightly found. Morse v. People, 180 Colo. 49, 501 P.2d 1328 (1972).

This decision is properly responsibility of defense counsel, and therefore, the decision of defense counsel to allow the prosecution to use depositions of witnesses in court is an effective waiver. Morse v. People, 180 Colo. 49, 501 P.2d 1328 (1972).

Waiver not required prior to guilty plea. The language of Boykin v. Alabama, 395 U.S. 238, 89 S. Ct. 1709, 23 L. Ed. 2d 274 (1969), does not expressly require that the right against compulsory self-incrimination and the right to confront one's accusers at trial must be specifically waived by a defendant before a trial court may accept his guilty plea. People v. Marsh, 183 Colo. 258, 516 P.2d 431 (1973).

Right to confront witnesses is inapplicable in administrative hearing to determine whether a driver's license should be revoked for accumulated traffic violations. Campbell v. State, 176 Colo. 202, 491 P.2d 1385 (1971).

Pretrial confrontation prior to appointment of defense counsel is unconstitutional. A pretrial confrontation of defendant by a witness to the crime, prior to appointment of defense counsel, is unconstitutional. Gallegos v. People, 176 Colo. 191, 489 P.2d 1301 (1971).

Confrontation clause violations are trial errors, and trial errors are reviewed under the plain error doctrine if the defendant does not raise the confrontation clause objection at trial. Since the jury had ample evidence to find the defendant guilty, the admission of the videotaped police interview did not constitute plain error. People v. Vigil, 127 P.3d 916 (Colo. 2006).

Even where there has been illegal confrontation, witness may make in-court identification if there is an independent source upon which to base such an identification apart from the illegal confrontation. Glass v. People, 177 Colo. 267, 493 P.2d 1347 (1972).

The defendant's confrontation right is not violated when the court admits out-of-court statements of declarants who testify at trial and are available for cross-examination about the out-of-court statements. People v. Rincon, 140 P.3d 976 (Colo. App. 2005).

A defendant's right to confrontation is satisfied when the hearsay declarant is produced for cross-examination. People v. Oliver, 745 P.2d 222 (Colo. 1987); People v. Dunlap, 124 P.3d 780 (Colo. App. 2004).

Cross-examination provides meaningful confrontation. Knowledge of techniques of scientific and technologic analyses is sufficiently available and the variables in techniques few enough that the accused has the opportunity for a meaningful confrontation of the government's case at trial through the ordinary process of cross-examination of the government's expert witnesses and the presentation of the evidence of his own experts. Sandoval v. People, 172 Colo. 383, 473 P.2d 722 (1970).

Cross-examination should not be unduly restricted, but, rather, should be liberally extended to permit thorough inquiry into the motives of a witness testifying for the prosecution. People v. Key, 185 Colo. 72, 522 P.2d 719 (1974).

Trial judge may determine scope and limits of cross-examination. Puncec v. City & County of Denver, 28 Colo. App. 542, 475 P.2d 359 (1970); Simms v. People, 174 Colo. 85, 482 P.2d 974 (1971); People v. Fresquez, 186 Colo. 146, 526 P.2d 146 (1974).

And except for abuse of discretion, his rulings will not be disturbed on review. Simms v. People, 174 Colo. 85, 482 P.2d 974 (1971); People v. Fresquez, 186 Colo. 146, 526 P.2d 146 (1974); People v. Knight, 167 P.3d 147 (Colo. App. 2006).

Right by cross-examination to require witness to give his residence address is in aid of a defendant's right of confrontation, but this right, however, is not without exceptions. People ex rel. Dunbar v. District Court, 177 Colo. 429, 494 P.2d 841 (1972).

Defendant's constitutional right to confront an adverse witness violated when court ruled defendant could not cross-examine witness regarding a pending misdemeanor case that might have influenced witness's testimony. Kinney v. People, 187 P.3d 548 (Colo. 2008).

Defendant need only show that the witness's testimony might be influenced by a promise for, or hope or expectation of, immunity or leniency with respect to the pending charges against the witness in exchange for favorable testimony. Kinney v. People, 187 P.3d 548 (Colo. 2008).

There is a duty to protect witness from questions which go beyond bounds of proper cross-examination merely to harass, annoy or humiliate him. People ex rel. Dunbar v. District Court, 177 Colo. 429, 494 P.2d 841 (1972).

Witness's loss of memory. Where a witness takes the stand and is available for cross-examination, the witness's actual or feigned memory loss, even if memory loss is total regarding prior inconsistent statements, does not violate a defendant's confrontation right. People v. Pepper, 193 Colo. 505, 568 P.2d 446 (1977).

The fact that at the time of trial witness no longer recalled the statements or events does not alter the conclusion that there was no violation of defendant's confrontation rights. Defense counsel had the opportunity to cross-examine the witness about her statements and the witness was available for further testimony. People v. Candelaria, 107 P.3d 1080 (Colo. App. 2004), aff'd in part and rev'd in part on other grounds, 148 P.3d 178 (Colo. 2006).

District attorney is not obliged to call all witnesses endorsed upon information. Harris v. People, 174 Colo. 483, 484 P.2d 1223 (1971).

Application of § 16-10-201 in allowing prosecution to impeach its own witness with prior inconsistent statements was not a violation of right to confront accuser, to assistance of counsel, to appear when depositions against one were taken, or to due process of law. People v. Bastardo, 191 Colo. 521, 554 P.2d 297 (1976).

Failure to call complaining witness at trial did not prevent confrontation. Where the defendant argued that he was not given an opportunity to confront the complaining witness who by her complaint initiated one count of assault with a deadly weapon, it was held that the defendant had failed to distinguish the difference between the charge of the offense and the proof of the offense. The information, which was based to a large extent upon what the officers had learned from the woman, was the vehicle by which the people advised the defendant of the crime he was alleged to have committed. It was not used, and necessarily could not be used, as evidence to prove the charge. Proof of the elements of the offense charged may be established not only by the testimony of the victim, but also they

may be proved by any other competent evidence. The defendant could not complain, since he was afforded an opportunity to cross-examine every witness used to prove the several elements of the offense with which he was charged. Harris v. People, 174 Colo. 483, 484 P.2d 1223 (1971).

Failure to advise pro se claimant of right of cross-examination was improper. Where the referee of the industrial commission used hospital records in rendering a decision against a claimant, his failure to advise claimant, who was appearing pro se, of her right of cross-examination was improper, as was his failure to offer her an opportunity to inspect the records before using them against her. Puncec v. City & County of Denver, 28 Colo. App. 542, 475 P.2d 359 (1970).

In joint prosecution of two roommates for possession of hashish, the attorney for the first defendant, who did not testify, should have been allowed to cross-examine a witness who was called by the second defendant and who testified that the second defendant had seldom been at the apartment for two weeks before the search but that the two defendants shared the closet where the hashish was discovered. Eder v. People, 179 Colo. 122, 498 P.2d 945 (1972).

There was no deprivation of constitutional rights in allowing witnesses to be impeached by their previous statements where neither witness invoked the fifth amendment and there was opportunity to cross-examine them as to both their previous and present statements. Gaitan v. People, 167 Colo. 395, 447 P.2d 1001 (1968).

Right of confrontation denied. This section precludes the admission of the transcript of a preliminary hearing at a subsequent trial when the witness whose testimony is sought has become unavailable. People v. Smith, 198 Colo. 120, 597 P.2d 204 (1979); People v. Sisneros, 44 Colo. App. 65, 606 P.2d 1317 (1980); People v. Fry, 74 P.3d 360 (Colo. App. 2002), aff'd on other grounds, 92 P.3d 970 (Colo. 2004).

Right to confront witness was denied when witness was allowed to testify over the phone and the unavailability of said witness had not been established. Gonsoir v. People, 793 P.2d 1165 (Colo. 1990).

Defendant's right to confront witness was denied by allowing physician who had treated victim to testify by telephone since physician was actually available to testify, although to do so would have been extremely inconvenient. Topping v. People, 793 P.2d 1168 (Colo. 1990).

Denial by the trial court for defense counsel to cross-examine prosecution witnesses with respect to use immunity granted to the witnesses violated confrontation clause of the United States Constitution, and was not harmless error. Merritt v. People, 842 P.2d 162 (Colo. 1992).

If victim's statements are deemed testimonial and the defendant did not have an opportunity to cross-examine the victim, the admission of the statements is a violation of defendant's confrontation rights under Crawford v. Washington, 541 U.S. 36 (2004). People v. Couillard, 131 P.3d 1146 (Colo. App. 2005).

Factors to be considered in determining whether a confrontation violation constitutes harmless error include: (1) The importance of the evidence to the prosecution's case; (2) whether the evidence was cumulative; (3) the presence or absence of corroborating or contradicting testimony on the material points of the improperly admitted evidence; (4) the extent of cross-examination otherwise permitted; and (5) the overall strength of the prosecution's case. People v. Harris, 43 P.3d 221 (Colo. 2002); People v. Fry, 92 P.3d 970 (Colo.

2004); People v. Couillard, 131 P.3d 1146 (Colo. App. 2005).

Although a defendant must have been provided with a prior adequate opportunity to cross-examine an unavailable witness before the state can admit that witness's previous testimony into evidence, the preliminary hearing does not provide an adequate opportunity to cross-examine sufficient to satisfy the confrontation clause requirements. People v. Fry, 92 P.3d 970 (Colo. 2004).

Test for a hearsay statement that would not deprive a defendant of his constitutional right to be confronted with the witnesses against him is whether the declarant's truthfulness is so clear from the surrounding circumstances that the test of cross-examination would be of marginal utility. To meet that high burden of truthfulness, the statement must either fall within a firmly rooted hearsay exception or bear particularized guarantees of trustworthiness. People v. Farrell, 34 P.3d 401 (Colo. 2001).

Statement against interest by a co-defendant made during custodial interrogation does not fall within a firmly rooted hearsay exception, but statement made by co-defendant in case at hand, after examining totality of circumstances, was genuinely self-inculpatory, not induced by threats, coercion, or promises, and not intended to shift blame to defendant; thus, admission of statement bore particularized guarantees of trustworthiness and did not deprive defendant of his constitutional right to be confronted with the witness against him. People v. Farrell, 34 P.3d 401 (Colo. 2001).

Right of confrontation not denied. Where prosecution used depositions of two witnesses at trial and where defendant was present with counsel and was granted full rights of cross-examination at the time of the taking of the depositions before a judge, he was not deprived of his right to confront witnesses at trial where the depositions were used without a finding of unavailability of the deponents, where it was a matter of his counsel's trial strategy. Morse v. People, 180 Colo. 49, 501 P.2d 1328 (1972).

Where defendant was prohibited from revealing to jury through cross-examination that a witness was in custody in another state on unrelated charges where such testimony would have been cumulative and of little or no probative value and where defendant was otherwise provided with ample opportunity to impeach the witness' credibility by showing ulterior motive. People v. Griffin, 867 P.2d 27 (Colo. App. 1993).

Where the declarant was unavailable as a witness due to her age, the requirement of spontaneity underlying the res gestae exception provided an adequate proxy for the truth-exacting sanction of an oath, and the admission of the hearsay assertion of the declarant under the res gestae exception did not violate the confrontation rights of the defendant. Lancaster v. People, 200 Colo. 448, 615 P.2d 720 (1980).

Where the witness testified under oath and was thoroughly cross-examined by defendant's attorney, the jury had the opportunity to observe the witness' demeanor, and the written hearsay statement did not contain any information which was not the subject of his examination and cross-examination. People v. Sharrock, 709 P.2d 973 (Colo. App. 1985).

Court properly denied defendant's request to cross-examine witness concerning illicit use of drugs five months prior the offense on grounds it was too remote to be probative of witness's credibility. People v. Fultz, 761 P.2d 242 (Colo. App. 1988).

The right to confront witness was not denied when the physician who treated victim testified over the

telephone but was fully cross-examined by the defense in jury's presence. The inherent reliability of physician's testimony arising from lack of personal interest in outcome of case and uncontested nature of testimony compensated for any minor reduction in defendant's ability to confront witness face to face. People v. Topping, 764 P.2d 369 (Colo. App. 1988).

The right of confrontation does not come into play when a potential witness neither testifies nor provides evidence at trial. A defendant has no absolute right to confront the victim when the victim does not appear as a witness and no evidence supplied by the victim is presented at trial. People v. Walters, 821 P.2d 887 (Colo. App. 1991).

Where defendant's counsel made a deliberate, tactical choice to introduce bystander's hearsay statement into case, defendant invited any error that may have resulted from its introduction. Therefore, hearsay admission did not violate defendant's right to confront the witnesses against him. People v. Gibson, 203 P.3d 571 (Colo. App. 2008).

An excited utterance made to a police officer was nontestimonial, thus Crawford v. Washington 541 U.S. 36, 124 S. Ct. 1354, 158 L. Ed. 2d 177 (2004), does not apply, there is no violation of the sixth amendment, and the defendant has no constitutional right to confront. If a victim makes an excited utterance to a police officer, in a noncustodial setting and without indicia of formality, the statement is a nontestimonial interrogation under Crawford. People v. King, 121 P.3d 234 (Colo. App. 2005).

Prosecutor as witness for defense. Every prosecutor may potentially be a witness for the defense insofar as he has interviewed other witnesses and investigated the facts of the case. This alone cannot be a sufficient basis to prevent the execution of his office as prosecutor because it would allow prosecution only by unprepared counsel. On the other hand, the defendant has a right to call witnesses on his own behalf and to prevent the prosecutor from adding to the weight or credibility of the evidence by acting as both witness and officer of the court. People v. District Court, 192 Colo. 480, 560 P.2d 463 (1977).

Where, in the course of investigations into activities of defendant, the grand jury prosecutor asked certain questions of defendant, the responses to these questions formed the basis for a subsequent indictment of defendant for perjury, and the grand jury prosecutor continued his role as prosecutor for the case at trial, granting defendant's motion to dismiss the prosecutor on the grounds that the defendant intended to call the prosecutor as a witness to the alleged crime was error since the testimony of the prosecutor did not play a significant role in the posture of the case and was not of sufficient consequence to prevent a fair trial. People v. District Court, 192 Colo. 480, 560 P.2d 463 (1977).

When defense witness has not been subpoenaed by defendant and due to witness's absence, a motion for continuance is made but denied, there is no violation of this provision. Edwards v. People, 176 Colo. 478, 491 P.2d 566 (1971).

Expenses of obtaining testimony of witnesses for indigent defendant must be paid by state. People v. McCabe, 37 Colo. App. 181, 546 P.2d 1289 (1975).

Advancement of costs by state. Since the state will ultimately pay the costs of securing out-of-state witnesses for the defendant, there is no legal justification for holding that it is not liable for advancement of such costs as mileage and witness fees. People v. McCabe, 37 Colo. App. 181, 546 P.2d 1289 (1975).

The United States and Colorado Constitutions guarantee an

accused the right to be confronted with the witnesses against him. This right is a fundamental element in the panoply of constitutional protections afforded a person accused of crime. People v. Thurman, 787 P.2d 646 (Colo. 1990).

The permissible purposes of the right of cross-examination include, among others, that the witness may be sought and offered of his reputation for veracity in his own neighborhood; that the jury may interpret his testimony in the light reflected upon it by knowledge of his environment; and that facts may be brought out tending to discredit the witness by showing that his testimony in chief was untrue or biased. People v. Thurman, 787 P.2d 646 (Colo. 1990); Luu v. People, 841 P.2d 271 (Colo. 1992).

Right of confrontation not absolute and withholding of victim's address not material enough to prejudice defendant's defense. Court did not err in extending personal safety exception to the victim and applying it to the defendant's right of cross-examination since victim did not give her present address because of concerns for her safety arising out of an unrelated, pending homicide case in which she was a witness and which was then in another courtroom. People v. Joyce, 878 P.2d 48 (Colo. App. 1994).

Nondisclosure of witnesses' addresses proper in postconviction proceeding for defendant convicted of murdering witness. Significant threat to witness safety was not overcome by evidence of any materiality of witnesses' addresses to postconviction proceedings. People v. Ray, 252 P.3d 1042 (Colo. 2011).

Constitutional right to confrontation is not absolute. Topping v. People, 793 P.2d 1168 (Colo. 1990).

An accused's right to confront and to cross-examine witnesses is not absolute and may be limited by the court to accommodate other legitimate interests in the criminal trial process after carefully scrutinizing such competing interests. People v. Cole, 654 P.2d 830 (Colo. 1982); People v. Benney, 757 P.2d 1078 (Colo. App. 1987); People v. Thurman, 787 P.2d 646 (Colo. 1990); People v. Ray, 109 P.3d 996 (Colo. App. 2004).

The court may limit an attack on the credibility of a witness to avoid wasting time and to protect the witness from harassment or undue embarrassment without violating the confrontation clause. The line of questioning defendant wanted to pursue would have injected collateral issues into the case and unduly prolonged the proceedings, so it was proper for the court to disallow the questioning. People v. Rincon, 140 P.3d 976 (Colo. App. 2005).

Defendant's misconduct resulting in wrongful prevention of future testimony from a witness or potential witness may result in a forfeiture of constitutional right of confrontation. A defendant is not to benefit from his or her wrongful prevention of future testimony. In the present case, defendant sought to overrule the allowance of victim's testimony under the excited utterance exception to the hearsay rule based on a violation of the defendant's right of confrontation. However, since victim was unavailable to testify because her death was the result of defendant's actions, defendant thus forfeited his right to claim a confrontation violation in connection with the admission of victim's statements into evidence. People v. Moore, 117 P.3d 1 (Colo. App. 2004).

Defendant forfeits right to confront witness in all proceedings in which witness's statements are otherwise admissible if (1) the witness is unavailable; (2) the defendant was involved in, or responsible for, procuring the unavailability of the witness; and (3) the defendant acted

with the intent to deprive the criminal justice system of evidence. Vasquez v. People, 173 P.3d 1099 (Colo. 2007); Pena v. People, 173 P.3d 1107 (Colo. 2007).

In order to establish forfeiture, these elements must be proved by a preponderance of the evidence in an evidentiary hearing outside the presence of the jury. Vasquez v. People, 173 P.3d 1099 (Colo. 2007); Pena v. People, 173 P.3d 1107 (Colo. 2007).

Once the court determines that forfeiture by wrongdoing has been established, the court must examine the admissibility of victim's hearsay statements according to rules of evidence. Vasquez v. People, 173 P.3d 1099 (Colo. 2007); Pena v. People, 173 P.3d 1107 (Colo. 2007).

Section 16-3-309 (5) is constitutional on its face. Section 16-3-309 (5), which requires a defendant to affirmatively request a laboratory technician's presence at trial, is an acceptable precondition to a defendant's exercise of his right to confrontation and is therefore not unconstitutional. A defendant's right to confrontation is not denied as he can preserve that right, pursuant to § 16-3-309, with minimal effort. People v. Mojica-Simental, 73 P.3d 15 (Colo. 2003).

Defendant's attorney's failure to comply with § 16-3-309 (5) waived defendant's right to confront technician who prepared forensic report that was introduced without technician's testimony. Defendant's attorney's ignorance of the statute's requirements does not affect the waiver of the right to confrontation. Defendant received sufficient notice of the existence of the report and its possible introduction at trial. Cropper v. People, 251 P.3d 434 (Colo. 2011).

The right of confrontation includes the right to elicit a witness's address by cross-examination. People v. Thurman, 787 P.2d 646 (Colo. 1990).

The address, however, may be kept confidential if prosecution shows that witness legitimately fears reprisal from defendant or defendant's associates. People v. Victorian, 165 P.3d 890 (Colo. App. 2007).

Right to cross-examine witness tempered by trial court's authority. The constitutional right to confront and cross-examine witnesses is tempered by the trial court's authority to prohibit cross-examination on matters wholly irrelevant and immaterial to issues at trial. People v. Loscutoff, 661 P.2d 274 (Colo. 1983); People v. Rubanowitz, 688 P.2d 231 (Colo. 1984); People v. Collins, 730 P.2d 293 (Colo. 1986); People v. Bell, 809 P.2d 1026 (Colo. App. 1990); People v. Kerber, 64 P.3d 930 (Colo. App. 2002).

The trial court has the ability to limit recross-examination when no new matters have been raised on redirect or additional testimony would be only marginally relevant. People v. Kerber, 64 P.3d 930 (Colo. App. 2002); People v. Baker, 178 P.3d 1225 (Colo. App. 2007).

Right to cross-examine drug enforcement agency agents concerning incentive programs for obtaining drug convictions in order to establish bias improperly denied by the trial court. The testimony would have revealed agents' strong interest in the outcome of the case and motive for giving testimony favorable to the prosecution. However, error was harmless because the facts in question were fully established by other evidence. Vega v. People, 893 P.2d 107 (Colo. 1995).

Right to confront adverse witnesses does not supersede a victim's statutory psychologist-patient privilege under § 13-90-107. Once the psychologist-patient privilege attaches,

the only basis for authorizing a disclosure of the confidential information is an express or an implied waiver. People v. District Court, 719 P.2d 722 (Colo. 1986).

The victim advocate privilege in § 13-90-107 (1)(k)(I) extends to records of service or assistance provided by the victim's advocate, and the withholding of such records does not violate the rights to confrontation and compulsory process. People v. Turner, 109 P.3d 639 (Colo. 2005).

A court must allow broad cross-examination of a prosecution witness as to bias, prejudice, and motivation for testifying. People v. Bowman, 669 P.2d 1369 (Colo. 1983); People v. Schwartz, 678 P.2d 1000 (Colo. 1984); People v. Benney, 757 P.2d 1078 (Colo. App. 1987).

However, a trial court must disallow cross-examination upon matters wholly irrelevant and immaterial to the issues at trial, and the court has broad discretion to preclude repetitive and harassing interrogation. People v. Bowman, 669 P.2d 1369 (Colo. 1983); People v. Schwartz, 678 P.2d 1000 (Colo. 1984).

The ability to cross-examine a prosecution witness about use immunity allows a defendant to elicit testimony that would show bias, and results in the elimination of reasonable but false inferences raised by the testimony of a witness granted immunity. Denial by the trial court for defense counsel to cross-examine prosecution witnesses with respect to use immunity granted to the witnesses violated confrontation clause of the United States Constitution, and was not harmless error. Merritt v. People, 842 P.2d 162 (Colo. 1992).

While a trial court does have discretion to limit cross-examination, it is constitutional error to limit excessively a defendant's cross-examination of a witness regarding the credibility of the witness especially cross-examination concerning the witness bias, prejudice, or motive for testifying. Merritt v. People, 842 P.2d 162 (Colo. 1992); People v. Russom, 107 P.3d 986 (Colo. App. 2004).

Trial court did not excessively limit cross-examination of prosecution witnesses regarding their gang affiliation, and thus, there was no constitutional error. Contrary to defendant's assertions, the trial court admitted substantial testimony regarding the prosecution witnesses' gang affiliations. To the extent that the court limited defendant's ability to inquire into other topics noted in his various offers of proof, defendant's proffers as to those subjects were speculative and conclusory at best, and the court did not abuse its discretion in precluding such inquiries. People v. Gonzales-Quevedo, 203 P.3d 609 (Colo. App. 2008).

The court may constitutionally prohibit cross-examination of a witness concerning the underlying facts of pending cases against that witness because factual details of a witness' pending cases are not relevant to the witness' biases, prejudices, or motives for testifying against defendant. People v. Russom, 107 P.3d 986 (Colo. App. 2004).

In determining whether a defendant's right to confrontation is violated, a reviewing court shall determine whether the trial court limited excessively the defendant's cross examination of a witness with respect to the witness' bias, prejudice, or motive for testifying. Merritt v. People, 842 P.2d 162 (Colo. 1992).

On review of conviction where a defendant asserts that the violation of the defendant's constitutional right to confrontation did not result in harmless error, the prosecution has the burden of showing that the trial court's limit on cross examination did not contribute to the

defendant's conviction. Merritt v. People, 842 P.2d 162 (Colo. 1992).

A defendant is presumptively entitled to cross-examine a prosecution witness as to the witness's address and place of employment. Absent sufficient justification for withholding this information, a defendant's right to it is unqualified, and the defendant is under no obligation to provide reasons for seeking it. The prosecution's showing must consist of more than the mere expression of apprehension by a witness who is reluctant to divulge her identity, address or place of employment. At a minimum, the danger claimed by the witness must in some way relate to the particular defendant. There must be a nexus such that the witness legitimately fears reprisal from the defendant or his associates. People ex rel. Dunbar v. District Court, 177 Colo. 429, 494 P.2d 841 (1972); People v. Thurman, 787 P.2d 646 (Colo. 1990).

Statements acknowledging the existence of a committed romantic relationship are not evidence of sexual conduct or sexual orientation for purposes of the rape shield statute. As such, if evidence of such a committed romantic relationship is otherwise relevant to the case, it is admissible and not barred by the rape shield statute. People v. Golden, 140 P.3d 1 (Colo. App. 2005).

Trial court erred in concluding that initial questions as to whether victim was in a committed relationship at the time of the alleged sexual assault inquired into sexual conduct and in foreclosing cross-examination through use of prior inconsistent statements in that regard. People v. Golden, 140 P.3d 1 (Colo. App. 2005).

Court properly excluded cross-examination of victim by precluding questioning on victim's reasons for seeking postpartum depression treatment since the issue was irrelevant and tangential to the victim's credibility. People v. Brown, 218 P.3d 733 (Colo. App. 2009), aff'd, 239 P.3d 764 (Colo. 2010).

Trial court erred in precluding defendant from inquiring into, and if necessary, presenting evidence of, a romantic relationship between alleged victim and a friend. Evidence of alleged victim's romantic and sexual relationship with friend was relevant to a material issue in the case, namely, victim's motive to lie. Trial court's exclusion of the motive evidence infringed upon defendant's constitutional right to confront witnesses. People v. Owens, 183 P.3d 568 (Colo. App. 2007).

Right of confrontation requires defendant to have opportunity to conduct an effective cross-examination of adversary witnesses but this opportunity does not mean unlimited cross-examination. People v. Griffin, 867 P.2d 27 (Colo. App. 1993).

The extent of cross-examination with respect to an appropriate subject of inquiry is within the sound discretion of the trial court, which is under a duty to protect a witness from questions which go beyond the bounds of proper cross-examination merely to harass, annoy or humiliate him. People v. Thurman, 787 P.2d 646 (Colo. 1990).

Where the right to confrontation is limited by a self-imposed tactical constraint, and not by any trial court ruling limiting cross-examination, there is no constitutional violation. A criminal defendant has the right to conduct liberal cross-examination of prosecution witnesses in order to establish possible bias or prejudice; however, the right to confrontation is not denied simply because the prosecution is permitted to examine a witness whom the defense declines for tactical reasons to cross-examine. People v. District Court of El Paso

County, 869 P.2d 1281 (Colo. 1994).

Right to cross-examination not denied when court properly prohibited witness for the prosecution from answering question regarding potential penalties if the witness had not entered a plea bargain, where the jury was fully informed that the witness had been allowed to plead guilty to a lesser charge and had received two years' probation and deferred sentence. People v. Collins, 730 P.2d 293 (Colo. 1986).

Trial court carefully balanced defendant's need for cross-examination against the need to preserve the attorney-client privilege and struck a balance accommodating both interests which did not violate the defendant's constitutional rights. People v. Benney, 757 P.2d 1078 (Colo. App. 1987).

But defendant's confrontation clause rights were violated when the court precluded defendant from cross-examining a witness regarding the details of her plea agreement. The record overwhelmingly supported the prosecution's case, so the error was harmless. People v. Houser, 2013 COA 11, __ P.3d __.

Right to confrontation under the sixth amendment to the U.S. Constitution not denied by limiting defendant's cross-examination of victim where trial court restricted some inquiries but generously afforded defendant ample opportunity to explore issues material to his defense. Matthews v. Price, 83 F.3d 328 (10th Cir. 1996).

A defendant's right to confrontation is not violated when the court excludes evidence regarding the difference between potential penalties for the original crime charged and those for the charge the witness pleaded guilty to, if the jury receives adequate facts to draw inferences about the witness's bias and motive. Witness's testimony that she expected to receive probation and pleaded guilty to "stay out of jail" was sufficient for the jury to determine bias. People v. McKinney, 80 P.3d 823 (Colo. App. 2003), rev'd on other grounds, 99 P.3d 1038 (Colo. 2004).

Right to compel witness to testify not denied. Where there is no suggestion that a subpoenaed witness' unavailability was due to any action or omission by the prosecution or court, defendant's rights to compulsory process were not denied. People v. Chastain, 733 P.2d 1206 (Colo. 1987).

Requirements for use of witness' former testimony. To satisfy the requirements of constitutional confrontation, a party offering a witness' former testimony must establish the present unavailability of the witness. Also, there must have been a sufficient opportunity for the accused to cross-examine the witness at the former hearing so as to afford the trier of fact a satisfactory basis for evaluating the truth of the prior statement. People v. Madonna, 651 P.2d 378 (Colo. 1982).

Removal of defendant from court during trial did not abridge defendant's constitutional rights. Where defendant had been warned numerous times about his courtroom behavior including getting up from his seat and moving towards judge on one occasion and physically attacking a witness on the witness stand on another so that court would either have to shackle, bind, and gag defendant in court or remove him to another room where he could watch the trial via closed-circuit television and freely talk to his attorney by telephone, trial court used constitutionally permissible method to deal with disruptive defendant. People v. Davis, 851 P.2d 239 (Colo. App. 1993).

A balancing approach may be used to measure the state's interest in enforcing discovery rules against the defendant's right to call witnesses in his favor. The factors considered in such approach include: (1) The reason for and the degree of

culpability associated with the failure to timely respond to the prosecution's specification of time and place; (2) whether and to what extent the nondisclosure prejudiced the prosecution's opportunity to effectively prepare for trial; (3) whether events occurring subsequent to the defendant's noncompliance mitigate the prejudice to the prosecution; (4) whether there is a reasonable and less drastic alternative to the preclusion of alibi (or other defense) evidence; (5) and any other relevant factors arising out of the circumstances of the case. People v. Hampton, 696 P.2d 765 (Colo. 1985); People v. Pronovost, 773 P.2d 555 (Colo. 1989).

This case implicates the fundamental right of criminal defendants to call witnesses on their own behalf, and accordingly, raises concerns not present where the exclusion is of a prosecution witness in a criminal case. People v. Melendez, 80 P.3d 883 (Colo. App. 2003), aff'd, 102 P.3d 315 (Colo. 2004).

While abuse of discretion in exclusion of a witness called by the accused in a criminal case remains the standard for appellate review, the constitutional implications of the sanction necessary affect the determination of whether abuse of discretion has been shown. People v. Melendez, 80 P.3d 883 (Colo. App. 2003), aff'd on other grounds, 102 P.3d 315 (Colo. 2004).

Right of confrontation paramount to immunity of juvenile proceedings. Where two juveniles admittedly participated in the crimes which were charged against the defendant, both juveniles were seeking leniency, both had already obtained the dismissal of serious felony counts which would have mandated imprisonment, their dispositional hearings were purposely set for a time subsequent to the defendant's trial, and no testimony tied the defendant to the crime other than that of the juvenile witnesses, the defendant's constitutional right to confrontation and cross-examination was paramount to the interests afforded the juveniles under § 19-1-109 (2), which relates to the inadmissibility of evidence from a juvenile proceeding in a criminal action. People v. Pate, 625 P.2d 369 (Colo. 1981).

Restrictions imposed on the cross-examination of juvenile prosecution witness, stepson of the defendant, held to violate the defendant's right of confrontation under the federal and state constitutions. People v. Bowman, 669 P.2d 1369 (Colo. 1983).

Applied in People v. Flores, 39 Colo. App. 556, 575 P.2d 11 (1977); People v. Marin, 686 P.2d 1351 (Colo. App. 1983); People v. Greenwell, 830 P.2d 1116 (Colo. App. 1992).

B. Disclosure of Informant's Identity; Personal Safety Exception.

In order for witness to avoid answering question because of personal safety consideration, there must be a nexus such that the witness legitimately fears reprisal from the defendant or his associates. People ex rel. Dunbar v. District Court, 177 Colo. 429, 494 P.2d 841 (1972); People v. Thurman, 787 P.2d 646 (Colo. 1990); People v. Turley, 870 P.2d 498 (Colo. App. 1993).

If inquiry which tends to endanger personal safety of witness is one that is normally permissible, the state or the witness should at the very least come forward with some showing of why the witness must be excused from answering the question, and the trial judge can then ascertain the interest of the defendant in the answer and exercise an informed discretion in making his ruling. People ex rel. Dunbar v. District Court, 177 Colo. 429, 494 P.2d 841 (1972).

Trial court was in error in ordering witness to answer without

some showing by the defendant that the disclosure was so material as to outweigh the matter of the safety of the witness. People ex rel. Dunbar v. District Court, 177 Colo. 429, 494 P.2d 841 (1972).

When conclusion that question is not patently material is justified. Where a question on its face has no bearing on the witness's credibility and where no explanation of the materiality of the witness's address is made, the trial court is, under the circumstances, justified in concluding that the question is not inevitably and patently material. People ex rel. Dunbar v. District Court, 177 Colo. 429, 494 P.2d 841 (1972).

Defendant bears the initial burden of showing that a confidential informant is a likely source of helpful evidence to the accused. If defendant meets this initial burden, the court must balance the interest in protecting flow of information to law enforcement officers with the defendant's need to obtain evidence. People v. Walters, 768 P.2d 1230 (Colo. 1989); People v. Anderson, 837 P.2d 293 (Colo. App. 1992).

Burden is on the defendant requesting disclosure of informant's identity to make an initial showing that the informant will provide information essential to the merits of his suppression ruling. To do this the defendant must establish a reasonable basis in fact to believe one of two things: Either that the informant does not exist or that the informant did not give police the information on which they purportedly relied. People v. Bueno, 646 P.2d 931 (Colo. 1982); People v. Garcia, 752 P.2d 570 (Colo. 1988).

The government's refusal to reveal the identity of a police informant who is not a witness against the defendant has been clearly distinguished from its refusal to do so where the informant is also a witness. The former does not deny the accused's right of confrontation; in the latter situation, the witness's identity generally must be revealed. People v. Thurman, 787 P.2d 646 (Colo. 1990).

Decision as to whether identity of confidential informant should be disclosed to defense is within the discretion of the trial court, and such decision requires a balancing of the public interest in protecting the flow of information regarding violations of the law against the individual's right to prepare his defense. People v. Roy, 723 P.2d 1345 (Colo. 1986); People v. Garcia, 752 P.2d 570 (Colo. 1988).

Identity of confidential informants should not have been disclosed since the informants were not eyewitnesses or earwitnesses to the crime, were unavailable as witnesses, and were not deeply involved in the criminal transaction. People v. Villanueva, 767 P.2d 1219 (Colo. 1989).

In determining whether the identity of a confidential informant should be revealed to a defendant, the court must determine whether the informant is a likely source of relevant evidence. In this case, the informant was not an earwitness or eyewitness to the crime, he was not available since the prosecution did not know his identity, other witnesses were available to testify, and the informant had no involvement in the criminal transaction. As a result, the court found that the trial court abused its discretion when it ruled that the charges against the defendant would be dismissed if the prosecution did not reveal the identity of the informant. People v. District Court, 767 P.2d 1208 (Colo. 1989).

And balancing test must consider at least these five factors: Whether the informant was an eyewitness or earwitness; whether the informant is available or could be made available by the exercise of reasonable diligence; whether other witness can testify to the likelihood that the

informant's testimony will vary significantly from other witnesses' testimony; whether the defendant knew or could without undue effort discover the informant's identity; and whether the informant was peripherally or deeply involved in the criminal transaction. People v. Marquez, 546 P.2d 482 (Colo. 1976); People v. Garcia, 752 P.2d 570 (Colo. 1988); People v. Martinez, 51 P.3d 1029 (Colo. App. 2001), aff'd in part and rev'd in part on other grounds, 69 P.3d 1029 (Colo. 2003).

Balancing test is applied in People v. Anderson, 837 P.2d 293 (Colo. App. 1992); People v. Martinez, 51 P.3d 1029 (Colo. App. 2001), aff'd in part and rev'd in part on other grounds, 69 P.3d 1029 (Colo. 2003).

Disclosure of confidential informant's identity is justified if the accused can show that the informant either witnessed or participated in the crime. People v. Bueno, 646 P.2d 931 (Colo. 1982); People v. Garcia, 752 P.2d 570 (Colo. 1988).

Colorado has recognized a "personal safety exception". A witness's assertion of concern for personal safety does not have a talismanic quality automatically giving the witness the right to withhold information about identity, address and place of employment. Rather, the proper resolution of such issues requires careful attention to the facts of each case and application of the law concerning the right of an accused to confront adverse witnesses. People v. Thurman, 787 P.2d 646 (Colo. 1990).

In order to withhold the address of a witness under the exception there must be a nexus showing that the witness legitimately fears reprisal from the defendant or the defendant's associates. People v. Turley, 870 P.2d 498 (Colo. App. 1993).

After the witness has made a showing that his safety would be endangered if he answered, the defendant has the duty to show that the information sought has some materiality. People ex rel. Dunbar v. District Court, 177 Colo. 429, 494 P.2d 841 (1972); People v. Thurman, 787 P.2d 646 (Colo. 1990); People v. Turley, 870 P.2d 498 (Colo. App. 1993).

The rule that an adequate showing by the prosecution that the witness legitimately fears for his safety requires some showing in turn by the defendant that the disclosure is so material as to outweigh the matter of the safety of the witness, followed by a balancing of interests by the trial court, should not be interpreted as requiring a threshold demonstration by the defendant that the information to be developed from learning the witness's identity, address and place of employment would prove highly material. The defendant's burden extends only to showing that the confidential informant is a material witness on the issue of guilt and that nondisclosure would deprive the defendant of a fair opportunity to test the witness's credibility. People v. Thurman, 787 P.2d 646 (Colo. 1990).

The trial court, in exercising its sound discretion, is in the best position to assess the basis for and seriousness of the witness's apprehension. When such apprehension is expressed, the key consideration for a trial court in assessing a defendant's constitutional claim to a witness's identity, address or place of employment is whether in absence of that information the defendant will have sufficient opportunity to place the witness in his proper setting. People v. Thurman, 787 P.2d 646 (Colo. 1990).

C. Admissibility of Evidence.

Hearsay evidence violates right to meet witnesses face to face. In a criminal action for first degree murder where one of two psychiatrists

who were called and examined as witnesses testified to the fact of agreement between themselves and two other psychiatrists, who were not called as witnesses, concerning the sanity of defendant, such testimony was clearly hearsay testimony and should have been excluded, and its admission violated the constitutional rights of the defendant, and particularly this section which provides among other things that the accused shall have the right "to meet the witnesses against him face to face". Carter v. People, 119 Colo. 342, 204 P.2d 147 (1949).

But admission of counsel's statement of proof does not. When a statement by the prisoner's counsel, of what a witness would swear to (it being favorable to the prisoner), is admitted in evidence, the admission of such statement cannot be construed as being in conflict with the provision of this section. Wilson v. People, 3 Colo. 325 (1877).

No violation of confrontation rights where a taped statement of the ALJ during the parole hearing was admitted at trial. Taped statement was not hearsay since it was merely offered to prove defendant was on notice that he was not to escape the confines of his intensive supervision parole. People v. Taylor, 74 P.3d 396 (Colo. App. 2002).

No violation of confrontation rights where detective's limited testimony regarding statements made by coconspirator was admitted at trial. Detective's limited testimony regarding statements made by coconspirator that led to the inclusion of defendant in a photo lineup did not include hearsay. Trial court did not abuse its discretion in admitting the testimony. People v. Martinez, 224 P.3d 1026 (Colo. App. 2009), aff'd on other grounds, 244 P.3d 135 (Colo. 2010).

Evidence showing motive and interest of paid informant witness should be admitted. Where evidence is offered to show the motive of a paid informant witness and his interest in the outcome of the case by reason of pending criminal charges against him, the prosecution of which may or may not be pursued by reason of the testimony he has given on behalf of the people, such evidence is competent and to deny its admissibility would erode defendant's right of confrontation. People v. King, 179 Colo. 94, 498 P.2d 1142 (1972).

Where the defendant contends that the witness' probationary status was motivation for providing statements to the police, but there is no evidence to suggest the witness believed probationary status was in jeopardy, such evidence is irrelevant and properly excluded. People v. Jones, 971 P.2d 243 (Colo. App. 1998).

Prosecutor's warnings to a defense witness regarding potential perjury and false reporting charges did not deprive defendant of fair trial. To determine whether substantial governmental interference occurred, look to the totality of the circumstances, including factors such as the manner in which the prosecutor raises the issue, the warning's effect on the witness's willingness to testify, and whether the prosecutor capitalized on the witness's absence by directing the jury's attention to it during closing arguments. People v. Blackwell, 251 P.3d 468 (Colo. App. 2010).

Admission of hearsay evidence challenged as violation of constitutional right of confrontation. Two-part test is applied when the admission of hearsay evidence is challenged on constitutional grounds. First, the hearsay declarant must be unavailable. Second, the hearsay evidence must bear sufficient indicia of reliability to ensure accuracy in the fact finding process. People v. Dement, 661 P.2d 675 (Colo. 1983); People v. Moore, 693 P.2d 388 (Colo. App. 1984); People v. Hise, 738 P.2d 13 (Colo. App. 1986); People v. Mitchell,

829 P.2d 409 (Colo. App. 1991); People v. Green, 884 P.2d 339 (Colo. App. 1994); Blecha v. People, 962 P.2d 931 (Colo. 1998).

In applying second part of two-part test, reliability of hearsay evidence may be inferred if such evidence falls within firmly rooted hearsay exception. People v. Dement, 661 P.2d 675 (Colo. 1983); People v. Moore, 693 P.2d 388 (Colo. App. 1984); People v. Green, 884 P.2d 339 (Colo. App. 1994); Blecha v. People, 962 P.2d 931 (Colo. 1998).

But the reliability of a declaration against penal interest should not be inferred. People v. Fincham, 799 P.2d 419 (Colo. App. 1990).

Two-part test is not applicable as testimony given by witness over telephone does not constitute hearsay evidence. Topping v. People, 793 P.2d 1168 (Colo. 1990); People v. Mitchell, 829 P.2d 409 (Colo. App. 1991).

Excited utterance, admissible under C.R.E. 803(2), is inherently trustworthy and trial court is not required to make findings concerning reliability under second part of Dement two-part test. People v. Mitchell, 829 P.2d 409 (Colo. App. 1991); People v. Green, 884 P.2d 339 (Colo. App. 1994).

Admission of excited utterance into evidence despite prosecution's failure to demonstrate declarant's unavailability, although a violation of this section, was harmless and did not require reversal. People v. Martinez, 83 P.3d 1174 (Colo. App. 2003).

The state of mind exception is firmly rooted, and, therefore, statements admitted pursuant to the exception implicitly bear sufficient indicia of reliability to satisfy second part of the Dement two-part test. Accordingly, trial court's failure to make a reliability determination regarding statements by an unavailable witness did not constitute plain error. People v. Gash, 165 P.3d 779 (Colo. App. 2006).

In the wake of Crawford v. Washington, 541 U.S. 36 (2004), the constitutional requirements for admission of testimonial hearsay evidence are that the declarant is unavailable and the defendant had a prior opportunity to cross-examine the declarant. The two-part test of declarant unavailability and reliability continues to apply to nontestimonial hearsay evidence. Compan v. People, 121 P.3d 876 (Colo. 2005).

The dual requirements of unavailability and reliability for admission of nontestimonial hearsay evidence sufficiently protect the Colorado confrontation clause's underlying purposes of face-to-face confrontation and cross-examination in cases involving a declarant's excited utterances. Compan v. People, 121 P.3d 876 (Colo. 2005).

Admission of out-of-court unsworn statements of two co-defendants, neither of whom was on trial with a third defendant, violated the confrontation clause of this section. Admission of the statements at the third defendant's trial lacked sufficient reliability to overcome a presumption of unreliability in that such defendants were tried separately from the third defendant, the third defendant made no statement that interlocked with the co-defendants' statements, and there were discrepancies between such co-defendants' statements. Editing of said discrepancies by the court could not improve the reliability of such statements. People v. Smith, 790 P.2d 862 (Colo. App. 1989).

Admission of hearsay statements made by unavailable witness through police officer's testimony to prove the truth of the matter asserted violated defendant's confrontation rights and constituted constitutional error. People v. Harris,

43 P.3d 221 (Colo. 2002).

Court erred in prohibiting defendant, on hearsay grounds, from eliciting evidence of what he and an alleged coconspirator said to one another. Nonhearsay verbal act evidence is admissible on the issue of whether a conspiratorial agreement existed because the statement is admitted merely to show that it was actually made, not to prove the truth of what was asserted in it. People v. Scearce, 87 P.3d 228 (Colo. App. 2003).

Trial court erred in prohibiting defendant, on hearsay grounds, from eliciting evidence of what he and his alleged coconspirator said to one another about the subject of the alleged conspiracy. Defendant argued, to no avail, that he was entitled to present evidence of whether there was any type or even suggestion of agreement between himself and the woman to use force, threats, or intimidation against the victim. People v. Scearce, 87 P.3d 228 (Colo. App. 2003).

Defendant was prohibited from eliciting testimony about statements he and his alleged coconspirator made, not for the truth of the matters contained in the statements, but for the very fact that they were made, to dispute the prosecution's claim that there was an agreement to use force, threats, or intimidation with a deadly weapon against the victim. As such, the evidence was admissible, and the trial court erred in excluding it. People v. Scearce, 87 P.3d 228 (Colo. App. 2003).

Testimonial hearsay must be excluded when declarant is unavailable and there has been no prior opportunity for cross-examination by defendant. Raile v. People, 148 P.3d 126 (Colo. 2006).

When the primary purpose of an interrogation is either to elicit statements that establish or prove past events or to elicit statements that are potentially relevant to a later criminal prosecution, the statements elicited are testimonial. On the other hand, nontestimonial statements are statements made during an on-going emergency to assist the police in their efforts to assess the current situation. Raile v. People, 148 P.3d 126 (Colo. 2006).

Statements in response to a police interrogation the primary purpose of which was to investigate possible crimes already committed were testimonial and should not have been admitted. Any emergency situation that may have occurred had passed by the time the interrogation began. The admission, however, was harmless error. Raile v. People, 148 P.3d 126 (Colo. 2006).

The court did not violate defendant's confrontation rights when it admitted nontestimonial statements made to medical personnel. The victim's statement to the triage nurse that she had been raped and her statement to the emergency room doctor that her assailant held her mouth closed during the assault would not be reasonably considered testimonial; each statement was given in order for the victim to receive medical care. People v. Jones, __ P.3d __ (Colo. App. 2011).

The admission of documentary evidence to show a previous conviction for habitual count purposes are business records and, therefore, not "testimonial statements" subject to Crawford v. Washington, 541 U.S. 36, 124 S. Ct. 1354, 158 L. Ed. 2d 177 (2004). People v. Shreck, 107 P.3d 1048 (Colo. App. 2004).

Admission of proofs of service attached to defendant's driving record were not testimonial for purposes of Crawford because the proofs reflected the administrative status of defendant's driving privilege, and their primary functions were to

notify defendant that he was not permitted to drive a motor vehicle in Colorado and to record that such notice was given. People v. Espinoza, 195 P.3d 1122 (Colo. App. 2008).

Although an objective person who prepared such a proof of service might reasonably believe it would be available in the event of a later traffic violation, this possibility does not make the document testimonial where the document served a routine administrative function and was created before the charged crime occurred. People v. Espinoza, 195 P.3d 1122 (Colo. App. 2008).

Booking reports and mittimus not "testimonial" and thus did not trigger defendant's confrontation rights. Trial court did not err in admitting them as public records. People v. Warrick, 284 P.3d 139 (Colo. App. 2011).

For analysis to be followed in challenges to hearsay evidence on constitutional grounds, see People v. Dement, 661 P.2d 675 (Colo. 1983); People v. Nunez, 698 P.2d 1376 (Colo. App. 1984), aff'd, 737 P.2d 422 (Colo. 1987); People v. Mathes, 703 P.2d 608 (Colo. App. 1985); People v. Welsh, 58 P.3d 1065 (Colo. App. 2002), aff'd on other grounds, 80 P.3d 296 (Colo. 2003).

D. Right to Compel Attendance.

The provision giving accused right to have process to compel attendance of witnesses in his behalf is mandatory. Osborn v. People, 83 Colo. 4, 262 P. 892 (1927).

It refers only to witnesses residing within state. Baker v. People, 72 Colo. 68, 209 P. 791 (1922).

Rationale for compelling attendance of only resident witnesses. Although the right to compel the attendance of a witness has been held to extend only to witnesses residing within the state, the rationale supporting that limitation on the duty of the court has been the absence of any means by which the state could compel the presence of out-of-state witnesses. People v. McCabe, 37 Colo. App. 181, 546 P.2d 1289 (1975).

Method for compelling attendance of out-of-state witnesses. Section 16-9-201 et seq. provides a method whereby, among states that have adopted the act, a court of one state may certify the need for the appearance and testimony of a material witness residing in another state and thereby invoke the authority of the court in the resident state to compel the witness's attendance in the certifying court. Hence, at least under the circumstances specified in the statute, a Colorado court may now compel the attendance of out-of-state witnesses. People v. McCabe, 37 Colo. App. 181, 546 P.2d 1289 (1975).

Defendant may obtain presence of any or all witnesses endorsed on information. Where a defendant wishes to obtain the presence of any or all of the witnesses endorsed on the information, he is free to do so, since the court's process and subpoena power is available to him. Scott v. People, 176 Colo. 289, 490 P.2d 1295 (1971).

V. RIGHT TO SPEEDY PUBLIC TRIAL.

Law reviews. For comment on Hicks v. People appearing below, see 34 Rocky Mt. L. Rev. 397 (1962). For comment on Thompson v. People appearing below, see 42 Den. L. J. 54 (1965) and 37 U. Colo. L. Rev. 511 (1965). For article, "Pronouncements of the U.S. Supreme Court Relating to the Criminal Law Field: 1985-1986", which discusses cases relating to speedy trials, see 15 Colo. Law. 1595 and 1617 (1986). For article, "The Ins and Outs, Stops and Starts of Speedy Trial Rights in Colorado--Part I", see 31 Colo. Law. 115 (July 2002). For article, "The Ins and Outs, Stops and

Starts of Speedy Trial Rights in Colorado--Part II", see 31 Colo. Law. 59 (August 2002).

A. Right to Speedy Trial.

The right to a speedy trial is a basic constitutional right, guaranteed by both the Colorado and United States Constitutions in essentially the same language. Valdez v. People, 174 Colo. 268, 483 P.2d 1333 (1971); Jaramillo v. District Court, 174 Colo. 561, 484 P.2d 1219 (1971); People v. Small, 177 Colo. 118, 493 P.2d 15 (1972).

The right to a speedy trial is guaranteed by this section, and this constitutional protection is independent of any right established by statute or rule. People v. Slender Wrap, Inc., 36 Colo. App. 11, 536 P.2d 850 (1975).

An accused person's right to a speedy trial is ultimately grounded on the federal and state constitutions, and statutes relating to speedy trial are intended to render these constitutional guarantees more effective. Simakis v. District Court, 194 Colo. 436, 577 P.2d 3 (1978).

Primary objective of right to speedy trial. A speedy public trial involves a trial, a judicial examination of issues present in a criminal case in order to arrive at a just result. Justice to both the accused and the public is the primary objective. Speed is important insofar as it aids in the achievement of such justice. Medina v. People, 154 Colo. 4, 387 P.2d 733 (1963), cert. denied, 379 U.S. 848, 85 S. Ct. 88, 13 L. Ed. 2d 52 (1964).

The right to a speedy trial is not only for the benefit of the accused, but also for the protection of the public. It is essential that an early determination of guilt be made, so that the innocent may be exonerated and the guilty punished. Jaramillo v. District Court, 174 Colo. 561, 484 P.2d 1219 (1971).

The right to a speedy trial has been formulated to force the prosecution to try a defendant promptly in compliance with the statutes, rules, and constitutional requirements of each case. People ex rel. Coca v. District Court, 187 Colo. 280, 530 P.2d 958 (1975).

A criminal case must be promptly tried, not only to limit the possibility that delay will impair the ability of an accused to defend himself, but also to protect the public in insuring prompt disposition of criminal cases for delay inflicts injury because evidence and witnesses disappear, memories fade, and events lose their perspective. Scott v. People, 176 Colo. 289, 490 P.2d 1295 (1971).

The essential ingredient of the constitutional requirement of a speedy trial is that the defendant and society have a mutual right to expect the orderly expedition of criminal charges, not mere speed. People v. Small, 631 P.2d 148 (Colo.), cert. denied, 454 U.S. 1101, 102 S. Ct. 678, 70 L. Ed. 2d 644 (1981).

Right of accused to speedy trial is an important civil right, and when the constitutional mandate is invoked, the matter should receive careful consideration by the courts. Ex parte Russo, 104 Colo. 91, 88 P.2d 953 (1939).

This section is mandatory. Hicks v. People, 148 Colo. 26, 364 P.2d 877 (1961).

Sixth amendment guarantee to speedy trial has been extended to protect defendants in state criminal actions. The safeguard in the federal constitutional guarantee of a speedy trial is no more restrictive than that found in the state constitution. Falgout v. People, 170 Colo. 32, 459 P.2d 572 (1969).

State provision is congruent to federal. Colorado constitutional provision guaranteeing a speedy, public trial is congruent to the United States constitutional provision entitling a defendant in a criminal case to a speedy

trial. Lucero v. People, 173 Colo. 94, 476 P.2d 257 (1970).

Finding under state provision requires finding under federal. A conclusion of the supreme court that defendant has not been denied a speedy trial under the Colorado Constitution requires the concomitant finding that the requirements of the United States Constitution have also been met. Lucero v. People, 173 Colo. 94, 476 P.2d 257 (1970).

The constitutional right to a speedy trial derived from the federal and Colorado constitutions, is distinct from the statutory speedy trial right and the determination as to one does not necessarily dispose of the other. People v. Harris, 914 P.2d 425 (Colo. App. 1995).

Constitutional and statutory right distinguished. The constitutional right to a speedy trial, as distinguished from the statutory right to a speedy trial, does not require that a defendant be tried within a specified period of time. People v. O'Neill, 185 Colo. 202, 523 P.2d 123 (1974).

Provisions of Crim. P. 48 and constitutional issue as to denial of speedy trial are mutually exclusive, and the resolution of one does not necessarily determine the resolution of the other. Potter v. District Court, 186 Colo. 1, 525 P.2d 429 (1974).

Right to speedy trial in juvenile proceedings. Trial courts are bound by the statutory and constitutional speedy trial requirements in juvenile as well as adult proceedings; fundamental fairness requires no less. P.V. v. District Court, 199 Colo. 357, 609 P.2d 110 (1980).

Right to speedy trial on de novo appeal. An accused on appeal to the county court from conviction of an offense, is entitled to a speedy trial de novo in such court, notwithstanding a speedy first trial before a justice of the peace. Hicks v. People, 148 Colo. 26, 364 P.2d 877 (1961).

The invocation of the speedy-trial provision need not await indictment, information or other formal charge. Dodge v. People, 178 Colo. 71, 495 P.2d 213 (1972); People v. Slender Wrap, Inc., 36 Colo. App. 11, 536 P.2d 850 (1975).

Defendant's being at large under bond manifestly does not divest him of right to speedy trial which is guaranteed by the constitution. Ex parte Miller, 66 Colo. 261, 180 P. 749 (1919); Hicks v. People, 148 Colo. 26, 364 P.2d 877 (1961).

The right to a speedy trial is not dissipated by the fact that the defendant is granted bail. Jaramillo v. District Court, 174 Colo. 561, 484 P.2d 1219 (1971).

Incarceration under prior conviction does not dissipate right to speedy trial. A sovereign may not deny an accused person a speedy trial by reason of the circumstance that he is incarcerated in a penal institution of that sovereign under a prior conviction and sentence in a court also of that sovereign. Rader v. People, 138 Colo. 397, 334 P.2d 437 (1959).

Nor does imprisonment in foreign jurisdiction. The fact that an accused was imprisoned by a foreign jurisdiction does not ipso facto deprive him of his rights to a speedy trial in another jurisdiction. There devolves upon the prosecuting attorney in the accusing state the duty to exercise good faith in an attempt to extradite the accused from a foreign jurisdiction so that he might be given a speedy trial. If the district attorney is able to secure the accused's presence in Colorado for trial, petitioner may at the trial raise and have determined the question as to whether he has been prejudiced by the state's delay to such an extent as to violate his constitutional right to a speedy trial. If the district attorney is unable to secure his presence for trial on the date set, then, the district court must continue the trial date until such

time as his presence at trial can be secured. Rudisill v. District Court, 169 Colo. 66, 453 P.2d 598, cert. denied, 395 U.S. 925, 89 S. Ct. 1779, 23 L. Ed. 2d 241 (1969); Egbert v. People, 169 Colo. 169, 454 P.2d 811 (1969).

District attorney's failure to initiate timely extradition proceedings denied petitioner his constitutional right to a speedy trial. Potter v. District Court, 186 Colo. 1, 525 P.2d 429 (1974).

Ad hoc balancing test is to be used to determine whether right to speedy trial has been denied. People v. Spencer, 182 Colo. 189, 512 P.2d 260 (1973); People v. Buggs, 186 Colo. 13, 525 P.2d 421 (1974); People v. Haines, 37 Colo. App. 302, 549 P.2d 786 (1976).

The determination of whether defendant's constitutional rights to a speedy trial have been violated requires a balancing of the conduct of the people and of the defendant, which compels an ad hoc approach to cases where the right is asserted. People v. Slender Wrap, Inc., 36 Colo. App. 11, 536 P.2d 850 (1975); People v. Jamerson, 198 Colo. 92, 596 P.2d 764 (1979).

Four factors relate to the constitutional concept of a speedy trial: (1) The length of the delay, (2) the reason for the delay, (3) the prejudice to the defendant, and (4) waiver by the defendant. Falgout v. People, 170 Colo. 32, 459 P.2d 572 (1969); People v. Spencer, 182 Colo. 189, 512 P.2d 260 (1973); People v. Buggs, 186 Colo. 13, 525 P.2d 421 (1974).

In determining whether right to a speedy trial has been denied, four factors to be weighed in the balance are the length of the delay, the reason for the delay, the defendant's assertion or demand for a speedy trial, and the prejudice to the defendant. People v. Slender Wrap, Inc., 36 Colo. App. 11, 536 P.2d 850 (1975); People v. Haines, 37 Colo. App. 302, 549 P.2d 786 (1976); People v. Jamerson, 198 Colo. 92, 596 P.2d 764 (1979); People v. Small, 631 P.2d 148 (Colo.), cert. denied, 454 U.S. 1101, 102 S. Ct. 678, 70 L. Ed. 2d 644 (1981); People v. Velasquez, 641 P.2d 943 (Colo.), appeal dismissed, 459 U.S. 805, 103 S. Ct. 28, 74 L. Ed. 2d 43 (1982), reh'g denied, 459 U.S. 1138, 103 S. Ct. 774, 74 L. Ed. 2d 986 (1983); Franklin v. People, 734 P.2d 133 (Colo. App. 1986); People v. Bost, 770, P.2d 1209 (Colo. 1989); Moody v. Corsentino, 843 P.2d 1355 (Colo. 1993); People v. Harris, 914 P.2d 425 (Colo. App. 1995); People v. Fears, 962 P.2d 272 (Colo. App. 1997).

Factors in determining whether speedy trial afforded. The circumstances of each case must be examined to determine whether a speedy trial has been afforded, and, in making this determination, the court must consider the length of the pretrial delay, the reasons for the delay, whether the defendant has demanded a speedy trial, and whether any prejudice actually resulted to the defendant. Gelfand v. People, 196 Colo. 487, 586 P.2d 1331 (1978).

But, prior to application of four factors, court must determine that the length of delay is at least presumptively prejudicial to the defendant before further inquiry is warranted. Moody v. Corsentino, 843 P.2d 1355 (Colo. 1993); People v. Harris, 914 P.2d 425 (Colo. App. 1995).

Court found eight years was sufficient delay to warrant consideration of other three factors. Moody v. Corsentino, 843 P.2d 1355 (Colo. 1993).

No one factor determinative. Regarding the factors to be considered in determining whether defendant's right to a speedy trial has been violated, no one of these factors alone is determinative. People v. Slender Wrap, Inc., 36 Colo. App. 11, 536 P.2d 850 (1975).

Such as prejudice. Whether or not defendant can show prejudice from delay to bring him to trial is simply a factor to be considered and is not decisive of whether defendant's constitutional rights have been violated. People v. Slender Wrap, Inc., 36 Colo. App. 11, 536 P.2d 850 (1975).

Where there has been no finding that the people were in some way to blame for unnecessary delay in bringing defendant to trial, then the absence of a finding of prejudice to the defendant must be heavily weighed in the balancing process for determining whether defendant was denied a speedy trial. People v. Slender Wrap, Inc., 36 Colo. App. 11, 536 P.2d 850 (1975).

Or where there is supportive evidence of defendant's desire for speedy trial, that fact alone is not determinative of whether defendant was denied such right. That factor, though in the defendant's favor, is to be weighed along with the other elements which must be given consideration in the balancing of the rights of the defendant and the people. People v. Slender Wrap, Inc., 36 Colo. App. 11, 536 P.2d 850 (1975).

Prejudice cannot be presumed where delay has not been shown to be arbitrary or oppressive. Scott v. People, 176 Colo. 289, 490 P.2d 1295 (1971).

Prejudice to the defendant cannot be presumed solely from the length of delay, nor from unsupported allegations of such prejudice. People v. Jamerson, 198 Colo. 92, 596 P.2d 764 (1979).

Allegations of anxiety, disappearance of witnesses, and financial strain must be documented to support a claim of denial of one's right to a speedy trial. People v. Jamerson, 198 Colo. 92, 596 P.2d 764 (1979).

Weight given to defendant's delay in determining denial. The defendants' delay in asserting their right to a speedy trial is entitled to strong evidentiary weight in determining whether the defendants were denied their constitutional right to a speedy trial. People v. Spencer, 182 Colo. 189, 512 P.2d 260 (1973).

This section is a guarantee only against arbitrary and oppressive delays. Jordan v. People, 155 Colo. 224, 393 P.2d 745 (1964); Valdez v. People, 174 Colo. 268, 483 P.2d 1333 (1971).

A speedy public trial is a relative concept. Falgout v. People, 170 Colo. 32, 459 P.2d 572 (1969).

The right to a speedy trial is necessarily relative. Gonzales v. People, 156 Colo. 252, 398 P.2d 236, cert. denied, 381 U.S. 945, 85 S. Ct. 1788, 14 L. Ed. 2d 709 (1965); Arthur v. People, 165 Colo. 63, 437 P.2d 41 (1968); Valdez v. People, 174 Colo. 268, 483 P.2d 1333 (1971).

Depending upon the circumstances of each case. Medina v. People, 154 Colo. 4, 387 P.2d 733 (1963), cert. denied, 379 U.S. 848, 85 S. Ct. 88, 13 L. Ed. 2d 52 (1964); Casias v. People, 160 Colo. 152, 415 P.2d 344, cert. denied, 385 U.S. 979, 87 S. Ct. 523, 17 L. Ed. 2d 441 (1966); Ferguson v. People, 160 Colo. 389, 417 P.2d 768 (1966); Maes v. People, 169 Colo. 200, 454 P.2d 792 (1969); Falgout v. People, 170 Colo. 32, 459 P.2d 572 (1969); People v. Small, 177 Colo. 118, 493 P.2d 15 (1972).

The right of a speedy trial is consistent with delays and depends upon circumstances. It secures rights to a defendant. It does not preclude the rights of public justice. Medina v. People, 154 Colo. 4, 387 P.2d 733 (1963), cert. denied, 379 U.S. 848, 85 S. Ct. 88, 13 L. Ed. 2d 52 (1964); Arthur v. People, 165 Colo. 63, 437 P.2d 41 (1968).

And consistent with court's business. The constitutional guarantee of a speedy trial has been held to be a trial consistent with the court's business. Gonzales v. People, 156 Colo. 252, 398 P.2d 236, cert. denied, 381 U.S. 945, 85 S. Ct. 1788, 14 L. Ed.

2d 709 (1965); Adargo v. People, 159 Colo. 321, 411 P.2d 245 (1966); Falgout v. People, 170 Colo. 32, 459 P.2d 572 (1969); Padilla v. People, 171 Colo. 521, 470 P.2d 846 (1970); Jaramillo v. District Court, 174 Colo. 561, 484 P.2d 1219 (1971); People v. Small, 177 Colo. 118, 493 P.2d 15 (1972); People v. Mayes, 178 Colo. 429, 498 P.2d 1123 (1972); Rowse v. District Court, 180 Colo. 44, 502 P.2d 422 (1972); People v. Slender Wrap, Inc., 36 Colo. App. 11, 536 P.2d 850 (1975).

A speedy public trial does not mean trial immediately after accused is apprehended and indicted, but public trial consistent with the court's business. Medina v. People, 154 Colo. 4, 387 P.2d 733 (1963), cert. denied, 379 U.S. 848, 85 S. Ct. 88, 13 L. Ed. 2d 52 (1964); Maes v. People, 169 Colo. 200, 454 P.2d 792 (1969).

The constitutional right to a speedy trial requires only that a trial be held within a time period consistent with the court's case load. People v. O'Neill, 185 Colo. 202, 523 P.2d 123 (1974).

An accused is not under a duty to demand trial within any specific time before he can claim the protection of this mandatory section affording him the right to a speedy public trial. Hicks v. People, 148 Colo. 26, 364 P.2d 877 (1961).

But objection to delay at trial is prerequisite to discharge. The objection that the defendant has not had a speedy trial must be speedily raised when the case is moved for trial. Such an objection is a prerequisite to his claim for discharge under § 18-1-405 and under this section. Keller v. People, 153 Colo. 590, 387 P.2d 421 (1963).

Defendant can waive his constitutional and statutory right to a speedy trial by his failure to make a timely objection. People v. O'Donnell, 184 Colo. 104, 518 P.2d 945 (1974).

To properly raise question, accused may apply for discharge or dismissal for lack of a speedy trial. Jordan v. People, 155 Colo. 224, 393 P.2d 745 (1964); Jaramillo v. District Court, 174 Colo. 561, 484 P.2d 1219 (1971).

Or petition for habeas corpus. The question of whether a speedy public trial by an impartial jury in a criminal case as provided in this section has been denied, is properly raised by a petition for a writ of habeas corpus. Rader v. People, 138 Colo. 397, 334 P.2d 437 (1959).

Petition for habeas corpus treated as motion under Crim. P. 35(b). When the issues before a trial court in a habeas corpus proceeding raise substantive constitutional questions concerning the right to a speedy trial, the issues are within the purview of postconviction remedy, and a petition for habeas corpus would be treated as a motion under Crim. P. 35(b). Dodge v. People, 178 Colo. 71, 495 P.2d 213 (1972).

Judicial question. Whether an accused has been denied a speedy public trial within the constitution is a judicial question. Medina v. People, 154 Colo. 4, 387 P.2d 733 (1963), cert. denied, 379 U.S. 848, 85 S. Ct. 88, 13 L. Ed. 2d 52 (1964); Casias v. People, 160 Colo. 152, 415 P.2d 344, cert. denied, 385 U.S. 979, 87 S. Ct. 523, 17 L. Ed. 2d 441 (1966); Jaramillo v. District Court, 174 Colo. 561, 484 P.2d 1219 (1971).

The burden is upon defendant to prove that an expeditious trial was denied him. Maes v. People, 169 Colo. 200, 454 P.2d 792 (1969); Ziatz v. People, 171 Colo. 58, 465 P.2d 406 (1970).

A motion for discharge or for dismissal for want of due prosecution of a charge of crime must be sustained by the accused; he has the burden of showing that he was not afforded a speedy trial. Jordan v. People, 155 Colo. 224, 393 P.2d 745 (1964); Jaramillo v. District Court, 174 Colo.

561, 484 P.2d 1219 (1971).

The burden is upon the defendant to prove that he has been denied an expeditious trial to his prejudice. Falgout v. People, 170 Colo. 32, 459 P.2d 572 (1969); Scott v. People, 176 Colo. 289, 490 P.2d 1295 (1971); People v. Small, 177 Colo. 118, 493 P.2d 15 (1972).

Burden is upon defendant who asserts denial of speedy trial to show facts establishing that, consistent with court's trial docket conditions, he could have been afforded trial. Rowse v. District Court, 180 Colo. 44, 502 P.2d 422 (1972); People v. O'Neill, 185 Colo. 202, 523 P.2d 123 (1974).

The defendant has the burden of proving that his constitutional speedy trial right has been denied. People v. Small, 631 P.2d 148 (Colo.), cert. denied, 454 U.S. 1101, 102 S. Ct. 678, 70 L. Ed. 2d 644 (1981); People v. Velasquez, 641 P.2d 943 (Colo.), appeal dismissed, 459 U.S. 805, 103 S. Ct. 28, 74 L. Ed. 2d 43 (1982), reh'g denied, 459 U.S. 1138, 103 S. Ct. 774, 74 L. Ed. 2d 986 (1983).

Right to speedy trial may be waived. Keller v. People, 153 Colo. 590, 387 P.2d 421 (1963); Chambers v. District Court, 180 Colo. 241, 504 P.2d 340 (1972).

Affirmative action is necessary for waiver. The constitutional right of an accused to a speedy public trial is not waived by inaction on the part of the accused. Affirmative action on the part of the accused, such as an express consent to delay or request therefor, is necessary to constitute such waiver. Hicks v. People, 148 Colo. 26, 364 P.2d 877 (1961); Chambers v. District Court, 180 Colo. 241, 504 P.2d 340 (1972).

Failure to request a speedy trial is one factor to be considered in determining if defendant waived his constitutional right, nevertheless, a defendant does not have the responsibility of bringing himself to trial. Action on the defendant's part, such as consent to delay or request therefor, is necessary to constitute such waiver. Potter v. District Court, 186 Colo. 1, 525 P.2d 429 (1974).

Failure to object to delay can waive right. The constitutional guarantee of a speedy trial can be waived by failure to make objection to the delay at the time of trial. Keller v. People, 153 Colo. 590, 387 P.2d 421 (1963); Keller v. Tinsley, 335 F.2d 144 (10th Cir.), cert. denied, 379 U.S. 938, 85 S. Ct. 342, 13 L. Ed. 2d 348 (1964); Valdez v. People, 174 Colo. 268, 483 P.2d 1333 (1971).

Failure to object is a factor which may be considered in determining whether a waiver of the right to a speedy trial took place. Chambers v. District Court, 180 Colo. 241, 504 P.2d 340 (1972).

Failure to assert right makes it difficult to prove denial. Failure to assert the right to a speedy trial will make it difficult for a defendant to prove that he was denied a speedy trial. People v. Buggs, 186 Colo. 13, 525 P.2d 421 (1974).

A plea of guilty to a charge acts as a waiver to any argument a defendant may have had concerning the denial of a speedy trial. Wixson v. People, 175 Colo. 348, 487 P.2d 809 (1971).

Where defendant had already pleaded guilty and had been sentenced when his motion to dismiss for denial of speedy trial was filed, he waived any argument he may have had concerning a denial of a speedy trial. Wixson v. People, 175 Colo. 348, 487 P.2d 809 (1971).

The erroneous denial of a motion to dismiss for violation of statutory speedy trial right does not divest the court of subject matter jurisdiction to accept a guilty plea. People v. McMurtry, 122 P.3d 237 (Colo. 2005).

A guilty plea waives a defendant's right to claim the improper denial of his or her

statutory right to a speedy trial. People v. McMurtry, 122 P.3d 237 (Colo. 2005).

Delay attributable to the defense does not deny speedy trial. Where delays in a case being set for trial occur and are not solely attributable to the prosecution but must be recognized to be in part a product of the defense, a speedy public trial has not been denied. People v. Small, 177 Colo. 118, 493 P.2d 15 (1972).

Where the record shows the withdrawal of counsel, the appointment of new counsel, and a continuance by agreement, it cannot be said that defendant was denied a speedy public trial. Medina v. People, 154 Colo. 4, 387 P.2d 733 (1963), cert. denied, 379 U.S. 848, 85 S. Ct. 88, 13 L. Ed. 2d 52 (1964).

The record did not disclose that defendant was denied the "speedy" public trial guaranteed him by the constitution where at least certain of the delays in getting to trial were of his own making. Lucero v. People, 161 Colo. 568, 423 P.2d 577 (1967); People v. Bost, 770 P.2d 1209 (Colo. 1989).

Where the record disclosed four continuances at the request, or with the consent of defendant, the appointment, withdrawal, and reappointment of counsel, and the entry and withdrawal of a plea of not guilty by reason of insanity, the defendant was not denied a speedy trial. Gonzales v. People, 156 Colo. 252, 398 P.2d 236, cert. denied, 381 U.S. 945, 85 S. Ct. 1788, 14 L. Ed. 2d 709 (1965).

Where, following a continuance that is not attributable to the defendant, the court sets a trial date within the speedy trial period but defense counsel objects to that date because of his or her own scheduling conflict, the latter delay is attributable to the defendant. Hills v. Westminster Mun. Court, 215 P.3d 1221 (Colo. App. 2009).

Where part of the delay in trial was due to the trial court's protection of the accused by finding that his counsel had not had sufficient time to confer with him to make proper preparations for trial, it cannot be said that the trial was unreasonably delayed in contravention of this section. Rhodus v. People, 160 Colo. 407, 418 P.2d 42 (1966).

A defendant is not denied a speedy trial, when trial is held more than 14 months after he is charged when the delay which preceded trial was occasioned, to a large extent, by the defendant who requested and obtained numerous continuances in an attempt to effectuate a plea bargain. Maynes v. People, 178 Colo. 88, 495 P.2d 551 (1972).

Where the delay at the time defendant filed his motion to dismiss was less than one year from the date of indictment, he had been out on bond for most of that time, his motion for continuances caused at least nine weeks of delay, he was represented by counsel at all relevant times, and he appeared before the court several times, and yet he did not request an early trial date, considering all these factors, the defendant was not denied his constitutional right to a speedy trial. People v. Reliford, 186 Colo. 6, 525 P.2d 467 (1974).

Where the record reflects that the defendants made no demand for a speedy trial until 14 months expired and showed no prejudice as a result of the delay, reflects that the delay occurred to permit the defendants to obtain expert testimony and prepare for trial, and moreover, the defendants were free on bond at all times prior to trial, taking all of the factors into account, the defendants were not denied their constitutional right to a speedy trial. People v. Spencer, 182 Colo. 189, 512 P.2d 260 (1973).

Right to speedy trial not denied where delay was only three and one-half months; the reasons for delay were reasonable and legitimate under the circumstances; defendant had not

asserted his right was violated when the court reset the case for trial; nor did defendant suffer prejudice based on additional expense and anxiety since during the delay defendant was on bond. People v. Wolfe, 9 P.3d 1137 (Colo. App. 1999).

Delay consistent with court's business was not prejudicial. Where the docket of the trial court was extremely congested, a delay of eight months before trial was consistent with the orderly business of the court, and where the defendant failed to show that the delay was purposeful or oppressive, or that it resulted in prejudice, the defendant was accorded a fair trial in accordance with his constitutional rights. Falgout v. People, 170 Colo. 32, 459 P.2d 572 (1969).

The record is devoid of any showing that the trial was not held as soon as consistent with the court's business or that defendant suffered any prejudice by reason of the short delay when between the date of charge and of trial, defendant, with his counsel, made seven appearances in court to dispose of various pretrial matters. Maes v. People, 169 Colo. 200, 454 P.2d 792 (1969).

Defendant did not sustain the burden of showing that a continuance of over three months was not consistent with the court's business in that defendant was prejudiced by the continuance. Padilla v. People, 171 Colo. 521, 470 P.2d 846 (1970).

Docket congestion factor in reasonableness of delay in retrial. Although it is clear that docket congestion would not warrant a retrial later than the three-month maximum period for delay caused by a mistrial, it is a factor in determining the reasonableness of the delay within the statutory and procedural time periods of § 18-1-405 (6)(e) and Crim. P. 48 (b)(6)(V). Pinelli v. District Court, 197 Colo. 555, 595 P.2d 225 (1979).

When a trial court continues a case due to docket congestion, but makes a reasonable effort to reschedule within the speedy trial period, and defense counsel's scheduling conflict does not permit a new date within the speedy trial deadline, the resulting delay is attributable to defendant. The period of delay is excludable from time calculations for purposes of the applicable speedy trial provision. Hills v. Westminster Mun. Court, 245 P.3d 947 (Colo. 2011).

Prosecution allowed reasonable time to prepare for trial. Under this section an accused person is entitled to a trial, as soon as, regard being had to the terms of the court, reasonable opportunity is afforded to the prosecution, by fair and honest exercise of reasonable diligence, to prepare for trial. Ex parte Miller, 66 Colo. 261, 180 P. 749 (1919).

A speedy public trial envisions a reasonable opportunity for the prosecution, by a fair and honest exercise of diligence, to prepare for trial, after which, if there is a term of court at which the trial might be had, the prosecution may try the case. Medina v. People, 154 Colo. 4, 387 P.2d 733 (1963), cert. denied, 379 U.S. 848, 85 S. Ct. 88, 13 L. Ed. 2d 52 (1964).

Where delay is the product of a valid investigative or prosecutorial purpose, it is not chargeable against the government. People v. Small, 631 P.2d 148 (Colo.), cert. denied, 454 U.S. 1101, 102 S. Ct. 678, 70 L. Ed. 2d 644 (1981).

It is responsibility of district attorney and trial court to assiduously avoid any occasion for useless and unnecessary delay in the trial of a criminal case. People v. Slender Wrap, Inc., 36 Colo. App. 11, 536 P.2d 850 (1975).

Defendant's right to speedy trial held denied. Day v. People, 152 Colo. 152, 381 P.2d 10, cert. denied, 375 U.S. 864, 84 S. Ct. 134, 11 L. Ed. 2d 90 (1963).

Thirteen-month delay held denial of right of speedy trial. Where defendant was charged with unlawful sale of narcotics in one indictment and was subjected to jurisdiction of court for 13 months, a subsequent indictment charging defendant with same offense must be dismissed for lack of speedy trial. Rowse v. District Court, 180 Colo. 44, 502 P.2d 422 (1972).

As was delay of two and one-half years. A delay of two and one-half years from the time of arrest and restraint until the time of trial was a denial of defendant's constitutional right to a speedy trial even if defendant was in the state prison part of the time for another crime. Dodge v. People, 178 Colo. 71, 495 P.2d 213 (1972).

And deliberate postponement by district attorney. Where the facts clearly establish that the petitioner was denied a speedy trial through no fault of his own and as a result of the deliberate election of the district attorney to postpone the trial so that efforts could be made to obtain the petitioner's testimony in companion and related cases, the petitioner has been denied a speedy trial under the provisions of Crim. P. 48(b). Jaramillo v. District Court, 174 Colo. 561, 484 P.2d 1219 (1971).

And neglect or laches of prosecution in preparing for trial. If the trial is delayed or postponed beyond such period necessary to provide a reasonable opportunity for a diligent prosecutor to prepare for trial, when there is a term of court at which the trial might be had, by reason of the neglect or laches of the prosecution in preparing for trial, such delay is a denial to the defendant of his rights to a speedy trial and in such case a party confined, upon application by habeas corpus, is entitled to discharge from custody. Ex parte Miller, 66 Colo. 261, 180 P. 749 (1919).

But delay before second trial not prejudicial. The defendant was tried with reasonable promptness following the mandate of the United States supreme court that his guilty plea be set aside, although eight and one-half years had passed since the date of the crime, the record discloses that defendant was not deprived of any defense, or that any witness was unavailable because of the delay, and the defendant was in no manner prejudiced by delay. Arthur v. People, 165 Colo. 63, 437 P.2d 41 (1968).

Delay caused by mistrial not counted between arraignment and trial. Pinelli v. District Court, 197 Colo. 555, 595 P.2d 225 (1979).

Time involved in people's petition for writ of prohibition is not to be included in calculating the period of delay to determine if there was a denial of the right to a speedy trial. People v. Slender Wrap, Inc., 36 Colo. App. 11, 536 P.2d 850 (1975).

Delay in ruling on motion for new trial did not violate defendant's right to a speedy trial guaranteed by both this section and the federal constitution. Vaughn v. Trujillo, 171 Colo. 24, 464 P.2d 292 (1970).

Defendant's right to speedy trial held not denied. Ferguson v. People, 160 Colo. 389, 417 P.2d 768 (1966); Rowse v. District Court, 180 Colo. 44, 502 P.2d 422 (1972).

Delay of nine to 10 months not violative. Where delay has occurred, but defendant has not made a showing of prejudice, nor can any significant part of the delay be said to have been unnecessarily caused by the people, the fact of delay of from nine to 10 months in bringing defendant to trial is insufficient alone to amount to a violation of defendant's right to a speedy trial. People v. Slender Wrap, Inc., 36 Colo. App. 11, 536 P.2d 850 (1975).

Delay of over three years, occasioned by two original proceedings in the Colorado supreme court in which the prosecution made a legitimate effort to clarify the constitutional status of the

death penalty statute and which did not materially prejudice the defendant, did not constitute a denial of the defendant's right to a speedy trial. People v. Fears, 962 P.2d 272 (Colo. App. 1997).

A six-month delay between the defendant's conviction and sentencing is not presumptively prejudicial; therefore, there is no constitutional speedy trial violation in relation to the sentencing. People v. Green, 2012 COA 68M, __ P.3d __.

Delay of resentencing for 29 months not violative. Although there was no apparent reason for the lengthy delay, particularly in light of the numerous requests defendant made for court action, the absence of any showing that the delay was intentionally caused by the prosecution or that defendant was prejudiced thereby leads to the conclusion that there was no violation of defendant's speedy trial right. People v. Luu, 983 P.2d 15 (Colo. App. 1998).

Reason for delay was attributable to defendant's concerns about his representation by the public defender, and the court's subsequent accommodations of such concern was made, in part, to protect defendant's right to adequate representation. Therefore, any prejudice defendant suffered by the 46-day extension was outweighed by the trial court's concerns for adequate representation. People v. Brewster, 240 P.3d 291 (Colo. App. 2009).

A denial of credit for time spent in the county jail pending appeal is not a violation of defendant's rights to a speedy trial, to due process of law or to be free from double jeopardy. People v. Falgout, 176 Colo. 94, 489 P.2d 195 (1971).

Where defendant's complex criminal behavior causes him to be in the penitentiary when his case is set for trial, the delay that occurs cannot be interpreted to be a violation of his constitutional rights. Scott v. People, 176 Colo. 289, 490 P.2d 1295 (1971).

Where defendants escaped from jail shortly prior to the date of their trial, and delay of trial was caused exclusively by such escape and the interval during which they remained at large, a claim that defendants were denied a speedy trial is without merit. Kostal v. People, 144 Colo. 505, 357 P.2d 70 (1960), cert. denied, 365 U.S. 804, 81 S. Ct. 471, 5 L. Ed. 2d 462 (1961).

No violation even though defendant did not contribute to delay. A period of undesirable delay which falls short of violating statutory and procedural rule protection is not a denial of defendant's right to a speedy trial merely because defendant did not cause the delay. People v. Slender Wrap, Inc., 36 Colo. App. 11, 536 P.2d 850 (1975).

Calculation of delay for corporate defendant. Where defendant is a corporation, and hence not subject to incarceration, the period of delay relevant to the assertion of defendant's right to a speedy trial began on the date when probable cause was determined and the defendant was bound over to the district court at the preliminary hearing in county court because it was on this date that the defendant was placed in the same relative position, as far as its status as an "accused" is concerned, as if there had been an indictment or information filed in the district court. People v. Slender Wrap, Inc., 36 Colo. App. 11, 536 P.2d 850 (1975).

Forfeiture action under Colorado public nuisance statute is civil in nature and therefore is not subject to constitutional or statutory speedy trial provisions applicable to criminal prosecutions. People v. Milton, 732 P.2d 1199 (Colo. 1987).

When right to speedy trial attaches. The constitutional right to a speedy trial attaches when a defendant is formally accused by a charging document, such as a criminal

complaint, information, or indictment. People v. Velasquez, 641 P.2d 943 (Colo.), appeal dismissed, 459 U.S. 805, 103 S. Ct. 28, 74 L. Ed. 2d 43 (1982), reh'g denied, 459 U.S. 1138, 103 S. Ct. 774, 74 L. Ed. 2d 986 (1983).

Defendant must assert right. A criminal defendant has no duty to bring himself to trial; but he does have a responsibility to assert his right to a speedy trial. People v. Small, 631 P.2d 148 (Colo.), cert. denied, 454 U.S. 1101, 102 S. Ct. 678, 70 L. Ed. 2d 644 (1981).

But defendant is precluded from raising the issue for the first time on appeal. People v. Scialabba, 55 P.3d 207 (Colo. App. 2002).

Even if defendant's statement regarding a dismissal can be construed as request for motion to dismiss on speedy trial grounds, it was nonetheless without merit since it was made before the speedy trial time ended and defendant was still represented by counsel. People v. Abdu, 215 P.3d 1265 (Colo. App. 2009).

Computation of length of delay is not subject to specific limitations or exclusions, such as the fixed time periods established by statute or rule. People v. Small, 631 P.2d 148 (Colo.), cert. denied, 454 U.S. 1101, 102 S. Ct. 678, 70 L. Ed. 2d 644 (1981).

Reinstitution of identical criminal charges held not to violate speedy trial principles. People v. Small, 631 P.2d 148 (Colo. 1981).

Defendant's actions held to delay proceedings. The defendant may not whipsaw the court between its obligation to protect his right of confrontation and his right to a speedy trial. When, as a result of defendant's actions, the court cannot determine whether he has waived his right to be present at trial, it is clear that defendant has delayed proceedings within the meaning of C.M.C.R. 248, a speedy trial provision. Crandall v. Municipal Court ex rel. City of Sterling, 650 P.2d 1324 (Colo. App. 1982).

Dismissal of detainer. In determining whether to dismiss charges for lack of prompt notification, a court must consider more than the general factors underlying the constitutional right to a speedy trial because the Uniform Mandatory Disposition of Detainers Act effectuates other policies besides the speedy trial right. People v. Higinbotham, 712 P.2d 993 (1986).

Twenty-nine-month delay between arrest in Arizona on Colorado offense and filing of detainer not violative of speedy trial rights where delay was not an attempt to hamper defense. People v. Bost, 770 P.2d 1209 (Colo. 1989).

Court found defendant's constitutional right to a speedy trial was not violated, even though sentencing was delayed for eight years, where defendant's actions caused most of the delay, there was no evidence that prosecution intentionally caused delay to prejudice defendant's case, the record showed only limited efforts by defendant to seek speedy sentencing, and defendant was unable to show prejudice resulting from sentencing delay. Moody v. Corsentino, 843 P.2d 1355 (Colo. 1993).

Court uses four-factor test to evaluate speedy appeal claim. The four factors are: (1) Length of delay; (2) the reason for delay; (3) defendant's assertion of the right; and (4) any prejudice to defendant resulting from delay. People v. McGlotten, 166 P.3d 182 (Colo. App. 2007).

Prejudice in appellate delay case is essential element, and review depends on procedural context of defendant's claim. If the claim is presented to gain temporary release pending appeal, several factors are considered, but, if the inquiry is on direct appeal, the only consideration is whether the delay has impaired defendant's ability to prosecute the

appeal. People v. McGlotten, 166 P.3d 182 (Colo. App. 2007).

Applying four-part test, defendant's right to speedy appeal has been prejudiced. First, five-year delay clearly excessive and inordinate. Second, reason for delay in this case must be attributed to the government since the delay is the result of court reporter's illness and inability to contract with other court reporters experienced in transcribing notes. Third, defendant has asserted his right since he timely filed his appeal and has actively sought relief. The first three factors all weigh in favor of defendant, so court must consider critical fourth element, prejudice. People v. McGlotten, 166 P.3d 182 (Colo. App. 2007).

In order for defendant to show prejudice, he must show the delay has impaired his ability to present his arguments on appeal. Defendant claims trial court committed constitutional error by failing to consult with defense before answering question from jury. Review of claim is impossible, transcript of what happened is unavailable, and appellate court's instructions to reconstruct the record on remand failed to produce enough information to review the claim. Thus, passage of time has put the necessary information to evaluate the claim out of reach. Since appellate court is unable to evaluate defendant's substantive claim, he has been prejudiced by the appellate delay, so defendant is entitled to a new trial. People v. McGlotten, 166 P.3d 182 (Colo. App. 2007).

When conducting speedy trial analysis, delay caused by appointed counsel is attributable to defendant, not the state. Considering the totality of the circumstances, defendant did not carry burden of proving a constitutional violation. People v. Glaser, 250 P.3d 632 (Colo. App. 2010).

When court delays sentencing so that another case against defendant may be resolved that would allow the court to increase the sentence in case before the court, the court violates defendant's right to speedy sentencing. The defendant was prejudiced by the court's decision to delay sentencing for six months and seven days, which resulted in a sentence that was double what the court could have imposed immediately after trial. People v. Sandoval-Candelaria, __ P.3d __ (Colo. App. 2011).

B. Right to Public Trial.

Accused in criminal case has right to public trial. Anderson v. People, 176 Colo. 224, 490 P.2d 47 (1971), cert. denied, 405 U.S. 1042, 92 S. Ct. 1376, 31 L. Ed. 2d 583 (1972).

The term "public trial" contemplated by the constitution is a trial which is not secret, one that the public is free to attend. Hampton v. People, 171 Colo. 153, 465 P.2d 394 (1970).

It is a relative term and its meaning depends largely on the circumstances of each particular case. Hampton v. People, 171 Colo. 153, 465 P.2d 394 (1970).

When reasonable portion of public is suffered to attend, without partiality or favoritism, the requirement of a public trial is fairly observed. Hampton v. People, 171 Colo. 153, 465 P.2d 394 (1970).

Right to public trial is not absolute, for in some instances, the right to a public trial may be subordinated to the higher right and duty of the court to insure that the defendant receives a fair trial. Anderson v. People, 176 Colo. 224, 490 P.2d 47 (1971), cert. denied, 405 U.S. 1042, 42 S. Ct. 1376, 31 L. Ed. 2d 583 (1972).

Public right to be informed is superior to defendant's right to

privacy. The initial determination that there exists probable cause to believe the named defendant has committed a crime charged creates in the public a right superior to that of the individual and by which the privilege or right of privacy is destroyed. At that point in time the public has a right to know and the press to disclose such facts relative to the pending criminal case as may reasonably be expected to be relevant and material thereto. Lincoln v. Denver Post, 31 Colo. App. 283, 501 P.2d 152 (1972).

But this does not absolve press of responsibility to report fairly and accurately and to avoid prejudicing the defendant's right to a fair trial. Lincoln v. Denver Post, 31 Colo. App. 283, 501 P.2d 152 (1972).

The right of privacy, if any, conferred upon plaintiff by statute dealing with use and preservation of child welfare records ceased to exist when she became criminal defendant charged with a crime directly connected with that statute and this right of privacy was lost without regard to the outcome of the charges. Lincoln v. Denver Post, 31 Colo. App. 283, 501 P.2d 152 (1972).

Right to public trial includes that stage of proceedings which is devoted to selection of jury. Anderson v. People, 176 Colo. 224, 490 P.2d 47 (1971), cert. denied, 405 U.S. 1042, 92 S. Ct. 1376, 31 L. Ed. 2d 583 (1972).

Defendant waived his right to a public trial by failing to object in trial court to closure of the courtroom during jury selection. People v. Stackhouse, 2012 COA 202, __ P.3d __.

Limited exclusion of public during time jury was chosen held not reversible error. Where the defendant is not the victim of any unjust prosecution, the limited exclusion of the general public at his trial during the time that a jury is chosen cannot be elevated to the constitutional plateau of reversible error to escape the jury's verdict. Anderson v. People, 176 Colo. 224, 490 P.2d 47 (1971), cert. denied, 405 U.S. 1042, 92 S. Ct. 1376, 31 L. Ed. 2d 583 (1972).

Exclusion must be limited to particularly justified class. The constitution precludes the general indiscriminate exclusion of the public from the trial of a criminal case over the objection of the defendant and limits the trial judge to the exclusion of those persons or classes of persons only whose particular exclusion is justified by lack of space or for reasons particularly applicable to them. Thompson v. People, 156 Colo. 416, 399 P.2d 776 (1965).

Court may not exclude general public from trial of sexual offense. Whatever may have been the view in more formally modest age, attitude of the present day toward matters of sex precludes a determination that all members of the public, the mature as well as the immature and impressionable may reasonably be excluded from the trial of a sexual offense upon ground of public morals. Thompson v. People, 156 Colo. 416, 399 P.2d 776 (1965).

But exclusion during testimony of prosecuting witness is permissible. In a case, such as a prosecution for statutory rape, in which the prosecuting witness is of such tender years as to be seriously embarrassed in giving her testimony by the presence of spectators not concerned with the trial, the trial judge may during that witness' testimony exclude all members of the public not directly concerned with the trial. Thompson v. People, 156 Colo. 416, 399 P.2d 776 (1965).

Defendant need not show specific prejudice by denial of public trial. It is not necessary for the defendant to show that he was in fact prejudiced by the action of the trial judge in denying a public trial. If that action violated a constitutional right,

such violation necessarily implies prejudice, and more than that need not appear. It would be difficult for a defendant to point to any definite, personal injury. To require him to do so would impair or destroy the safeguard. Thompson v. People, 156 Colo. 416, 399 P.2d 776 (1965).

The right to a public trial, guaranteed by both the federal and state constitutions, is one that is so fundamental to a fair hearing that, if the right is violated, a defendant is entitled to appropriate relief, even if no prejudice can be shown to have resulted from such violation; however, a court may, under justifiable circumstances, bar spectators during a portion of the trial, and such action will not amount to a denial of the right. People v. Thomas, 832 P.2d 990 (Colo. App. 1991).

A defendant's right to a public trial was not violated where the trial court temporarily excluded certain members of the public from the trial proceedings. The court's interest in protecting witnesses from intimidation and in maintaining orderliness and fairness of proceedings outweighed the defendant's interest in a public trial. People v. Angel, 790 P.2d 844 (Colo. App. 1989).

Defendant's right to public trial not violated where courtroom was only partially closed to the public; the court merely limited the flow of traffic in and out of the courtroom; no member of the public was excluded as long as he or she was seated before testimony began; an officer announced the court's decision to all those outside the courtroom, providing ample opportunity for spectators to make arrangements to attend; and the restriction was only in place for a short part of defendant's trial. People v. Whitman, 205 P.3d 371 (Colo. App. 2007).

Upon remand to determine whether locking courtroom was a denial of a public trial, court's findings should determine the length of the time that the doors to the courtroom were locked and the nature of the proceedings that took place during that time; how many, if any, members of the public were excluded from viewing the trial; the nature of any orders given by the court respecting the locking of the door and whether any such orders were disobeyed; whether any members of the public were admitted by the guards while the doors were locked and, if so, what criteria were used in admitting certain members of the public and excluding others; and any other fact the court considers to be germane to establishing the nature of the actions taken by the guards with reference to admitting persons to the courtroom during defendant's trial. People v. Thomas, 832 P.2d 990 (Colo. App. 1991).

C. Right to Speedy Appeal.

There was no violation of the right to a meaningful appeal. The transcripts were sufficiently complete and reliable to enable an intelligent review of defendant's substantive rights. People v. Whittiker, 181 P.3d 264 (Colo. App. 2006); People v. Carmichael, 179 P.3d 47 (Colo. App. 2007), rev'd on other grounds, 206 P.3d 800 (Colo. 2009).

A court must consider the following four factors in determining whether defendant's right to speedy appeal was violated. First, the length of the delay, second, the reason for the delay, third, the defendant's assertion of the right, and, finally, any prejudice to defendant. The first three factors in this case benefit the defendant, but, since there is no showing of prejudice, there is no violation of defendant's right to speedy appeal. The delay, in this case, has not impaired the defendant's ability to present his appeal. People v. Whittiker, 181 P.3d 264 (Colo. App. 2006).

VI. RIGHT TO IMPARTIAL

JURY; VENUE.

Law reviews. For note, "Waiver of Jury Trial in Felony Cases--Colorado Law", see 23 Rocky Mt. L. Rev. 334 (1951). For note, "The Right in Colorado of One Accused of a Felony to Waive Jury Without the Consent of the State", see 24 Rocky Mt. L. Rev. 98 (1951). For note, "The Criminal Jury and Misconduct in Colorado", see 36 U. Colo. L. Rev. 245 (1964). For article, "Pronouncements of the U.S. Supreme Court Relating to the Criminal Law Field: 1985-1986", which discusses a case relating to fair trials and impartial juries, see 15 Colo. Law. 1592 and 1593 (1986).

A. Right to Impartial Jury.

This section guarantees right to trial by impartial jury to the accused in all criminal prosecutions. Oaks v. People, 150 Colo. 64, 371 P.2d 443 (1962).

Where a jury trial is granted, the right to a fair and impartial jury is a constitutional right which can never be abrogated. Brisbin v. Schauer, 176 Colo. 550, 492 P.2d 835 (1971).

It is fundamental that a defendant is entitled to a fair trial by an impartial jury. Maes v. District Court, 180 Colo. 169, 503 P.2d 621 (1972).

Right to fair and impartial jury is all-inclusive; it embraces every class and type of person. Oaks v. People, 150 Colo. 64, 371 P.2d 443 (1962).

Right to fair trial may require limitations on exercise of other constitutional rights. The interest of an accused, whose life and liberty are in jeopardy, to a fair trial by impartial jury is paramount and may require, depending on circumstances of case, limitations upon exercise of right of free speech and of press. Stapleton v. District Court, 179 Colo. 187, 499 P.2d 310 (1972).

Constitutional guarantees are not always absolute and full exercise thereof is not always possible. Stapleton v. District Court, 179 Colo. 187, 499 P.2d 310 (1972).

The constitutional guarantee of a trial by a panel of impartial jurors must be considered in light of the concomitant right of the public and press to the full protections of the first amendment. People v. Botham, 629 P.2d 589 (Colo. 1981).

Petty offense may be constitutionally tried to court without jury. Austin v. City & County of Denver, 170 Colo. 448, 462 P.2d 600 (1969), cert. denied, 398 U.S. 910, 90 S. Ct. 1703, 26 L. Ed. 2d 69 (1970).

Although the proceeding against petitioner is criminal in nature by reason of the imposition of penal sanctions, the offense charged, the unlawful use of a traffic lane by a motor vehicle, is a petty offense and not a criminal offense which would entitle petitioner to a jury trial as comprehended by the constitution of Colorado. Austin v. City & County of Denver, 170 Colo. 448, 462 P.2d 600 (1969), cert. denied, 398 U.S. 910, 90 S. Ct. 1703, 26 L. Ed. 2d 69 (1970).

There is no federal or state constitutional right to a jury trial in cases involving petty offenses. Hardamon v. Municipal Court, 178 Colo. 271, 497 P.2d 1000 (1972).

But such right could be granted by general assembly. Either the general assembly, on a statewide basis, or the legislative body of a home rule city, within its territorial limits, could grant a jury trial in petty offense cases. Hardamon v. Municipal Court, 178 Colo. 271, 497 P.2d 1000 (1972).

"Petty offense" defined. In the interests of the orderly administration of justice and in the absence of legislative mandate by statute or charter to the contrary, petty offenses under the constitution, general laws, charters and ordinances, are those crimes or offenses the punishment for which do not exceed in extent

imprisonment for more than six months or a fine of more than $500, or a combination of imprisonment and fine within such limits. Austin v. City & County of Denver, 170 Colo. 448, 462 P.2d 600 (1969), cert. denied, 398 U.S. 910, 90 S. Ct. 1703, 26 L. Ed. 2d 69 (1970).

Contempt has not been classified as either a "petty" or "serious" offense, so the determinant of whether a particular contempt charge is sufficiently serious to require a jury trial is the severity of the fine actually imposed upon the contemnor. People v. Shell, 148 P.3d 162 (Colo. 2006).

Right to jury trial is inapplicable in administrative hearing to determine whether a driver's license should be revoked for accumulated traffic violations. Campbell v. State, 176 Colo. 202, 491 P.2d 1385 (1971).

Defendant may waive his right to trial by jury, and on a plea of not guilty be tried by the court, and, if found guilty, a valid sentence may be pronounced thereon. Munsell v. People, 122 Colo. 420, 222 P.2d 615 (1950).

Guilty plea operates as waiver of a defendant's constitutional right to a jury trial, but coercion deprives it of its effect as a waiver. Von Pickrell v. People, 163 Colo. 591, 431 P.2d 1003 (1967).

The right to trial by jury comprehends a fair verdict, free from the influence or poison of evidence which should never have been admitted, and the admission of which arouses passions and prejudices which tend to destroy the fairness and impartiality of the jury. Oaks v. People, 150 Colo. 64, 371 P.2d 443 (1962).

The juror's oath prescribes his duty. By the obligation thus imposed, he is to well and truly try the issues joined and a true verdict render according to the law and the evidence. Padilla v. People, 171 Colo. 521, 470 P.2d 846 (1970).

It is sufficient if the juror can lay aside his opinion or extrajudicial information received through pretrial publicity so that he can render a verdict based on the evidence presented in court. People v. McCrary, 190 Colo. 538, 549 P.2d 1320 (1976).

Trial court to determine competence of juror. A juror's assurances that he is equal to the task cannot be dispositive, and it is the duty of the trial court to determine the competence and credibility of the juror. People v. McCrary, 190 Colo. 538, 549 P.2d 1320 (1976).

The fact that jurors have read newspaper articles relating to a case does not disqualify them as jurors. This is true even though a juror may have had a preconceived notion as to the guilt or innocence of the accused. People v. McCrary, 190 Colo. 538, 549 P.2d 1320 (1976).

Test as to juror's impartiality after pretrial publicity. The test is whether the nature and strength of the opinion formed or of the information learned from pretrial publicity are such as necessarily raise the presumption of partiality or of the inability of the potential juror to block out the information from his consideration. People v. McCrary, 190 Colo. 538, 549 P.2d 1320 (1976).

Factors to be considered. A juror's exposure to highly inflammatory information that is inadmissible at trial can, in some cases, be sufficient to disbelieve a juror's assurances that he can lay it aside. However, normally other factors must also be considered such as the detail of the information, the strength of the juror's recollection, the length of time since his exposure to the information, the juror's willingness to exclude the evidence from his consideration, the juror's opinion as to its relevance, the confidence the juror expresses in the news source, and, finally, the atmosphere that will pervade the trial. People v. McCrary, 190 Colo. 538, 549 P.2d 1320 (1976).

It is counsel's duty to make

diligent inquiry into the existence of potential prejudice that might exist in the jurors' minds by reason of defendant's racial heritage. Maes v. District Court, 180 Colo. 169, 503 P.2d 621 (1972); People v. Baker, 924 P.2d 1186 (Colo. App. 1996).

Thus, voir dire inquiry is permissible into matters of racial prejudice in the interest of obtaining a fair and impartial jury. Maes v. District Court, 180 Colo. 169, 503 P.2d 621 (1972).

Defendant who failed to exhaust his or her peremptory challenges has no claim that his or her substantial right to the use of peremptory challenges was violated. Dunlap v. People, 173 P.3d 1054 (Colo. 2007), cert. denied, 552 U.S. 1105, 128 S. Ct. 882, 169 L. Ed. 2d 740 (2008).

Disqualification of a juror for inability to join in a verdict imposing the death penalty in a proper case is not error where the jury has the duty to determine the defendant's guilt or innocence and his punishment if he is found guilty. Padilla v. People, 171 Colo. 521, 470 P.2d 846 (1970).

A constitutional right to a trial by a jury of his peers is not denied a defendant because twenty-nine and three-tenths percent of the jury panel were excluded on challenge for cause because of their unwillingness to consider under any circumstances the imposition of the death penalty. Padilla v. People, 171 Colo. 521, 470 P.2d 846 (1970).

But exclusion for opposition to capital punishment vitiates death penalty. A death sentence cannot constitutionally be executed if imposed by a jury from which have been excluded for cause those who, without more, are opposed to capital punishment or have conscientious scruples against imposing the death penalty. This decision does not govern where the jury recommended a sentence of life imprisonment. Padilla v. People, 171 Colo. 521, 470 P.2d 846 (1970).

And denies representative jury and equal protection. Belief against capital punishment on the part of jurors who are vested with a dichotomy of functions, the determination of the issue of guilt, and the degree of punishment, cannot be allowed to disqualify a substantial part of the venire when it is not established that the views of the persons so disqualified will preclude them from making a fair determination on the issue of guilt, aside from the issue of punishment. Such disqualification prevents the jury in its function of determining the issue of guilt from being fairly representative of the community, and thus violates equal protection of the laws. Padilla v. People, 171 Colo. 521, 470 P.2d 846 (1970).

Death qualified jury not denial of impartial jury. Death qualified juries are not more prone to convict than to acquit, and do not deny a defendant his right to an impartial jury. People v. Manier, 184 Colo. 44, 518 P.2d 811 (1974); People v. Mackey, 185 Colo. 24, 521 P.2d 910 (1974); People v. Casey, 185 Colo. 58, 521 P.2d 1250 (1974); People v. Rodriguez, 786 P.2d 472 (Colo. App. 1989).

Peremptory challenge after juror accepted. A trial court has the right, upon the showing of good cause, to authorize a defendant to peremptorily challenge a juror even after he has been accepted. Simms v. People, 174 Colo. 85, 482 P.2d 974 (1971).

Improper for court to require challenge for cause, and subsequent argument, in the presence of potential jurors. However, not plain error requiring reversal of conviction where there is no evidence in record supporting assertion that the challenged jurors were biased by hearing the challenges for cause nor

were the challenges so obviously inflammatory to raise the presumption that bias resulted. People v. Flockhart, __ P.3d __ (Colo. App. 2009).

Recess did not prejudice jury. Where defense counsel became ill during the course of the trial resulting in a recess of over a week, a situation was not created where the jury was prejudiced by the recess. Valdez v. District Court, 171 Colo. 436, 467 P.2d 825 (1970).

Court did not err by allowing jury to deliberate past midnight because a juror had travel plans for the next day. People v. Baird, 66 P.3d 183 (Colo. App. 2002).

Instructing jury that they may engage in predeliberation discussion of the case is constitutional error. The error is trial error rather than structural error. The burden rests with the people to establish harmlessness beyond a reasonable doubt. People v. Flockhart, __ P.3d __ (Colo. App. 2009).

Predeliberation instruction creates a rebuttable presumption of prejudice. Defendant must make prima facie showing that predeliberation instruction was made, without conflicting instructions prohibiting predeliberation, and that the jury had the opportunity to predeliberate. The people may then rebut the prima facie case by establishing by a preponderance of the evidence that predeliberation did not occur. People v. Flockhart, __ P.3d __ (Colo. App. 2009).

When analyzing prejudice from predetermination instructions, courts consider the mitigating effect of additional jury instructions. People v. Flockhart, __ P.3d __ (Colo. App. 2009).

Denial of trial by impartial jury not established. Where the record in a first-degree murder case contained only excerpts from the voir dire examination, referring solely to those jurors excused for cause, who stated in effect that under no circumstances would they impose a death sentence, and nothing was brought before the supreme court to support a claim that the jury was not impartial, the defendant did not establish a violation of his rights under this section. Carroll v. People, 177 Colo. 288, 494 P.2d 80 (1972).

Coercion of juror violated section. The provision of this section as to a trial by an impartial jury was violated where 11 jurors, instead of 12, fixed the death penalty upon defendant, the twelfth juror having been coerced to agree. Such juror's sworn statement can be admitted to show procurement of his assent by threats. Wharton v. People, 104 Colo. 260, 90 P.2d 615 (1939).

Court may not act in a manner that could coerce a verdict by causing juror to surrender honest convictions as to the weight and effect of the evidence for the mere purpose of returning a verdict. Denial of mistrial was improper because court created unacceptably high risk of coerced verdict by threatening previously absent juror with contempt sanctions and admonishing the juror on several occasions before deliberations. People v. Dahl, 160 P.3d 301 (Colo. App. 2007).

Separate hearings of the issues raised by pleas of insanity and not guilty, in a criminal case, do not violate the constitutional right to a speedy public trial by an impartial jury, or of due process of law. Leick v. People, 136 Colo. 535, 322 P.2d 674, cert. denied, 357 U.S. 922, 78 S. Ct. 1363, 2 L. Ed. 2d 366 (1958).

A bifurcated trial on the guilt issue and the punishment issue in a first-degree murder case is neither statutorily permitted nor constitutionally required. Jorgensen v. People, 178 Colo. 8, 495 P.2d 1130 (1972).

Where questions by district attorney convince jury that defendant has been involved in other

criminal offenses besides the one for which he is being tried, defendant's right to a fair trial is vitiated in a substantive manner. Edmisten v. People, 176 Colo. 262, 490 P.2d 58 (1971).

The right to an impartial jury includes the right to a jury drawn from a representative or fair cross-section of the community. Fields v. People, 732 P.2d 1145 (Colo. 1987).

The right to an impartial jury does not require counsel be granted unlimited voir dire examination. People v. O'Neill, 803 P.2d 164 (Colo. 1990).

The right to a jury comprising a fair cross-section of the community does not require that each petit jury mirror the demographic composition of the community or that any particular jury actually contain members of the defendant's own group. Fields v. People, 732 P.2d 1145 (Colo. 1987).

Although a defendant is entitled to a trial by a fair and impartial jury, he is not entitled to any particular juror. People v. Johnson, 757 P.2d 1098 (Colo. App. 1988).

The presumption exists that the prosecutor has exercised peremptory challenges on constitutionally permissible grounds, but said presumption may be rebutted by the demonstration of a prima facie case of discrimination. Fields v. People, 732 P.2d 1145 (Colo. 1987).

In evaluating allegations of discriminatory jury selection, the court employs a three-step process. First, the defendant must make a prima facie showing that the people excluded jurors based solely on their race. Second, if the defendant makes this showing, then the burden shifts to the people to articulate a race-neutral reason for excluding the jurors in question. This burden requires the people to provide only a facially race-neutral reason, not an explanation that is persuasive or even plausible. Third, if the people provide a race-neutral reason, the trial court must consider all relevant circumstances to determine whether the defendant has proved purposeful racial discrimination. Valdez v. People, 966 P.2d 587 (Colo. 1998); People v. Hinojos-Mendoza, 140 P.3d 30 (Colo. App. 2005), aff'd in part and rev'd in part on other grounds, 169 P.3d 662 (Colo. 2007).

There is a three-step process for evaluating claims of racial discrimination in jury selection. To establish a prima facie showing, the defendant: (1) Must demonstrate that the prosecution struck a member of a cognizable racial group from the jury; (2) can rely on the fact that peremptory challenges constitute a jury selection practice that permits those who are of a mind to discriminate to discriminate; and (3) must show that the totality of the relevant facts gives rise to an inference of purposeful discrimination. People v. Hogan, 114 P.3d 42 (Colo. App. 2004).

Relevant factors in determining whether an inference of intentional racial discrimination exists include the disproportionate effect of peremptory strikes, a pattern of strikes against jurors of a particular race, and the prosecutor's questions and statements during voir dire. Defendant failed to demonstrate a prima facie case of racial discrimination. People v. Hogan, 114 P.3d 42 (Colo. App. 2004).

Test for prima facie case of discrimination in jury selection includes: (1) That a distinctive and cognizable group exists; (2) that the group is systematically excluded from the jury selection process; and (3) that the resulting jury pool fails to be reasonably representative of the community. People v. Sepeda, 196 Colo. 13, 581 P.2d 723 (1978).

A prima facie case of discrimination in jury selection is demonstrated by showing that the persons excluded are members of a

cognizable group and that, considering all the circumstances of the case, there is a strong likelihood that the jurors were excused solely because of their membership in the group. Fields v. People, 732 P.2d 1145 (Colo. 1987).

Failure to voir dire can demonstrate intent to exclude jurors on the basis of race. Applying non-racial criteria for peremptory challenge differently to different jurors can also indicate a peremptory challenge used to discriminate because of race. People v. Gabler, 958 P.2d 505 (Colo. App. 1997).

Whether the defendant has established a prima facie case of discrimination in jury selection is moot where the prosecution explained its use of peremptory challenges before the trial court determined whether an inference of systematic exclusion existed. People v. Mendoza, 860 P.2d 1370 (Colo. App. 1993).

Upon the court's determination that a prima facie case of discrimination has been proven, the burden shifts to the state to rebut the inference that jurors were excluded solely because of group membership by statements by the prosecutor stating reasons for excluding such jurors that are unrelated to membership in a cognizable group and reasonably related to the particular case. Fields v. People, 732 P.2d 1145 (Colo. 1987).

Question of whether a party has established a prima facie case of racial discrimination during the jury selection process is a matter of law to which an appellate court should apply a de novo standard of review. Valdez v. People, 966 P.2d 587 (Colo. 1998).

Once the prosecution has articulated a race-neutral reason for excluding the juror in question, the trial court must consider the plausibility of the prosecutor's race-neutral explanation. The court may consider a number of factors including the prosecutor's demeanor, how reasonable the explanations are, and whether the proffered rationale has some basis in accepted trial strategy. People v. Collins, 187 P.3d 1178 (Colo. App. 2008).

Because reviewing court is not as well positioned as trial court to make credibility determinations, the trial court's determination as to whether the proponent has exercised purposeful racial discrimination is reviewed only for clear error. People v. Robinson, 187 P.3d 1166 (Colo. App. 2008); People v. Collins, 187 P.3d 1178 (Colo. App. 2008).

Prosecutor's use of peremptory challenge held to be purposeful discrimination where at least three of prosecutor's race-neutral reasons were refuted by the record, the trial court failed to specifically credit the other reasons given, and the prosecutor's failure to inquire into the facts of one of the articulated reasons suggested pretext and undermined the persuasiveness of the underlying concern. People v. Collins, 187 P.3d 1178 (Colo. App. 2008).

Striking a single potential juror for a discriminatory reason violates the equal protection clause even where jurors of the same race are seated. People v. Collins, 187 P.3d 1178 (Colo. App. 2008).

Where prosecutor offered explanation of peremptory challenge of the only remaining member of defendant's race from jury panel before defendant was afforded the opportunity to make out a prima facie case of discrimination, defendant's burden of proof is moot and court must consider whether the prosecution espoused a sufficient race-neutral rationale for striking juror. People v. Arrington, 843 P.2d 62 (Colo. App. 1992).

Defendant's right to equal protection was violated where prosecutor's peremptory challenge against the only remaining member of defendant's race was founded upon impermissibly race specific reasons.

People v. Arrington, 843 P.2d 62 (Colo. App. 1992).

Prosecutor's striking of a prospective juror was a Batson v. Kentucky, 476 U.S. 79 (1986), violation. Both of the prosecutor's race-neutral explanations for striking the prospective juror were refuted by the record and, therefore, supported a finding of pretext. Further, the prosecutor did not challenge other jurors who expressed similar concerns that formed the basis for the prosecutor's race-neutral explanations. People v. Wilson, 2012 COA 163M, __ P.3d __.

A Batson v. Kentucky, 476 U.S. 79 (1986), violation is a structural error requiring reversal. People v. Wilson, 2012 COA 163M, __ P.3d __.

Spanish-surnamed persons are a cognizable group for purposes of determining whether a defendant has been denied the opportunity for a jury composed of a fair cross-section of the community, and for equal protection analysis. Fields v. People, 732 P.2d 1145 (Colo. 1987).

A prosecutor's purposeful, discriminatory, and systematic exercise of peremptory challenges in a given case to exclude from the jury panel Spanish-surnamed persons solely on the basis of presumed group characteristics violates this constitutional provision. Fields v. People, 732 P.2d 1145 (Colo. 1987).

If even one of the prosecutor's explanations of the bases for the peremptory challenges is insufficient, the trial court should rule that the exclusion violates both the defendant's and the prospective juror's equal protection rights. People v. Mendoza, 860 P.2d 1370 (Colo. App. 1993).

A defendant's objection to the prosecutor's peremptory challenge must be made before the venire is dismissed and the trial begins since the procedures for proving such a claim include requiring the prosecutor to state neutral reasons for striking the potential juror. Therefore, defendant was precluded from making an objection after the venire was dismissed, the jury panel had been sworn, and the trial had begun. People v. Mendoza, 860 P.2d 1370 (Colo. App. 1993).

Error, if any, in granting prosecution's challenge for cause to prospective juror was harmless where prosecution did not use all its peremptory challenges. People v. Orth, 121 P.3d 256 (Colo. App. 2005).

Test for excluding a juror is whether the juror would render a fair and impartial verdict based on evidence presented at trial and on instructions given by the court. People v. Abbott, 690 P.2d 1263 (Colo. 1984).

Rebuttable presumption that defendant's right to a fair trial has been prejudiced arises when, over objection of defendant, a regular juror who has become unable to continue deliberations is substituted with a discharged alternate juror. People v. Burnette, 775 P.2d 583 (Colo. 1989); People v. Patterson, 832 P.2d 1083 (Colo. App. 1992).

Such presumption arises independent of the question of the authority by which the substitution is made. People v. Patterson, 832 P.2d 1083 (Colo. App. 1992).

Thus, even where defendant contents to the fact of the juror substitution, the defendant does not waive the right to challenge the procedure followed in accomplishing the juror substitution and thereby waive the right to a fair and impartial jury. People v. Patterson, 832 P.2d 1083 (Colo. App. 1992).

Presumption of prejudice not rebutted where, even though defendant consented to the fact of a juror substitution, he was not present when the actual substitution was made and neither he nor his counsel were aware of the manner in which the substitution

was accomplished until after deliberations had been concluded and where trial court: failed to question regular jurors prior to substitution regarding their willingness and ability to start deliberations anew with an alternate juror; never instructed reconstituted jury to start deliberations anew; failed to question alternate juror about his ability to serve or as to whether he had received any extraneous information or formed any opinions while discharged until after the deliberative process; and where trial court's instruction may have sent message to jurors that their deliberations should continue from the point at which they had been interrupted. People v. Patterson, 832 P.2d 1083 (Colo. App. 1992).

The length of time a jury deliberates prior to juror substitution may influence the issue of whether defendant's right to a fair trial has been prejudiced; the longer the delay in inserting the substitute juror, the stronger the presumption of prejudice. People v. Patterson, 832 P.2d 1083 (Colo. App. 1992).

The promptness of the juror substitution cannot, by itself, defeat the presumption that defendant's right to a fair trial has been prejudiced by substitution of a regular juror who has become unable to continue deliberations with a discharged alternate juror; rather, promptness of substitution is one of several factors important to such determination. People v. Patterson, 832 P.2d 1083 (Colo. App. 1992).

If a trial court interrupts deliberations of a jury and suspends the jury's fact finding functions to investigate allegations of juror misconduct, the court's inquiry must not intrude into the deliberative process. In the exercise of judicial discretion, before a juror is dismissed from a deliberating jury due to an allegation of juror misconduct, the court must make findings supporting a conclusion that the allegedly offending juror will not follow the court's instructions. Garcia v. People, 997 P.2d 1 (Colo. 2000).

Jury to be selected from representative cross-section of community. The constitutional guarantees of due process and trial by jury require that juries be selected from a representative cross-section of the community. People v. Moody, 630 P.2d 74 (Colo. 1981).

But each jury need not reflect exact ethnic proportion. There is no constitutional requirement that each petit jury reflect the exact ethnic proportion of the population to which the defendant belongs. People v. Moody, 630 P.2d 74 (Colo. 1981).

Prosecutor may not exercise peremptory jury challenge based solely on gender. Cause remanded for further consideration of gender discrimination question since trial court made no finding on claim. People v. Gandy, 878 P.2d 68 (Colo. App. 1994).

The term "district" is intended to express a concept of local vicinity. Wafai v. People, 750 P.2d 37 (Colo. 1988).

Residents of a particular urban area do not constitute a distinctive group for purposes of trial by a jury fairly representing a cross-section of the community. People v. Rubanowitz, 688 P.2d 231 (Colo. 1984).

Selection of jurors from a different county than the county of venue preserved defendant's right to a fair trial. People v. Wafai, 713 P.2d 1354 (Colo. App. 1985), aff'd, 750 P.2d 37 (Colo. 1988).

Municipal court jury trials. The term "district", as applicable to a municipal court prosecution for an ordinance violation in a multi-county municipality, refers to the area served by the municipal court which means the territorial boundaries of the city. City of Aurora v. Rhodes, 689 P.2d 603

(Colo. 1984).

Term "district", within the meaning of this section which gives an accused the right to a speedy public trial by an impartial jury of the county or district in which the offense is alleged to have been committed, refers to a governmental area district from a county and includes a judicial district. People v. Taylor, 732 P.2d 1172 (Colo. 1987).

Strong aversion to particular crime not automatic disqualification of prospective juror. A strong aversion to a particular crime, such as child abuse, does not automatically disqualify a prospective juror, where the juror states that she can, and will, set aside her adverse feelings and decide the case based upon the evidence and the law, and the juror's statement is not otherwise impugned by the record. People v. Taggart, 621 P.2d 1375 (Colo. 1981).

No abuse of discretion when court denies a challenge for cause after the challenged juror has committed to put aside his or her biases and has expressed that he or she can be fair. People v. Shover, 217 P.3d 901 (Colo. App. 2009).

Court did not abuse its discretion in deciding not to excuse two jurors for cause. Although each juror expressed some reservations about the burden of proof, nothing in their statements indicated that they did not understand the burden of proof or would not follow the court's instruction regarding the burden of proof. People v. Rabes, 258 P.3d 937 (Colo. App. 2010); People v. Taylor, 2012 COA 91, __ P.3d __.

Same jury requirement under habitual criminal statute upheld. Under the habitual-criminal statute, the same jury which returns a guilty verdict on the underlying offense must then decide whether the defendant committed the necessary prior crimes to be adjudged an habitual criminal. Despite this "same-jury" requirement in § 16-13-103, the defendant can have an impartial jury during the habitual-criminal sentencing hearing, as guaranteed by this section and § 25 of this article. People ex rel. Faulk v. District Court ex rel. County of Fremont, 673 P.2d 998 (Colo. 1983).

Decision of trial judge to deny challenge for cause will not be disturbed on review in the absence of a manifest abuse of discretion. People v. Taggart, 621 P.2d 1375 (Colo. 1981); People v. Abbott, 690 P.2d 1263 (Colo. 1984).

Trial court's decision to excuse a juror during trial will not be disturbed absent a gross abuse of discretion. People v. Abbott, 690 P.2d 1263 (Colo. 1984).

Trial court did not abuse its discretion when it dismissed a juror and did not commit reversible error by not recording the side bar conference. A defendant must establish specific prejudice that resulted from an incomplete record. People v. Wolfe, 9 P.3d 1137 (Colo. App. 1999).

Trial court's decision to allow juror questioning in a criminal trial does not, in and of itself, violate a defendant's constitutional rights to a fair and impartial jury. Medina v. People, 114 P.3d 845 (Colo. 2005).

The court's decision to permit juror questioning did not constitute an abuse of discretion as the testimony elicited by the jurors was not new or different from other evidence already admitted. People v. Milligan, 77 P.3d 771 (Colo. App. 2003).

There was no abuse of discretion in denying challenge for cause. Juror stated she would express her opinions in the jury room, so the court reasonably concluded the juror could serve. People v. Collins, 250 P.3d 668 (Colo. App. 2010).

There was no abuse of discretion in denying defendant's challenge for cause where juror repeatedly stated he would not make a decision about the appropriate penalty

until all of the evidence had been heard. Dunlap v. People, 173 P.3d 1054 (Colo. 2007), cert. denied, 552 U.S. 1105, 128 S. Ct. 882, 169 L. Ed. 2d 740 (2008).

Trial court's decision to grant prosecution's challenge for cause to a juror who stated he would vote for life imprisonment if any mitigation existed, however slight, was supported by the record. Juror's statement showed he was substantially impaired in his ability to fairly and impartially weigh the aggravating and mitigating evidence. Dunlap v. People, 173 P.3d 1054 (Colo. 2007), cert. denied, 552 U.S. 1105, 128 S. Ct. 882, 169 L. Ed. 2d 740 (2008).

The constitutional basis for the prosecutorial duty to refrain from improper methods calculated to produce a wrong conviction as well as to use every legitimate means to bring about a just one is the right to trial by a fair and impartial jury guaranteed by both the sixth amendment to the United States Constitution and art. II, §§ 16 and 23, of the Colorado Constitution. Harris v. People, 888 P.2d 259 (Colo. 1995).

Prosecutorial misconduct that misleads a jury can warrant reversal of a conviction because the right to trial includes the right to trial by an impartial jury empaneled to determine the issues solely on the basis of the evidence introduced at trial rather than on the basis of bias or prejudice for or against a party. Harris v. People, 888 P.2d 259 (Colo. 1995); People v. Walters, 148 P.3d 331 (Colo. App. 2006).

Comments on defendant's demeanor are not considered prosecutorial misconduct if defendant testifies in his or her own defense, thus making his or her demeanor and credibility proper subjects for the jury to consider. The prosecutor may not, however, inject his or her own credibility into the case. People v. Walters, 148 P.3d 331 (Colo. App. 2006).

It is improper and therefore constitutes prosecutorial misconduct for prosecutor to ask the jury to consider anecdotal evidence regarding acquaintances and personal experiences or other information outside the record that serves only to inflame the jurors' passion. People v. Walters, 148 P.3d 331 (Colo. App. 2006).

It is prosecutorial misconduct for an attorney to characterize a witness's testimony or his character for truthfulness with any form of the word "lie". A violation of this prohibition, although sanctionable in other ways, does not warrant reversal if it was harmless. Domingo-Gomez v. People, 125 P.3d 1043 (Colo. 2005); Crider v. People, 186 P.3d 39 (Colo. 2008).

Potential for jury prejudice is significantly diminished when a trial court sustains defense counsel's objection. People v. Suazo, 87 P.3d 124 (Colo. App. 2003).

Failure to instruct jury on element not necessarily structural, requiring reversal. If element uncontested, supported by overwhelming evidence, and jury verdict would have been same absent error, failure to instruct harmless. People v. Geisendorfer, 991 P.2d 308 (Colo. App. 1999).

Right to a fair trial before an impartial jury was not violated when evidence was admitted that at the time of the arrest the defendant had a handgun, the defendant was wearing multiple clothing, and several items of clothing identified by the police at trial were found in the defendant's car. This evidence was relevant, and no error existed in its admission. People v. Boehmer, 872 P.2d 1320 (Colo. App. 1993).

Defendant's right to fair trial held not violated when the prosecutor's argument, while supported by evidence admitted at trial, was contrary to facts outside the record but prosecutor was not aware of the facts

outside the record. People v. Perry, 68 P.3d 472 (Colo. App. 2002).

Court's failure to question jury about possible juror misconduct did not prejudice defendant. Any error in not questioning the jury was harmless beyond a reasonable doubt. Alternate jurors' conversation about defendant's previous conviction occurred outside the presence of the regular jurors and there was no evidence that the regular jurors were exposed to the information. Alternate juror's statement to regular juror congratulating regular juror on the guilty verdicts also did not prejudice defendant because the incident occurred after the guilty verdicts were announced and had no effect on the jury during the guilt phase. Dunlap v. People, 173 P.3d 1054 (Colo. 2007), cert. denied, 552 U.S. 1105, 128 S. Ct. 882, 169 L. Ed. 2d 740 (2008).

Applied in Stone v. People, 71 Colo. 162, 204 P. 897 (1922); Dikeou v. Food Distribs. Ass'n, 107 Colo. 38, 108 P.2d 529 (1940); People v. Benney, 757 P.2d 1078 (Colo. App. 1987).

B. Venue and Pretrial Publicity.

In Colorado, a person is subject to prosecution in any Colorado district court if he or she commits an offense either wholly or partly within the state. People v. Sharp, 155 P.3d 577 (Colo. App. 2006).

Venue in a criminal case generally lies in the county where the offense was committed. Claxton v. People, 164 Colo. 283, 434 P.2d 407 (1967).

Right to trial in county where alleged offense is committed may be waived. The provision of this section that defendant in a criminal case shall have the right to a trial in the county or district in which the offense is alleged to have been committed, is solely for the benefit of the accused and may be waived by him at his pleasure. Davis v. People, 83 Colo. 295, 264 P. 658 (1928).

Where the defendant enters a plea of guilty to the charge, there is no "trial" within the import of the language of the provision which guarantees the right to a "speedy public trial by an impartial jury of the county or district". Even where a not guilty plea is entered and the issues of fact are determined by a jury, the accused may waive his right to trial in the county where the offense is committed. Vigil v. People, 135 Colo. 313, 310 P.2d 552 (1957).

Where defendant expressly consented to the proceedings in the county where the arraignment was had, he waived whatever right he might otherwise have had to be arraigned in the county where the alleged offense was committed. Vigil v. People, 135 Colo. 313, 310 P.2d 552 (1957).

This provision is guarantee of right to proper venue only and is for the sole benefit of the accused and may be waived. People v. Rice, 40 Colo. App. 357, 579 P.2d 647, cert. denied, 439 U.S. 898, 99 S. Ct. 261, 58 L. Ed. 2d 245 (1978).

This provision makes no reference to where arraignments shall be had. Vigil v. People, 135 Colo. 313, 310 P.2d 552 (1957); People v. Joseph, 920 P.2d 850 (Colo. App. 1995).

Effect of prejudice in community. Where there is a reasonable likelihood that prejudicial news prior to trial will prevent a fair trial, the judge should continue the case until the threat abates, or transfer it to another county not so permeated with publicity. Walker v. People, 169 Colo. 467, 458 P.2d 238 (1969).

If a community is prejudiced against a citizen or if other circumstances are likely to deny him a fair and impartial jury trial, then a change of venue must be granted. Brisbin v. Schauer, 176 Colo. 550, 492 P.2d 835 (1971).

Only when the publicity is so ubiquitous and vituperative that most jurors in a community could not ignore its influence is a change of venue required before voir dire examination. People v. McCrary, 190 Colo. 538, 549 P.2d 1320 (1976).

Factors as to whether pretrial publicity capable of biasing community. Some of the cumulative factors to be considered by a trial court in determining swhether there is such massive, pervasive, and prejudicial pretrial publicity as to bias a community are: the size and type of the locale, the reputation of the victim, the revealed sources of the news stories, the specificity of the accounts of certain facts, the volume and intensity of the coverage, the extent of comment by the news reports on the facts of the case, the manner of presentation, the proximity to the time of trial, and the publication of highly incriminating facts not admissible at trial. People v. McCrary, 190 Colo. 538, 549 P.2d 1320 (1976).

Balance between fair trial and freedom of press. To strike the proper balance between the accused's right to a fair trial and the freedom of the press, the trial judge may: (1) Cause extensive voir dire examination of prospective jurors; (2) change the trial venue to a place less exposed to intense publicity; (3) postpone the trial to allow public attention to subside; (4) empanel veniremen from an area that has not been exposed to intense pretrial publicity; (5) enlarge the size of the jury panel and increase the number of peremptory challenges; or (6) use emphatic and clear instructions on the sworn duty of each juror to decide the issues only on the evidence presented in open court. People v. Botham, 629 P.2d 589 (Colo. 1981).

Mere existence of extensive pretrial publicity, by itself, does not trigger a due process entitlement to a change of venue. People v. Bartowsheski, 661 P.2d 235 (Colo. 1983).

A defendant, in order to prevail on this argument, must show that the publicity was so "massive, pervasive, and prejudicial" as to create a presumption of an unfair trial or, or alternatively, that the publicity created actual hostility on the part of the jurors. People v. Bartowsheski, 661 P.2d 235 (Colo. 1983); People v. Tafoya, 703 P.2d 663 (Colo. App. 1985).

Defendant failed to meet this burden where the trial court allowed extensive in camera voir dire and gave cautionary remarks to the jury concerning avoidance of publicity and where the defendant failed to exhaust his peremptory challenges. People v. Tafoya, 703 P.2d 663 (Colo. App. 1985).

Mere familiarity with a case due to pretrial publicity does not, in itself, create a constitutionally defective jury. People v. Loscutoff, 661 P.2d 274 (Colo. 1983).

Mere speculation by a defendant that the jurors read and were prejudiced by unfavorable news articles does not constitute a basis for reversal, and a defendant bears the burden of showing that prejudice occurred. People v. Davis, 39 Colo. App. 63, 565 P.2d 1347 (1977); People v. Tafoya, 703 P.2d 663 (Colo. App. 1985).

The trial court's failure to sequester the jury or its failure to give the complete admonitory instruction when requested, and its refusal to allow any inquiry with regard to the jurors' exposure to out-of-court information, in light of the circumstances surrounding the trial, was an abuse of discretion. Under the circumstances of the case, this error, combined with others, required reversal. People v. Vialpando, 809 P.2d 1082 (Colo. App. 1990).

Presumption of partiality shown. Where it is shown that a significant number of jurors entertained an opinion of the defendant's guilt, had been exposed to pretrial publicity, and

had knowledge of the details of the crime, the defendant has met his burden of showing the existence of an opinion in the minds of the jurors which raises a presumption of partiality. People v. Botham, 629 P.2d 589 (Colo. 1981).

VII. RIGHT TO UNANIMOUS JURY VERDICT.

There was no unanimity problem with the guilty verdict based on a series of sexual contacts since the defendant did not allege that some occurred and others did not. People v. Greer, 262 P.3d 920 (Colo. App. 2011).

The people adequately elected the specific acts underlying each count that constituted the pattern of sexual abuse. People v. Greer, 260 P.3d 920 (Colo. App. 2011).

There was a unanimity problem with four of the guilty verdicts since the jury indicated that it did not find a specific act was committed to support the guilty verdict for each count. Because the court did not resolve that problem by merging each of the four convictions into one conviction, reversal of the convictions is the proper remedy. People v. Greer, 262 P.3d 920 (Colo. App. 2011).

Section 16a. Rights of crime victims. Any person who is a victim of a criminal act, or such person's designee, legal guardian, or surviving immediate family members if such person is deceased, shall have the right to be heard when relevant, informed, and present at all critical stages of the criminal justice process. All terminology, including the term "critical stages", shall be defined by the general assembly.

Source: L. 91: Entire section added, p. 2031, effective upon proclamation of the Governor, **L. 93,** p. 2155, January 14, 1993.

Cross references: For statutory provisions relating to victims' rights set out in this section, see §§ 24-4.1-302.5, 24-4.1-303, and 24-31-106.

ANNOTATION

It is within the general assembly's discretion to define the technical or special terminology included in this section, including "critical stages" and "right to be heard". People v. Herron, 874 P.2d 435 (Colo. App. 1993).

This section does not grant a victim the right to challenge a district attorney's decision to dismiss charges by appealing the trial court's order of dismissal since the general assembly did not include that right in defining victims' rights in § 24-4.1-302.5. People v. Herron, 874 P.2d 435 (Colo. App. 1993).

The right of a victim's surviving immediate family member to be present at all critical stages of the criminal justice process takes precedence over a party's right to sequester witnesses under C.R.E. 615. The father of a murder victim who testified in the defendant's trial was wrongly excluded from subsequent portions of the trial. People v. Coney, 98 P.3d 930 (Colo. App. 2004).

Section 17. Imprisonment of witnesses - depositions - form. No person shall be imprisoned for the purpose of securing his testimony in any case longer than may be necessary in order to take his deposition. If he can give security he shall be discharged; if he cannot give security his deposition shall be

taken by some judge of the supreme, district or county court, at the earliest time he can attend, at some convenient place by him appointed for that purpose, of which time and place the accused and the attorney prosecuting for the people shall have reasonable notice. The accused shall have the right to appear in person and by counsel. If he has no counsel, the judge shall assign him one in his behalf only. On the completion of such examination the witness shall be discharged on his own recognizance, entered into before said judge, but such deposition shall not be used if in the opinion of the court the personal attendance of the witness might be procured by the prosecution, or is procured by the accused. No exception shall be taken to such deposition as to matters of form.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 31.

Cross references: For right to compel attendance of witnesses at trial, see § 16-9-101; for summoning witnesses from outside the state, see § 16-9-202.

ANNOTATION

Law reviews. For article, "Report of the Denver Bar Association's Committee on the Administration of Criminal Justice in Colorado", see 2 Den. B. Ass'n Rec. 2 (Feb. 1925).

Main thrust of section is prevention of imprisonment of a witness who cannot give bond or security for his or her appearance. Morse v. Wilson, 500 F.2d 1264 (10th Cir. 1974), cert. denied, 419 U.S. 1121, 95 S. Ct. 804, 42 L. Ed. 2d 821 (1975).

This and preceding section must be construed in pari materia, and when so construed no doubt can be entertained that in this state there is constitutional sanction for the taking of a deposition on the part of the prosecution and the introduction of the same against the accused upon final trial, under some circumstances. Ryan v. People, 21 Colo. 119, 40 P. 775 (1895).

Use of depositions not deprivation of right to confront witness. Where prosecution used depositions of two witnesses at trial, and where defendant was present with counsel and was granted full rights of cross-examination at the time of the taking of the depositions before a judge, he was not deprived of his right to confront witnesses at trial where the depositions were used without a finding of unavailability of the deponents, where it was a matter of his counsel's trial strategy. Morse v. People, 180 Colo. 49, 501 P.2d 1328 (1972).

Clause of this section dealing with use of deposition is incidental provision. Morse v. Wilson, 500 F.2d 1264 (10th Cir. 1974), cert. denied, 419 U.S. 1121, 95 S. Ct. 804, 42 L. Ed. 2d 821 (1975).

Waiver of deposition. Reading the deposition provision in its entirety and considering its object and purpose, there can be a waiver. Morse v. Wilson, 500 F.2d 1264 (10th Cir. 1974), cert. denied, 419 U.S. 1121, 95 S. Ct. 804, 42 L. Ed. 2d 821 (1975).

Application of section 16-10-201 in allowing prosecution to impeach its own witness with prior inconsistent statements was not a violation of right to confront accuser, to assistance of counsel, to appear when depositions against one were taken, or to due process of law. People v. Bastardo, 191 Colo. 521, 554 P.2d 297 (1976).

Applied in Baker v. People, 72 Colo. 68, 209 P. 791 (1922); People v. District Court, 647 P.2d 1206 (Colo. 1982).

Section 18. Crimes - evidence against one's self - jeopardy. No person shall be compelled to testify against himself in a criminal case nor shall any person be twice put in jeopardy for the same offense. If the jury disagree, or if the judgment be arrested after the verdict, or if the judgment be reversed for error in law, the accused shall not be deemed to have been in jeopardy.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 31.

Editor's note: (1) Compare Kirschwing v. Farrar, 114 Colo. 421, 166 P.2d 154 (1946) (civil case, blood test obtained while unconscious); Lewis v. People, 115 Colo. 435, 174 P.2d 736 (1946) (civil case, void telephone company identification); Hanlon v. Woodhouse, 113 Colo. 504, 160 P.2d 998 (1945) (civil case).

(2) For successive indictments and trials in federal and state courts on the same offense, compare Malloy v. Hogan, 378 U.S. 1, 12 L. Ed, 653, 84 S. Ct. 1489 (1964) (referee investigation); Escobedo v. Illinois, 378 U.S. 478, 12 L. Ed. 997, 84 S. Ct. 1758 (1964) (right to counsel upon request on time investigation), and Bartkus v. Illinois, 359 U.S. 141, 79 S. Ct. 676, 3 L. Ed. 2d 684 (1959); and, as to double jeopardy between cumulative state and federal courts, see Mills v. Louisiana, 360 U.S. 230, 79 S. Ct. 980, 3 L. Ed. 2d 1193 (1959); Knapp v. Schweitzer, 357 U.S. 371, 78 S. Ct. 1302, 2 L. Ed. 2d 1393 (1958), and Feldman v. United States, 322 U.S. 487, 64 S. Ct. 1082, 88 L. Ed. 1408 (1944).

Cross references: For when prosecution is barred by former proceedings, see part 3 of article 1 of title 18.

ANNOTATION

I. GENERAL CONSIDERATION.

Law reviews. For article, "Blood, Whiskey and the Constitution", see 24 Rocky Mt. L. Rev. 459 (1952). For article, "One Year Review of Constitutional and Administrative Law", see 34 Dicta 79 (1957). For note, "Habeas Corpus in Colorado for the Convicted Criminal", see 30 Rocky Mt. L. Rev. 145 (1958). For article, "One Year Review of Constitutional and Administrative Law", see 35 Dicta 7 (1958). For article, "One Year Review of Constitutional and Administrative Law", see 36 Dicta 11 (1959). For article, "One Year Review of Criminal Law and Procedure", see 40 Den. L. Ctr. J. 89 (1963). For note, "One Year Review of Constitutional Law", see 41 Den. L. Ctr. J. 77 (1964). For comment, "Reporter's Privilege: Pankratz v. District Court", see 58 Den. L.J. 681 (1981). For article, "Confessions and the Juvenile Offender", see 11 Colo. Law. 896 (1982). For article, "Incriminating Evidence: What to do With a Hot Potato", see 11 Colo. Law 880 (1982). For article, "Suffering Adverse Inference from Taking the Fifth in Civil Proceedings", see 12 Colo. Law. 1445 (1983). For casenote, "People v. Quintana: How 'Probative' Is This Colorado Decision Excluding Evidence of Post-Arrest Silence?", see 56 U. Colo. L. Rev. 157 (1984). For article, "Criminal Procedure", which discusses a Tenth Circuit decision dealing with post-arrest silence, see 61 Den. L.J. 281 (1984). For article, "Criminal Procedure", which discusses Tenth Circuit decisions dealing with double jeopardy, see 61 Den. L.J. 299 (1984). For article, "Criminal Procedure", which discusses Tenth Circuit decisions dealing with self-incrimination, see 62 Den. U. L. Rev. 168 (1985). For article, "Defending Against the Confession at

Trial", see 15 Colo. Law. 409 (1986). For comment, "People v. Connelly: Taking Confession Law to the Outer Limits of Logic", see 57 U. Colo. L. Rev. 909 (1986). For article, "Miranda Rights in a Terry Stop: The Implications of People v. Johnson", see 63 Den. U.L. Rev. 109 (1986). For article, "Criminal Procedure", which discusses Tenth Circuit decisions dealing with self-incrimination, see 63 Den. U. L. Rev. 343 (1986). For article, "Pronouncements of the U.S. Supreme Court Relating to the Criminal Law Field: 1985-1986", which discusses cases relating to self-incrimination and double jeopardy, see 15 Colo. Law. 1568 and 1572 (1986). For comment, "Oregon v. Elstad and Prior Unwarned Statements: What Suspects Don't Know Can Hurt Them", see 58 U. Colo. L. Rev. 325 (1987). For article, "Criminal Procedure", which discusses a Tenth Circuit decision dealing with double jeopardy, see 64 Den. U. L. Rev. 250 (1987). For article, "Logical Fallacies and the Supreme Court", see 59 U. Colo. L. Rev. 741 (1988). For article, "Criminal Procedure", which discusses a Tenth Circuit decision dealing with the Miranda warning and the voluntariness of confessions, see 65 Den. U. L. Rev. 547 (1988). For article, "Self Incrimination and the Insanity Plea: Out of the Mouths of Babes", see 66 Den. U. L. Rev. 81 (1988). For a discussion of Tenth Circuit decisions dealing with criminal procedure, see 66 Den. U. L. Rev. 739 (1989). For a discussion of Tenth Circuit decisions dealing with questions of criminal procedure, see 67 Den. U. L. Rev. 701 (1990). For article, "The Admissibility of Evidence of the Pre-Trial Exercise of Constitutional Rights", see 37 Colo. Law. 81 (July 2008).

Annotator's note. For other annotations concerning double jeopardy, see part 3 of article 1 of title 18.

Protection of innocent and preservation of integrity of society. Both the United States and the Colorado Constitutions accord an accused substantive and procedural rights that are binding on the government in a criminal prosecution. Such procedures protect the innocent from an unjust conviction and preserve the integrity of society itself by keeping sound and wholesome the process by which it visits its condemnation on a wrongdoer. People v. Germany, 674 P.2d 345 (Colo. 1983).

Derivative evidence rule which excludes evidence obtained as a result of violations of a defendant's constitutional rights applies to fourth, fifth, and sixth amendment violations, and prosecution bears burden to prove that evidence sought for admission was not acquired as a result of a constitutional violation. People v. Connelly, 702 P.2d 722 (Colo. 1985).

Applied in Imboden v. People, 40 Colo. 142, 90 P. 608 (1907); Morletti v. People, 72 Colo. 7, 209 P. 796 (1922); Sweeney v. Cregan, 89 Colo. 94, 299 P. 1058 (1931); French v. District Court, 153 Colo. 10, 384 P.2d 268 (1963); People v. Stark, 157 Colo. 59, 400 P.2d 923 (1965); Ferrell v. Vogt, 161 Colo. 549, 423 P.2d 844 (1967); People ex rel. McKevitt v. District Court, 167 Colo. 221, 447 P.2d 205 (1968); McGee v. State Bd. of Accountancy, 169 Colo. 87, 453 P.2d 800 (1969); People v. Falgout, 176 Colo. 94, 489 P.2d 195 (1971); People v. Woods, 182 Colo. 3, 510 P.2d 435 (1973); People v. Montera, 198 Colo. 156, 596 P.2d 1198 (1979); People v. Sisneros, 44 Colo. App. 65, 606 P.2d 1317 (1980); Jeffrey v. District Court, 626 P.2d 631 (Colo. 1981); Richardson v. District Court, 633 P.2d 595 (Colo. 1981); People v. Pierson, 632 P.2d 485 (Colo. App. 1981); People v. Franklin, 645 P.2d 1 (Colo. 1982); People v. Brassfield, 652 P.2d 588 (Colo. 1982); People v. Lucero, 654 P.2d 835 (Colo. 1982); People v. Fisher, 657 P.2d 922 (Colo. 1983); People v. Lowe, 660 P.2d 1261 (Colo. 1983).

II. SELF-INCRIMINATION.

Law reviews. For note, "Involuntary Confessions -- Fourth Stage in Colorado", see 31 Dicta 133 (1954). For comment on French v. District Court appearing below, see 36 U. Colo. L. Rev. 280 (1964). For comment on Lanford v. People appearing below, see 39 U. Colo. L. Rev. 158 (1966). For comment, "Limiting Prosecutorial Discovery Under the Sixth Amendment Right to Effective Assistance of Counsel: Hutchinson v. People", see 66 Den. U. L. Rev. 123 (1988).

Sections 16-8-103.6, 16-8-106, and 16-8-107 do not violate a defendant's constitutional privilege against self-incrimination. The information obtained in compulsory mental examinations is admissible only on the issue of mental condition and insanity raised by defendants themselves. People v. Bondurant, 2012 COA 50, __ P.3d __.

Common-law privilege fixed in constitution. Immunity from self-incrimination is a privilege immovably fixed in our constitution. The existence of the privilege is one of the outstanding and distinctive features of the common-law system of jurisprudence and one of the highest protections to the liberty of the citizens of a free democracy. Always the courts have been, and they should be, zealous in preserving the privilege. In so doing, however, they ought not to give it more than its due significance. It is to be respected rationally for its merits, not worshipped blindly as a fetish. People v. Clifford, 105 Colo. 316, 98 P.2d 272 (1939); People v. Schneider, 133 Colo. 173, 292 P.2d 982 (1956); People v. Austin, 159 Colo. 445, 412 P.2d 425 (1966).

"Criminal cases", as used in the constitution, refers to cases which at the time of the adoption of the constitution were recognized as criminal, or cases which should thereafter be made criminal by statute. Austin v. City & County of Denver, 170 Colo. 448, 462 P.2d 600 (1969), cert. denied, 398 U.S. 910, 90 S. Ct. 1703, 26 L. Ed. 2d 69 (1970).

Privilege is only against self-incrimination. People v. Knapp, 180 Colo. 280, 505 P.2d 7 (1973).

A witness is possessed of a constitutional right not to incriminate himself. Smaldone v. People, 158 Colo. 16, 404 P.2d 276 (1965).

It does not permit witness to remain silent to avoid incriminating third party. People v. Knapp, 180 Colo. 280, 505 P.2d 7 (1973).

Self-incrimination is personal right. Pub. Utils. Comm'n v. District Court, 180 Colo. 388, 505 P.2d 1300 (1973).

And privilege may not be invoked by corporations. Pub. Utils. Comm'n v. District Court, 180 Colo. 388, 505 P.2d 1300 (1973).

The right to be free from self-incrimination applies to pre-arrest silence. Allowing the substantive use of such silence would substantially impair the policies behind the privilege. People v. Welsh, 58 P.3d 1065 (Colo. App. 2002), aff'd on other grounds, 80 P.3d 296 (Colo. 2003).

The use of pre-arrest silence when the defendant does not testify impermissibly burdens the privilege guaranteed by the fifth amendment and thus is inadmissible in the prosecution's case-in-chief as substantive evidence of guilt or sanity; no evidentiary inference of consciousness of guilt or sanity can trump a fifth amendment right. People v. Welsh, 58 P.3d 1065 (Colo. App. 2002), aff'd on other grounds, 80 P.3d 296 (Colo. 2003).

No privilege against self-incrimination under the fifth amendment where defendant's incriminating statements to undercover agent were obtained pursuant to defendant's express invitation. People

v. Battle, 694 P.2d 359 (Colo. App. 1984).

Defendant has no protection from testifying about whether he requested counsel because such testimony has no bearing on his guilt or innocence. People v. Turtura, 921 P.2d 40 (Colo. 1996).

Trial court erred in suppressing voluntary statements made by arrestee to police investigator. Arrestee initiated conversation with the investigator and the investigator did not deliberately elicit statement from the arrestee. The court, upon finding that the arrestee was not being subjected to interrogation, need not have considered whether the arrestee waived his fifth or sixth amendment rights. People v. Ross, 821 P.2d 816 (Colo. 1992).

Volunteered statements by a defendant are not proscribed by the fifth amendment, therefore, defendant's right against self-incrimination was not violated by the introduction of such voluntary statements. People v. Ridley, 872 P.2d 1377 (Colo. App. 1994).

Section applies to witness in any investigation. The provision of this section that "no person shall be compelled to testify against himself in a criminal case" was not intended merely for the protection of the individual in a criminal prosecution against himself, but its purpose was to insure that a person could not be required, when acting as a witness in any investigation, to give testimony which might tend to show that he, himself, had committed a crime. Tuttle v. People, 33 Colo. 243, 79 P. 1035 (1905).

Privilege applies both at trial and in other proceedings. The privilege against self-incrimination operates to protect the accused against compulsory testimony not only at the trial but also in other proceedings. Early v. People, 142 Colo. 462, 352 P.2d 112, cert. denied, 364 U.S. 847, 81 S. Ct. 90, 5 L. Ed. 2d 70 (1960).

Since a witness-defendant's forced incriminating statements could influence the court to impose a harsher sentence than it might have imposed absent the involuntary testimony, a defendant who has not yet been sentenced retains the privilege against self-incrimination. She may refuse to testify about any aspect of the subject matter giving rise to the guilty verdict which might influence the trial court's sentencing decision. Steinberger v. District Court, 198 Colo. 55, 596 P.2d 755 (1979).

Defendant's fifth amendment claim necessarily failed because he waived his right to remain silent at sentencing when he chose to "speak my piece". There is no reason why the court could not consider what a defendant who chose to speak at sentencing said as well as what defendant did not say. There is no constitutional right to be free from a court considering a dissembling sentencing allocution. People v. McBride, 228 P.3d 216 (Colo. App. 2009).

Defendant police officers appearing before a citizens group created by city ordinance to review conduct of police officers could not be compelled to answer such group's questions over their assertion of their fifth amendment privilege not to incriminate themselves. City and County of Denver v. Powell, 969 P.2d 776 (Colo. App. 1998).

A party may not call a witness to testify if that party knows the witness will exercise her privilege against self-incrimination, and this prohibition applies whether or not the claim of privilege is proper. People v. Newton, 940 P.2d 1065 (Colo. App. 1996), aff'd, 966 P.2d 563 (Colo. 1998).

If the prosecutor asks whether the witness is invoking his or her right against self-incrimination and the witness does not respond, there is no

violation of the right. If the witness does not invoke the right at trial, the question of whether the prosecution called the witness solely to extract the witness's claim of the right does not apply. People v. Banks, 2012 COA 157, __ P.3d __.

Privilege not extended to civil commitment proceedings. Due process does not require that the privilege against self-incrimination be extended to civil commitment proceedings. People v. Taylor, 618 P.2d 1127 (Colo. 1980).

Nor to sentencing proceedings. Defendant's statutory privilege against self-incrimination during course of court-ordered psychiatric examinations and protection from being confronted with evidence acquired from examinations did not extend to proceedings conducted for sentencing purposes. And, even if the constitutional privilege against self-incrimination is assumed to apply to the use of information for sentencing purposes after guilt has been established, the defendant waived his right against self-incrimination where he consented to use of reports from court-ordered psychiatric examination at sentencing hearing and had been apprised of his constitutional rights by his attorney. People v. Hernandez, 768 P.2d 755 (Colo. App. 1988).

And scope of privilege includes proceedings before grand juries. People v. McPhail, 118 Colo. 478, 197 P.2d 315 (1948).

But completed criminal contempt in presence of court is not protected by the constitutional privilege against incrimination. Smaldone v. People, 158 Colo. 7, 405 P.2d 208 (1965), cert. denied, 382 U.S. 1012, 86 S. Ct. 616, 15 L. Ed. 2d 527 (1966).

If the court finds the claim of privilege to be invalid, it should consider contempt penalties against the witness, rather than allowing questioning that could be prejudicial to the defendant. People v. Newton, 940 P.2d 1065 (Colo. App. 1996), aff'd, 966 P.2d 563 (Colo. 1998).

Immunity allows state to compel testimony. A grant of immunity as extensive as a witness' constitutional privilege against self-incrimination allows a state to compel testimony which might otherwise be unobtainable. People ex rel. Smith v. Jordan, 689 P.2d 1172 (Colo. App. 1984).

Citizens group created by city ordinance to review conduct of police officers could not compel police officers under group's review to answer such group's questions over their assertion of their fifth amendment privilege not to incriminate themselves when group had no authority to grant immunity to such police officers. City and County of Denver v. Powell, 969 P.2d 776 (Colo. App. 1998).

When the privilege against self-incrimination is invoked in a civil case, the finder of fact should be permitted to draw an adverse inference therefrom. Asplin v. Mueller, 687 P.2d 1329 (Colo. App. 1984); Chaffin, Inc. v. Wallain, 689 P.2d 684 (Colo. App. 1984).

Prior to determining what consequence will flow from a plaintiff's invocation of the privilege, the trial court must consider the defendant's need for the information withheld, whether the defendant has any alternative means of obtaining that information, and whether any effective remedy, short of dismissal, is available to safeguard both parties' interests. Steiner v. Minn. Life Ins. Co., 85 P.3d 135 (Colo. 2004).

Privilege applies both at trial and in other proceedings. Attorney's exercise of privilege against self-incrimination was valid at hearings to determine whether attorney had ability to pay court-ordered restitution, as there was the threat of incarceration for punitive reasons arising out of contempt proceedings. People v.

Razatos, 699 P.2d 970 (Colo. 1985).

Fifth amendment protections afforded a criminal defendant apply in post-dissolution contempt proceedings in which the potential exists for a sanction of imprisonment to be imposed as punishment. In re Alverson, 981 P.2d 1123 (Colo. App. 1999).

The privilege against self-incrimination protects one accused of a crime from providing the state, not a private employer, with evidence of a testimonial nature. Wilson v. Indus. Comm'n, 730 P.2d 911 (Colo. App. 1986).

Administrative hearing need not be continued pending outcome of parallel criminal charge. If person invokes privilege against self-incrimination and this is not held against the person, the privilege is satisfied, and there is no denial of due process despite pending criminal proceedings. Smith v. Charnes, 728 P.2d 1287 (Colo. 1986).

Statements used for impeachment purposes. Statements made by an accused under circumstances rendering the statement inadmissible for substantive purposes may be admitted for the limited purpose of impeaching the accused's credibility if statements were voluntarily given. People v. Mickens, 734 P.2d 646 (Colo. App. 1986).

There is no exception to the exclusionary rule for the use of excluded evidence to impeach a witness who is not the defendant. People v. Trujillo, 30 P.3d 760 (Colo. App. 2000), aff'd, 49 P.3d 316 (Colo. 2002).

If a defendant's statements to the arresting officer were the subject of his direct examination, the defendant could be subjected to cross-examination about those statements without violating any constitutional rights, federal or state. People v. Moran, 983 P.2d 143 (Colo. App. 1999).

It was not error for the prosecution to refer to evidence concerning the omissions from defendant's statements at the time of his arrest in closing arguments, because the evidence was properly admitted. Contrary to defendant's characterization, the prosecutor was not improperly commenting on defendant's post-arrest "silence". Rather, the prosecutor was properly commenting on reasonable inferences that could be drawn about defendant's credibility from his testimony and his statements to the arresting officer. People v. Moran, 983 P.2d 143 (Colo. App. 1999).

No violation of defendant's right to due process where defendant volunteered that he had invoked his right to remain silent and the prosecutor did not comment on it in the jury's presence. Prosecutor did not deliberately elicit testimony from defendant that he had invoked his right to remain silent. Prosecutor asked defendant leading questions intended to elicit testimony that he had refused to consent to a search. People v. Chavez, 190 P.3d 760 (Colo. App. 2007).

Fifth amendment protection does not extend to protection from being called as a witness in a civil proceeding even if party is claiming the privilege. In re Hoyt, 742 P.2d 963 (Colo. App. 1987).

Although punitive contempt is not a common law or statutory crime, the possibility of incarceration associated with such proceedings is sufficient to require recognition and protection of the rights afforded to criminal defendants, including the right not to be called as a witness. In re Alverson, 981 P.2d 1123 (Colo. App. 1999) (disagreeing with In re Hoyt cited above and decided prior to 1995 amendments to C.R.C.P. 107).

Although privilege against self-incrimination under the fifth amendment generally applies only to state action, where no state action is

involved in an accused making incriminating statements to a private individual under circumstances that so overbear a person's will as to render such statements involuntary, a confession is inadmissible. People v. Freeman, 739 P.2d 856 (Colo. App. 1987).

Defendant protected from supplying link in evidence against himself. The provision of this section that no person shall be compelled to testify against himself was not intended merely to protect a party from being compelled to make confession of guilt, but protects him from being compelled to furnish a single link in a chain of evidence by which his conviction of a criminal offense might be secured. Tuttle v. People, 33 Colo. 243, 79 P. 1035 (1905).

But not every type of evidence derived from defendant is protected or privileged under defendant's right to not incriminate himself. Thompson v. People, 181 Colo. 194, 510 P.2d 311 (1973).

As the privilege is prohibition of use of physical or moral compulsion to exact communications. Serratore v. People, 178 Colo. 341, 497 P.2d 1018 (1972).

Privilege against self-incrimination is specifically limited to testimonial compulsion. Lanford v. People, 159 Colo. 36, 409 P.2d 829 (1966); Serratore v. People, 178 Colo. 341, 497 P.2d 1018 (1972).

The privilege against self-incrimination protects a person against the production of evidence of a testimonial or communicative nature. Houston v. Manerbino, 185 Colo. 1, 521 P.2d 166 (1974); People v. District Court, 187 Colo. 333, 531 P.2d 626 (1975); People v. Ramirez, 199 Colo. 367, 609 P.2d 616 (1980).

The federal and state constitutional privilege against self-incrimination is concerned with and limited to testimonial compulsion, as distinguished from compulsion to exhibit physical characteristics. People v. Brown, 174 Colo. 513, 485 P.2d 500 (1971), appeal dismissed, 404 U.S. 1007, 92 S. Ct. 671, 30 L. Ed. 2d 656 (1972); Sandoval v. People, 172 Colo. 383, 473 P.2d 722 (1972).

And privilege is inapplicable to real or demonstrative evidence. Early v. People, 142 Colo. 462, 352 P.2d 112, cert. denied, 364 U.S. 847, 81 S. Ct. 90, 5 L. Ed. 2d 70 (1960).

The privilege against self-incrimination does not extend to demonstrative evidence obtained from the defendant or from a witness, to performance of acts in or out of court, or to blood tests. People v. District Court, 187 Colo. 333, 531 P.2d 626 (1975).

The constitution protects one against an admission of guilt coming from his own lips under compulsion and against the will of the accused and has no relation whatever to real as distinguished from testimonial evidence. Vigil v. People, 134 Colo. 126, 300 P.2d 545 (1956).

Trial court's ruling that defendant's suppression hearing testimony was admissible to impeach sister's character testimony did not violate constitutional protections. The fourth amendment right to suppress inadmissible testimony, the fifth amendment right against self-incrimination, and the sixth amendment right to present evidence in a defense are all at play in the question of whether the prosecution could use defendant's suppression testimony that he had sexual contact with the victim to impeach the defendant's sister's character testimony that the defendant would not commit sexual assault. The following factors supported the court's ruling to admit the testimony: The evidence was not offered on the issue of guilt; the defendant still has an obligation to present truthful testimony; the defendant's statement was made under oath, not based on a hypothetical

assumption that defendant was guilty of the crime; and the trial court's willingness to allow the defendant to use leading questions when presenting defendant's sister's testimony. Thus, each of defendant's constitutional rights were protected. People v. Dembry, 91 P.3d 431 (Colo. App. 2003).

Defendant may be compelled to submit to fingerprinting, photographing, or measurements, to write or speak for identification, to appear in court, to stand, to assume a stance, to walk, or to make a particular gesture. The privilege against self-incrimination is a bar against compelling communications or testimony; but that compulsion which makes a suspect or accused the source of real or physical evidence does not violate it. Sandoval v. People, 172 Colo. 383, 473 P.2d 722 (1970).

Statements made by defendant during booking process regarding possession of marijuana violated fifth amendment privilege and, therefore, were inadmissible. Because defendant made statements to booking officers denying possessing contraband without the benefit of Miranda warnings, the trial court erred in admitting those statements. The statements did not fall under the booking question exception because the questions were unrelated to basic identifying data, nor did the statements fall under the public safety exception because the officer's questions exceeded the scope by asking about items beyond weapons or dangerous instruments. People v. Allen, 199 P.3d 33 (Colo. App. 2007).

Evidence of physical facts relating to defendant admissible. The purpose of the provision against self-incrimination is to prevent a man from being compelled to utter words that will incriminate him, and not to exclude all evidence of physical facts relating to defendant. Block v. People, 125 Colo. 36, 240 P.2d 512 (1951), cert. denied, 343 U.S. 978, 72 S. Ct. 1076, 96 L. Ed. 1370, reh'g denied, 344 U.S. 848, 73 S. Ct. 6, 97 L. Ed. 659 (1952).

The provision against self-incrimination is limited to protection against testimonial compulsion, and does not extend to the exclusion of the body as evidence when such evidence may be relevant and material. Vigil v. People, 134 Colo. 126, 300 P.2d 545 (1956); LaBlanc v. People, 161 Colo. 274, 421 P.2d 474 (1966).

Such as tattoos. There was no error in allowing a police officer to testify concerning his examination of the defendant's arm and to describe the tattoo he found. The examination in question was not violative of the prohibition against compulsory self-incrimination, and testimony concerning the examination is admissible if relevant and material. LaBlanc v. People, 161 Colo. 274, 421 P.2d 474 (1966).

Results of physical examination. The admission of testimony based upon a physical examination is not violative of the constitutional immunity against self-incrimination. Vigil v. People, 134 Colo. 126, 300 P.2d 545 (1956).

Results of roadside sobriety test. The privilege against self-incrimination does not extend to the results obtained from a roadside sobriety test. Such a test does not contravene the privilege by requiring the subject to divulge any knowledge he might have; the fact that the subject's guilt may be inferred from the results of the test goes to the probity of the testing method, not to its character as a supposed confession surrogate. People v. Ramirez, 199 Colo. 367, 609 P.2d 616 (1980).

Miranda warnings are not required before the administration of a roadside sobriety test. People v. Helm, 633 P.2d 1071 (Colo. 1981).

Motion pictures of defendant. In a proceeding to

determine whether defendant was driving under the influence of intoxicating liquors, a motion picture that is taken without the defendant's consent and shows his refusal to submit to tests does not violate defendant's constitutional rights against self-incrimination. Lanford v. People, 159 Colo. 36, 409 P.2d 829 (1966); People v. Ramirez, 199 Colo. 367, 609 P.2d 616 (1980).

Photographs. The taking of photographs of a suspect does not involve his privilege against self-incrimination. Sandoval v. People, 172 Colo. 383, 473 P.2d 722 (1970).

And business records. Seizure of business records does not violate defendant's privilege against self-incrimination because defendant was not "compelled" to produce the papers; the papers are not communicative in nature; the papers are business records of which others must have knowledge, rather than personal and private writings; and the papers are instrumentalities of the crime with which defendant is charged. People v. Tucci, 179 Colo. 373, 500 P.2d 815 (1972).

Withdrawal of blood and use of analysis in case does not involve compulsion to testify against one's self, or otherwise provide the state with evidence of a testimonial or communicative nature. People v. Brown, 174 Colo. 513, 485 P.2d 500 (1971), appeal dismissed, 404 U.S. 1007, 92 S. Ct. 671, 30 L. Ed. 2d 656 (1972).

Because blood tests are not testimony of the defendant, the nonconsensual withdrawal of a blood sample does not violate the defendant's protection against self-incrimination. People v. Duemig, 620 P.2d 240 (Colo. 1980), cert. denied, 451 U.S. 971, 101 S. Ct. 2048, 68 L. Ed. 2d 350 (1981).

Admission of blood alcohol test is not barred by this section. Block v. People, 125 Colo. 36, 240 P.2d 512 (1951), cert. denied, 343 U.S. 978, 72 S. Ct. 1076, 96 L. Ed. 1370, reh'g denied, 344 U.S. 848, 73 S. Ct. 6, 97 L. Ed. 659 (1952).

Where the defendant was charged with causing injury while driving under the influence of intoxicating liquor, the trial court correctly denied the motion to suppress the blood sample where the defendant was in a semiconscious condition and was unable to consent or to refuse to give his consent. People v. Fidler, 175 Colo. 90, 485 P.2d 725 (1971).

Since breath tests are not testimony of defendant, nonconsensual test does not violate defendant's protection against self-incrimination. People v. Bowers, 716 P.2d 471 (Colo. 1986).

A refusal to take a blood or breath test when a police officer has lawfully requested it is not compelled testimony entitled to protection under the Colorado Constitution. Cox v. People, 735 P.2d 153 (Colo. 1987).

Mere fact that witness observed the defendant at a hearing in which the defendant gave immunized testimony does not constitute a use of that testimony in violation of the right not to incriminate oneself. Defendant could have been compelled to appear before the witness and to speak even in the absence of the grant of immunity since the right does not extend to non-testimonial actions. People v. Reali, 895 P.2d 161 (Colo. App. 1994).

Allowing prosecution to use notices of alibi for impeachment when defendant testified inconsistently with the information contained in such notices did not violate defendant's fifth amendment rights. People v. Lowe, 969 P.2d 746 (Colo. App. 1998).

Prearraignment mental examination of accused does not of itself violate his privilege against self-incrimination any more than the taking of a statement from him constitutes a per se violation. Early v. People, 142 Colo. 462, 352 P.2d 112,

cert. denied, 364 U.S. 847, 81 S. Ct. 90, 5 L. Ed. 2d 70 (1960).

Plea of not guilty by reason of insanity not compulsory incrimination. Since a defendant can offer evidence of his insanity as bearing upon his ability to form criminal intent, he is not compelled to enter a plea of not guilty by reason of insanity, and hence there is no basis for holding his election to do so as compulsory incrimination. Castro v. People, 140 Colo. 493, 346 P.2d 1020 (1959).

Commitment for observation and examination after insanity plea does not violate section. Confinement of a defendant, who urges the defense of insanity, in a hospital for observation and examination does not offend against this section. Ingles v. People, 92 Colo. 518, 22 P.2d 1109 (1933).

An accused who submits to the procedures prescribed by statute in connection with criminal insanity cannot at the same time claim that he is being compelled to testify against himself. No change in the matter of incarceration and observation is provided by the procedure save from jail to hospital, and such incarceration and examination does not violate defendant's constitutional exemption from testifying against himself. Wymer v. People, 114 Colo. 43, 160 P.2d 987 (1945); Castro v. People, 140 Colo. 493, 346 P.2d 1020 (1959).

And defendant may refuse to cooperate in examinations after pleading insanity. A person accused of a crime who enters a plea of not guilty by reason of insanity cannot be compelled to carry on conversations against his will under the penalty of forfeiture of the defense for failure to respond to questions, or for a refusal to "cooperate" with persons appointed to examine him. The procedures prescribed by statute to be followed upon the entry of a plea of not guilty by reason of insanity cannot operate to destroy the constitutional safeguards against self-incrimination. French v. District Court, 153 Colo. 10, 384 P.2d 268 (1963).

Section 16-8-107 (1.5)(a) does not violate the privilege against self-incrimination. The only permissible use of statements made during a sanity examination is to determine whether a defendant was capable of forming a culpable mental state. People v. Herrera, 87 P.3d 240 (Colo. App. 2003).

Information produced at psychiatric commitment hearing not usable in criminal proceedings. No information produced at a hearing on involuntary short-term certification for psychiatric treatment, unless available to the people from other sources, can be used to incriminate the person sought to be committed in future criminal proceedings. People v. Taylor, 618 P.2d 1127 (Colo. 1980).

Prosecution may not elicit defendant's incriminating admissions from his psychiatrist. The prosecution may not call as a witness in its case-in-chief a psychiatrist privately retained by the defendant in connection with an insanity plea and elicit from the psychiatrist incriminating admissions made by the defendant during a sanity examination. People v. Rosenthal, 617 P.2d 551 (Colo. 1980).

This reasoning applies with equal force to communications made by indigent defendants to court-appointed psychiatrists pursuant to § 16-8-108 (1). People v. Roark, 643 P.2d 756 (Colo. 1982).

Counseling for abusive men for defendant arrested on domestic violence charges and alcohol-related misdemeanors as a condition of bond implicates defendant's fifth amendment privilege against self-incrimination and the presumption of innocence since such counseling may encourage or even require participants to admit their abusive behavior. Martell v. County Court of Summit County, 854 P.2d

1327 (Colo. App. 1992).

If a court-ordered competency examination is required, the trial court must provide the defendant with adequate safeguards calculated to ensure protection not only of the defendant's privilege against self-incrimination but also such defendant's right to counsel. People v. Branch, 805 P.2d 1075 (Colo. 1991).

Privilege against self-incrimination is option of refusal, not prohibition of inquiry. People v. Austin, 159 Colo. 445, 412 P.2d 425 (1966).

Two-prong test to determine whether statements are compelled by threat of discharge from employment: (1) A person must subjectively believe that he will be fired for asserting his fifth amendment privilege against self-incrimination, and (2) that belief must be objectively reasonable under the circumstances. People v. Sapp, 934 P.2d 1367 (Colo. 1997); Hopp & Flesch v. Backstreet, 123 P.3d 1176 (Colo. 2005).

Whether a subjective belief that a person will be terminated from employment for asserting the fifth amendment privilege is objectively reasonable under the circumstances is an issue of law. People v. Sapp, 934 P.2d 1367 (Colo. 1997); Hopp & Flesch v. Backstreet, 123 P.3d 1176 (Colo. 2005).

In order for such a belief to be objectively reasonable, the belief must result from some significant coercive action of the state. People v. Sapp, 934 P.2d 1367 (Colo. 1997); Hopp & Flesch v. Backstreet, 123 P.3d 1176 (Colo. 2005).

The action of the state must be more coercive than that resulting from the general obligation imposed on a witness to give truthful testimony. People v. Sapp, 934 P.2d 1367 (Colo. 1997); Hopp & Flesch v. Backstreet, 123 P.3d 1176 (Colo. 2005).

A person's subjective belief that he will be dismissed from employment for asserting the fifth amendment privilege is not objectively reasonable even though the person was interviewed by three supervising officers who knew that criminal charges might be warranted and did not so advise the person and who searched him and his workstation, with his consent, and held his badge and keys during that search. Such facts do not comprise the level of state coercion necessary to support objective reasonableness. People v. Koverman, 38 P.3d 85 (Colo. 2002).

Nor does an employment policy stating that if an employee is requested to make a statement in the course of an official investigation, the employee shall make full, complete, and truthful statements, support an objectively reasonable fear of termination. People v. Koverman, 38 P.3d 85 (Colo. 2002).

Proper procedure for asserting privilege. The privilege against self-incrimination may not be asserted in advance of the questions actually propounded. The proper procedure is to wait until a question which tends to be incriminating has been asked and then decline to answer. Otherwise the privilege is normally waived when the question is answered. People v. Austin, 159 Colo. 445, 412 P.2d 425 (1966); People in Interest of I.O., 713 P.2d 396 (Colo. App. 1985).

Grant of immunity as extensive as witness' constitutional privilege against self-incrimination allows the state to compel testimony which might otherwise be unattainable. Steinberger v. District Court, 198 Colo. 55, 596 P.2d 755 (1979).

Subject of investigation may not be summoned to testify before grand jury. It is intolerable that one whose conduct is being investigated for the purpose of fixing on him a criminal charge, should, in view of the constitutional mandate of this section, be summoned before a grand jury to testify against himself and

furnish evidence upon which he may be indicted. It is a plain violation both of the letter and spirit of the organic law. People v. Clifford, 105 Colo. 316, 98 P.2d 272 (1939); People v. Schneider, 133 Colo. 173, 292 P.2d 982 (1956).

Unless fully warned of privilege. A defendant cannot be called before a grand jury which is investigating suspected offenses unless the putative or focused-on defendant is fully warned of his or her privilege against self-incrimination, and this principle remains true even though the focused-on defendant is not yet formally charged. People v. Spencer, 182 Colo. 189, 512 P.2d 260 (1973).

But voluntary appearance and testimony do not violate privilege. The appearance and voluntary testimony by a potential defendant before a grand jury, after being fully advised both of his constitutional rights and that he is the subject of the investigation, is not in violation of the privilege against self-incrimination. People v. Austin, 159 Colo. 445, 412 P.2d 425 (1966).

And persons so testifying chargeable. Under the Colorado rule, voluntary testimony before a grand jury by one who is the subject of the investigation does not in and of itself grant immunity to the witness against a subsequent prosecution, and a charge may be brought by a grand jury against one who, although advised he was a subject of the investigation and warned of the privilege against self-incrimination, appears unsubpoenaed before the grand jury. People v. Austin, 159 Colo. 445, 412 P.2d 425 (1966).

Defendant's mere silence throughout a period of questioning that included two advisements of his rights and written waivers thereof gave no indication that he wished to invoke his right to terminate interrogation. People v. Cooper, 731 P.2d 781 (Colo. App. 1986).

Testimony before grand jury admissible in later perjury trial. Defendants who were not advised of their rights against self-incrimination prior to their grand jury appearance are not entitled to have their testimony before the grand jury suppressed in later perjury prosecution. People v. Spencer, 182 Colo. 189, 512 P.2d 260 (1973).

Since warning applies only to admissions as to past acts. The required warning concerning one's privilege against self-incrimination in a grand jury appearance relates to admissions concerning past acts, and its absence does not grant witnesses the right to commit perjury before the grand jury. People v. Spencer, 182 Colo. 189, 512 P.2d 260 (1973).

Defendant has right to remain silent after arrest. People v. Campbell, 187 Colo. 354, 531 P.2d 381 (1975).

In-custody defendant must be informed of right to remain silent. At the outset, if a person in custody is to be subjected to interrogation, he must first be informed in clear and unequivocal terms that he has the right to remain silent. Miranda v. Arizona, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).

Since in-custody questioning jeopardizes privilege against self-incrimination. When an individual is taken into custody or otherwise deprived of his freedom by the authorities in any significant way and is subjected to questioning, the privilege against self-incrimination is jeopardized. Miranda v. Arizona, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).

Measures required for in-custody interrogation. Unless other fully effective means are adopted to notify the person of his right of silence and to assure that the exercise of the right will be scrupulously honored, the following measures are required. He must be warned prior to any questioning that he has the right to

remain silent, that anything he says can be used against him in a court of law, that he has the right to the presence of an attorney, and that if he cannot afford an attorney, one will be appointed for him prior to any questioning if he so desires. Opportunity to exercise these rights must be afforded to him throughout the interrogation. After such warnings have been given, and such opportunity afforded him, the individual may knowingly and intelligently waive these rights and agree to answer questions or make a statement. But unless and until such warnings and waiver are demonstrated by the prosecution at trial, no evidence obtained as a result of interrogation can be used against him. Miranda v. Arizona, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).

Miranda protections must be afforded when the person suspected of criminal conduct is subjected to police interrogation while in custody at the station or otherwise deprived of his freedom of action in any significant way. Roybal v. People, 178 Colo. 259, 496 P.2d 1019 (1972).

Basis for pronouncement in Miranda was that a defendant should not be convicted by his own words unless he waived the rights that the U.S. supreme court deemed fundamental under the provisions of the fifth and sixth amendments to the United States Constitution. Redmond v. People, 180 Colo. 24, 501 P.2d 1051 (1972).

If defendant wishes to remain silent, interrogation must cease. If an individual indicates in any manner, at any time prior to or during questioning, that he wishes to remain silent, the interrogation must cease. Miranda v. Arizona, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).

Defendant's brief statement to the arresting officer, after he had been informed of his right to refrain from responding to questions, made as a result of a knowing, intelligent, and voluntary waiver of his right to remain silent did not deprive him of his right to refrain from answering any further inquiries. People v. Ortega, 198 Colo. 179, 597 P.2d 1034 (1979).

No interrogation until rights exercised by defendant. Where a defendant is advised of his rights, he cannot be effectively interrogated until given an opportunity to exercise his rights, unless he has knowingly and intelligently waived them. Roybal v. People, 178 Colo. 259, 496 P.2d 1019 (1972).

Periodic repeating of interrogation after refusal to make statement not permitted. When the police are met with a refusal to make any statement during an attempted in-custody interrogation, a periodic repeating of the procedure until the accused finally makes a statement is not permitted. Dyett v. People, 177 Colo. 370, 494 P.2d 94 (1972).

But police are not forever banned from asking defendant further questions. Miranda referred to those cases in which the police refuse to take "no" for an answer and continue to question, harass, cajole, and coerce the defendant in total disregard of his desire to exercise his constitutional right to remain silent but it did not mean that after an accused has once refused to talk to law enforcement officers, they are forever barred from asking the defendant any further questions. Sergent v. People, 177 Colo. 354, 497 P.2d 983 (1972); Dyett v. People, 177 Colo. 370, 494 P.2d 94 (1972).

Miranda v. Arizona, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966), did not mean that after an accused has once refused to talk to law enforcement officers, the police are forever barred from questioning or talking to the defendant about any phase of the criminal conduct that was charged. People v. Naranjo, 181 Colo. 273, 509 P.2d 1235 (1973).

Every person accused of a

crime has the right to remain silent in the face of a criminal accusation. People v. Burress, 183 Colo. 146, 515 P.2d 460 (1973).

What the supreme court condemned in Miranda v. Arizona (384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694, 10 A.L.R.3d 974 (1966)), were those cases in which the police refuse to take "no" for an answer and continue to question, harass, and coerce the defendant to cast aside his desire to exercise his constitutional right to remain silent. People v. Naranjo, 181 Colo. 273, 509 P.2d 1235 (1973).

Miranda rule applies only to custodial interrogation, which means questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way. Walker v. People, 175 Colo. 173, 489 P.2d 584 (1971); People v. Algien, 180 Colo. 1, 501 P.2d 468 (1972); People v. Viduya, 703 P.2d 1281 (Colo. 1985); People v. Kurts, 721 P.2d 1201 (Colo. App. 1986).

The Miranda warning to be given to defendants before confessions elicited will be admissible is required only in those instances where there is investigatory activity being directed against the defendant by state agents. Lewis v. People, 174 Colo. 334, 483 P.2d 949 (1971).

Where a statement made by the defendant was prior to the accusatory stage and was made before he was taken into custody, it does not come under the prohibitions of Miranda. Walker v. People, 175 Colo. 173, 489 P.2d 584 (1971); Yerby v. People, 176 Colo. 115, 489 P.2d 1308 (1971).

Defendant's rights were not violated where she was not in custody or the subject of police interrogation at the time she made statements to Drug Enforcement Administration agents about other drug transactions and agreed to arrange at least one such transaction. People v. Ridley, 872 P.2d 1377 (Colo. App. 1994).

Once a suspect is confronted with custodial interrogation, he is entitled to Miranda warnings. Such requirement is not contingent upon a defendant's actual or presumed knowledge of his rights or on his status but, rather, must be honored in all instances of custodial interrogation. People v. Probasco, 795 P.2d 1330 (Colo. 1990).

In determining whether defendant is in custody for Miranda purposes, objective test should be applied, that is, whether under the circumstances a reasonable man would believe himself to be deprived of his freedom in any significant way. People v. Algien, 180 Colo. 1, 501 P.2d 468 (1972).

Where defendant's driver's license was taken by a police officer and he was instructed to remain in a particular place, each, in itself, a significant deprivation of his liberty, the defendant reasonably believed that, under the circumstances, he was not free to leave if he wished and police questioning of defendant was "custodial interrogation" for purposes of Miranda v. Arizona, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966); and, in the absence of prior Miranda warnings, defendant's answers may be properly suppressed. People v. Gutierrez, 198 Colo. 118, 596 P.2d 759 (1979).

A trial court's inquiry when considering whether a defendant is in custody for Miranda purposes is limited to an objective assessment whether, under the totality of the circumstances, a reasonable person in the defendant's position would consider himself to be deprived of his freedom of action to the degree associated with a formal arrest. People v. Matheny, 46 P.3d 453 (Colo. 2002).

Custodial presence not precluded by initially voluntary appearance. That defendant's appearance for a polygraph

examination was initially voluntary did not preclude the characterization of his presence thereafter as custodial, and the interrogation as custodial interrogation. People v. Algien, 180 Colo. 1, 501 P.2d 468 (1972).

Miranda warnings to be given before commencement of polygraph examinations. Prudent police practice requires that when polygraph examinations are to be given persons in custody under investigation for suspected criminal conduct, they should be given Miranda warnings before the commencement of such examinations. People v. Algien, 180 Colo. 1, 501 P.2d 468 (1972).

Failure to give defendant a Miranda advisement violated his due process rights and his statements to a counselor at a juvenile detention center about shooting the victim were inadmissible because the counselor was an agent of the state based on an examination of the totality of the circumstances, where the counselor was paid by the state, he was aware that his questioning was likely to elicit an incriminating response, and he was obligated to inform the district attorney of the information he learned. People v. Robledo, 832 P.2d 249 (Colo. 1992).

Circumstances sufficient to constitute custody for Miranda purposes. People v. Algien, 180 Colo. 1, 501 P.2d 468 (1972); People v. Rodriguez, 645 P.2d 857 (Colo. App. 1982); People v. Viduya, 703 P.2d 1281 (Colo. 1985); People v. Jones, 711 P.2d 1270 (Colo. 1986); People v. Wallace, 724 P.2d 670 (Colo. 1986); People v. Kurts, 721 P.2d 1201 (Colo. App. 1986); People v. Cleburn, 782 P.2d 784 (Colo. 1989), cert. denied, 495 U.S. 923, 110 S. Ct. 1959, 109 L. Ed. 2d 321 (1990); People v. Trujillo, 784 P.2d 788 (Colo. 1990); People v. Horn, 790 P.2d 816 (Colo. 1990); People v. Probasco, 795 P.2d 1324 (Colo. 1990); People v. Polander, 41 P.3d 698 (Colo. 2001).

Subsequent statement not tainted by prior refusal to make statement. When the police fully honor a defendant's refusal to make a statement, the fact of a prior refusal to make any statement should not taint the statement subsequently given voluntarily and with full advisement of rights. Dyett v. People, 177 Colo. 370, 494 P.2d 94 (1972).

Custodial interrogation when person arrested spontaneously changes his mind and volunteers that he wishes to talk does not violate the person's rights. Carroll v. People, 177 Colo. 288, 494 P.2d 80 (1972).

Test for whether a person is in police custody is whether a reasonable person in the suspect's position would consider himself deprived of his freedom of action in any significant way. People v. Cleburn, 782 P.2d 784 (Colo. 1989), cert. denied, 495 U.S. 923, 110 S. Ct. 1959, 109 L. Ed. 2d 321 (1990); People v. Probasco, 795 P.2d 1324 (Colo. 1990); People v. Dracon, 884 P.2d 712 (Colo. 1994).

Defendant's inculpatory statement was properly suppressed where the police did not give the defendant Miranda warnings and the court found evidence that a reasonable person would have considered himself or herself deprived of freedom of action. The defendant was escorted into his apartment by police officers, other officers searching the apartment initially drew their weapons upon defendant's entrance, the defendant's movement was restricted to sitting on the recliner during the search and questioning, and an officer stood five feet from defendant during the search and questioning. People v. Moore, 900 P.2d 66 (Colo. 1995).

Under the "reasonable person" standard neither the interrogating officer's subjective state of mind nor the suspect's mental state is conclusive on the issue of whether a reasonable person in the situation

would have considered the interrogation to be custodial. People v. Trujillo, 785 P.2d 1290 (Colo. 1990); People v. Hamilton, 831 P.2d 1326 (Colo. 1992); People v. Dracon, 884 P.2d 712 (Colo. 1994).

The court must consider the totality of the circumstances surrounding the interrogation in order to determine whether a reasonable person in the suspect's position would consider himself deprived of his freedom of action in a significant way. People v. Probasco, 795 P.2d 1330 (Colo. 1990); People v. Hamilton, 831 P.2d 1326 (Colo. 1992).

The validity of the right to remain silent must be resolved on the basis of the totality of circumstances surrounding a custodial interrogation. People v. Delgado, 832 P.2d 971 (Colo. App. 1991).

Prosecution must prove the validity of a waiver of Miranda rights by a preponderance of the evidence, and a waiver will be valid only if the totality of the circumstances surrounding an interrogation reveal both an uncoerced choice and the requisite level of comprehension on behalf of the suspect. People v. Al-Yousif, 49 P.3d 1165 (Colo. 2002); People v. Redgebol, 184 P.3d 86 (Colo. 2008).

A person acting as an interpreter must be sufficiently capable of accurately expressing the substance of the suspect's rights. People v. Mejia-Mendoza, 965 P.2d 777 (Colo. 1998); People v. Aguilar-Ramos, 86 P.3d 397 (Colo. 2004); People v. Redgebol, 184 P.3d 86 (Colo. 2008).

Even though suppression order had been based on linguistic as well as cultural barriers, defendant's rudimentary understanding of the rights as read to him or her was sufficient to uphold his or her waiver. People v. Al-Yousif, 49 P.3d 1165 (Colo. 2002).

Every bilingual effort between an officer and a suspect need not be perfect in order to withstand scrutiny. A defendant need only minimally understand that he or she had the right to remain silent and to have counsel present and that anything he or she said could be used against him or her. People v. Aguilar-Ramos, 86 P.3d 397 (Colo. 2004).

Defendant did not make a knowing and intelligent waiver of his Miranda rights because of the combined effects of translator's inadequate translation, substantial miscommunication between parties, and defendant's cultural background and limited intellectual functioning. People v. Redgebol, 184 P.3d 86 (Colo. 2008).

Translator did not adequately translate because of her own lack of understanding of the meaning of the rights. Translation was also flawed because translator interrupted defendant, improperly summarized his responses, and did not always effectively explain instructions to him. People v. Redgebol, 184 P.3d 86 (Colo. 2008).

Miscommunication demonstrated that parties "frequently had no idea what the other was talking about". Miscommunication between parties took two forms: Interruptions by the interrogating officer and the interpreter, and unresponsive and nonsensical answers by the defendant. People v. Redgebol, 184 P.3d 86 (Colo. 2008).

Where defendant was functionally illiterate and had recently emigrated to the United States from a culture that had an entirely different cultural conception of legal disputes, defendant's cultural background and limited intellectual ability contributed to his inability to understand his Miranda rights. People v. Redgebol, 184 P.3d 86 (Colo. 2008).

Factors to be considered in determining the validity of a waiver of the right to remain silent include: (1) The lapse of time between an initial Miranda advisement and any

subsequent interrogation; (2) whether the defendant or the interrogating officer initiated the interview; (3) whether and to what extent the interrogating officer reminded the defendant of his rights prior to the interrogation by asking him if he recalled his rights, understood them, or wanted an attorney; (4) the clarity and form of the defendant's acknowledgement and waiver, if any; and (5) defendant's background and experience with the criminal justice system. People v. Delgado, 832 P.2d 971 (Colo. App. 1991).

Defendant with alleged limited command of English knowingly, intelligently, and voluntarily waived his right to remain silent through his execution of a written waiver of his rights, his demonstration of his ability to converse in the English language, and the temporal proximity of a subsequent interview to the initial advisement of his rights. People v. Delgado, 832 P.2d 971 (Colo. App. 1991).

Knowing, intelligent, and voluntary waiver of Miranda rights not found where defendant did not in fact understand his rights. Defendant with limited mental capacity, no education, and limited ability in English and Spanish did not understand that he had rights and what those rights were and could not therefore knowingly and intelligently waive those rights. People v. Jiminez, 863 P.2d 981 (Colo. 1993).

Trial court properly admitted defendant's statements into evidence because of defendant's knowing, voluntary, and intelligent waiver. Defendant received thorough advisements in Spanish at every stage, there was no evidence of coercive government conduct, and the different dialect of the translator produced little difficulty. People v. Preciado-Flores, 66 P.3d 155 (Colo. App. 2002).

Knowing and intelligent waiver by developmentally delayed defendant found where: (1) Interrogating officers who initiated interview clearly adivsed defendant of her Miranda rights and reminded her of those rights by asking if she understood them; (2) the clarity and form of defendant's acknowledgment and waiver of rights was satisfactory; and (3) defendant, despite her diminished mental capacity, had adequate mental capacity to make knowing and intelligent waiver. People v. Kaiser, 32 P.3d 480 (Colo. 2001).

Where defendant was detained for ten-minute period after his refusal to talk, during which a police officer at the jail was doing the necessary paper work in order to book him, there was no unreasonableness nor any coercion, direct or indirect, so as to violate his rights. Carroll v. People, 177 Colo. 288, 494 P.2d 80 (1972).

Half-hour delay between defendant's expression of willingness to talk and the arrival of a detective to do the questioning did not violate defendant's rights. Carroll v. People, 177 Colo. 288, 494 P.2d 80 (1972).

The roadside questioning of a motorist detained pursuant to a routine traffic stop does not necessarily constitute "custodial interrogation" for purposes of Miranda warnings. Therefore, statements made prior to the Miranda warnings are admissible. People v. Archuleta, 719 P.2d 1091 (Colo. 1986).

As a general rule, routine traffic stops do not constitute custody for Miranda purposes even though the stop significantly curtails the freedom of action of the driver and the passengers. Given the non-coercive nature of a traffic stop, Miranda protections need not be applied unless the defendant's freedom of action is curtailed to a degree associated with formal arrest. People v. Reddersen, 992 P.2d 1176 (Colo. 2000).

Defendant was not in custody of state agents when he made

statements to private security guard who had detained him. People v. Chastain, 733 P.2d 1206 (Colo. 1987).

Officer's request and retention of motorist's driver's license coupled with the instruction to exit the vehicle and stand next to the bridge while the search of the vehicle was conducted do not amount to custody because they are not tantamount to a formal arrest. People v. Stephenson, 159 P.3d 617 (Colo. 2007).

Custody issue is not disposed of by consideration of whether a reasonable police officer might have been imprudent in allowing an individual to leave where officer had reason to believe individual had committed a crime. People v. Sandoval, 736 P.2d 1201 (Colo. 1987).

Custody includes, but is not limited to, the situation in which the defendant is actually placed under arrest. People v. Probasco, 795 P.2d 1330 (Colo. 1990).

The totality of the circumstances could not amount to a finding that there was a custodial interrogation of the defendant on-duty policeman where defendant called for assistance, was asked to sit in his police car and nothing in record supported a claim that the defendant reasonably believed he was suspected of wrongdoing or that officer intended to interrogate him, or that a reasonable person in the defendant's position would have believed his freedom was curtailed in a meaningful way or that he was in custody. People v. Probasco, 795 P.2d 1330 (Colo. 1990).

Whether statement is made voluntarily is not an issue when statement is not made to law enforcement officials or their agents. People v. Bowman, 812 P.2d 725 (Colo. App. 1991).

Defendant should have been advised of his Miranda rights because he was in custody when police officer proceeded to interrogate him after finding pot pipe during valid consensual pat down search. People v. Thomas, 839 P.2d 1174 (Colo. 1992).

Defendant's confession of sexual abuse of child to social worker at alcohol treatment facility which defendant was voluntarily admitted to was not given involuntarily as defendant was not in custody and no advisement of his rights was required. People v. Bowman, 812 P.2d 725 (Colo. App. 1991).

Standards for questioning of suspects by police officers. Police officers are not trained lawyers and the interrogation of suspected felons need not be conducted with the same formality and decorum of a trial. Questioning by police officers of a suspected felon naturally takes the form of leading questions, as upon cross-examination in a trial, but interrogation conducted by third degree methods cannot be tolerated. Romero v. People, 170 Colo. 234, 460 P.2d 784 (1969).

Detective's questioning to elicit incriminating response constituted custodial interrogation. Where detective intended to elicit an incriminating response from the defendant, detective's initial question to the defendant, "Do you know why you are here?", constituted custodial interrogation. People v. Lowe, 200 Colo. 470, 616 P.2d 118 (1980).

Questioning of the defendant while hospitalized following a traffic accident did not constitute custodial interrogation. The trooper's question to defendant in the emergency room regarding whether or not he was the driver of the motorcycle involved in the accident is the type of general question which could have been asked at the accident scene as part of "general on-the-scene questioning as to facts" surrounding the accident. A statement in this context is not violative of the fifth amendment simply because the question was asked at the hospital rather than at the scene

of the accident. People v. Milhollin, 751 P.2d 43 (Colo. 1988).

Questioning an inmate concerning an altercation between the inmate and another inmate constituted an on-the-scene investigation rather than an interrogation under Miranda and its progeny. People v. Denison, 918 P.2d 1114 (Colo. 1996).

Instead of the "free to leave" standard, a "restriction" standard is applied when questioning an inmate concerning an offense that was committed while the inmate was incarcerated. Under the "restriction" standard, four factors are to be considered: (1) The language used to summon the individual; (2) the physical surroundings of the interrogation; (3) the extent to which the prisoner is confronted with evidence of guilt; and (4) the additional pressure exerted to detain the prisoner. People v. Denison, 918 P.2d 1114 (Colo. 1996).

Trial court must make specific findings concerning the "totality of circumstances" when there are disputed issues of fact surrounding a confession. People v. Rosales, 911 P.2d 644 (Colo. App. 1995).

When determining voluntariness of a confession, statement by police officer instructing a suspect not to lie may constitute a threat. People v. Rosales, 911 P.2d 644 (Colo. App. 1995).

When detective asked if defendant lived in the home that was being searched and whether there was anything the police needed to know, defendant was not in custody. Police officers asked defendant to sit outside the home with other occupants of the home while officers searched it. When detective questioned defendant, the detective's tone was conversational and his brief questioning was not accusatory. There was no police overreaching or coercion that could have overborne defendant's will. Defendant's incriminating statement, therefore, was made voluntarily, and jury was properly allowed to consider it. People v. Mumford, 275 P.3d 667 (Colo. App. 2010), aff'd, 2012 CO 2, 270 P.3d 953.

A police officer may ask "Do you know what happened?" to parties not in custody. This does not constitute an interrogation but is within the officer's right to gather information relevant to the investigation. People v. Rosales, 911 P.2d 644 (Colo. App. 1995).

The totality of the circumstances surrounding the interrogation, including the defendant's prior confession to the theft to the victim, the fact that the victim called the police while the defendant was present so that the police could deal with the defendant there, and the conversation between the victim and the police officer in the presence of the defendant prior to the interrogation, indicate custodial interrogation. Moreover, the officer's initial question to the defendant, "What's happening here between you and Mr. Worley?", was reasonably likely to elicit an incriminating response from the defendant. People v. Hamilton, 831 P.2d 1326 (Colo. 1992).

Constitutional right may be waived. The right to trial by jury, the right to counsel, the right not to incriminate one's self, and related matters are known as alienable constitutional rights or as rights in the nature of personal privilege for the benefit of the person who may seek their protection. Such rights, whenever assertable, may be waived. Geer v. Alaniz, 138 Colo. 177, 331 P.2d 260 (1958); People v. Bennett, 183 Colo. 125, 515 P.2d 466 (1973).

Where accused knows the general nature of the crime involved, an effective waiver by defendant of his constitutional rights can be made. People v. Weaver, 179 Colo. 331, 500

P.2d 980 (1972).

A defendant may waive his right against self-incrimination if done "knowingly and intelligently". People v. Stephens, 188 Colo. 8, 532 P.2d 728 (1975).

A defendant can waive his privilege against self-incrimination by his conduct before the grand jury. People v. Austin, 159 Colo. 445, 412 P.2d 425 (1966).

Constitutional privilege against self-incrimination can be waived when an accused broadcasts his version of a criminal incident to others and then elects to take the witness stand and explain his conduct in the criminal transaction or in ensuing police investigation. People v. Storr, 186 Colo. 242, 527 P.2d 878 (1974).

At a contempt hearing, attorney's production of documents before the master had a chance to consider whether the fifth amendment privilege might prevent their compelled disclosure constituted a waiver of the privilege. People v. Razatos, 690 P.2d 970 (Colo. 1985).

A suspect may waive the right to remain silent as long as the waiver is knowingly, intelligently, and voluntarily made. People v. Delgado, 832 P.2d 971 (Colo. App. 1991).

Factors in determining applicability of Miranda procedural safeguards. The procedural safeguards required by Miranda are triggered only when a suspect is interrogated in a custodial setting. Inquiry should also be made into the voluntariness of statements made. People v. Corley, 698 P.2d 1336 (Colo. 1985).

Finding of waiver must be supported by evidence. Where at the close of an in camera hearing a trial court finds that a confession is voluntary and in compliance with Miranda requirements, that finding of a knowing and intelligent waiver must be supported by the evidence. Quintana v. People, 178 Colo. 213, 496 P.2d 1009 (1972).

Waiver of Miranda rights must be proven by preponderance of evidence. People v. Bowman, 812 P.2d 725 (Colo. App. 1991).

Language of Miranda does not require express declination as an absolute from which, and only from which, a valid waiver of one's constitutional rights can flow. People v. Weaver, 179 Colo. 331, 500 P.2d 980 (1972).

Waiver may be implied. Knowing, intelligent and voluntary waiver of rights on part of accused may be implied from surrounding circumstances where there is no express declination. People v. Reed, 180 Colo. 16, 502 P.2d 952 (1972).

Strong and unmistakable circumstances may establish effective equivalent to express waiver by showing clearly and convincingly that the accused did relinquish his constitutional rights knowingly, intelligently and voluntarily. Roybal v. People, 178 Colo. 259, 496 P.2d 1019 (1972).

The waiver need not be express; strong and unmistakable circumstances may suffice. People v. Stephens, 188 Colo. 8, 532 P.2d 728 (1975).

Miranda requirements satisfied under circumstances by nonverbal waiver. People v. Ferran, 196 Colo. 513, 591 P.2d 1013 (1978).

Voluntary testimony waives privilege. Where a potential defendant appears without subpoena, gives voluntary testimony before a grand jury, answers each question freely and without objection that the answer might tend to incriminate him after being advised of his right not to answer, the privilege against self-incrimination is waived. People v. Austin, 159 Colo. 445, 412 P.2d 425 (1966).

The initial declaration of a defendant when asked his name prior to his arrest--"I'm the one you're looking for"--was noncustodial and voluntarily made, and therefore not subject to the

Miranda requirements. Jorgensen v. People, 178 Colo. 8, 495 P.2d 1130 (1972).

Statements freely made to police informant are not the product of any sort of coercion and are admissible. People v. Aalbu, 696 P.2d 796 (Colo. 1985).

Silence by police officer in response to statements made by an arrestee during arrest was not interrogation. Statements by the arrestee were the product of the arrestee's free and unconstrained choice. People v. Sharples, 807 P.2d 590 (Colo. 1991).

But valid waiver will not be presumed simply from silence of accused after warnings are given in in-custody interrogation or simply from the fact that a confession was in fact eventually obtained. Miranda v. Arizona, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966); Roybal v. People, 178 Colo. 259, 496 P.2d 1019 (1972); People v. Garcia, 690 P.2d 869 (Colo. App. 1984).

Even if defendant were placed under arrest without probable cause, defendant knowingly and voluntarily waived his right to remain silent, and, thus, his second statement to police chief did not require suppression as product of illegal arrest, where probable cause to arrest existed within minutes after arrest and defendant received full and complete Miranda advisement before giving second statement. People v. Koolbeck, 703 P.2d 673 (Colo. App. 1985).

And defendant's refusal to sign written acknowledgment of waiver is not preclusive to knowing and intelligent waiver. People v. Stephens, 188 Colo. 8, 532 P.2d 728 (1975).

Waiver of fifth amendment rights not affected by presence of attorney desiring to meet with defendant. People v. Page, 907 P.2d 624 (Colo. App. 1995).

Broad privilege against self-incrimination announced in Miranda must be carefully confined in its application to the realm of coerced confessions and statements. People v. Ramirez, 119 Colo. 367, 609 P.2d 616 (1980).

Fruit of the poisonous tree. Third-party live-witness testimony is fruit under the poisonous tree doctrine under the fifth amendment of the U.S. Constitution. As such, the "fruits" analysis must be utilized in any case in which the fifth amendment privilege against self-incrimination is implicated. People v. Briggs, 709 P.2d 911 (Colo. 1985).

Where the attenuation doctrine is invoked to support the admissibility of a witness's evidence that is known to be derived from the "poisonous tree", it must be ascertained whether the relationship between the defendant's involuntary statements and the challenged evidence is so attenuated as to be free from contamination. People v. Briggs, 709 P.2d 911 (Colo. 1985).

The attenuation exception allows the admission of evidence obtained as the fruit of an illegal warrantless search or seizure when the connection between the lawless conduct of the police and the discovery of the challenged evidence has "become so attenuated as to dissipate the taint". People v. Lewis, 975 P.2d 160 (Colo. 1999).

The proper inquiry is whether any attenuating events intervened between the arrest and the interview. People v. Lewis, 975 P.2d 160 (Colo. 1999).

In determining whether a witness's extra-judicial statements, testimony, and tape-recorded conversation with the defendant are attenuated from the defendant's involuntary statements such that they are admissible, the trial court shall consider at least: (1) The role played by the defendant's involuntary statements in inducing the witness's cooperation;

(2) the length of time between the involuntary statements and discovery of the challenged evidence; (3) whether the witness was a suspect; (4) the degree of free will exercised by the witness; and (5) the time, place, and manner of all of the questioning of the witness. People v. Briggs, 709 P.2d 911 (Colo. 1985).

Because the fifth amendment of the U.S. Constitution is directly concerned with the introduction of tainted evidence at trial, balancing the factors of flagrancy and purpose of official misconduct against the deterrent effect of the exclusionary rule is not an appropriate consideration to be taken into account by the trial court in consideration. People v. Briggs, 709 P.2d 911 (Colo. 1985).

Whether the agreement between the witness and the state is characterized as a promise of immunity or a grant of immunity is critical to an attenuation analysis, particularly of the free will criterion. Because the consequences of the characterization are different, no per se rule that immunized testimony is never an act of free will can be established. People v. Briggs, 709 P.2d 911 (Colo. 1985).

Even though the witness had been given a conditional promise of immunity, his evidence would have been admissible if it had been demonstrated that the evidence would have been discovered as a matter of course if independent investigations were allowed to proceed. People v. Briggs, 709 P.2d 911 (Colo. 1985).

Even if the attenuation doctrine did not permit the admission of the witness's evidence, such evidence could have been properly admitted if it had been demonstrated, at the suppression hearing, that the evidence would have been inevitably discovered. People v. Briggs, 709 P.2d 911 (Colo. 1985).

When Miranda rights not required to be readvised. Readvisement not required to be given to defendant when subject of interrogation changes because defendant was adequately forewarned that subject matter of interrogation was about to change from sexual assault to armed robbery and there was no evidence of improper police conduct. People v. Longoria, 717 P.2d 497 (Colo. 1986).

Awareness of all possible subjects of questioning in advance of interrogation is not relevant to determining whether suspect voluntarily, knowingly, and intelligently waived his privilege against self-incrimination. Colo. v. Spring, 479 U.S. 564, 107 S. Ct. 851, 93 L. Ed. 2d 809 (1987).

Even though it is better practice for the police to advise a suspect before each interrogation, there is no categorical constitutional requirement that Miranda warnings must be repeated before every interrogation in order for a suspect to validly waive his Miranda rights. People v. Hopkins, 774 P.2d 849 (Colo. 1989).

Waiver will not automatically be held invalid simply because the advisement was made only by a written document. Miranda warnings need not be given in any particular format so long as they reasonably convey a suspect's rights. People v. Elangnaf, 829 P.2d 484 (Colo. App. 1991).

Fellow inmate of defendant, who gained confidence of defendant and to whom defendant purportedly described crime and asked inmate to kill identifying witness, did not have status of police informant at time of confession so as to violate defendant's right to effective assistance of counsel during critical stage of criminal proceeding, even though inmate had acted as paid informant with regard to other cases. People v. Wieghard, 727 P.2d 383 (Colo. App. 1986).

Tape recording of defendant's conversation with

accomplice made without his knowledge in the back of police car did not violate his fifth amendment right against self-incrimination since he was not responding to any sort of police coercion and it was not an interrogation within the meaning of Miranda and its progeny. People v. Palmer, 888 P.2d 348 (Colo. App. 1994).

Defendant's statements to witness who was former police officer was properly admitted into evidence where police involvement was not so extensive as to create an agency relationship between the witness and the police. People v. Topping, 764 P.2d 369 (Colo. App. 1988).

Any evidence that accused was threatened, tricked, or cajoled into waiver will show that the defendant did not voluntarily waive his privilege. Redmond v. People, 180 Colo. 24, 501 P.2d 1051 (1972).

Compulsion to confess, whether induced physically or mentally, vitiates any confession. Lewis v. People, 174 Colo. 334, 483 P.2d 949 (1971).

An officer's comment that the police had found incriminating evidence and that defendant should probably be cooperative did not constitute either a threat or a promise. People v. Bostic, 148 P.3d 250 (Colo. App. 2006).

Defendant's incriminating statement should not have been allowed into evidence where defendant was not advised of his right to an attorney in connection with an independent criminal proceeding. People v. Stamus, 902 P.2d 936 (Colo. App. 1995).

Psychologically coerced statement involuntary. Police officers from an independent investigation had enough evidence to consider defendant as a prime suspect and had probable cause to believe she had committed several burglaries in the apartment building where she lived, but they did not obtain a search warrant for a search of defendant's apartment. Rather, the officers testified defendant had been the victim of a break-in and sexual assault and one of their officers had interviewed defendant concerning that attack. Thus, the officers said they gained admittance on the pretext that they desired to consult defendant further about the unsolved crime against her person. Under the totality of the circumstances the defendant's actions in consenting to a search of her apartment and admissions of criminality made by her were induced by psychological coercion and a promise made to her by the police that she would not be taken to jail. Thus, consent to the search was not freely and voluntarily given nor was the statement made voluntarily. People v. Coghlan, 189 Colo. 99, 537 P.2d 745 (1975).

Evidence of involuntariness. Whether a statement of an accused can be excluded on the ground that it is involuntary generally depends on direct testimony of threats or other coercion or surrounding facts and circumstances which give rise to a conclusion that the statement was involuntary. Castro v. People, 140 Colo. 493, 346 P.2d 1020 (1959).

Where defendant told focus of attention on coconspirator. A Miranda warning was meaningless after the defendant was told that parts of his statement would not be used and that the focus of attention was not upon him, but upon a coconspirator, because with promises of this type that prompt a confession, it is impossible to determine what parts of the confession were truly voluntary and those segments which were, at best, inadmissible. Redmond v. People, 180 Colo. 24, 501 P.2d 1051 (1972).

In camera hearing required on voluntariness. When an objection is properly raised at trial challenging the voluntariness of a confession, the trial court is obligated to conduct an in camera hearing to determine

voluntariness, regardless of whether the confession was made to a police officer or to a private individual. Hunter v. People, 655 P.2d 374 (Colo. 1982).

Psychological pressures may render confession involuntary. Psychological as well as physical pressures may be brought to bear on a suspect to induce his confession and under some circumstances may render it involuntary. People v. Freeman, 668 P.2d 1371 (Colo. 1983).

Mental disorder of defendant. Taking of statements of defendant who, while mentally ill, approached police officer and confessed to homicide after being advised of his Miranda rights and without any coercion on the part of the police did not violate due process. Colo. v. Connelly, 479 U.S. 157, 107 S. Ct. 515, 93 L. Ed. 2d 473 (1986).

A finding of involuntariness of a statement cannot be supported solely by evidence that the statement was impelled by a serious mental disorder. People v. Rhodes, 729 P.2d 982 (Colo. 1986).

Fact that defendant may have been psychotic when she made inculpatory statements did not render statements involuntary in the absence of showing that statements were induced by coercive police activity. People v. Rhodes, 729 P.2d 982 (Colo. 1986).

The mental condition of the defendant is a relevant consideration in determining whether a defendant effectively waived his Miranda rights. People v. Clements, 732 P.2d 1245 (Colo. App. 1986).

The degree of a person's intoxication is relevant to his mental state and may be pertinent in determining a statement's voluntariness. People v. Rivers, 727 P.2d 394 (Colo. App. 1986).

Intoxication alone does not automatically render statements involuntary, or invalidate an otherwise valid waiver of Miranda rights. People v. Martin, 30 P.3d 758 (Colo. App. 2000).

It is the defendant's obligation to ask the trial court to reconsider a pretrial suppression ruling based on evidence subsequently adduced at trial. People v. Martin, 30 P.3d 758 (Colo. App. 2000).

Where issue of defendant's intoxication at time of Miranda waiver was not raised at pretrial suppression hearing, and evidence of intoxication presented at trial was not of such quality as to suggest defendant's statements would have been suppressed had the evidence been presented at the suppression hearing, the trial court was not required to reconsider, sua sponte, its earlier denial of the motion to suppress the statements. People v. Martin, 30 P.3d 758 (Colo. App. 2000).

Simply because the defendant became upset when learning of the victim's death was not a sufficient basis for the trial court's conclusion that defendant's statement was involuntary. People v. Smith, 716 P.2d 1115 (Colo. 1986).

Privilege against self-incrimination is not concerned with moral and psychological pressures to confess emanating from sources other than official coercion. Colo. v. Connelly, 479 U.S. 157, 107 S. Ct. 515, 93 L. Ed. 2d 473 (1986).

Where there was no evidence of threats or coercion and where the defendant was adequately advised of the subject matter of the interview at the time of waiver and spoke freely and without reservation, circumstances were sufficient to show knowing, intelligent, and voluntary waiver. Jones v. People, 711 P.2d 1270 (Colo. 1986).

And the presence or absence of official misconduct as factors in the determination of whether a statement is voluntary must be considered within the totality of the circumstances. People v. Cooper, 731 P.2d 781 (Colo. App. 1986).

Police officers' false

representation regarding extent of their knowledge and evidence of defendant's participation in attempted robbery and murder did not make defendant's statement involuntary, absent showing that other aspects of the interrogation were improper. People v. Cooper, 731 P.2d 781 (Colo. App. 1986).

Coercive police activity is a necessary predicate to the finding that a confession is not voluntary. People v. Rhodes, 729 P.2d 982 (Colo. 1986).

Defendant's confession to murder made to county court judge during court appearance after having been fully apprised of his rights was properly admitted in murder trial, even though statements were made subsequent to tainted confession, as second confession was voluntary, where factors which necessitated suppression of tainted confession had dissipated by the time defendant appeared before county court. People v. Freeman, 739 P.2d 856 (Colo. App. 1987).

Mere silence by law enforcement officers as to subject matter of interrogation is not "trickery" sufficient to invalidate suspect's waiver of Miranda rights. Colo. v. Spring, 479 U.S. 564, 107 S. Ct. 851, 93 L. Ed. 2d 809 (1987).

Critical to any finding of involuntariness is the existence of coercive governmental conduct, physical or mental, that plays a significant role in inducing a confession or inculpatory statement. People v. Gennings, 808 P.2d 839 (Colo. 1991).

Trial court erroneously suppressed statements of defendant made to polygraph examiner after polygraph test since, in considering the totality of the circumstances, the examiner's statements to defendant did not constitute coercive police activity and defendant had waived his Miranda rights. People v. Hutton, 831 P.2d 486 (Colo. 1992).

A suspect may waive his right to remain silent as long as the waiver is knowingly, intelligently, and voluntarily made. People v. Delgado, 832 P.2d 971 (Colo. App. 1991).

In light of the totality of the circumstances there was no error in the trial court's denial of the motion to suppress the statements of defendant and the record supported a conclusion that the prosecution met its burden of proof to show the validity of the defendant's waiver of his rights by a preponderance of the evidence. The defendant's execution of the written waiver of his rights, his demonstration of his ability to converse in the English language, and the temporal proximity of the subsequent interview to the initial advisement belied his assertion that the waiver was not given knowingly, intelligently, and voluntarily. People v. Delgado, 832 P.2d 971 (Colo. App. 1991).

A confession or inculpatory statement will not be deemed involuntary unless there is evidence of some form of coercive governmental action that plays a significant role in inducing the statement. People v. Branch, 805 P.2d 1075 (Colo. 1991).

There need not be evidence of physical abuse or threats directed against the defendant for a confession or inculpatory statement to be deemed involuntary. Subtle forms of psychological coercion, when utilized by a governmental agent, can play a significant role in a court's inquiry into constitutional voluntariness. People v. Branch, 805 P.2d 1075 (Colo. 1991).

Burden of proving waiver is on government. If interrogation continues without the presence of an attorney and a statement is taken, a heavy burden rests on the government to demonstrate that the defendant knowingly and intelligently waived his privilege against self-incrimination and his right to retained or appointed counsel. Miranda v. Arizona, 384 U.S.

436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966); Neitz v. People, 170 Colo. 428, 462 P.2d 498 (1969).

The burden of establishing waiver rests upon the people. People v. Stephens, 188 Colo. 8, 532 P.2d 728 (1975).

The burden is upon the people to show attendant circumstances sufficient from which a knowing and intelligent waiver may be implied. Roybal v. People, 178 Colo. 259, 496 P.2d 1019 (1972).

And burden of proof of admissibility of confession is on people. Neitz v. People, 170 Colo. 428, 462 P.2d 498 (1969); People v. Rhodes, 729 P.2d 982 (Colo. 1986).

But it does not require corroboration of witnesses who testify for people on the issue of admissibility, as when the officer is alone with the defendant when a waiver is signed. Neitz v. People, 170 Colo. 428, 462 P.2d 498 (1969).

The prosecution must establish by a preponderance of the evidence that a defendant's confession or inculpatory statement to a governmental agent was voluntarily made before such confession or statement may be admitted into evidence at trial. People v. Branch, 805 P.2d 1075 (Colo. 1991).

When voluntariness of defendant's statement challenged, prosecution must show a preponderance of the evidence that, under the totality of the circumstances, the statement was made voluntarily. People v. Hutton, 831 P.2d 486 (Colo. 1992); People v. Dracon, 884 P.2d 712 (Colo. 1994); People v. Trujillo, 938 P.2d 117 (Colo. 1997).

Exclusion of incriminating statements given without assistance of counsel. Under the holding of Escobedo v. Illinois, 378 U.S. 478, 84 S. Ct. 1758, 12 L. Ed. 2d 977 (1964), where the investigation is no longer a general inquiry into an unsolved crime but has begun to focus on a particular suspect, the suspect has been taken into police custody, the police carry out a process of interrogations that tends itself to eliciting incriminating statements, the suspect has requested and been denied an opportunity to consult with his lawyer, and the police have not effectively warned him of his absolute constitutional right to remain silent, the accused has been denied the assistance of counsel and no statement elicited by the police during the interogation may be used against him at a criminal trial. Bean v. People, 164 Colo. 593, 436 P.2d 678 (1968); Nez v. People, 167 Colo. 23, 445 P.2d 68 (1968).

If written confession is direct exploitation of prior illegality, it is inadmissible. People v. Algien, 180 Colo. 1, 501 P.2d 468 (1972).

When confession will be admitted. Law enforcement officers in their efforts to solve a murder case, and in the interest of justice, must have a reasonable latitude in arresting and questioning one justifiably suspected, and if in so doing the investigating authorities give proper consideration to the comfort and well-being of the suspected person, and conduct themselves in a manner free from threats, promises, or mistreatment of the suspect, a confession thus secured may be received in evidence, even though it was the result of several extended periods of interrogation of the accused. Romero v. People, 170 Colo. 234, 460 P.2d 784 (1969).

Two-step analysis required to resolve suppression motion based on an allegedly inadequate Miranda advisement: First, the court must determine whether the defendant was adequately warned of his privilege against self-incrimination and his right to counsel; and, second, the court must determine whether the defendant knowingly, intelligently, and voluntarily waived these rights. People v. Chase, 719 P.2d 718 (Colo. 1986).

To be admissible,

confession must be voluntary. Castro v. People, 140 Colo. 493, 346 P.2d 1020 (1959); Gallegos v. People, 145 Colo. 53, 358 P.2d 1028 (1960), rev'd on other grounds, 370 U.S. 49, 82 S. Ct. 1209, 8 L. Ed. 2d 325 (1962); Dyett v. People, 177 Colo. 370, 494 P.2d 94 (1972); Gimmy v. People, 645 P.2d 262 (Colo. 1982).

To be admissible, a confession must be free and voluntary; that is, it must not be extracted by any sort of threats or violence, nor obtained by any direct or implied promises, however slight. People v. Pineda, 182 Colo. 385, 513 P.2d 452 (1973); People v. Raffaelli, 647 P.2d 230 (Colo. 1982); People v. Rhodes, 729 P.2d 982 (Colo. 1986); People v. Clements, 732 P.2d 1245 (Colo. App. 1986); People v. Bowman, 812 P.2d 725 (Colo. App. 1991).

The trial court did not err in admitting incriminating statements made by defendant subsequent to his indication of a desire to remain silent, where defendant was given a proper warning, knew what his rights were, and then voluntarily waived those constitutional rights. Sergent v. People, 177 Colo. 354, 497 P.2d 983 (1972).

No rule bars the admissibility of a defendant's voluntary incriminating statement made in answer to a question from his friend. No holding of the United States supreme court interdicts such an extrajudicial statement, where there is nothing in the record to indicate that the statement was made in response to any process of interrogation initiated by the police. Washington v. People, 169 Colo. 323, 455 P.2d 656 (1969).

Where the defendant voluntarily and spontaneously made statements as to his willingness to plead guilty on certain conditions to a jailer who, at the time, was engaged in an activity wholly unrelated to the defendant, if the defendant chooses to make such spontaneous declarations as these, nothing is present to bar the people from presenting them to a jury for their consideration. Lewis v. People, 174 Colo. 334, 483 P.2d 949 (1971).

The fact that no advisement form was signed by defendant after the first advisement of his rights, and that defendant did not expressly decline the verbal offer of counsel did not render his statements concerning his dual identity inadmissible where he was not coerced or forced to give the statements and the record reveals the he may not have been responding to interrogation at all but may simply have responded to preliminary statements by the police officer concerning his identification. Duncan v. People, 178 Colo. 314, 497 P.2d 1029 (1972).

The issue of the voluntariness of defendant's statement remains the threshold factor in determining whether that statement can even be offered for purposes of impeachment. People v. Salazar, 44 Colo. App. 242, 610 P.2d 1354 (1980), rev'd on other grounds, 627 P.2d 246 (Colo. 1981).

Statements obtained through promises, threats, violence, or any other improper influence may not be admissible. People v. Cummings, 706 P.2d 766 (Colo. 1985).

To be admissible in evidence, a confession must be shown to be free and voluntary, made without threats of violence or promises of special consequences, and made without the exertion of improper influences. People v. Bookman, 646 P.2d 924 (Colo. 1982); People v. Smith, 716 P.2d 1115 (Colo. 1986).

Once the requirements for a valid waiver are satisfied, then whether the statement was voluntarily made must be considered. The test of voluntariness, in this context, means that the statement was the product of a rational intellect and a free will and was not the result of any force, threats, promises, or other forms of undue influence that affected the defendant's decision to speak. People v. Chase, 719

P.2d 718 (Colo. 1986).

The goal of the voluntariness inquiry is to determine whether the challenged statement was the product of a rational intellect and a free will. People v. Rhodes, 729 P.2d 982 (Colo. 1986).

To be admissible for any purpose, confessions, admissions, and statements given by a defendant must be voluntary. People v. Amato, 631 P.2d 1172 (Colo. App. 1981); People v. Garcia, 690 P.2d 869 (Colo. App. 1984); People v. Kurts, 721 P.2d 1201 (Colo. App. 1986); People v. Jensen, 747 P.2d 1247 (Colo. 1987).

Whether an alleged promise by a police detective to keep defendant's girlfriend out of homicide investigation rises to the level of coercion that would render the defendant's confession involuntary is a question of fact for trial court's determination on remand. People v. Sparks, 748 P.2d 795 (Colo. 1988).

The prosecution may not use a defendant's involuntary statement for any purpose at trial. People v. Branch, 805 P.2d 1075 (Colo. 1991).

Confessions, admissions, and statements given by a defendant, unless voluntary, are not admissible for any purpose. People v. Salazar, 44 Colo. App. 242, 610 P.2d 1354 (1980), rev'd on other grounds, 627 P.2d 246 (Colo. 1981).

Confession otherwise admissible is not rendered inadmissible simply because it is oral, and not written. Moore v. People, 164 Colo. 222, 434 P.2d 132 (1967).

When taint of illegal questioning is purged. The taint of initial illegal questioning is purged if sufficient time has passed, if there are sufficient intervening circumstances between the statements, and if there was a valid purpose to the official misconduct which led to the suppression of the earlier statement. People v. Mann, 646 P.2d 352 (Colo. 1982).

However, the United States supreme court in Oregon v. Elstad, 470 U.S. 298, 105 S. Ct. 1285, 84 L. Ed. 2d 222 (1985), ruled that a careful and thorough administration of Miranda warnings may cure the condition that rendered the previous unwarned statement inadmissible. People v. Harris, 703 P.2d 667 (Colo. App. 1985).

Reading Miranda rights not necessarily sufficient to purge taint of initial illegal questioning. Simply reading a defendant his Miranda rights is not necessarily sufficient to purge the taint of an initial illegal questioning by breaking the causal chain between that questioning and the statement obtained subsequent to the time the defendant received his Miranda rights. People v. Lowe, 200 Colo. 470, 616 P.2d 118 (1980); People v. Jones, 828 P.2d 797 (Colo. 1992).

But taint of illegal questioning on a written confession is not purged where there was no break in time between the invalid interrogation and the written confession, there was no change in location and no change in persons involved, and police officer's coercive and threatening questions were designed to elicit incriminating statements. People v. Thomas, 839 P.2d 1174 (Colo. 1992).

Police threat to defendant's family relationship operated in a continuum through the interview at which defendant confessed, and nothing occurred that relieved or removed the taint of illegality. Because trial court's finding of fact and conclusion of law that threat had a significant role in inducing defendant's confession is supported by the evidence, trial court's suppression order upheld. People v. Medina, 25 P.3d 1216 (Colo. 2001).

Only if the defendant's initial statement was voluntary in a constitutional sense and his subsequent statements were

preceded by a valid waiver of Miranda rights, and were otherwise constitutionally voluntary, would the defendant's subsequent statements be admissible under Oregon v. Elstad, 470 U.S. 298, 105 S. Ct. 1285, 84 L. Ed. 2d 222 (1985). People v. Hamilton, 831 P.2d 1326 (Colo. 1992).

Under Oregon v. Elstad, 470 U.S. 298, 105 S. Ct. 1285, 84 L. Ed. 2d 222 (1985), a finding of constitutional voluntariness with respect to the defendant's initial and subsequent inculpatory statements is fundamental to a resolution of the constitutional admissibility of those statements. People v. Hamilton, 831 P.2d 1326 (Colo. 1992); People v. Trujillo, 938 P.2d 117 (Colo. 1997).

Admissible statement not invalidated for noncompliance with Crim. P. 5. If a statement is admissible as being in compliance with Miranda supreme court decision, it should not be invalidated because of noncompliance with Crim. P. 5 if the record also shows, as it does here, that there was no studied attempt to avoid taking the defendant before a county judge. People v. Weaver, 179 Colo. 331, 500 P.2d 980 (1972).

Failure to comply with Crim. P. 5 did not result in prejudice to the defendant, inasmuch as the defendant was properly advised as required by Miranda v. Arizona, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694, 10 A.L.R.3d 974 (1966), and thereafter chose to make incriminating statements rather than to remain silent. People v. Gilmer, 182 Colo. 96, 511 P.2d 494 (1973).

Rules governing admissibility of confession as outlined in Miranda, are not retrospective in operation. Arthur v. People, 165 Colo. 63, 437 P.2d 41 (1968).

Even though defendant's initial voluntary statements to police officer prior to Miranda warnings were not admissible, defendant's subsequent confession, made after belated Miranda warnings were read to defendant, was admissible where there was no evidence that either the environment or the manner of the initial interrogation was coercive, and, although belated, the reading of defendant's rights was complete and was repeated three times. People v. Harris, 703 P.2d 667 (Colo. App. 1985).

The absence of a Miranda warning does not require the suppression of a statement given by the defendant in the presence of the defendant's lawyer. People v. Mounts, 784 P.2d 792 (Colo. 1990).

A defendant's statement which is constitutionally voluntary but which nevertheless has been obtained in violation of procedural safeguards designed to ensure protection of the defendant's privilege against self-incrimination and defendant's right to counsel may not be used by the prosecution as substantive evidence in its case-in-chief but may be used to impeach the defendant's testimony at trial. People v. Branch, 805 P.2d 1075 (Colo. 1991).

When a defendant does not testify, the defendant's voluntary, unwarned custodial statements may not be used either to rebut the defendant's theory of defense or to impeach a witness other than the defendant. People v. Trujillo, 49 P.3d 316 (Colo. 2002) (following James v. Illinois, 493 U.S. 307 (1990)).

Court must make findings that statements voluntary and admissible. Before a trial court may find that statements to which objections have been made are admissible in evidence, the court must make findings of fact and law that the statements under consideration were voluntarily given with full understanding of the accused's rights. Martinez v. People, 174 Colo. 125, 482 P.2d 375 (1971).

Preferred practice is for the trial judge to make clear and explicit

findings as to the voluntariness of a confession at the conclusion of the in-camera hearing. People v. Apple, 186 Colo. 180, 526 P.2d 311 (1974).

Whether or not a confession is voluntary is primarily a question for a trial court. Its admissibility is largely within the discretion of that court, and on review, its ruling will not be disturbed, unless there has been a clear abuse of discretion. Castro v. People, 140 Colo. 493, 346 P.2d 1020 (1959).

Before a criminal defendant's extrajudicial statement is admissible as evidence against him, a trial court must find beyond a reasonable doubt that the defendant was fully informed of his constitutional rights, and that he intelligently and expressly waived them. People v. Vigil, 175 Colo. 373, 489 P.2d 588 (1971).

The question of admissibility is for the court. The jury is not permitted to pass on that question. Gallegos v. People, 145 Colo. 53, 358 P.2d 1028 (1960), rev'd on other grounds, 370 U.S. 49, 82 S. Ct. 1209, 8 L. Ed. 2d 325 (1962); Deeds v. People, 747 P.2d 1266 (Colo. 1987).

Trial court's findings of fact concerning voluntariness shall be given deference by appellate court. People v. Hutton, 831 P.2d 486 (Colo. 1992).

Where a suppression order is based on conclusions that statements were the product of an illegal arrest and of a custodial interrogation not preceded by Miranda warnings, a district court must make sufficient findings of fact and conclusions of law to identify each of the statements at issue and to permit appellate review of its rulings with regard to whether the statements must be suppressed. People v. Haurey, 859 P.2d 889 (Colo. 1993).

And must consider totality of facts and conduct of accused. In passing on whether a statement is voluntary and whether the accused waived his right to counsel, the court must consider and examine the totality of the facts and circumstances of the case, and also the conduct of the accused. Duncan v. People, 178 Colo. 314, 497 P.2d 1029 (1972); People v. York, 189 Colo. 16, 537 P.2d 294 (1975).

The totality of the circumstances is to be considered by the trial court in determining whether a confession is voluntary. Gimmy v. People, 645 P.2d 262 (Colo. 1982); People v. Bookman, 646 P.2d 924 (Colo. 1982); People v. Sandoval, 685 P.2d 215 (Colo. App. 1983); Kwiatkowski v. People, 706 P.2d 407 (Colo. 1985); People v. Cummings, 706 P.2d 766 (Colo. 1985); People v. Hutton, 831 P.2d 486 (Colo. 1992).

The fact that a statement is made during a polygraph examination does not automatically render it involuntary; rather, the examination is a factor to be considered in determining voluntariness under the circumstances. People v. Cummings, 706 P.2d 766 (Colo. 1985).

A trial court must consider all of the circumstances surrounding the making of the statement, and the mental condition of the person making the statement at the time the statement is made is one of the factors relevant to the question of voluntariness. People v. Rhodes, 729 P.2d 982 (Colo. 1986).

Under the totality of the facts and circumstances, the defendant's statements were voluntary since the defendant willingly accompanied police officers to the police station where he was reminded of his Miranda rights before each interview and was repeatedly told he was free to leave. People v. Cummings, 706 P.2d 766 (Colo. 1985); People v. Sandoval, 736 P.2d 1201 (Colo. 1987).

Under the totality of the circumstances, a reasonable person in defendant's position would not have considered himself deprived of his freedom of action to the degree associated with a formal arrest. People v. Smith, __ P.3d __ (Colo. App.

2010).

In determining whether a confession is voluntary, the totality of the circumstances must be considered, and an appellate court is bound by the trial court's factual findings in that regard when supported by adequate evidence in the record and will not lightly disturb the trial court's findings. People v. Harris, 703 P.2d 667 (Colo. App. 1985); People v. Rivers, 727 P.2d 394 (Colo. App. 1986).

In determining voluntariness, the trial court is required to access the totality of the circumstances surrounding the statement, including the atmosphere and events surrounding the elicitation of the statement, the conduct of the defendant before and during the interrogation, and the defendant's mental condition at the time the statement is made. People v. Clements, 732 P.2d 1245 (Colo. App. 1986).

Term "totality of circumstances" refers to the significant details surrounding and inherent to the interrogation. People v. Hutton, 831 P.2d 486 (Colo. 1992).

Among the circumstances court examines in determining the voluntariness of a confession are: Whether the defendant was in custody; whether the defendant was free to leave; whether the defendant was aware of the situation; whether the police read Miranda rights to the defendant; whether the defendant understood and waived Miranda rights; whether the defendant had an opportunity to confer with counsel or anyone else prior to or during the interrogation; whether the statement was made during the interrogation or volunteered later; whether the police threatened defendant or promised anything directly or impliedly; the method or style of the interrogation; the defendant's mental and physical condition just prior to the interrogation; the length of the interrogation; the location of the interrogation; and the physical conditions of the location where the interrogation occurred. People v. Medina, 25 P.3d 1216 (Colo. 2001).

In analyzing the totality of the circumstances, factors to consider include, but are not limited to: The time interval between the initial Miranda advisement and any subsequent interrogation; whether the defendant or the interrogating officer initiated the interview; whether and to what extent the interrogating officer reminded the defendant of his rights prior to the interrogation by asking him if he recalled his rights, understood them, or wanted an attorney; the clarity and form of the defendant's acknowledgment and waiver, if any; the background and experience of the defendant in connection with the criminal justice system; any language barriers encountered by a defendant; and the defendant's age, experience, education, background, and intelligence. People v. Kaiser, 32 P.3d 480 (Colo. 2001).

The totality of the circumstances test is applied in People v. Lesko, 701 P.2d 638 (Colo. App. 1985); People v. Lytle, 704 P.2d 331 (Colo. App. 1985); People v. Robinson, 713 P.2d 1333 (Colo. App. 1985); People v. Pearson, 725 P.2d 782 (Colo. 1986); People v. Jensen, 747 P.2d 1247 (Colo. 1987); People v. Bowman, 812 P.2d 725 (Colo. App. 1991); People v. Dracon, 884 P.2d 712 (Colo. 1994); People v. Al-Yousif, 49 P.3d 1165 (Colo. 2002); People v. Aguilar-Ramos, 86 P.3d 397 (Colo. 2004).

Including any suggestion of voluntariness from defendant. The premise that the court must proceed to determine voluntariness of defendant's confession independent of any suggestion thereof from the defendant is faulty. Ciccarelli v. People, 147 Colo. 413, 364 P.2d 368 (1961).

Voluntariness of confession induced by promise. Generally, for confessions induced by the promises of

private parties to be involuntary, the promises must be made by one with apparent power to perform the promise, such as the prosecuting attorney or one representing him. People v. Amato, 631 P.2d 1172 (Colo. App. 1981).

People bear the burden of showing that incriminating statements are result of fully voluntary action. People v. Allen, 185 Colo. 190, 523 P.2d 131 (1974).

Where the question was whether the defendants' statement to the authorities was voluntary, the burden of proof lies with the people, for it must be shown by the preponderance of the evidence that the statements were made voluntarily. People v. Martinez, 185 Colo. 187, 523 P.2d 120, aff'd, 186 Colo. 225, 526 P.2d 1325 (1974).

Once the issue of voluntariness has been raised, the burden is upon the state to establish that the statement in question was voluntarily given. People v. Salazar, 44 Colo. App. 242, 610 P.2d 1354 (1980), rev'd on other grounds, 627 P.2d 246 (Colo. 1981).

Prosecution must prove by clear and convincing evidence that a defendant voluntarily, knowingly, and intelligently waived his Miranda rights. People v. Clements, 732 P.2d 1245 (Colo. App. 1986).

Waiver of Miranda rights need only be proven by a preponderance of the evidence. Colo. v. Connelly, 479 U.S. 157, 107 S. Ct. 515, 93 L. Ed. 2d 473 (1986); People v. Sandoval, 736 P.2d 1201 (Colo. 1987).

The burden is on the prosecution to show voluntariness by a preponderance of the evidence. Gimmy v. People, 645 P.2d 262 (Colo. 1982); People v. Raffaelli, 647 P.2d 230 (Colo. 1982); People v. Corley, 698 P.2d 1336 (Colo. 1985); People v. Cummings, 706 P.2d 766 (Colo. 1985); People v. DeBaca, 736 P.2d 25 (Colo. 1987); Deeds v. People, 747 P.2d 1266 (Colo. 1987); People v. Gennings, 808 P.2d 839 (Colo. 1991); People v. Bowman, 812 P.2d 725 (Colo. App. 1991); People v. Hutton, 831 P.2d 486 (Colo. 1992).

Two-step procedure is proper to resolve issue of voluntariness of confession: First, the trial judge must determine whether the confession is voluntary; and second, if the confession is voluntary and is admitted into evidence, the trial judge should instruct the jury on the weight to be given the confession. People v. Shearer, 181 Colo. 237, 508 P.2d 1249 (1973).

Where the defendant initiates the contact with the police, the resulting promises of leniency do not render the statement involuntary. People v. Mounts, 784 P.2d 792 (Colo. 1990).

Stereotype warning cannot be sole basis of court's determination that statement was voluntary and that the defendant was aware of his rights and waived and relinquished his rights. People v. Moreno, 176, Colo. 488, 491 P.2d 575 (1971).

Question should be considered as to substance rather than form. The question of constitutional inhibition of self-incrimination whether raised by motion or plea should be considered as to its substance rather than its form. People v. Clifford, 105 Colo. 316, 98 P.2d 272 (1939).

Circumstances demonstrating effective waiver of constitutional rights by defendant. Massey v. People, 179 Colo. 167, 498 P.2d 953 (1972); People v. Weaver, 179 Colo. 331, 500 P.2d 980 (1972).

Where officers twice gave defendant complete Miranda warnings after arrest and defendant twice stated he understood his rights yet failed to exercise them, and where confession immediately followed second warning, circumstances were sufficient to show knowing, intelligent and voluntary waiver. People v. Reed, 180 Colo. 16, 502 P.2d 952 (1972).

Where counsel fails to object on direct examination to testimony that may have been a transgression of Miranda, but cross-examines on the subject, there is a waiver. People v. Sanchez, 180 Colo. 119, 503 P.2d 619 (1972).

When statement is reversible error. Even if a statement allowed into evidence can be construed as a violation of the defendant's constitutional right, reversible error exists only under circumstances in which the prosecution directs the attention of the jury to the defendant's silence and uses it as a means of inferring guilt. People v. Key, 185 Colo. 72, 522 P.2d 719 (1974); People v. Benevidez, 679 P.2d 125 (Colo. App. 1984).

Defendant's statement to police made after request for counsel was result of unlawful interrogation, and, since such statement contained the only evidence of an element of the crime (forgery), use of the statement at trial constituted prejudicial error. People v. Johnson, 712 P.2d 1048 (Colo. App. 1985).

Defendant was in custody for Miranda purposes and was exposed to risk of self-incrimination when initially questioned by police officer prior to being advised of Miranda rights and the officer testified that defendant was not free to leave, the undisputed facts do not allow an inference that the defendant was not in custody and the police questioning was reasonably likely to evoke an incriminating response. People v. Harris, 703 P.2d 667 (Colo. App. 1985).

Evidence held sufficient to support finding of voluntary confession. People v. Valencia, 181 Colo. 36, 506 P.2d 743 (1973).

And questioning a suspect over a period of time does not automatically render a statement involuntary. People v. Cummings, 706 P.2d 766 (Colo. 1985).

But custody alone is not sufficient to render statements involuntary. People v. Cummings, 706 P.2d 766 (Colo. 1985).

Whether suspect clearly invoked the right to remain silent is determined under a reasonableness standard. Before the police must scrupulously honor a suspect's right to remain silent, the suspect must clearly articulate that right so that a reasonable police officer in the circumstances would understand the suspect's words and conduct to mean that the suspect wants to exercise his or her right to cut off further questioning. People v. Arroya, 988 P.2d 1124 (Colo. 1999).

The fact that the subject of the second interrogation is the same as the first has significance only as it bears on the overriding question of whether the defendant's right to cut off questioning at any time was scrupulously honored. People v. Quezada, 731 P.2d 730 (Colo. 1987).

Subsequent statement not tainted by prior refusal to make statement. People v. Quezada, 731 P.2d 730 (Colo. 1987).

Statements made during second interrogation 45 minutes after defendant invoked her right to cut off questioning in first interrogation concerning same crime were admissible where police immediately ceased initial interrogation upon defendant's request, defendant was given sufficient opportunity to assess her interests in making statement, second interrogating officer gave new Miranda warnings, and second officer was unaware of prior invocation of right to cut off questioning. People v. Quezada, 731 P.2d 730 (Colo. 1987).

Requirement that police scrupulously honor suspect's assertion of right to remain silent is independent of requirement that any waiver of rights be knowing, intelligent, and voluntary. People v. Quezada, 731 P.2d 730 (Colo. 1987).

Defendant's statements held

properly admitted. Where the trial court made finding supported by the evidence to the effect that defendant's intoxication was not to an extent which would make his statement inadmissible, the jury was properly instructed as to the requirement of voluntariness of a statement, and the defendant did not attempt to introduce evidence as to his intoxication, offered no instruction on the subject, and did not mention the point in the motion for new trial, it was not reversible error to admit defendant's statements. Carroll v. People, 177 Colo. 288, 494 P.2d 80 (1972).

Lengthy conversation about wanting to end the police interview did not show that defendant had stopped agreeing to talk on a voluntary basis or that defendant had invoked the right to remain silent. A reasonable police officer could have understood the statements as an expression of defendant's desire to go home promptly, rather than as an invocation of the right to remain silent. Accordingly, the district court did not abuse its discretion in denying defendant's motion to suppress. People v. Muniz, 190 P.3d 774 (Colo. App. 2008).

Defendant's statements held inadmissable. Once the right to remain silent is clearly articulated, some additional circumstances must occur before police may resume questioning. Merely giving the suspect a short break from the interrogation was insufficient. People v. Arroya, 988 P.2d 1124 (Colo. 1999).

Police threat played a significant role in inducing defendant's statements, rendering those statements involuntary. Trial court found that police conduct calculated to cause defendant to believe that, (1) unless he confessed, detective would cause child to lose his mother and the mother, her child; and (2) if he did confess, mother and child would be together and detective would help defendant be reunited with them. Trial court's findings regarding the existence of the threat, its duration, and effect on the defendant, in light of his emotional and psychological condition, are supported by the evidence. Trial court's conclusion of involuntariness, based on its totality of the circumstances analysis, was justified. People v. Medina, 25 P.3d 1216 (Colo. 2001).

"Public safety" exception to Miranda not applicable where defendant had invoked his constitutional right to remain silent, had been safely in custody for several hours such that there was no immediate necessity to justify the detective's decision not to scrupulously honor defendant's invocation of this right to silence, and there was no exigency in the circumstances surrounding the interrogation. The detective's interrogation was investigatory since his questioning did not relate to an objectively reasonable need to protect the police or the public from any immediate danger. People v. Ingram, 984 P.2d 597 (Colo. 1999).

Police are not forever banned from asking defendant further questions. In determining admissibility of statements obtained after suspect has invoked right of silence, court should consider particular circumstances under which custodial statement was obtained, including the four factors discussed in Michigan v. Mosley, (423 U.S. 96, 96 S. Ct. 321, 46 L. Ed. 2d 313 (1975)). These four factors are to be considered along with any other factor bearing on whether the police fully respected the suspect's right to cut off questioning. People v. Quezada, 731 P.2d 730 (Colo. 1987).

The admissibility of statements obtained after the person in custody has decided to remain silent depends according to Miranda on whether the person's right to cut off questioning was scrupulously honored. People v. Close, 867 P.2d 82 (Colo. App. 1993).

Defendant's prior

knowledge of the crime about which he is questioned and the source of that understanding are factors to be considered in the totality of the circumstances surrounding the making of a statement for purposes of determining a voluntary, knowing, and intelligent waiver of Miranda rights. People v. Spring, 713 P.2d 865 (Colo. 1985), rev'd on other grounds, 479 U.S. 564, 107 S. Ct. 851, 93 L. Ed. 2d 809 (1987).

Defendant must be aware of the consequences of making the statement to satisfy the requirement that waiver of Miranda rights must be knowing and intelligent. People v. May, 859 P.2d 879 (Colo. 1993).

When issue in suppression hearing is voluntariness of defendant's statements, trial court should base decision upon fifth and fourteenth amendment analysis of the totality of the circumstances, including the conduct of the police and the defendant's mental condition at the time the statements were made, and not blur legal concepts by considering fourth amendment doctrines regarding the expectation of privacy in telephone conversations. People v. Smith, 716 P.2d 1115 (Colo. 1986); People v. May, 859 P.2d 879 (Colo. 1993).

But in instructing the jury on the issue of voluntariness of a confession, the court need not define the term since the general understanding of the word is clear. Kwiatkowski v. People, 706 P.2d 407 (Colo. 1985).

However, an appellate court may not ignore uncontradicted credible evidence in the record. People v. Cummings, 706 P.2d 766 (Colo. 1985); People v. DeBaca, 736 P.2d 25 (Colo. 1987).

It is proper for the trial court to instruct the jury that, although the defendant's confession had been admitted into evidence, it is the sole prerogative of the jury to determine what weight, if any, is to be given to the confession and any testimony directly related to the confession. Deeds v. People, 747 P.2d 1266 (Colo. 1987).

Review of trial court's finding on voluntariness. A trial court's finding of fact on the voluntariness of a confession will be upheld by the supreme court on review where it is supported by adequate evidence in the record. People v. Raffaelli, 647 P.2d 230 (Colo. 1982); People v. Corley, 698 P.2d 1336 (Colo. 1985); People v. Kurts, 721 P.2d 1201 (Colo. App. 1986); People v. Clements, 732 P.2d 1245 (Colo. App. 1986); People v. Jensen, 747 P.2d 1247 (Colo. 1987); People v. Bowman, 812 P.2d 725 (Colo. App. 1991).

Admission of oral and written incriminating statements held improper. Nez v. People, 167 Colo. 23, 445 P.2d 68 (1968).

Evidence of prior criminal transactions not admissible where defendant was acquitted of similar act. The doctrine of collateral estoppel prevents the introduction of similar transactions for which a defendant has been acquitted. People v. Arrington, 682 P.2d 490 (Colo. App. 1983).

Evidence from former trial admissible. Defendant's testimony from prior trial at which he was acquitted does not constitute hearsay and is admissible as defendant's statement in his individual capacity. People v. Arrington, 682 P.2d 490 (Colo. App. 1983).

Admission not to be product of illegally obtained statement. The burden is on the prosecution to establish that a tape-recorded statement by the defendant was not the product of the defendant's prior incriminating response, which was illegally obtained. People v. Lowe, 200 Colo. 470, 616 P.2d 118 (1980).

Defendant's statement to police made after request for counsel was result of unlawful interrogation,

and, since such statement contained the only evidence of an element of the crime (forgery), use of the statement at trial constituted prejudicial error. People v. Johnson, 712 P.2d 1048 (Colo. App. 1985).

A consent to search is not the type of incriminating statement toward which the fifth amendment is directed. Trial court correctly found that defendant's written consent to search the trailer was voluntary and that the refusal to talk did not extend Miranda protection to his right to give consent to search. People v. Beaver, 725 P.2d 96 (Colo. App. 1986).

Courts have duty to quash indictment based upon testimony which violates defendant's constitutional guarantee against self-incrimination. People v. Schneider, 133 Colo. 173, 292 P.2d 982 (1956).

Jury must determine weight to be given confession. Where the court has admitted the confession in evidence, it is for the jury to determine the weight to which it is entitled, great weight, little weight, or no weight at all, depending upon the circumstances surrounding the making of the confession. Gallegos v. People, 145 Colo. 53, 358 P.2d 1028 (1960), rev'd on other grounds, 370 U.S. 49, 82 S. Ct. 1209, 8 L. Ed. 2d 325 (1962).

Where trial court conducts full in camera hearing to determine whether defendant's confession was voluntary and to ascertain whether defendant was advised of rights afforded him by Miranda v. Arizona and where these issues are resolved against defendant, weight to be given to defendant's confession is properly left to jury. People v. Lovato, 180 Colo. 445, 506 P.2d 361 (1973).

Where a defendant elects neither to testify nor to offer any explanation of the evidence in his own behalf, he cannot later successfully complain upon review that the jurors drew inferences of his guilt which were warranted by the circumstantial evidence. Pooley v. People, 164 Colo. 484, 436 P.2d 118 (1968); Deeds v. People, 747 P.2d 1266 (Colo. 1987).

Not every reference to a defendant's silence mandates reversal; reversible error occurs only if the jury's attention is directed to a defendant's exercise of the right not to testify and defendant's silence is used to infer guilt. People v. Reali, 895 P.2d 161 (Colo. App. 1994).

Fifth amendment error does not occur when the prosecution elicits evidence of and comments upon a defendant's conduct, demeanor, and lack of concern on the night of the crime. The evidence and comments defendant challenged referred not to his silence in the face of police questioning but rather his failure, while speaking to the police, to show concern even for the welfare of his girlfriend. People v. Rogers, 68 P.3d 486 (Colo. App. 2002).

Inferences drawn when defendant fails to testify permissible. Where the defendant does not choose to testify, the jury may draw any reasonable inference of guilt warranted by the evidence in the case. Montoya v. People, 169 Colo. 428, 457 P.2d 397 (1969).

As, in protecting accused against unfair comment, the court is not compelled to limit advocacy or to gag the prosecution in legitimate oral argument covering the evidence and inferences which can be drawn from the evidence. People v. Todd, 189 Colo. 117, 538 P.2d 433 (1975).

But defense shall not call witness, when it is known that witness will claim valid privilege not to testify, for the purpose of impressing upon the jury the fact of the claim of privilege. People v. Dikeman, 192 Colo. 1, 555 P.2d 519 (1976).

And the exercise of privilege against self-incrimination is not evidence to be used in case by any party. People v. Dikeman, 192 Colo. 1, 555 P.2d 519 (1976).

Once the defendant has

indicated in any way that he does not wish to answer a question or questions, the interrogating officers have an affirmative and emphatic duty to determine whether the suspect is in fact exercising his privilege against self-incrimination with regard to specific questions or the entire subject from that point forward. People v. Spring, 713 P.2d 865 (Colo. 1985).

So state may not comment on refusal to testify. Comment on the refusal to testify is a remnant of the inquisitorial system of criminal justice, which the constitution outlaws because it is a penalty imposed by courts for exercising a constitutional privilege. It cuts down on the privilege by making its assertion costly. Montoya v. People, 169 Colo. 428, 457 P.2d 397 (1969).

The prosecution cannot comment on or in any way use the silence of the accused as an instrument for inferring or suggesting guilt. People v. Burress, 183 Colo. 146, 515 P.2d 460 (1973); People v. Robles, 183 Colo. 4, 514 P.2d 630 (1973).

At trial the prosecution may not allude to defendant's silence after arrest as indicating a consciousness of guilt, as that would impermissibily penalize the defendant for exercising his privilege against self-incrimination during police custodial interrogation. People v. Campbell, 187 Colo. 354, 531 P.2d 381 (1975).

The defendant was unconstitutionally prejudiced by the district attorney's questioning and closing argument, the composite of which brought forth with clarity for the jury's consideration the fact that he had exercised his right to remain silent when questioned by the police after his arrest. Hines v. People, 179 Colo. 4, 497 P.2d 1258 (1972).

Defendant's assertion that court ruling affected testimonial rights sufficient for review. When a defendant asserts that a ruling of the trial court has affected the exercise of his constitutionally protected testimonial rights, he has alleged prejudice sufficient to seek review of that ruling. People v. Salazar, 44 Colo. App. 242, 610 P.2d 1354 (1980), rev'd on other grounds, 627 P.2d 246 (Colo. 1981).

Such comment reversible error if calculated to influence jury. Any direct, or even indirect, statement concerning a defendant's failure to testify in a criminal proceeding may well constitute reversible error, to be determined by the "true test" of whether the comment, in context, was calculated or intended to direct the attention of the jury to the defendant's neglect or failure to exercise his right to testify in his own behalf. Montoya v. People, 169 Colo. 428, 457 P.2d 397 (1969); People v. Todd, 189 Colo. 117, 538 P.2d 433 (1975).

Improper comment by the prosecution on a defendant's failure to testify constitutes plain error. People v. Ortega, 198 Colo. 179, 597 P.2d 1034 (1979).

If a defendant does not waive or otherwise justify comment by the prosecutor, reversal and a new trial must be ordered when the prosecutor causes the defendant's silence to be highlighted in his closing arguments to the jury. People v. Storr, 186 Colo. 242, 527 P.2d 878 (1974).

Intent to steal being an essential element of proof of the crimes charged, the district attorney's comments were clearly directed to defendant's failure to testify concerning his intent at the time of the transaction and were prejudicial. Montoya v. People, 169 Colo. 428, 457 P.2d 397 (1969).

Factors determinative of whether argument constitutional. Factors which have entered into the determination of whether the prosecution's argument constituted fair comment or an unconstitutional reference to the failure of the accused to testify have been: (1) Whether the comment referred specifically to the

defendant's failure to take the stand or to rebut the evidence against him; (2) whether the trial judge, after objection was made, gave a cautionary instruction to the jury to disregard the comments or the remarks relating to the failure of the accused to testify; (3) whether the prosecutorial comments were aggravated or repetitive; (4) whether the defendant was the only person who could refute the evidence which caused the comments to be directly pointed at the accused. People v. Todd, 189 Colo. 117, 538 P.2d 433 (1975).

Where references to silence of defendant are not intentionally designed to provoke adverse inferences of guilt in the minds of the jury, nor so repeated or gross in character as to provoke such inferences of guilt, reversal is not required. People v. Hauschel, 37 Colo. App. 114, 550 P.2d 876 (1976); People v. Nave, 689 P.2d 645 (Colo. App. 1984).

Defendant held not prejudiced by district attorney's remarks. Where the district attorney's remarks are directed toward calling the jury's attention to the sufficiency of the evidence rather than to the defendant's exercise of the right to refrain from testifying, the defendant is not prejudiced. Meader v. People, 178 Colo. 383, 497 P.2d 1010 (1972).

Where the district attorney said of the accused, "He can take the witness stand if he so desires like any other witness in this case", and where the court instructed the jury that the arguments, objections, and statements of counsel were not evidence and should not be considered, the trifling comment that occurred in the heat of trial did not impinge upon the defendant's right to silence and did not constitute reversible constitutional error. People v. Gilkey, 181 Colo. 103, 507 P.2d 855 (1973).

Where the prosecutor's remarks in summation are not reasonably calculated to direct the jury's attention to the defendant's post-arrest silence, there is no violation of the defendant's privilege against self-incrimination. People v. DeHerrera, 697 P.2d 734 (Colo. 1985).

Prosecutor's comments about "uncontradicted" evidence did not impermissibly infringe on defendant's right to remain silent. Prosecutor never referred directly to defendant's failure to testify; the trial court corrected any error with a limiting instruction; and prosecutor abided by court's direction to stop using the word. People v. Gomez, 211 P.3d 53 (Colo. App. 2008).

The trial court did not abuse its discretion in denying a motion for mistrial when prosecutor's remarks during closing argument referred to defendant's silence. At the time of the silence, defendant was not in custody and there was no interrogation. Any prejudice created by prosecution's remarks did not result in a miscarriage of justice. People v. Richardson, 58 P.3d 1039 (Colo. App. 2002).

Improper allusion to defendant's silence. Not only does a defendant have the right to remain silent, but it is improper for the prosecution to allude to his exercise of that right as indicating a consciousness of guilt. People v. Wright, 182 Colo. 87, 511 P.2d 460 (1973).

Trial testimony as to defendant's silence in custodial interrogation inadmissible. Testimony introduced at trial showing that the defendant refused to answer certain questions while undergoing custodial interrogation by police officers was inadmissible and violated privilege against self-incrimination. People v. Mingo, 180 Colo. 390, 509 P.2d 800 (1973).

Court may properly allow testimony concerning defendant's pre-advisement silence concerning failure to contact authorities to correct discrepancies in documents if

defendant testified and the evidence of defendant's pre-advisement silence was elicited in the cross-examination of defendant for credibility purposes. People v. Taylor, 159 P.3d 730 (Colo. App. 2006).

Cross-examination regarding defendant's silence, when considered in light of the direct examination, pointed out that defendant's pre-Miranda phone interview with the detective was inconsistent with defendant's statement that he told her "everything". People v. Davis, __ P.3d __ (Colo. App. 2010).

Police officer's testimony was properly allowed when the officer testified that the defendant slammed the door in the officer's face after the officer identified himself as a police officer because there was no evidence that the officer requested to search the premises before the door was slammed, and commenting on slamming the door cannot be construed to be analogous to prosecutorial comments upon defendant's right to remain silent. People v. Turner, 730 P.2d 333 (Colo. App. 1986).

But testimony as to refusal to sign Miranda forms admissible. Where the defendants did not claim their constitutional rights against self-incrimination but instead talked freely when questioned by police, they could not at their trial object to the introduction of Miranda v. Arizona, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966), advisement forms which showed that the defendants understood their rights but refused to sign the forms. People v. Trujillo, 186 Colo. 329, 527 P.2d 52 (1974).

Waiver of Miranda rights valid even though advisement on witness statement form contained an inaccurate statement of privilege against self-incrimination at trial. People v. Owens, 969 P.2d 704 (Colo. 1999).

Police testimony as to defendant's oral confession was proper and permissible in all its aspects, where the record indicates that before being questioned the defendant was advised of her complete rights; that she read and signed a rights advisement form; that she understood her rights; that she indicated a willingness to talk; and that she "freely and voluntarily" told the police about her involvement in the crime. People v. Gallegos, 181 Colo. 264, 509 P.2d 596 (1973).

Jury instructions regarding defendant's failure to testify. Jury instructions stating that defendant's failure to testify in a criminal case should not be taken by the jury as evidence of defendant's guilt or innocence is frowned upon when the defendant has objected to the instruction, but it does not constitute prejudicial error. White v. People, 175 Colo. 119, 486 P.2d 4 (1971); People v. Roark, 643 P.2d 756 (Colo. 1982).

It is error to refuse a tendered instruction containing language that the defendant is not compelled to testify and that the fact that he does not cannot be used as an inference of guilt and should not prejudice him in any way. People v. Crawford, 632 P.2d 626 (Colo. App. 1981).

Call of coconspirator to witness stand prejudiced defendant. Where the district attorney was alerted, as was the trial court, that the coconspirator was facing criminal charges and did not intend to testify, he could not have entertained a good faith belief that the coconspirator would testify if called. Thus, calling him appears as a studied attempt to bring to the attention of the jury his refusal to testify and his claim of the "fifth amendment". This staged incident is prejudicial to the rights of the defendant. Absent good faith on the part of the district attorney instructions that the jury disregard the byplay, it is impossible to conclude that such procedure did not have an adverse affect on the rights of the defendant. DeGesualdo v. People, 147 Colo. 426,

364 P.2d 374 (1961).

Attorney of defendant who took stand may not comment on another defendant's silence. In a joint prosecution of two roommates for possession of hashish which has been discovered in a closet shared by them and each contends that the hashish belongs to the other, where one defendant fails to take the stand, the attorney of the defendant who did take the stand cannot comment on the other defendant's silence, for to do so would violate the silent defendant's constitutional rights. Eder v. People, 179 Colo. 122, 498 P.2d 945 (1972).

Where prosecution requests in front of jury that defendant participate in physical demonstration to illustrate the correctness of the prosecution's theory and defendant refuses, the request violates the defendant's privilege against self-incrimination and warrants reversal. Serratore v. People, 178 Colo. 341, 497 P.2d 1018 (1972).

Privilege not violated by prosecution as accessory after fact. Defendant's constitutional privilege against self-incrimination was not violated by prosecution as an accessory after the fact. Such an accessory by definition does not assent to the commission of the principal's crime, and the statute defining the offense did not impose liability upon defendant for his failure to reveal his complicity, but rather for his affirmative acts which constituted the interdicted conduct. Self v. People, 167 Colo. 292, 448 P.2d 619 (1968).

Or by cross-examination of defendant at pretrial suppression hearing. Where no evidence elicited at a pretrial suppression hearing from the defendant compelling him to testify against himself was offered either on direct or cross-examination by the prosecution at defendant's trial and the record did not support the contention by the defendant that trial testimony by police officers was based upon evidence adduced upon his cross-examination at the pretrial suppression hearing, any error in permitting such cross-examination of the defendant was harmless. Dickerson v. People, 179 Colo. 146, 499 P.2d 1196 (1972).

Suppression of statement under use-immunity principle. Where a police officer obtains a statement from a suspect in exchange for his implicit promise not to prosecute her for what she tells him, and the suspect has reasonably and detrimentally relied upon the promise, a remedy that accords substantial justice is to treat the statement as if it has been obtained pursuant to a grant of use-immunity. The statement must be suppressed under the use-immunity principle, as well as any evidence derived directly or indirectly from the statement. People v. Manning, 672 P.2d 499 (Colo. 1983).

Defendant who introduces a statement as part of his or her case-in-chief cannot later claim that that same statement, or portions thereof, if being used by the prosecution, was admitted in violation of Miranda. People v. Grant, 174 P.3d 798 (Colo. App. 2007).

Once a criminal defendant demonstrates that he has been compelled to testify under a grant of use immunity, the prosecution is prohibited from using the compelled testimony in any respect and the prosecution has the duty to prove that evidence it proposes to use is derived from an independent source. People v. Reali, 895 P.2d 161 (Colo. App. 1994).

A waiver of the right to remain silent resulting from an election to testify must be made by the defendant personally and must be made voluntarily, knowingly, and intelligently if it is to be effective. People v. Mozee, 723 P.2d 117 (Colo. 1986).

The absence of an on-the-record advisement and determination of waiver before the

defendant testifies will not automatically render a defendant's waiver invalid. People v. Mozee, 723 P.2d 117 (Colo. 1986).

Failure of court to advise defendant that he could testify despite his attorney's advice did not require reversal of conviction where defendant stated on the record that his waiver of the right to testify was made freely and voluntarily. People v. Woodard, 782 P.2d 1212 (Colo. App. 1989).

Trial court is not required to ask the defendant personally, on the record, whether he wishes to waive his right to testify as long as competent evidence exists to support the trial court's determination that the defendant has effectively waived his right to testify. Roelker v. People, 804 P.2d 1336 (Colo. 1991).

Right to testify on own behalf. An accused in a criminal trial has the right to testify in his own behalf even in the face of contrary advice from his attorney. People v. Palmer, 631 P.2d 1160 (Colo. App. 1981).

The defendant has a constitutionally protected right to testify on his own behalf. People v. Curtis, 657 P.2d 990 (Colo. App. 1982), aff'd, 681 P.2d 504 (Colo. 1984).

In deciding as to a waiver of the defendant's right to testify on his own behalf, the defense counsel must be governed by the will of the defendant. People v. Curtis, 657 P.2d 990 (Colo. App. 1982), aff'd, 681 P.2d 504 (Colo. 1984).

Waiver of the right must be voluntary, knowing, and intentional, and the existence of effective waiver should be ascertained by the trial court on the record. People v. Curtis, 681 P.2d 504 (Colo. 1984); People v. Clouse, 859 P.2d 228 (Colo. App. 1992).

However, this holding was given only prospective effect, and, therefore, in trials conducted prior to People v. Curtis it was necessary only to determine from the record whether the waiver was voluntary, knowing, and intentional. People v. Somerville, 703 P.2d 615 (Colo. App. 1985).

Trial court has a duty to determine whether the waiver of the right to testify by the defendant was in fact voluntary, knowing, and intentional. People v. Pietrantonio, 727 P.2d 407 (Colo. App. 1986).

Satisfactory advisement prior to waiver of the right to testify should inform defendant of the right to testify; the fact that this decision is personal; the prosecution's ability to cross-examine the defendant; the fact that prior felony convictions could be disclosed to the jury; the limited purpose for which such prior convictions would be admitted; and the consequences of testifying. People v. Gray, 920 P.2d 787 (Colo. 1996); People v. Ziglar, 45 P.3d 1266 (Colo. 2002).

Failure of the court to give a proper People v. Curtis advisement constitutes reversible error. People v. Gray, 920 P.2d 787 (Colo. 1996).

Requirements of People v. Curtis substantially complied with. People v. Roelker, 780 P.2d 17 (Colo. App. 1989); People v. Whitley, 998 P.2d 31 (Colo. App. 1999); People v. McDaniel, 74 P.3d 454 (Colo. App. 2003).

The right to testify is so fundamental that only the defendant may waive it, and this waiver must be voluntary, knowing, and intentional. People v. Ball, 813 P.2d 759 (Colo. App. 1990).

Defendant who was facing habitual criminal charges received adequate advisement about his right to testify and thus made a knowing, voluntary, and intentional waiver of his right to testify. Defendant was given advisements twice to the effect that he had a right to testify, that nobody could prevent him from testifying, that if he did testify the

prosecution was entitled to cross-examine him and ask him about prior felony convictions, and that, if a felony conviction was disclosed to the jury, then the jury could be instructed to consider the felony conviction only as it had bearing on the defendant's credibility. People v. Ball, 813 P.2d 759 (Colo. App. 1990).

Trial court's advisement that was episodic, discursive, and given in colloquial terms but which was not deficient in substance did not constitute a denial of defendant's right to remain silent. People v. Tyler, 854 P.2d 1366 (Colo. App. 1993).

Trial court's advisement that the jury would be instructed to consider the defendant's felony conviction as it bears on the defendant's character was deficient. The evidentiary concept of character and the trait of credibility are substantively different terms when used by the trial court. By using character instead of credibility, the trial court incorrectly advised the defendant of the consequences of testifying at his or her trial. People v. Harding, 104 P.3d 881 (Colo. 2005).

Although a deficient Curtis advisement entitles a defendant to a post-conviction hearing concerning the validity of his waiver of the right to testify, a deficient trial court advisement does not invariably render the defendant's waiver invalid. People v. Blehm, 983 P.2d 779 (Colo. 1999).

A criminal defendant who voluntarily takes the witness stand in his or her own defense waives the fifth amendment protection against incrimination to the extent necessary to permit effective cross-examination. People v. Sallis, 857 P.2d 572 (Colo. App. 1993).

The procedure of conducting a mock cross-examination of defendant outside the presence of the jury was improper. Having waived the protection of the fifth amendment, the defendant should not have the benefit of procedures that are not extended to other witnesses. People v. Sallis, 857 P.2d 572 (Colo. App. 1993).

Proper response to a deficient trial court advisement is a post-conviction hearing concerning the validity of the defendant's waiver of the right to testify. People v. Blehm, 983 P.2d 779 (Colo. 1999); People v. Harding, 17 P.3d 183 (Colo. App. 2000).

Trial record alone was not sufficient to prove that the defendant was fully aware of the impeachment consequences of testifying. People v. Harding, 104 P.3d 881 (Colo. 2005).

Crim. P. 16 part II (b) and (c), do not violate privilege against self-incrimination. People v. District Court, 187 Colo. 333, 531 P.2d 626 (1975).

The court's limiting instruction and surrounding instructions regarding the expert's testimony on the issue of defendant's sanity adequately protected defendant's privilege against self-incrimination. People v. Grenier, 200 P.3d 1062 (Colo. App. 2008).

III. FORMER JEOPARDY.

Law reviews. For note, "Former Jeopardy -- Effect of State's Appeal in Colorado", see 24 Rocky Mt. L. Rev. 94 (1951). For comment on Krutka v. Spinuzzi appearing below, see 36 U. Colo. L. Rev. 581 (1964).

This section protects person against second jeopardy for same offense. Roland v. People, 23 Colo. 283, 47 P. 269 (1896); Davidson v. People, 64 Colo. 281, 170 P. 962 (1918).

This section of the constitution provides that no person may be twice put in jeopardy for the some offense. Menton v. Johns, 151 Colo. 276, 377 P.2d 104 (1962); Krutka v. Spinuzzi, 153 Colo. 115, 384 P.2d 928 (1963); Casias v. People, 160 Colo.

152, 415 P.2d 344, cert. denied, 385 U.S. 979, 87 S. Ct. 523, 17 L. Ed. 2d 441 (1966).

The constitutional prohibition against double jeopardy means that no person shall twice be put in danger of conviction and punishment for the same offense. People v. King, 181 Colo. 439, 510 P.2d 233 (1973).

This section protects not only against a second trial for the same offense but also against multiple punishments for the same offense. People v. Tallwhiteman, 124 P.3d 827 (Colo. App. 2005).

Upon a clear showing of legislative intent, the general assembly is free to authorize multiple punishments based upon the same criminal conduct without offending the double jeopardy clause. In the absence of express legislative authorization, the court must ascertain whether the offenses are sufficiently distinguishable to permit the imposition of multiple punishments. People v. Tallwhiteman, 124 P.3d 827 (Colo. App. 2005).

Double jeopardy protections are accorded retroactive effect because the constitutional guarantee against double jeopardy is significantly different from other procedural guarantees. People v. Allen, 843 P.2d 97 (Colo. App. 1992).

Reviewing court may review double jeopardy claim not raised during trial using the plain error standard. People v. Tillery, 231 P.3d 36 (Colo. App. 2009), aff'd on other grounds sub nom. People v. Simon, 266 P.3d 1099 (Colo. 2011).

To establish that the state has imposed multiple punishments in violation of the double jeopardy clause, an individual must demonstrate that: (1) The state has subjected the individual to separate proceedings; (2) the conduct precipitating the separate proceedings consisted of one offense; and (3) the penalties in each of the proceedings may be considered punishment for the purposes of the double jeopardy clause. People v. Coolidge, 953 P.2d 949 (Colo. App. 1997).

Applicable in criminal actions. The double jeopardy clause protects persons against being brought to trial again for the same criminal offense; a defendant is sued in a civil action, he is not "brought to trial" or prosecuted within the meaning of the double jeopardy clause. E.F. Hutton & Co. v. Anderson, 42 Colo. App. 497, 596 P.2d 413 (1979).

Double jeopardy provisions of United States Constitution and Colorado Constitution, which prohibit multiple punishments for the same offense, apply only to criminal or quasi-criminal proceedings. People v. Milton, 732 P.2d 1199 (Colo. 1987).

A civil as well as a criminal sanction constitutes punishment when the sanction as applied in the civil case serves the goals of punishment. People v. Frank, 943 P.2d 28 (Colo. App. 1996).

Two-pronged test to determine whether a statutory forfeiture proceeding is essentially criminal in character for purposes of the double jeopardy clause: (1) Whether general assembly expressly or impliedly indicated a preference for criminal or civil categorization; and, (2) in the event the general assembly did indicate an intent to treat a forfeiture proceeding as civil, whether the statutory scheme is so punitive either in purpose or effect as to negate the legislative intention. People v. Milton, 732 P.2d 1199 (Colo. 1987).

The test for determining whether punishment is criminal or civil for double jeopardy purposes is the test contained in Kennedy v. Mendoza-Martinez, 372 U.S. 144 (1966). The seven factors are: (1) Whether the sanction involves an affirmative disability or restraint; (2) whether it has historically been regarded as punishment; (3) whether it

comes into play only on a finding of scienter; (4) whether its operation will promote the traditional aims of punishment--retribution and deterrence; (5) whether the behavior to which it applies is already a crime; (6) whether an alternative purpose to which it may rationally be connected is assignable for it; and (7) whether it appears excessive in relation to the alternative purpose assigned. In re Caldwell, 50 P.3d 897 (Colo. 2002); People v. Howell, 64 P.3d 894 (Colo. App. 2002).

The U.S. supreme court emphasized that these factors are to be considered only in relation to the statute on its face, and only the clearest proof will suffice to override legislative intent and transform what has been denominated a civil remedy into a criminal penalty. In re Caldwell, 50 P.3d 897 (Colo. 2002).

To establish the imposition of multiple punishments in violation of prohibition against double jeopardy, an individual must demonstrate that: (1) The state has subjected the individual to separate proceedings; (2) the conduct precipitating the separate proceedings consisted of one offense; and (3) the penalties in each of the proceedings may be considered punishment for the purposes of double jeopardy. People v. Mayes, 981 P.2d 1106 (Colo. App. 1999).

Convictions for two counts of aggravated robbery arising out of the same criminal episode are not multiplicitous. The issue turns on whether two robberies can arise out of a single taking of property. The inquiry then focuses on whether the crime of robbery is intended to protect people or property. If robbery is intended to protect people, a single taking could support multiple convictions if the one item is taken from multiple people with control over the item. The plain language of the robbery statute is ambiguous as to whether it is intended to protect people or property. The common law history of robbery and case law indicates robbery statutes are intended to protect people. Therefore, a single taking can support multiple convictions for robbery if the taking is made in the presence of multiple victims. People v. Borghesi, 66 P.3d 93 (Colo. 2003); People v. Clifton, 74 P.3d 519 (Colo. App. 2003).

No double jeopardy concerns where the trial court committed harmless error by not requiring the prosecution to elect which of the five incidents related to each of the five charges and by giving the jurors the typical unanimity instruction. People v. Quintano, 81 P.3d 1093 (Colo. App. 2003), aff'd, 105 P.3d 585 (Colo. 2005).

Double jeopardy does not apply to an administrative hearing for failure to submit to a breath or blood alcohol test. Such is a remedial sanction, not punishment. People v. Olson, 921 P.2d 51 (Colo. App. 1996).

Characterization of a statute as civil or criminal is not dispositive of whether the penalty imposed pursuant to such section is punishment for purposes of the prohibition against double jeopardy. People v. Olson, 921 P.2d 51 (Colo. App. 1996).

Forfeiture action pursuant to Colorado public nuisance statute is essentially civil in nature and thus does not violate double jeopardy provisions of the constitution. People v. Milton, 732 P.2d 1199 (Colo. 1987).

Forfeiture of money found in defendant's car under the public nuisance statute does not constitute punishment for double jeopardy purposes. The general assembly intended forfeiture proceedings to be civil in nature and its sanctions are primarily directed toward the salutary goal of preventing and terminating the harmful use of property. In addition, the proceedings are not so punitive in form and effect as to render them

criminal. People v. Frank, 943 P.2d 28 (Colo. App. 1996).

A lawyer discipline proceeding is not a criminal proceeding and is therefore not a successive criminal prosecution in violation of constitutional protections against double jeopardy. Furthermore, disciplinary sanctions imposed pursuant to lawyer discipline proceeding do not constitute punishment for purposes of the multiple punishment component of double jeopardy since the aim in determining the level of discipline is not punishment but protection of the public. People v. Marmon, 903 P.2d 651 (Colo. 1995); In re Cardwell, 50 P.3d 897 (Colo. 2002).

The fact that statute defines a public nuisance to include every vehicle used in the commission of any felony not otherwise included in the section did not transform forfeiture action into a criminal proceeding subject to double jeopardy provisions. People v. Martin, 732 P.2d 1210 (Colo. 1987).

Using the same prior conviction to enhance or aggravate two different counts does not violate double jeopardy. The prior conviction was used as a sentence enhancer under § 18-9-111 (5)(a.5) and for the purposes of the habitual criminal sentencing statute, but neither is new jeopardy, rather each creates a stiffer penalty. People v. Cross, 114 P.3d 1 (Colo. App. 2004), rev'd on other grounds, 127 P.3d 71 (Colo. 2006).

Protection afforded is not against peril of second punishment, but against being again tried for same offense. Bustamante v. People, 136 Colo. 362, 317 P.2d 885 (1957).

Constitutional prohibitions against twice putting a person in jeopardy relate to retrials for the same offense. People v. Smith, 182 Colo. 228, 512 P.2d 269 (1973).

Concept of jeopardy requires that accused be on trial for the offense charged--that he be present at a judicial proceeding aimed at reaching a final determination of his guilt or innocence. People v. King, 181 Colo. 439, 510 P.2d 333 (1973).

No double jeopardy in probation revocation proceedings. The function of probation revocation proceedings is not to punish a defendant for a new crime. Rather, their purpose is to ascertain an appropriate sentence for an offense of which defendant has already been convicted and for which probation was granted. People v. Preuss, 920 P.2d 859 (Colo. App. 1995).

In the course of probation revocation proceedings, the trial court was authorized to impose any sentence within the range that originally could have been imposed, and had discretion to impose that sentence either concurrently with or consecutively to another sentence. People v. Preuss, 920 P.2d 859 (Colo. App. 1995).

No double jeopardy prohibition was implicated where deferred judgment and sentence was revoked, since the trial court needed only to ascertain the appropriate sentence for the offense to which the defendant had already pleaded guilty. People v. Lopez, 97 P.3d 223 (Colo. App. 2004).

Section 17-22.5-403 (9) does not violate double jeopardy. Defendant was on notice that, under certain circumstances, he or she could be subject to post-release supervision and reincarceration following mandatory parole. Thus, he or she could not have had a legitimate expectation of finality in the sentence announced by the court at sentencing. Therefore, the defendant's double jeopardy rights were not violated when, because of intervening circumstances, the defendant was subject to the additional period of statutorily required supervision. People v. Jackson, 109 P.3d 1017 (Colo. App. 2004).

Provision of this section as

to jeopardy needs no construction; it is as plain and clear as language can make it. It means: First, if the jury disagree, that the accused may be tried again upon the charge as if no trial had been had; second, if the judgment be arrested after the verdict, for any reason, that the defendant shall be deemed not to have been in jeopardy, and may be again tried as originally; and, third, if the judgment be reversed for error in law, that then the defendant shall be deemed not to have been in jeopardy, and may be again tried under the information, upon every charge contained in it. Young v. People, 54 Colo. 293, 130 P. 1011 (1913).

State may not proceed contrary to inhibitions of this section. Markiewicz v. Black, 138 Colo. 128, 330 P.2d 539, 75 A.L.R.2d 678 (1958).

And dual sovereignty no longer viable. In early cases the courts recognized the concept of dual sovereignty for the purposes of prosecution and punishment of an accused in both a state and municipal court for the same act. The concept of dual sovereignty is no longer viable in Colorado. People v. Horvat, 186 Colo. 202, 527 P.2d 47 (1974).

Dual prosecution for violation of a city ordinance and a state statute based on the same acts constitutes double jeopardy. Vela v. People, 174 Colo. 465, 484 P.2d 1204 (1971).

The fact that a city has the power to legislate does not recognize dual sovereignty or double prosecutions. The determination that there is nothing basically invalid about legislation on the same subject, for example, gambling, by both a home rule city and the state, does not affect the prohibition against double prosecution, nor does it undermine any basic safeguards. Woolverton v. City & County of Denver, 146 Colo. 247, 361 P.2d 982 (1961).

Juveniles entitled to protection against double jeopardy. A juvenile charged with delinquency is entitled to the same constitutional protection against double jeopardy as is a defendant in a criminal case. People in Interest of P.L.V., 176 Colo. 342, 490 P.2d 685 (1971).

Juveniles are entitled to the fundamental protection of the bill of rights in proceedings that may result in confinement or other sanctions, whether the state labels these proceedings "criminal" or "civil". People in Interest of P.L.V., 176 Colo. 342, 490 P.2d 685 (1971).

Collateral estoppel may act as complete bar to subsequent prosecution if the issue previously decided in the defendant's favor would be essential to the case against him on the second charge or if the issue previously decided is not decisive of the outcome in the second prosecution, the doctrine of collateral estoppel accords to the accused the right to claim finality with respect to a fact or group of facts previously determined in his favor. People v. Kernanen, 178 Colo. 234, 497 P.2d 8 (1972).

Collateral estoppel is an integral part of the concept of double jeopardy. Simply stated, collateral estoppel bars relitigation between the same parties of issues actually determined at a previous trial. People v. Horvat, 186 Colo. 202, 527 P.2d 47 (1974).

Application of collateral estoppel. The doctrine of collateral estoppel is applicable if an issue of ultimate fact determined by one court is germane to the determination to be made by a second court and the other prerequisites to the applicability of the doctrine, namely, a valid and final judgment and identity of parties, have been satisfied. People v. Kernanen, 178 Colo. 234, 497 P.2d 8 (1972).

Reprosecution in a second proceeding is barred if an issue previously decided in defendant's favor is essential to the case against him in the later proceeding. People v. Hoehl,

629 P.2d 1083 (Colo. App. 1980).

A party who has pled guilty to a crime in Colorado state court is collaterally estopped from relitigating the elements of that crime in a subsequent civil action. Jiron v. City of Lakewood, 392 F.3d 410 (10th Cir. 2004).

But collateral estoppel, or issue preclusion, does not apply to bar the right of a defendant to a trial where defendant had been charged with the crime of driving with a revoked license, which constituted both a violation of his probation and a new criminal act. Defendant did not have a full and fair opportunity to litigate the issue in the probation revocation hearing. A determination of guilt or innocence in a probation revocation hearing would undermine the function of the criminal trial process. Byrd v. People, 58 P.3d 50 (Colo. 2002).

Probation revocation hearings are held for different purposes, governed by different procedures, and do not protect a defendant's rights as does a criminal trial. Byrd v. People, 58 P.3d 50 (Colo. 2002).

Subsequent prosecution for separate crime not barred. The determination by one district court that defendant was insane at the time of a crime committed within that district does not bar a subsequent prosecution in another district court for a separate crime committed a few hours later within that district. People v. Kernanen, 178 Colo. 234, 497 P.2d 8 (1972).

Trial court did not err in refusing to instruct the jury on two lesser included offenses the defendant requested in a subsequent trial when the defendant was convicted of the lesser included offenses in the previous trial. The trial court adequately instructed the jury on the defendant's theory of the case. Although the trial court did not instruct the jury on the lesser included offenses the defendant requested, the court did instruct the jury on different lesser included offenses that allowed the defendant to argue his theory of the case. People v. Trujillo, 83 P.3d 642 (Colo. 2004).

Prohibition deemed proper proceeding to prevent double jeopardy. Where it appears that defendants were in jeopardy and that a court is about to place them in jeopardy a second time for the same offense, prohibition is the proper proceeding to protect defendants in their constitutional right against being twice put in jeopardy for the same offense. Markiewicz v. Black, 138 Colo. 128, 330 P.2d 539 (1958).

Jeopardy is danger of valid judgment. It is not ordinarily necessary that a prior trial shall have resulted in a valid judgment either of conviction or acquittal since it is not the verdict or judgment which places a prisoner in jeopardy. It is sufficient if the prisoner was actually placed in jeopardy in that he was in danger of having a valid judgment pronounced as the result of a trial. Markiewicz v. Black, 138 Colo. 128, 330 P.2d 539 (1958).

Jeopardy does not attach for the second time until after some form of judgment, acquittal or dismissal is reached in the first instance. People in Interest of J.A.M., 174 Colo. 245, 483 P.2d, 362 (1971).

Jeopardy does not attach when a charge is dismissed on grounds unrelated to a defendant's criminal liability. Where, prior to the commencement of trial, a charge was dismissed on the basis of a finding of incompetency to stand trial, jeopardy did not attach in such prosecution. Chatfield v. Colo. Court of Appeals, 775 P.2d 1168 (Colo. 1989).

Plea of former jeopardy must be based on former valid proceeding. The lack of any fundamental requisite that would make a verdict and sentence valid, defeats a plea of former jeopardy. Markiewicz v. Black, 138 Colo. 128, 330 P.2d 539, 75

A.L.R.2d 678 (1958).

Effect of conviction on plea of nolo contendere. For purposes of a criminal proceeding, a conviction on a plea of nolo contendere is equivalent to a conviction on a plea of guilty. Jones v. District Court, 196 Colo. 261, 584 P.2d 81 (1978); People v. Carpenter, 709 P.2d 72 (Colo. App. 1985).

Court of appeals bound by mandate of supreme court that retrial of defendant would not violate prohibition against double jeopardy. People v. Gurule, 699 P.2d 9 (Colo. App. 1984).

When jeopardy attaches. A person is in legal jeopardy when he is put on trial, before a court of competent jurisdiction, on an indictment or information which is sufficient in form and substance to sustain a conviction, and a jury is impaneled and sworn. Bustamante v. People, 136 Colo. 362, 317 P.2d 885 (1957); Markiewicz v. Black, 138 Colo. 128, 330 P.2d 539 (1958); Menton v. Johns, 151 Colo. 276, 377 P.2d 104 (1962); Krutka v. Spinuzzi, 153 Colo. 115, 384 P.2d 928 (1963); People v. Abrahamsen, 176 Colo. 52, 489 P.2d 206 (1971); Maes v. District Court, 180 Colo. 169, 503 P.2d 621 (1972); Espinoza v. District Court, 180 Colo. 391, 506 P.2d 131 (1973); People v. King, 181 Colo. 439, 510 P.2d 333 (1973); People v. Paulsen, 198 Colo. 458, 601 P.2d 634 (1979).

The double jeopardy guaranty is extended through the subsequent prosecution provisions of § 18-1-408. People v. McCormick, 859 P.2d 846 (Colo. 1993).

Where the jury was in the process of being impaneled but had not been sworn to try the issues, the defendant was not place in jeopardy. People v. Abrahamsen, 176 Colo. 52, 489 P.2d 206 (1971).

A plea of guilty to an indictment, in good faith, with its entry on the record, is jeopardy, although judgment is suspended or the prosecution is dismissed without the consent of accused. As against any new charge for the same offense, the defendant may plead the former conviction. Markiewicz v. Black, 138 Colo. 128, 330 P.2d 539 (1958).

In a case submitted to the court without a jury, jeopardy begins after accused has been indicted, arraigned, and has pleaded, and the court has begun to hear the evidence, or the trial has begun by the reading of the indictment to the court, assuming that a court has jurisdiction. Markiewicz v. Black, 138 Colo. 128, 330 P.2d 539 (1958).

Jeopardy attaches in the prosecution of a criminal case which is tried to the court without a jury at the point where presentation of proof begins after accused has been indicted, arraigned, and has pleaded. McCoy v. District Court, 156 Colo. 115, 397 P.2d 733 (1964).

Jeopardy attaches when the defendant is present at a judicial proceeding aimed at reaching a final determination of his guilt or innocence. People v. Paulsen, 198 Colo. 458, 601 P.2d 634 (1979).

Where the trial had commenced and proceeded until the first witness for the people had been sworn and answered all questions put to him, until he collapsed, the defendant was in jeopardy. McCoy v. District Court, 156 Colo. 115, 397 P.2d 733 (1964).

When both the prosecution and the defense present their cases in full and rest, a defendant is placed in jeopardy. Menton v. Johns, 151 Colo. 276, 377 P.2d 104 (1962); Maes v. District Court, 180 Colo. 169, 503 P.2d 621 (1972).

When a defendant pleads guilty to an offense, jeopardy attaches when the court finally accepts the defendant's plea. Jeffrey v. District Court, 626 P.2d 631 (Colo. 1981); People v. Carpenter, 709 P.2d 72 (Colo. App. 1985).

Jeopardy does not attach until

the jury has been impaneled and sworn. People v. Avery, 736 P.2d 1233 (Colo. App. 1986); Barela v. People, 826 P.2d 1249 (Colo. 1992).

In a trial to the court, jeopardy attaches when the first witness is sworn. Barela v. People, 826 P.2d 1249 (Colo. 1992).

In the absence of clear legislative authority for cumulative punishment, the double jeopardy clause prohibits cumulative punishment for convictions under separate statutory provisions that proscribe the same conduct. People v. Dixon, 950 P.2d 686 (Colo. App. 1997).

The issue of legislative authority for cumulative punishment does not arise until it is shown that two statutes apply to the same offense. If each of the offenses requires proof of an element not contained in the other statute, they are not directed to the same conduct for purposes of double jeopardy analysis. People v. Dixon, 950 P.2d 686 (Colo. App. 1997).

The reviewing court is required to examine the record to determine whether the same conduct that constituted the basis for the first prosecution is necessary to establish an essential element charged in a subsequent prosecution. If the record reflects that the entirety of the conduct for which the defendant was convicted in the first prosecution will also be used to establish the elements of the second prosecution, the double jeopardy bar is triggered. People v. Allen, 843 P.2d 97 (Colo. App. 1992).

Determination of whether successive prosecution for same statutory offense is barred by double jeopardy principles involves, first, an examination of the scope of prosecution authorized by the statutory prescription, and, next, an examination of the factual components of each prosecution and the evidence in support thereof. People v. Williams, 651 P.2d 899 (Colo. 1982).

Defendant's federal prosecution under the Racketeer Influenced and Corrupt Organizations Act (RICO) and subsequent state conviction for first degree murder for the same incident do not constitute double jeopardy, as the RICO conviction required proof of facts not necessary for the state murder conviction, and the two laws seek to prohibit substantially different evils.People v. Gladney, 250 P.3d 762 (Colo. App. 2010).

Effect of jeopardy to prohibit any further prosecution in the same proceeding. Once jeopardy has attached, any further prosecution in the same proceeding is barred, as is a prosecution for the same offense. Korr v. District Court, 661 P.2d 668 (Colo. 1983); People v. Carpenter, 709 P.2d 72 (Colo. App. 1985).

Sufficiency of plea of former jeopardy or autrefois acquit. To be sufficient in law the plea of autrefois acquit must be based upon the fact that the matter set out in the second indictment or information is such as would be admissible and sustain a conviction, under the first. Dill v. People, 19 Colo. 469, 36 P. 229 (1894); Davis v. People, 22 Colo. 1, 43 P. 122 (1895); Davidson v. People, 64 Colo. 281, 170 P. 962 (1918); Bustamante v. People, 136 Colo. 362, 317 P.2d 885 (1957).

The plea of autrefois acquit is unavailing unless the charge to which it is interposed is precisely the same in law and fact as the former charge relied on and the evidence required to sustain each is the same. Johnson v. People, 152 Colo. 586, 384 P.2d 454 (1963), cert. denied, 376 U.S. 922, 84 S. Ct. 682, 11 L. Ed. 2d 617 (1964); Martinez v. People, 174 Colo. 365, 484 P.2d 792 (1971); People v. Smith, 182 Colo. 228, 512 P.2d 269 (1973); People v. Mendoza, 190 Colo. 519, 549 P.2d 766 (1976).

In a prosecution for embezzlement where the time and the sum alleged could have been included

in a former prosecution for embezzlement, of which defendant was convicted, a plea of former jeopardy as to the second prosecution is valid. Bustamante v. People, 136 Colo. 362, 317 P.2d 885 (1957).

Indictment must be sufficient to prevent subsequent prosecution. One charged in an indictment must not only be so definitely apprised of the exact nature of the accusation as to adequately prepare and present his defense, but, when convicted or acquitted, to protect himself from further prosecution for the same offense, or double jeopardy, as guaranteed by this section. People v. Warner, 112 Colo. 565, 151 P.2d 975 (1944).

But indictment or information need not plead offense in such detail as to be self-sufficient as bar to further prosecution for the same offense for the judgment constitutes the bar. Howe v. People, 178 Colo. 248, 496 P.2d 1040 (1972).

Effect of material variance between allegations and proof. The allegations and the proof must correspond, and if in some matter essential to the charge there is a discrepancy between the averments and the proof, there is a variance. If the variance is material, as where it misleads accused in making his defense or exposes him to the danger of being again put in jeopardy for the same offense, the variance is fatal to a conviction. Skidmore v. People, 154 Colo. 363, 390 P.2d 944 (1964).

Defense of former jeopardy waivable. "Former jeopardy" is a personal privilege which a defendant may take advantage of or waive as he pleases, and his waiver may be implied from his conduct. Ballensky v. People, 116 Colo. 34, 178 P.2d 433 (1947).

Implied and expressed waiver. A plea of former jeopardy is expressly waived by a defendant's request for a mistrial, or impliedly waived where there is an opportunity to object before the jury is discharged. Worrell v. County Court, 34 Colo. App. 401, 529 P.2d 654 (1974).

Mistrial granted at instance of defendant operates as waiver of the claim of double jeopardy. Worrell v. County Court, 34 Colo. App. 401, 529 P.2d 654 (1974); People v. Bastardo, 191 Colo. 521, 554 P.2d 297 (1976).

Defendant should not be able to challenge a mistrial declaration where defense counsel's willful violation of court order barring defense from alluding to certain facts regarding the victim necessitated the declaration. People v. Owens, 183 P.3d 568 (Colo. App. 2007).

A mistrial, occasioned by the misconduct of the prosecutor in abandoning a line of questioning and releasing the witness, and granted at the instance of and pursuant to a defense motion, did not provide a basis for a claim of double jeopardy upon retrial of the defendant. People v. Baca, 193, Colo. 9, 562 P.2d 411 (1977).

Defense must be made at earliest reasonable time and before trial on the merits begins, usually before arraignment. Ballensky v. People, 116 Colo. 34, 178 P.2d 433 (1947).

The time to raise the defense of former jeopardy is when there is an attempt to punish under both the criminal and the civil proceedings, not when petitioner has not yet been punished for failure to make support payments either by the Colorado court under the uniform reciprocal enforcement of support act, or by the state of California pursuant to its criminal laws. Conrad v. McClearn, 166 Colo. 568, 445 P.2d 222 (1968).

And defense should be presented by special plea to trial court. In re Allison, 13 Colo. 525, 22 P. 820 (1889).

Dual convictions for murder of single victim improper. The rule of lenity prohibits the entry of

dual convictions and sentences for felony murder and murder after deliberation when the convictions and sentences are predicated upon the killing of a single victim. People v. Lowe, 660 P.2d 1261 (Colo. 1983); People v. Bartowsheski, 661 P.2d 235 (Colo. 1983); People v. Glover, 893 P.2d 1311 (Colo. 1995).

Convictions for both second degree murder and first degree felony murder may not be entered when there is only one victim. People v. Driggers, 812 P.2d 702 (Colo. App. 1991).

Single act may be offense against two statutes. Briefly stated, the rule is that a single act may be an offense against two statutes; and if each statute requires proof of an additional fact which the other does not, an acquittal or conviction under either statute does not exempt the defendant from prosecution and punishment under the other. People v. Bugarin, 181 Colo. 62, 507 P.2d 875 (1973); People v. Hancock, 186 Colo. 30, 525 P.2d 435 (1974); People v. Mendoza, 190 Colo. 519, 549 P.2d 766 (1976).

More than one felony conviction may, in a proper case, be based upon the same occurrence without running afoul of either federal or state double jeopardy prohibitions. People v. Opson, 632 P.2d 602 (Colo. App. 1980).

The federal and state constitutional guarantees of equal protection and due process as well as guarantees against double jeopardy are not violated even though one course of conduct is proscribed by two different statutes since the legislature unmistakably intended to authorize cumulative punishment under the two statutes. People v. Haymaker, 716 P.2d 110 (Colo. 1986); People v. Powell, 716 P.2d 1096 (Colo. 1986); People v. Schruder, 735 P.2d 905 (Colo. App. 1986). People v. Goodman, 733 P.2d 1204 (Colo. 1987).

And one continuing transaction may contain distinct offenses. Where evidence discloses that defendant robbed a tavern and while in flight shot and killed a police officer, acquittal of the murder does not bar prosecution on the charge of aggravated robbery, the offenses not being the same in law and fact, but separate and distinct crimes even though a part of one continuing criminal transaction. Johnson v. People, 152 Colo. 586, 384 P.2d 454 (1963), cert. denied, 376 U.S. 922, 84 S. Ct. 682, 11 L. Ed. 2d 617 (1964).

Assault against one man and the alleged assault against another were not "precisely the same in law and in fact", but are "separate and distinct crimes, even though a part of one continuing criminal transaction". People v. Mendoza, 190 Colo. 519, 549 P.2d 766 (1976).

Defendant's possession and distribution convictions were based upon factually distinct conduct and, therefore, not subject to double jeopardy. People v. Flowers, 128 P.3d 285 (Colo. App. 2005).

Colorado has long followed interpretation of federal double jeopardy provision to determine whether two offenses are the same. People v. Bugarin, 181 Colo. 62, 507 P.2d 875 (1973).

"Same offense" standard applies for purposes of the double jeopardy prohibition against successive prosecutions for separate statutory crimes. Double jeopardy does not bar a subsequent prosecution where at least one of the elements of the offense in the second prosecution is different from the elements of the offense in the first prosecution. People v. Allen, 868 P.2d 379 (Colo. 1994); People v. Stenson, 902 P.2d 389 (Colo. App. 1994); People v. Carey, 198 P.3d 1223 (Colo. App. 2008).

A defendant may not be convicted of more than one offense if one offense is a lesser included offense of the other. Armintrout v. People, 864 P.2d 576 (Colo. 1993);

People v. Moore, 877 P.2d 840 (Colo. 1994); People v. Fisher, 904 P.2d 1326 (Colo. App. 1994).

The lesser included offense "merges" into the conviction of the greater offense and the defendant cannot be separately punished for it. Litwinsky v. Zavaras, 132 F. Supp. 2d 1316 (D. Colo. 2001).

In order to determine whether one offense is included in another, the court must compare the elements of the statutes involved. Litwinsky v. Zavaras, 132 F. Supp. 2d 1316 (D. Colo. 2001); People v. Tallwhiteman, 124 P.3d 827 (Colo. App. 2005).

The rule of merger in Colorado treats an offense as lesser included when proof of the essential elements of the greater offense necessarily establishes the elements required to prove the lesser offense. Boulies v. People, 770 P.2d 1274 (Colo. 1989); Armintrout v. People, 864 P.2d 576 (Colo. 1993); Litwinsky v. Zavaras, 132 F. Supp. 2d 1316 (D. Colo. 2001).

Evidence determines identity of offenses. If the evidence which is necessary to support a second indictment was admissible under a former, related to the same crime, and is sufficient if believed by a jury to have warranted a conviction of that crime, the offenses are identical, and a plea of former conviction or acquittal is a bar. Bustamante v. People, 136 Colo. 362, 317 P.2d 885 (1957); Martinez v. People, 174 Colo. 365, 484 P.2d 792 (1971).

The conduct needed to establish the essential elements of criminal trespass and menacing is the same conduct for which defendant was held in contempt and thus the double jeopardy threshold is met. People v. Allen, 843 P.2d 97 (Colo. App. 1992); People v. Watson, 892 P.2d 388 (Colo. App. 1994).

Crime of simple possession is lesser included offense of the crime of possession with the intent to distribute. Conviction of simple possession constitutes double jeopardy. People v. Gilmore, 97 P.3d 123 (Colo. App. 2003).

Aggravated sentence based upon circumstance that was also element of substantive offense is not prohibited by constitution. Aggravated sentence was permissible where defendant's confinement in correctional facility was both element of attempt to introduce contraband into a detention facility and circumstance requiring sentence in the aggravated range under § 18-1-105 (9)(a)(V). People v. Chavez, 764 P.2d 356 (1988).

Sentencing for contempt. When an individual imprisoned for contempt is given a punitive sentence, as opposed to a remedial sentence, the proscriptions against double jeopardy apply. People v. Matheson, 671 P.2d 968 (Colo. App. 1983).

Because the elements of contempt and the elements of the criminal offenses with which the defendant was charged are not the same, the subsequent prosecution of the defendant is not barred. People v. Allen, 868 P.2d 379 (Colo. 1994); People v. Stenson, 902 P.2d 389 (Colo. App. 1994).

Each violation supports separate indictment if not continuous. If a violation of law is not continuous in its nature, separate indictments or informations may be maintained for each violation of the same species of crime. Bustamante v. People, 136 Colo. 362, 317 P.2d 885 (1957).

An acquittal or conviction is no bar to a subsequent indictment for the same offense or the same species of crime, where the latter is alleged to have been committed at a different date from that previously tried, or is a distinct repetition of a prohibited act, even on the same day, unless the offense is continuous. Bustamante v. People, 136 Colo. 362, 317 P.2d 885

(1957).

A defendant's double jeopardy rights are not violated when the court sentences a defendant to consecutive sentences based on separate incidents involving the same victim. People v. Shepard, 98 P.3d 905 (Colo. App. 2004).

The unit of prosecution for leaving the scene of an accident is the number of accident scenes, not the number of injured victims at those scenes; consequently, where two people were injured at a single accident scene, defendant's conviction on two counts of leaving the scene of an accident violates the constitutional prohibition against double jeopardy. People v. Arzabala, 2012 COA 99, __ P.3d __.

Double jeopardy violated where statute does not expressly provide that possession in the course of manufacturing a controlled substance is a separately punishable offense, and the offenses are not otherwise sufficiently distinguishable to permit multiple punishment. Patton v. People, 35 P.3d 124 (Colo. 2001).

Distinct elements and evidence allow trial for separate offenses. Double jeopardy does not prevent the state from trying a defendant in county court for driving under the influence when he has previously entered a guilty plea in municipal court to a speeding charge arising from the same incident since the state charge contains elements and requires evidence fully distinct from that required by the municipal prosecution. Blum v. County Court, 631 P.2d 1191 (Colo. App. 1981).

Manufacturing a controlled substance is a lesser included offense of child abuse based on manufacturing a controlled substance. People v. Laurent, 194 P.3d 1053 (Colo. App. 2008) (decided under law in effect prior to 2006 amendment to § 18-6-401 (1)(c)).

But prosecution for part of one offense will bar prosecution for whole where the crime charged and the facts proved constitute but one offense. Bustamante v. People, 136 Colo. 362, 317 P.2d 885 (1957).

Where a continuous offense is charged between specified dates, if any portion of the time covered by the indictment has been used on or applied under a former indictment and has resulted in a conviction, the former conviction is a bar. Bustamante v. People, 136 Colo. 362, 317 P.2d 885 (1957).

If a subsequent prosecution for the same statutory offense requires proof of the same facts upon which a conviction under the first prosecution was based, then the second prosecution would be barred under the "same offense" prohibition of the double jeopardy clause. People v. Williams, 651 P.2d 899 (Colo. 1982).

Distinct repetition of a prohibited act, even on the same day, may constitute a second offense and incur an additional penalty. People v. Williams, 654 P.2d 319 (Colo. App. 1982).

And bar against double jeopardy precludes conviction of offense and lesser included offense where both charges are based on the same criminal transaction; hence, it was error to refuse defendants' tendered instruction which stated that if the jury found the defendants guilty of possession of narcotic drugs for sale, they must find them not guilty of possession of narcotic drugs. People v. Brown, 185 Colo. 272, 523 P.2d 986 (1974); Boulies v. People, 770 P.2d 1274 (Colo. 1989).

A defendant cannot be convicted of an offense which is a lesser included offense of another crime of which he was also convicted. People v. Hancock, 186 Colo. 30, 525 P.2d 435 (1974); People v. Grant, 40 Colo. App. 46, 571 P.2d 1111 (1977); People v. Delgado-Elizarras, 131 P.3d 1110 (Colo. App. 2005).

When defendant is convicted of both a greater and lesser offense, in order to protect the defendant against multiple punishments for the same offense, the conviction of the lesser offense should be vacated and the conviction of the greater offense should be affirmed. People v. Driggers, 812 P.2d 702 (Colo. App. 1991).

When offense deemed lesser included. An offense is lesser included if it is impossible to commit the greater offense without also having satisfied every essential element of the lesser offense. People v. Grant, 40 Colo. App. 46, 571 P.2d 1111 (1977).

When a jury deadlocks on a greater charge but convicts on a lesser included charge, the hung jury rule, not the implied acquittal rule, applies. Thus, retrial of the greater charge does not result in a double jeopardy violation. People v. Aguilar, 2012 COA 181, __ P.3d __.

Because duplicate convictions of reckless endangerment were based on identical acts, they violated defendant's right to be free from double jeopardy. People v. Delgado-Elizarras, 131 P.3d 1110 (Colo. App. 2005).

The crime of sexual assault on a child as part of a pattern of sexual abuse is not a lesser included offense of the crime of sexual assault on a child by one in a position of trust. In addition, neither of these are sentence enhancers for a person convicted of sexual assault on a child. All are separate crimes and each requires proof of facts not required by any of the others. People v. Valdez, 874 P.2d 415 (Colo. App. 1994).

The "pattern" provisions of §§ 18-3-405 (2)(d) and 18-3-405.3 (2)(b) do not violate the double jeopardy protection against multiple punishments. Separate convictions and punishments authorized by the legislature never violate double jeopardy. The general assembly intended to authorize separate convictions for each incident of sexual assault on a child or sexual assault on a child by one in a position of trust and authorized enhanced punishment of each assault that is committed as part of a "pattern of sexual abuse". People v. Simon, 266 P.3d 1099 (Colo. 2011).

No double jeopardy violation for imposing sentences under §§ 18-3-405 and 18-3-405.3. Each section required a different element, a pattern of abuse for the first and being in a position of trust for the second, thus, there was no double jeopardy violation. People v. Tillery, 231 P.3d 36 (Colo. App. 2009), aff'd sub nom. People v. Simon, 266 P.3d 1099 (Colo. 2011).

Convictions on four separate counts of sexual assault on a child, based upon different types of sexual contact, but not clearly separate incidents, violates constitutional prohibition against double jeopardy. Defendant, therefore, received more than one sentence for each single contact, and the charges were multiplicative. People v. Woellhaf, 105 P.3d 209 (Colo. 2005).

For purposes of double jeopardy, the critical factor is whether defendant's aggregate sentence on resentencing is less severe than the original aggregate sentence. Here, although the trial court doubled the length of the original sentence for a single count, the aggregate sentence for all counts was lower so there was no double jeopardy. People v. Woellhaf, 199 P.3d 27 (Colo. App. 2007).

Multiple punishments for two counts of sexual assault on a child by one in a position of trust and for two counts of aggravated incest are barred by double jeopardy. The evidence supported the conclusion that the two types of sexual contact constituted a single factual offense of sexual assault on a child by one in a position of trust and a single factual offense of aggravated incest. People v.

Mintz, 165 P.3d 829 (Colo. App. 2007).

Use and possession of narcotics distinct offenses. Where a single transaction involves two distinct offenses, one grounded on narcotics addiction (use) and the other on possession, a plea of former jeopardy is properly denied. People v. McKenzie, 169 Colo. 521, 458 P.2d 232 (1969).

Possession and sale of marijuana. Possession and sale are directed at different sorts of criminal conduct which may be independently punished. Therefore, the prohibition against double jeopardy is not violated by a conviction for both possession and simple or "soft" sale of marijuana. People v. Bloom, 195 Colo. 246, 577 P.2d 288 (1978).

There is no double jeopardy violation when a conviction for possession of a controlled substance and a conviction for distribution of a controlled substance were each based on a different quantum of drugs. People v. Davis, 2012 COA 1, __ P.3d __.

And, assault with intent to murder and aggravated robbery. The offense of assault with intent to murder requires proof of a specific intent to kill, a fact not necessary to sustain a charge of aggravated robbery. On the other hand, aggravated robbery requires proof of a robbery, a fact not necessary for assault. Therefore, punishment for both of these offenses committed during one course of conduct does not violate the constitutional prohibition against double jeopardy for the same offense. People v. Bugarin, 181 Colo. 62, 507 P.2d 875 (1973).

There was no double jeopardy violation for a conviction of sexual assault on a child and a conviction of sexual assault on a child-pattern. Each count was based on an incident that was separated by time and intervening events. People v. Greer, 262 P.3d 920 (Colo. App. 2011).

Conspiracy and crime which is its object are different and distinct offenses. Goddard v. People, 172 Colo. 498, 474 P.2d 210 (1970).

Defendant was not being tried for what is really one offense where the essence of the crime of conspiracy is the illegal agreement or combination, while the essence of the accessory statute establishing guilt equal to that of a principal is to punish for participation in the criminal act. Goddard v. People, 172 Colo. 498, 474 P.2d 210 (1970).

It is not a violation of the double jeopardy provision to be convicted of both aggravated robbery and conspiracy to commit robbery. People v. Rivera, 178 Colo. 373, 497 P.2d 990 (1972).

Defendant charged with assault with a deadly weapon and conspiracy to assault with deadly weapon was not subjected to double jeopardy by conspiracy instruction in combination with accessory instruction. People v. Grass, 180 Colo. 346, 505 P.2d 1301 (1973).

So conviction on conspiracy and acquittal on substantive charge not inconsistent. Conviction on a charge of conspiracy to commit assault to rape was not inconsistent with an acquittal on a substantive charge of assault with intent to commit rape. People v. Walker, 182 Colo. 317, 512 P.2d 1243 (1973).

One conspiracy does not become several when object violates several statutes. Where the conspiracy violated but a single statute, only a single penalty could be imposed, as this section prohibits double punishment for the same crime. People v. Bradley, 169 Colo. 262, 455 P.2d 199 (1969).

Court did not err in failing to merge defendant's aggravated robbery and kidnapping conviction. The sentence enhancer, robbery, is not an element of the kidnapping offense that would require merger. People v. Hogan, 114 P.3d 42 (Colo. App. 2004).

Doctrine of merger required convictions for attempted aggravated robbery to be vacated where separately charged crime of attempted aggravated robbery of each victim was lesser included offense of crime of first-degree assault on each victim. People v. Griffin, 867 P.2d 27 (Colo. App. 1993).

When separate convictions proper for first-degree murder and robbery. Although a separate judgment of conviction for robbery may not simultaneously exist with a judgment of conviction for first-degree murder predicated upon the killing of the robbery victim, there is no such impediment to the entry of both a judgment of conviction for first-degree murder based upon the killing of another after deliberation and a separate judgment of conviction for the robbery of the same victim. People v. Lowe, 660 P.2d 1261 (Colo. 1983); People v. Bartowsheski, 661 P.2d 235 (Colo. 1983).

The defendant's conviction of the greater offense of felony murder, predicated as it is upon his killing of the robbery victim, precludes his simultaneous conviction of the lesser-included offense of robbery. People v. Lowe, 660 P.2d 1261 (Colo. 1983); People v. Bartowsheski, 661 P.2d 235 (Colo. 1983); Boulies v. People, 770 P.2d 1274 (Colo. 1989); People v. Driggers, 812 P.2d 702 (Colo. App. 1991).

Conviction and sentencing for both second degree assault and commission of a violent crime does not constitute double jeopardy. People v. Anaya, 732 P.2d 1241 (Colo. App. 1986), rev'd on other grounds, 764 P.2d 779 (Colo. 1988).

Second degree burglary and second degree sexual assault are not the same offense for purposes of the prohibition against double jeopardy because the elements of the two offenses are different. Childs v. Zavaras, 90 F. Supp. 2d 1141 (D. Colo. 1999).

Acquittal of one criminal offense pleaded as res judicata of another. Where different criminal offenses are separately charged and separately tried, the same evidence being offered in support of each, an acquittal on one can be pleaded as res judicata of the other if the facts found by the jury to acquit on the first are inconsistent with guilt on the trial of the second. Packer v. People, 8 Colo. 361, 8 P. 564 (1885); Crane v. People, 91 Colo. 21, 11 P.2d 567 (1932).

And acquittal bars second trial for same offense set in one or two indictments. Where a judgment of acquittal upon the first count of the information was entered after the jury had been sworn, and the testimony was all in, defendant cannot be convicted of a second count which describes precisely the same offense as the first, simply because it is set out in slightly different verbiage. This is equally true whether the offense is charged in different and wholly independent informations, or is set out in separate counts in one and the same information. Davidson v. People, 64 Colo. 281, 170 P. 962 (1918).

Acquittal constitutes jeopardy. From the time the jury is sworn, the defendant was in jeopardy, and where the trial court granted a motion for judgment of acquittal, even if the court committed reversible error, the defendant could not be retried. People v. Terry, 189 Colo. 177, 538 P.2d 466 (1975).

The provision that if a judgment in a criminal case be reversed for errors of law the accused shall not be deemed to have been in jeopardy must be reviewed as of the time of its adoption and construed in the sense in which the framers understood it, and it cannot be deemed to apply in a situation where the people on review by appeal obtain disapproval of a judgment of acquittal in a criminal proceeding, since at the time of its

adoption the people did not have the right to appeal in a criminal case. Krutka v. Spinuzzi, 153 Colo. 115, 384 P.2d 928 (1963).

Where a minor child aged 16 was alleged to be a delinquent, grounded on the allegation that he had committed an assault and battery, but at the close of the evidence presented by the people, the court ruled that the evidence presented was not sufficient to sustain the allegations of the petition and entered a judgment of acquittal, on appeal by the people it was held that the case was moot. The minor had been acquitted of the charge contained in the petition and could not again be put in jeopardy for this offense. People in Interest of G.D.K. v. G.D.K., 30 Colo. App. 54, 491 P.2d 81 (1971).

When a defendant's motion for judgment of acquittal on the charge of first degree murder should have been granted, a new trial on the charge of first degree murder would be contrary to the guarantee against double jeopardy. Hervey v. People, 178 Colo. 38, 495 P.2d 204 (1972); People v. Rutt, 179 Colo. 180, 500 P.2d 362 (1972).

Proceedings following granting of motion of acquittal improper. Where the trial court stated that a motion for judgment of acquittal should be granted and then allowed the prosecution a chance to present more evidence in areas in which it was deficient, the further proceedings were a violation of the prohibition against double jeopardy. People v. Meeker, 661 P.2d 1193 (Colo. App. 1982).

Unless erroneous acquittal can be corrected without prejudice. The double jeopardy prohibition should not preclude a trial judge from correcting, during the trial itself, an erroneous ruling on a motion for a judgment of acquittal when no threat of retrial would arise from the correction and the accused has suffered no demonstrable prejudice by reason of the correction. People v. District Court, 663 P.2d 616 (Colo. 1983).

Defendants in Colorado are on notice that a midtrial order granting a motion for judgment of acquittal is not final and is subject to change until the jury is dismissed. Until the jury is dismissed and the judgment of acquittal is final, the defendant has not been subjected to double jeopardy based upon a trial court's reversal of the acquittal. People v. Madison, 176 P.3d 793 (Colo. App. 2007).

Flawed jury verdict as implied acquittal of higher offense. Defendant, who was charged with two counts of first degree murder but who was convicted by a jury, after one juror had consulted a legal dictionary, of the lesser-included offense of second degree murder, could be retried only on two counts of second degree murder and appropriate lesser-included offenses, since the jury verdict, though flawed, constituted an implied acquittal of the higher offense of first degree murder. Niemand v. District Court, 684 P.2d 931 (Colo. 1984).

Double jeopardy does not bar reinstatement of a juvenile delinquency judgment where an intermediate appellate court erroneously reverses the judgment and a higher court later reverses the judgment of the intermediate appellate court. People ex rel. J.G., 97 P.3d 300 (Colo. App. 2004).

Supreme court may reinstate jury verdict. Where a judgment of acquittal was improperly granted by the trial court there is no double jeopardy prohibition against the supreme court reinstating the jury verdict. People v. Rivas, 197 Colo. 131, 591 P.2d 83 (1979).

When an appellate court reverses a trial court's order granting a judgment of acquittal notwithstanding the verdict, it may properly remand the case to the trial court with directions to reinstate the jury verdict without violating the constitutional prohibition

against twice placing the defendant in jeopardy for the same offense. People v. Parks, 749 P.2d 417 (Colo. 1988); People v. Madison, 176 P.3d 793 (Colo. App. 2007).

But may not order retrial. When jeopardy has attached and a judgment of acquittal has been granted at the defendant's request following the close of the prosecution's case, the defendant cannot be tried again on the same charge. Retrial is precluded even when the trial court erred as a matter of law in granting the judgment of acquittal. People v. Paulsen, 198 Colo. 458, 601 P.2d 634 (1979).

Where retrial proscribed. The double jeopardy clause proscribes retrial both because a conviction for menacing in a first trial impliedly acquitted the defendant of one of the charges in the new information (a second-degree assault charge) and because the defendant has a legitimate interest in having the charges against him determined by the jury first impaneled to hear his case. Ortiz v. District Court, 626 P.2d 642 (Colo. 1981).

Retrial on habitual criminality barred notwithstanding trial court's erroneous interpretation or application of substantive law in dismissing habitual charges against the defendant where such dismissal occurs after jeopardy attached upon the impaneling and swearing of the jury. People v. Hrapski, 718 P.2d 1050 (Colo. 1986).

Retrial on habitual criminality prohibited. Where habitual criminal counts have been dismissed by the trial court after jeopardy has already attached on substantive charges, this section prohibits a retrial of the defendant on habitual criminality. Appellate review under these circumstances is limited to approval or disapproval of the judgment. People v. Leonard, 673 P.2d 37 (Colo. 1983).

Retrial following mistrial permitted over objection when based on manifest necessity. The double jeopardy clause does not prohibit a retrial of an accused following the declaration of a mistrial over the defendant's objection whenever, in the opinion of the court, taking all the circumstances into consideration, there is a manifest necessity for the act or the ends of public justice would otherwise be defeated. People v. Castro, 657 P.2d 932 (Colo. 1983); People v. Muniz, 190 P.3d 774 (Colo. App. 2008).

Retrial of first-degree murder charge and lesser-included offenses was not barred by double jeopardy as declaration of mistrial was manifestly necessary. Jury indicated that they had reached a unanimous verdict on only one charge and that they were not making progress towards unanimity on the other two charges, including first degree murder. People v. Richardson, 184 P.3d 755 (Colo. 2008).

Test for retrial applied in People v. Clark, 705 P.2d 1017 (Colo. App. 1985).

Retrial prohibited when first trial's final judgment is favorable to defendant. A retrial on a criminal accusation is prohibited whenever the first trial results in a final judgment favorable to the defendant. People v. Quintana, 634 P.2d 413 (Colo. 1981).

Regardless of character of judgment. The precise character of the trial court's judgment -- whether an improper judgment of dismissal on grounds unrelated to factual guilt or innocence or an acquittal based on an erroneous application of evidentiary standards -- is not determinative of the retrial bar under the Colorado double jeopardy clause. People v. Quintana, 634 P.2d 413 (Colo. 1981).

Motion for acquittal or dismissal. When an order sustains a motion for acquittal or dismissal and discharges a defendant after a trial to a jury, it ends the case, and the defendant

can not be again tried for the same offense. Menton v. Johns, 151 Colo. 276, 377 P.2d 104 (1962).

Motion for new trial does not relinquish right to invoke double jeopardy guarantees against retrial of a charge upon which no verdict was returned. Ortiz v. District Court, 626 P.2d 642 (Colo. 1981).

Directed verdict of not guilty equivalent to acquittal. When a court has directed a verdict of not guilty in a criminal case, such directed verdict is equivalent to an acquittal and will support a plea of former jeopardy. Krutka v. Spinuzzi, 153 Colo. 115, 384 P.2d 928 (1963).

As is withdrawal of count. Where the defendant was put in jeopardy upon the first trial for the offense charged in the first count of the information, the action of the trial court in withdrawing that count from the consideration of the jury on account of the insufficiency of the evidence to sustain a conviction of the offense was equivalent to an acquittal of the defendant. Roland v. People, 23 Colo. 283, 47 P. 269 (1896); Davidson v. People, 64 Colo. 281, 170 P. 962 (1918).

But dismissal entered before jeopardy attaches is not equivalent to acquittal and does not operate to bar a subsequent prosecution for the same offense. People v. Abrahamsen, 176 Colo. 52, 489 P.2d 206 (1971).

Conviction of lesser degree of homicide is acquittal of all higher degrees of that crime, so long as that conviction stands. Young v. People, 54 Colo. 293, 130 P. 1011 (1913).

In test for determining whether jury is unable to reach a unanimous verdict and thus whether a mistrial should be declared, trial court should consider these factors: The jury's collective opinion that it cannot agree; the length of the trial; the complexity of the issues; the length of time the jury has deliberated; whether the defendant has made timely objections to a mistrial; and the effects of exhaustion or coercion on the jury. People v. Schwartz, 678 P.2d 1000 (Colo. 1984).

Mistrial bars retrial unless justified or defendant consented. After jeopardy attaches, if a jury is discharged without returning a verdict, the defendant cannot again be put in jeopardy unless he consented to the discharge or legal necessity required it. Barriner v. District Court, 174 Colo. 447, 484 P.2d 774 (1971); Espinoza v. District Court, 180 Colo. 391, 506 P.2d 131 (1973); Paul v. People, 105 P.3d 628 (Colo. 2005).

Once a defendant is placed in jeopardy, the remaining question is whether there was legal justification to declare a mistrial which in turn prevents a defendant from sustaining a plea of former jeopardy. McCoy v. District Court, 156 Colo. 115, 397 P.2d 733 (1964).

Where trial judge, despite objections of district attorney, erroneously declared a mistrial sua sponte based upon alleged improper conduct of defense counsel in closing argument, second trial was barred by double jeopardy. Espinoza v. District Court, 180 Colo. 391, 506 P.2d 131 (1973).

Where trial judge, despite objections of defense attorney, erroneously declared a mistrial sua sponte because a key staff member resigned, the docket was crowded, and the trial ran longer than was anticipated, second trial was barred by double jeopardy. The court's reasons for declaring a mistrial were not substantial enough to warrant a finding of "manifest necessity". People v. Berreth, 13 P.3d 1214 (Colo. 2000).

It was proper for defense counsel to inquire, on cross-examination, about the witness's prior act of shoplifting, therefore, the trial court was not justified in declaring a mistrial. Without manifest necessity

to declare a mistrial, double jeopardy barred retrial. People v. Segovia, 196 P.3d 1126 (Colo. 2008).

No waiver if motion for mistrial is provoked by prosecutorial misconduct which was committed for the purpose of provoking or forcing the defendant to move for a mistrial. People v. Espinoza, 666 P.2d 555 (Colo. 1983).

Court must determine whether the motion was provoked and the standard to be applied is one of overreaching flowing from bad faith or negligence. People v. Baca, 193 Colo. 9, 562 P.2d 411 (1977).

Standard applied in People v. Reyher, 728 P.2d 333 (Colo. App. 1986).

As where prejudicial conduct has occurred which makes it unjust to proceed. People v. Moore, 701 P.2d 1249 (Colo. App.), cert. denied, 706 P.2d 802 (Colo. 1985).

For mistrial to be legally justified, there must be a reasonable objective sought and a substantial purpose attained. It need only be such as could affect, interfere with, retard, or influence to even a slight degree, the administration of honest, fair, even-handed justice to any of the parties. When it appears that such an irregularity prevails and when in the exercise of his judgment, a judge declares a mistrial, he has fairly exercised his judicial discretion and his action is properly and legally justified. McCoy v. District Court, 156 Colo. 115, 397 P.2d 733 (1964).

When defendant's consent to mistrial has no force or validity. A defendant's "consent" to the discharge of the jury and declaration of mistrial has no force or validity where the conditions and assumptions upon which it was based were never legally met, as where the defendant agreed to a future situation of "hopelessly deadlocked", where he had a right to anticipate that the court would follow the usual procedures in discharging a jury, not declare a mistrial based upon hearsay and procedural violations, done off the record and out of court, where no objection to the procedure was possible. Barriner v. District Court, 174 Colo. 447, 484 P.2d 774 (1971).

And failure to object initially to granting of mistrial not consent. When defense counsel initially does not object to the trial court granting a mistrial but changes his mind before the jury is discharged, there is no irretrievable binding consent to a mistrial of waiver or the constitutional protection against double jeopardy. Maes v. District Court, 180 Colo. 169, 503 P.2d 621 (1972).

Although failure to object to discharge of jury returning insufficient verdict deemed consent. Where a jury returned a verdict of guilty of manslaughter without designating whether it was voluntary or involuntary and the defendant made no objection to the discharge of the jury but merely excepted to the verdict and subsequently consented that judgment be entered on the verdict for involuntary manslaughter, which the court declined to do but set aside the verdict because it was insufficient to sustain a judgment, the defendant, by failing to object to the discharge of the jury, must be held to have consented to their discharge and his plea of former jeopardy, interposed in objection to another trial, was properly overruled. Mahany v. People, 31 Colo. 365, 73 P. 26 (1903).

Jury, upon failure to agree, may be discharged without prejudice to another trial. Barriner v. District Court, 174 Colo. 447, 484 P.2d 774 (1971).

Where, upon first trial of defendant jury was unable to reach a verdict, jeopardy did not attach. People v. Garner, 187 Colo. 294, 530 P.2d 496 (1975).

Under the provision of this section which provides that "if the jury disagree the accused shall not be

deemed to have been in jeopardy", unless it appears that the discretion of the trial court in discharging the jury for failure to agree has been grossly abused, the plea of prior jeopardy, even when properly interposed, will not avail. In re Allison, 13 Colo. 525, 22 P. 820 (1889).

Where a trial is terminated by a deadlocked jury that cannot reach a verdict, reprosecution of an accused is not barred by the double jeopardy doctrine. Ortiz v. District Court, 626 P.2d 642 (Colo. 1981); People v. Cisneros, 665 P.2d 145 (Colo. App. 1983).

"Disagree". Where there was no motion for a mistrial by the district attorney in the last session in open court, no indication of an inability on the part of the jury to agree upon a verdict, and in fact, no juror ever stated in open court that he thought the jury could not agree on a verdict, but the jury was discharged by the bailiff without the jury returning to the courtroom to directly communicate the state of their deliberations to the trail judge, the jury did not "disagree" within the contemplation of that term as used in this section of the constitution. Barriner v. District Court, 174 Colo. 447, 484 P.2d 774 (1971).

Declaration of mistrial for failure to reach verdict discretionary. The declaration of a mistrial because of the inability of the jury to agree upon a verdict lies within the sound discretion of the trial judge. Barriner v. District Court, 174 Colo. 447, 484 P.2d 774 (1971); People v. Schwartz, 678 P.2d 1000 (Colo. 1984).

Prosecution on invalid information does not constitute jeopardy and does not preclude prosecution on a valid information. Markiewicz v. Black, 138 Colo. 128, 330 P.2d 539 (1958).

Jeopardy does not attach if an information is insufficient in form and substance to sustain a conviction. People v. Garner, 187 Colo. 294, 530 P.2d 496 (1975).

Where first trial of defendant upon rape charge resulted in a guilty verdict, but verdict was set aside for failure of information to charge defendant with a crime, jeopardy did not attach. People v. Garner, 187 Colo. 294, 530 P.2d 496 (1975).

Nor invalid plea of guilty. A plea of guilty extorted by duress or by fear of mob violence does not place an accused in jeopardy. Markiewicz v. Black, 138 Colo. 128, 330 P.2d 539, 75 A.L.R.2d 678 (1958).

A defendant is placed in jeopardy when the defendant is adjudicated and found not guilty by reason of insanity. Such an adjudication is a final judgment in favor of the defendant. A retrial of the defendant is precluded by the double jeopardy clause of the Colorado Constitution even when the trial court erred as a matter of law in granting the judgment of acquittal. People v. Serravo, 823 P.2d 128 (Colo. 1992).

Guilty plea not jeopardy in a continuing proceeding. The rule that a plea of guilty constitutes jeopardy has its proper application and force only as against a new charge for the same crime, and not to a continuing proceeding on the one, original charge. Markiewicz v. Black, 138 Colo. 128, 330 P.2d 539 (1958).

During pendency of appeal, conviction bars new trial. A plea of former jeopardy based on a conviction for the same offense does not depend upon the former conviction being final. A conviction even though not yet final, due to its appeal, should and does afford the defendant with a shield against a second or later prosecution for the same offense while the former action is pending. Bustamante v. People, 136 Colo. 362, 317 P.2d 885 (1957).

An accused under indictment for murder may be tried for manslaughter and the fact that he had been tried and convicted of murder,

which judgment was reversed because of error in entering the same--the law having been so modified as to forbid the judgment--will not warrant his discharge on the ground of former jeopardy when subsequently tried for manslaughter on the same indictment. In re Garvey, 7 Colo. 384, 3 P. 903 (1884).

No constitutional or statutory impediment to retrying defendant where he appeals his conviction on the basis of a fatally infirm charge and the original conviction has, at the defendant's behest, been wholly nullified and the slate wiped clean. People v. Fueston, 749 P.2d 952 (Colo. 1988).

Conviction reversed for error of law not jeopardy. This section means that in the same action, upon retrial, if the judgment was reversed for errors of law a defendant shall not be deemed to have been in jeopardy due to the first trial. Bustamante v. People, 136 Colo. 362, 317 P.2d 885 (1957); Stafford v. People, 165 Colo. 328, 438 P.2d 696 (1968); People v. Ovalle, 51 P.3d 1073 (Colo. App. 2002).

If judgment of conviction is reversed for error in law, accused is not deemed to have been in jeopardy, and, under circumstances, trial court correctly interpreted district court's reversal without direction as necessitating a new trial. Gomez v. Ensor, 694 P.2d 869 (Colo. App. 1984).

Nor where reversal of prior, unsatisfied conviction. It is an established rule that when a defendant obtains a reversal or vacation of a prior, unsatisfied conviction, he may be retried in the normal course of events. White v. District Court, 180 Colo. 147, 503 P.2d 340 (1972).

Accused stands as if there never had been former trial, and the state stands in precisely the same position. The second trial is de novo. The same presumption of innocence of any degree of unlawful homicide, although accused has been convicted of one degree thereof, prevails as upon the first trial. This is the evident purpose and intent of the framers of the constitution. Young v. People, 54 Colo. 293, 130 P. 1011 (1913).

The reversal of a conviction does not result in jeopardy and defendant is not entitled to credit for four years served under the void conviction for murder. Stafford v. People, 165 Colo. 328, 438 P.2d 696 (1968).

Double jeopardy principles were not violated when the court granted a continuance during a habitual offender hearing for the prosecution to fix a technical defect with the evidence of the previous convictions. In this case, the defendant's "first" jeopardy was not ended by the continuance, so the delay did not create a double jeopardy problem. People v. Valencia, 169 P.3d 212 (Colo. App. 2007).

Second hearing in juvenile proceeding not jeopardy. A second hearing before the judge on motions of the people in juvenile proceedings and modification of the referee's findings do not place a child twice in jeopardy. People in Interest of J.A.M., 174 Colo. 245, 483 P.2d 362 (1971).

Nor continuance of four days to amend information. Where the court granted a continuance of four days to amend an information, defendant was not placed in double jeopardy. McKee v. People, 175 Colo. 410, 487 P.2d 1332 (1971).

Nor proceedings to revoke driver's license on basis of previous convictions for violations. The proceedings to revoke a driver's license on the basis of previous convictions for violations are not intended as a further punishment of the violator, but are designed solely for the protection of the public in the use of highways and does not in the legal sense, subject the licensee to double jeopardy or punishment. Campbell v. State, 176

Colo. 202, 491 P.2d 1385 (1971).

Resentencing not double jeopardy. When an original sentence is illegal, resentencing does not constitute double jeopardy even if the subsequent sentence is longer than the original and even though the defendant has begun serving the original sentence. People v. District Court, 673 P.2d 991 (Colo. 1983).

No double jeopardy for second sentence when the first sentence was not fully served. Defendant who discharged imprisonment portion of sentence, but not the mandatory parole portion, had not completed sentence. Therefore, defendant was still serving original sentence when original conviction was vacated and defendant was re-sentenced. People v. Ovalle, 51 P.3d 1073 (Colo. App. 2002).

There is no double jeopardy claim when the defendant is resentenced to the department of corrections and a term of mandatory parole after termination of a community corrections sentence. Since a community corrections sentence is subject to modification, the defendant had no expectation of finality in his sentence and thus, no double jeopardy claim. As well, the imposition of mandatory parole is part of the statutory sentencing scheme, so the defendant was on notice that he could be subject to a longer period of restraint, if his community corrections sentence was terminated. People v. Chavez, 32 P.3d 613 (Colo. App. 2001).

Parole revocation does not violate double jeopardy since it is an administrative proceeding and does not punish criminal defendants for violating criminal laws. People v. Taylor, 74 P.3d 396 (Colo. App. 2002); People v. Harper, 111 P.3d 482 (Colo. App. 2004).

No double jeopardy violation where conviction follows the revocation of defendant's parole based on the same conduct. Parole is a privilege and its revocation is an administrative proceeding; revocation does not punish the defendant for his conduct but merely reaffirms the original sentence. People v. Taylor, 74 P.3d 396 (Colo. App. 2002).

Sentence change is not double jeopardy if the sentence is increased but the defendant has not yet begun serving the sentence. People v. Reed, 43 P.3d 644 (Colo. App. 2001).

"Manifest necessity" construed. Manifest necessity encompasses those situations, substantial and real, that interfere with or retard the administration of honest, fair, evenhanded justice to either, both, or any of the parties to the proceeding. People v. Castro, 657 P.2d 932 (Colo. 1983).

Remand for new trial not former jeopardy. Evidence showing a child's condition during the two-day period prior to her death and showing that her father chose to forego medical treatment despite urgings from friends and police would have been sufficient to support conviction of the father for child abuse resulting in death, so that remand for new trial did not constitute double jeopardy. People v. Lybarger, 700 P.2d 910 (Colo. 1985).

Although charges pending after reversal of the defendant's conviction on appeal were not "untried" within the meaning of the Uniform Mandatory Disposition of Detainers Act, remand for a new trial on those charges does not violate the double jeopardy clause. People v. Campbell, 885 P.2d 327 (Colo. App. 1994).

Where double jeopardy rights not violated. Where the court was apprised of the fact that a plea bargain had been entered into; the defendant voluntarily entered his plea after he was advised that he could receive any sentence that fell within the statutory limits; the charge which was the subject of the plea bargain was not

the basis of the defendant's presentence confinement; the trial judge did not indicate that he was giving the defendant credit for his jail time; and the trial court was well aware of the time that had been served before sentence was imposed, there was no violation of defendant's equal protection or double jeopardy rights where the sentence was within statutory limits. People v. Mieyr, 176 Colo. 90, 489 P.2d 327 (1971).

Cumulative punishment in a single trial may only be imposed for statutory offenses proscribing the same conduct where legislature has specifically authorized cumulative punishment for these offenses. Boulies v. People, 770 P.2d 1274 (Colo. 1989).

Total sentence was not increased in violation of prohibition against double jeopardy where amended judgment and mittimus only clarified original judgment and mittimus. Graham v. Cooper, 874 P.2d 390 (Colo. 1994).

But an increase in the sentence is impermissible even if the court alters the sentence solely to conform to or clarify its original intent. People v. Sandoval, 974 P.2d 1012 (Colo. App. 1998).

Sentences are presumed concurrent. Where the trial court is advised of a preexisting Colorado sentence but does not specify whether the new sentence is to be concurrent with or consecutive to the prior sentence, the new sentence will be presumed to run concurrently with the prior sentence. After the defendant begins serving the new sentence, the presumption in effect becomes conclusive, since any subsequent increase in the sentence would be impermissible. People v. Sandoval, 974 P.2d 1012 (Colo. App. 1998).

Changing a sentence from concurrent to consecutive constitutes an increase in the sentence. People v. Sandoval, 974 P.2d 1012 (Colo. App. 1998).

A sentence may be increased without violating double jeopardy prohibitions if the defendant could have no legitimate expectation of finality in the sentence. People v. Rodriguez, 55 P.3d 173 (Colo. App. 2002); Romero v. People, 179 P.3d 984 (Colo. 2007).

Jeopardy does not attach where a remand is required for correction of the mittimus in order to reference a mandatory period of parole. People v. Barth, 981 P.2d 1102 (Colo. App. 1999); People v. Espinoza, 985 P.2d 68 (Colo. App. 1999).

A defendant is not subject to multiple punishments for the same offense or conduct in violation of the double jeopardy clause where a civil penalty has not been imposed. In this instance, the defendants have not paid any money to the state nor has the state taken any steps to collect the tax obligation allegedly owed pursuant to §§ 39-28.7-102 and 39-28.7-107. People v. Litchfield, 902 P.2d 921 (Colo. App. 1995), aff'd on other grounds, 918 P.2d 1099 (Colo. 1996).

Imposition of two surcharges for conviction does not violate the prohibition against double jeopardy. The surcharge created by § 18-21-103 (1)(c) and the surcharge created by § 24-4.2-104 (1)(a)(II)(A) may both be applied to the conviction for second degree sexual assault. People v. Thien Van Vo, 932 P.2d 849 (Colo. App. 1996).

No double jeopardy violation where the imposition of costs is primarily remedial rather than punitive. The reviewing court first considers if the legislature intended a criminal or civil sanction, then determines if the statutory scheme is primarily punitive. People v. Howell, 64 P.3d 894 (Colo. App. 2002).

Costs are imposed to reimburse the state for the actual expenses incurred in prosecuting a defendant; costs are not traditionally

considered to be punishment; the imposition of costs does not serve the goals of retribution and deterrence. People v. Howell, 64 P.3d 894 (Colo. App. 2002); People v. McQuarrie, 66 P.3d 181 (Colo. App. 2002).

The drug offender surcharge, a criminal sanction, constitutes punishment for purposes of double jeopardy analysis. People v. McQuarrie, 66 P.3d 181 (Colo. App. 2002).

Under certain circumstances, a civil penalty may rise to the level of a "punishment" for double jeopardy clause purposes. People v. Maurello, 932 P.2d 851 (Colo. App. 1997) (decided under former § 39-28.7-107 as it existed prior to the 1996 repeal of article 28.7 of title 39).

The Colorado controlled substances tax constituted a penalty that triggered double jeopardy with respect to the subsequent prosecution of a defendant for a criminal offense involving the possession of the marihuana taxed. People v. Maurello, 932 P.2d 851 (Colo. App. 1997) (decided under former § 39-28.7-107 as it existed prior to the 1996 repeal of article 28.7 of title 39).

Once a legal sentence including restitution has been imposed and the defendant has begun serving the sentence, the restitution amount cannot be increased without violating the constitutional prohibition against double jeopardy. People v. Wright, 18 P.3d 816 (Colo. App. 2000).

An increase in the amount of restitution ordered after sentence has been imposed and the defendant has begun serving it violates double jeopardy protections. People v. Shepard, 989 P.2d 183 (Colo. App. 1999).

Where there is no increase in the amount of restitution ordered, there is no double jeopardy violation. People v. Lowe, 60 P.3d 753 (Colo. App. 2002).

An illegal sentence including restitution may be corrected without violating defendant's right to be free from double jeopardy. People v. Pagan, 165 P.3d 724 (Colo. App. 2006).

Defendant not subjected to double jeopardy where restitution was not ordered, and judgment was not entered, until defendant had an opportunity to contest the matter of restitution in a hearing. People v. Harman, 97 P.3d 290 (Colo. App. 2004).

The state does not violate the double jeopardy clause by subjecting individuals to criminal prosecution pursuant to the DUI or DUI per se statutes subsequent to subjecting them to an administrative license revocation proceeding. Deutschendorf v. People, 920 P.2d 53 (Colo. 1996).

Because mandatory parole is a required part of any sentence to the department of corrections, it is not a second sentence for the same crime and does not violate the protection against double jeopardy. People v. Mayes, 981 P.2d 1106 (Colo. App. 1999).

Section 19. Right to bail - exceptions. (1) All persons shall be bailable by sufficient sureties pending disposition of charges except:

(a) For capital offenses when proof is evident or presumption is great; or

(b) When, after a hearing held within ninety-six hours of arrest and upon reasonable notice, the court finds that proof is evident or presumption is great as to the crime alleged to have been committed and finds that the public would be placed in significant peril if the accused were released on bail and such

person is accused in any of the following cases:

(I) A crime of violence, as may be defined by the general assembly, alleged to have been committed while on probation or parole resulting from the conviction of a crime of violence;

(II) A crime of violence, as may be defined by the general assembly, alleged to have been committed while on bail pending the disposition of a previous crime of violence charge for which probable cause has been found;

(III) A crime of violence, as may be defined by the general assembly, alleged to have been committed after two previous felony convictions, or one such previous felony conviction if such conviction was for a crime of violence, upon charges separately brought and tried under the laws of this state or under the laws of any other state, the United States, or any territory subject to the jurisdiction of the United States which, if committed in this state, would be a felony; or

(c) (Deleted by amendment, L. 94, p. 2853, effective upon proclamation of the Governor, L. 95, p. 1434, January 1, 1995.)

(2) Except in the case of a capital offense, if a person is denied bail under this section, the trial of the person shall be commenced not more than ninety days after the date on which bail is denied. If the trial is not commenced within ninety days and the delay is not attributable to the defense, the court shall immediately schedule a bail hearing and shall set the amount of the bail for the person.

(2.5) (a) The court may grant bail after a person is convicted, pending sentencing or appeal, only as provided by statute as enacted by the general assembly; except that no bail is allowed for persons convicted of:

(I) Murder;

(II) Any felony sexual assault involving the use of a deadly weapon;

(III) Any felony sexual assault committed against a child who is under fifteen years of age;

(IV) A crime of violence, as defined by statute enacted by the general assembly; or

(V) Any felony during the commission of which the person used a firearm.

(b) The court shall not set bail that is otherwise allowed pursuant to this subsection (2.5) unless the court finds that:

(I) The person is unlikely to flee and does not pose a danger to the safety of any person or the community; and

(II) The appeal is not frivolous or is not pursued for the purpose of delay.

(3) This section shall take effect January 1, 1995, and shall apply to offenses committed on or after said date.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 31. **L. 82:** Entire section R&RE, p. 685, effective January 1, 1983. **L. 94:** Entire section amended, p. 2853, effective upon proclamation of the Governor, **L. 95,** p. 1434, January 19, 1995.

Editor's note: For the proclamation of the Governor, December 30, 1982, see

L. 83, p. 1671.

Cross references: For considering the question of bail, see Crim. P. 46 and part 1 of article 4 of title 16; for prohibition against excessive bail, see § 20 of this article.

ANNOTATION

Law reviews. For article, "Some Legal Aspects of the Colorado Coal Strike", see 4 Den. B. Ass'n Rec. 22 (Dec. 1927). For article, "Martial Law in Colorado", see 5 Den. B. Ass'n Rec. 4 (Feb. 1928). For article, "One Year Review of Criminal Law and Procedure", see 40 Den. L. Ctr. J. 89 (1963).

Annotator's note. The following annotations include cases decided under the prior version of this section.

Purpose of bail is to insure the defendant's presence at the time of trial and not to punish a defendant before he has been convicted. Lucero v. District Court, 188 Colo. 67, 532 P.2d 955 (1975); L.O.W. v. District Court, 623 P.2d 1253 (Colo. 1981).

The purpose of confining the defendant before trial is not for punishment but to insure his presence at the trial. People v. Spinuzzi, 149 Colo. 391, 369 P.2d 427 (1962).

This section confers absolute right to bail in all cases, except for capital offenses, where the proof is evident and the presumption is great that the accused committed the crime. Gladney v. District Court, 188 Colo. 365, 535 P.2d 190 (1975); L.O.W. v. District Court, 623 P.2d 1253 (Colo. 1981).

This section in effect changes the common law so as to confer an absolute right to bail after indictment in all other felonies than capital cases. Proofs may be required in determining the amount of bail, but the right thereto is no longer a matter of judicial inquiry or discretion. In re Losasso, 15 Colo. 163, 24 P. 1080, 10 L.R.A. 847 (1890); Shanks v. District Court, 153 Colo. 332, 385 P.2d 990 (1963).

Bail, as a matter of right, for all but the most heinous crimes, has been recognized in Colorado. People ex rel. Dunbar v. District Court, 179 Colo. 304, 500 P.2d 358 (1972).

But bail not guaranteed to offender of law of another state. The right to bail guaranteed by this section does not apply to one charged with an offense under the laws of another state. Johnson v. District Court, 199 Colo. 458, 610 P.2d 1064 (1980).

Child does not have absolute constitutional or statutory right to bail pending adjudication of the charges filed against him in juvenile court. L.O.W. v. District Court, 623 P.2d 1253 (Colo. 1981).

The inquiry concerning whether an exception to the presumption of bail for juveniles should be recognized focuses primarily on the circumstances surrounding the conduct and character of the juvenile rather than on the nature of particular detention facilities. People v. Juvenile Court, 893 P.2d 81 (Colo. 1995).

Lack of absolute right to bail after service of governor's warrant does not mean that the court has lost its inherent power to grant bail after that time, but simply reflects a determination that the legislative intent to deny bail after service of the governor's warrant is a reasonable and appropriate limitation on that power absent the most extraordinary circumstances. Johnson v. District Court, 199 Colo. 458, 610 P.2d 1064 (1980).

Section modifies common-law rule as to bail in capital offenses. This constitutional provision modifies the common-law rule by providing, in effect, that in capital offenses, even after indictment, if upon investigation it is found that the "proof is not evident or the presumption

great", bail should be allowed. In re Losasso, 15 Colo. 163, 24 P. 1080, 10 L.R.A. 847 (1890).

Section includes persons accused of any crime, before or after indictment. This constitutional provision is entirely silent as to the status of the prosecution. It does not say that upon indictment for a felony, or for a particular kind of felony, the beneficent privilege conferred is withdrawn. On the contrary, its terms are broad enough to include persons accused of any crime whatever, after as well as before indictment. In re Losasso, 15 Colo. 163, 24 P. 1080, 10 L.R.A. 847 (1890).

But bail need not be matter of right in every case. People v. Jones, 176 Colo. 61, 489 P.2d 596 (1971).

Defendant is not entitled to bail when accused of first-degree murder. People ex rel. Dunbar v. District Court, 180 Colo. 107, 502 P.2d 420 (1972).

And bail need not be granted after conviction. People v. Roca, 17 P.3d 835 (Colo. App. 2000).

No right to trial within 90 days of revocation pursuant to § 16-4-103 (2) for defendant whose bail was denied because proof was evident and presumption great in capital offense case. People v. Avery, 736 P.2d 1233 (Colo. App. 1986).

Only exception expressly made has reference to capital offenses, but this exception is wholly inoperative if the proof of guilt be not evident and the presumption great. In re Losasso, 15 Colo. 163, 24 P. 1080 (1890).

Bail as a matter of right in capital cases is denied; but, when some competent authority ascertains by inquiry that the proof is not evident and the presumption not great, its allowance is imperatively commanded. Shanks v. District Court, 153 Colo. 332, 385 P.2d 990 (1963).

When proof is evident or presumption great, denial of bail is mandatory. People v. District Court, 187 Colo. 164, 529 P.2d 1335 (1974); Goodwin v. District Court, 196 Colo. 246, 586 P.2d 2 (1978).

Under the plain meaning of this section, a defendant convicted of a crime of violence must be denied an appeal bond until the conviction becomes final, even where defendant's conviction was reversed at the appellate court level. The conviction is not final until the defendant has exhausted all direct appeals. The bond must be denied when the defendant may ultimately be successful on appeal, acquitted upon retrial, and will have fully served the sentence. People v. Stewart, 26 P.3d 17 (Colo. App. 2000), rev'd on other grounds 55 P.3d 107 (Colo. 2002).

Historical reason for denying bail in capital case is because temptation for the defendant to leave the jurisdiction of the court and thus avoid trial is particularly great in such case. Courts should therefore proceed with extreme caution in permitting bail in a capital case and in the determination of whether the proof is evident or the presumption great. People v. Spinuzzi, 149 Colo. 391, 369 P.2d 427 (1962).

Furman v. Georgia did not deprive section of vitality. The United States supreme court decision Furman v. Georgia, 408 U.S. 238, 92 S. Ct. 2726, 33 L. Ed. 2d 346 (1972), which prohibited the imposition of the death penalty in certain circumstances, did not deprive this section of vitality. People ex rel. Dunbar v. District Court, 179 Colo. 304, 500 P.2d 358 (1972).

Mention of one exception excludes other exceptions. Palmer v. District Court, 156 Colo. 284, 398 P.2d 435, 11 A.L.R.3d 1380 (1965).

Although ineligibility for death penalty does not foreclose denial of bail. Fact that defendant was 16 years of age, a minor, who could not be subjected to the death penalty, would not have foreclosed the denial of

bail. Lucero v. District Court, 188 Colo. 67, 532 P.2d 955 (1975).

Implementation of right to bail must be determined by hearing where the people's proof of guilt is presented. Orona v. District Court, 184 Colo. 55, 518 P.2d 839 (1974).

It is duty of court to determine for itself whether proof is evident or the presumption great in each case. People v. Spinuzzi, 149 Colo. 391, 369 P.2d 427 (1962); Shanks v. District Court, 153 Colo. 332, 385 P.2d 990 (1963).

Failure of court to determine for itself request for bail requires remand. While the trial court does nothing more than summarily sustain the objections of the district attorney to the request for bail, and does not determine for itself from any competent evidence that the proof is evident or the presumption great that the accused was guilty of the crime charged, the cause will be remanded to the trial court for a hearing on the matter. Shanks v. District Court, 153 Colo. 332, 385 P.2d 990 (1963).

Burden of proof on those opposing bail. Because the state constitution establishes that the right to bail is absolute except were a capital crime has been committed and "the proof is evident or the presumption great" that the one charged committed the crime, the burden of proof rests with those opposing bail. Orona v. District Court, 184 Colo. 55, 518 P.2d 839 (1974).

Burden is upon the prosecution to show that the exception to the right to bail is applicable, and only with that showing can the conditional freedom secured by bail properly be denied. Gladney v. District Court, 188 Colo. 365, 535 P.2d 190 (1975).

If bail is to be denied, prosecution must show proof is evident or presumption great. If bail is to be denied, it is incumbent upon the prosecution to come forward and show that the proof is evident or the presumption great that the crime set forth was committed by the defendant. People ex rel. Dunbar v. District Court, 179 Colo. 304, 500 P.2d 358 (1972).

The people bear burden of proving that proof is evident and presumption great, and the fact that charges have been made that the offense allegedly committed by the defendant is a capital offense which meets the constitutional standard for denial of bail does not satisfy the prosecution's burden. Goodwin v. District Court, 196 Colo. 246, 586 P.2d 2 (1978).

Standard greater than probable cause. The standard which the constitution requires before bail may be denied is greater than probable cause, though less than that required for a conviction. Orona v. District Court, 184 Colo. 55, 518 P.2d 839 (1974); Gladney v. District Court, 188 Colo. 365, 535 P.2d 190 (1975).

Guilt or innocence of accused is not issue in a bail hearing. Gladney v. District Court, 188 Colo. 365, 535 P.2d 190 (1975).

And no need of proof enough to impose death penalty. The language, "when the proof is evident or the presumption great", pertains to proof of guilt, not to the kind of proof needed for the imposition of the death penalty. Where the state's evidence, although circumstantial in nature, was considerable, it is enough to constitute "evident proof" within the meaning of the constitution. Corbett v. Patterson, 272 F. Supp. 602 (D. Colo. 1967).

Offense does not cease to be capital where evidence circumstantial. Although by statute the death penalty cannot be imposed on the basis of only circumstantial evidence, petitioner does not cease to be charged with a "capital" offense and become entitled to bail as a matter of right where the prosecution probably did not have the direct evidence necessary to seek the death penalty.

The offense with which he was charged was still a capital one, even if it should later develop that the type of evidence adduced did not support a verdict imposing the death penalty. Corbett v. Patterson, 272 F. Supp. 602 (D. Colo. 1967).

Hearsay evidence is admissible in bail hearings. Gladney v. District Court, 188 Colo. 365, 535 P.2d 190 (1975).

But denial of bail may not be predicated upon hearsay alone although such evidence may be admitted in corroboration. Gladney v. District Court, 188 Colo. 365, 535 P.2d 190 (1975).

Filing of information or binding over for trial insufficient. The mere fact that an information has been filed--or that the defendant has been bound over for trial--is not equivalent to a determination that the proof of guilt is evident or the presumption great so as to warrant a denial of bail. Orona v. District Court, 184 Colo. 55, 518 P.2d 839 (1974).

As is production of evidence. The mere filing of an information or the production of evidence which would establish probable cause that the crimes charged were committed will not meet the Colorado constitutional standard for denying bail in capital cases. Lucero v. District Court, 188 Colo. 67, 532 P.2d 955 (1975).

Indictment may create strong presumption that prisoner is guilty of capital offense. In re Losasso, 15 Colo. 163, 24 P. 1080 (1890); Shanks v. District Court, 153 Colo. 332, 385 P.2d 990 (1963).

And burden of overcoming this presumption is cast upon prisoner. Shanks v. District Court, 153 Colo. 332, 385 P.2d 990 (1963).

If evidence is not presented by prosecution, court must set reasonable bail in compliance with Colorado constitution and the eighth amendment of the constitution of the United States. People ex rel. Dunbar v. District Court, 179 Colo. 304, 500 P.2d 358 (1972).

If evidence of the proper nature and kind is not presented by the district attorney, it is incumbent upon the court, looking to the guidelines laid down in section 16-4-105 (1)(h) and in the case of Stack v. Boyle, 342 U.S. 1, 72 S. Ct. 1, 96 L. Ed. 3 (1951), to set reasonable bail in compliance with the Colorado constitution and the eighth amendment of the constitution of the United States. Lucero v. District Court, 188 Colo. 67, 532 P.2d 955 (1975).

Colorado constitution recognizes that monetary bail is constitutionally permissible. People v. Jones, 176 Colo. 61, 489 P.2d 596 (1971).

Factors which should be considered by trial court in determining whether bail should be set, and amount of such bail, include the seriousness of the offense, the possible danger to the community, the penalty, the character and reputation of the accused and the probability of his appearing. Corbett v. Patterson, 272 F. Supp. 602 (D. Colo. 1967).

While the guilt or innocence of the accused is not to be determined, the quantity and character of the proofs on this point are, for the special purpose of determining bail, necessarily considered. Shanks v. District Court, 153 Colo. 332, 385 P.2d 990 (1963).

Although an accused has a constitutional right to bail in noncapital cases, the trial court has the discretion to set the amount and conditions of bail, subject to statutory limitations. Martell v. County Court of Summit County, 854 P.2d 1327 (Colo. App. 1992).

One who enters plea of not guilty by reason of insanity at time of commission of alleged crime cannot be denied bail pending trial. The trial court was powerless to construct an exception in such a case, and the denial

of bail was erroneous. Palmer v. District Court, 156 Colo. 284, 398 P.2d 435 (1965).

Person guilty of contempt entitled to bail pending review. Where a petitioner is adjudged guilty of contempt of court for refusal to answer questions before the grand jury and is sentenced to four months in jail, refusal of the trial court to stay execution or admit the petitioner to bail pending review by the supreme court is an abuse of discretion. Smaldone v. People, 153 Colo. 208, 385 P.2d 127 (1963).

But right to bail after conviction not absolute. This section does not give a defendant an absolute right to bail after conviction and before sentence, this being a matter within the discretion of the trial court. Romeo v. Downer, 69 Colo. 281, 193 P. 559 (1920).

And requires showing of peculiar circumstances by prisoner. Accused persons, bailable before trial but having no absolute right to be admitted to bail after conviction, should be admitted to bail with great caution after conviction, only where the extraordinary or peculiar circumstances of the case render it right and proper. The burden of showing such circumstances is, of course, on the accused. Romeo v. Downer, 69 Colo. 281, 193 P. 559 (1920).

Where denial of bail not arbitrary. Where petitioner was charged with first-degree murder, punishable by death, and had previously been convicted of second-degree murder and had escaped, it is obvious under the relevant standards that the bail denial cannot be viewed as unreasonable or arbitrary, or as an infringement upon petitioner's constitutional rights. Corbett v. Patterson, 272 F. Supp. 602 (D. Colo. 1967).

Due process requirements met regarding denial of bail. Where denial of bail is not arbitrary and is not based solely upon the defendant's financial condition, due process requirements are met. People v. Jones, 176 Colo. 61, 489 P.2d 596 (1971).

Unconstitutional bail condition. The imposition of conditions, relating to the defendant's right to remain at liberty on bail, that complies with the constitution is in keeping with the recommendations of the standards for criminal justice. However, the trial judge imposed an improper and unconstitutional condition where the bail order included the following condition: "If probable cause shall be shown to this court that any of the above offenses shall have been committed by either defendant, bond for that particular defendant shall be immediately terminated". Lucero v. District Court, 188 Colo. 67, 532 P.2d 955 (1975).

Order refusing bail is order that accused shall be confined. Robran v. People, 173 Colo. 378, 479 P.2d 976 (1971).

And wilfull release of prisoner in violation of order contempt. Where a sheriff knows that his prisoner has been refused bail, it is a contempt of the court refusing the bail for the sheriff wilfully to permit the prisoner to be at large. Robran v. People, 173 Colo. 378, 479 P.2d 976 (1971).

Bail bond with but one surety is sufficient. Van Gilder v. People, 75 Colo. 515, 227 P. 386 (1924).

Applied in Wesson v. Johnson, 195 Colo. 521, 579 P.2d 1165 (1978); People v. Olds, 656 P.2d 705 (Colo. 1983); People ex rel. Gallagher v. District Court, 656 P.2d 1287 (Colo. 1983); People v. Walker, 665 P.2d 154 (Colo. App. 1983), aff'd sub nom. Yording v. Walker, 683 P.2d 788 (Colo. 1984).

Section 20. Excessive bail, fines or punishment. Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 32.

Cross references: For right to bail and exceptions thereto, see § 19 of this article; for considering the question of bail, see Crim. P. 46 and part 1 of article 4 of title 16.

ANNOTATION

Law reviews. For article, "Pronouncements of the U.S. Supreme Court Relating to the Criminal Law Field: 1985-1986", which discusses cases relating to the death penalty and cruel and unusual punishment, see 15 Colo. Law. 1596 and 1601 (1986). For comment, "The Process of Death: Reflections on Capital Punishment Issues in the Tenth Circuit Court of Appeals", see 66 Den. U. L. Rev. 563 (1989).

Bail need not be matter of right in every case. People v. Jones, 176 Colo. 61, 489 P.2d 596 (1971).

The right to bail does not amount to a guarantee that every defendant who is charged with a crime will be released without bail if he is indigent. People v. Jones, 176 Colo. 61, 489 P.2d 596 (1971).

Monetary bail is constitutionally permissible. People v. Jones, 176 Colo. 61, 489 P.2d 596 (1971).

Bail should be reasonably sufficient to secure prisoner's presence at trial; it should not be more than will be reasonably sufficient to prevent evasion of the law by flight or concealment. Palmer v. District Court, 156 Colo. 284, 398 P.2d 435 (1965).

Hearing may be necessary for trial court to reasonably fix bail. Proofs may be required in determining the amount of bail, but the right thereto is no longer a matter of judicial inquiry or discretion. The scope and character of the hearing envisage consideration of factors which throw light on what would be reasonable bail in order to assure the prisoner's presence at the trial. Palmer v. District Court, 156 Colo. 284, 398 P.2d 435 (1965).

Remedy for excessive bail. Where the bond fixed by the trial court in a criminal case is so grossly excessive as to amount to a denial of the right of accused to be admitted to bail in a reasonable amount, the supreme court will direct that the accused be admitted to bail in reasonable amount. Altobella v. District Court, 153 Colo. 143, 385 P.2d 663 (1963).

If bail is set in an excessive amount, the defendant has the right to petition for reduction of bail or appeal the bail decision. People v. Jones, 176 Colo. 61, 489 P.2d 596 (1971).

Section refers to sentencing statutes and not the sentence. This section and the eighth amendment of the United States constitution refer to statutes providing the maximum and minimum sentences for conviction of a crime, and not to the sentence. Walker v. People, 126 Colo. 135, 248 P.2d 287 (1952).

The constitutional prohibition against cruel and unusual punishment does not require strict proportionality between the crimes committed and the sentences imposed. Instead, such prohibition forbids only extreme sentences that are "grossly disproportionate" to the crime. People v. Mershon, 874 P.2d 1025 (Colo. 1994); People v. Oglethorpe, 87 P.3d 129 (Colo. App. 2003).

Punishing a person who cannot, because of his or her

voluntary use of intoxicating substances, distinguish right from wrong does not violate the constitutional proscription on cruel and unusual punishment. People v. Grant, 174 P.3d 798 (Colo. App. 2007).

Power to declare what punishment may be assessed for violation of statute is legislative and not judicial. Walker v. People, 126 Colo. 135, 248 P.2d 287 (1952); Normand v. People, 165 Colo. 509, 440 P.2d 282 (1968).

The matter of punishment for commissions of crime is a matter for determination by the general assembly. People v. Summit, 183 Colo. 421, 517 P.2d 850 (1974).

But a defendant is entitled to a proportionality review of a statutorily mandated sentence. The crime of violence statute, § 18-1.3-406, requires the court to impose consecutive sentences if the defendant is convicted of multiple crimes of violence. Because this takes away the trial court's discretion in considering the sentence and the trial court's opportunity to conduct its own proportionality review in imposing the sentence, the defendant is entitled to have the court of appeals conduct an abbreviated proportionality review of the sentence imposed. Close v. People, 48 P.3d 528 (Colo. 2002).

The defendant's age should not be considered in determining whether to conduct an abbreviated or an extended proportionality review. Valenzuela v. People, 856 P.2d 805 (Colo. 1993).

Sentence of life imprisonment with no possibility of parole for 40 years for a juvenile offender under the automatic sentencing provisions mandated by § 16-11-103 for first degree murder was not disproportionate in violation of the eighth amendment. Valenzuela v. People, 856 P.2d 805 (Colo. 1993).

The U.S. supreme court concluded in Miller v. Alabama, __U.S. __, 132 S. Ct. 2455, 183 L. Ed. 2d 407 (2012), that the eighth amendment prohibits a mandatory life sentence without the possibility of parole for juvenile offenders. People v. Banks, 2012 COA 157, __ P.3d __.

Because defendant was a minor when the trial court mandatorily sentenced him to life imprisonment without the possibility of parole, and because defendant's case was still pending on direct review when the U.S. supreme court decided Miller, the no-parole provisions contained in §§ 17-22.5-104 (2)(d)(I) and § 18-1.3-401 are unconstitutional as applied to defendant in that they deny defendant the opportunity of parole. People v. Banks, 2012 COA 157, __ P.3d __.

The legislative intent of §§ 17-22.5-104 (2)(d)(IV) and 18-1.3-401 support sentencing defendant to life imprisonment with the possibility of parole after 40 calendar years. People v. Banks, 2012 COA 157, __ P.3d __.

The prohibition against cruel and unusual punishment is not per se applicable to a juvenile in a delinquency proceeding, but it may nevertheless be considered in assessing whether the child has been accorded fundamental fairness under the due process clause. People v. T.S.R., 843 P.2d 105 (Colo. App. 1992).

Mitigating factors such as defendant's age are irrelevant in determining whether a punishment is proportionate to the crime. Solem v. Helm, 463 U.S. 277, 103 S. Ct. 3001, 77 L. Ed. 2d 637 (1983); People v. Cisneros, 855 P.2d 822 (Colo. 1993).

A defendant's age is not a relevant factor to be considered by a court in a proportionality review. People v. Anaya, 894 P.2d 28 (Colo. App. 1994).

If defendant faced with life sentence without possibility of parole, a more extensive review is required rather than a limited proportionality review to protect the defendant against cruel and unusual

punishment. Under such extended proportionality review, the court should be guided by objective criteria including: (1) The gravity of the offense and the harshness of the penalty; (2) the sentences imposed on other criminals in the same jurisdiction; and (3) the sentences imposed for commission of the same crime in other jurisdictions. Solem v. Helm, 463 U.S. 277, 103 S. Ct. 3001, 77 L. Ed. 2d 637 (1983); People v. Cisneros, 824 P.2d 16 (Colo. App. 1991), rev'd on other grounds, 855 P.2d 822 (Colo. 1993).

Sentence within limits fixed by constitutional statute deemed valid. If a statute is not in violation of the constitution, then any punishment assessed by a court within the limits fixed thereby cannot be adjudged excessive. Walker v. People, 126 Colo. 135, 248 P.2d 287 (1952).

The supreme court cannot find cruel and unusual punishment as proscribed by the United States and Colorado constitutions to be present as it affects an individual, where the sentence is within the statutory limits, and where it does not shock the conscience of the court. Normand v. People, 165 Colo. 509, 440 P.2d 282 (1968); Trujillo v. People, 178 Colo. 136, 496 P.2d 1026 (1972); People v. O'Donnell, 184 Colo. 104, 518 P.2d 945 (1974); People v. McKnight, 41 Colo. App. 372, 588 P.2d 886 (1978); People v. Nieto, 715 P.2d 1262 (Colo. App. 1985).

In determining if a sentence constitutes cruel and unusual punishment, an appellate court may not substitute its judgment for that of the sentencing court as to the appropriateness of a particular sentence; rather, it determines only if the sentence is within constitutional limits. People v. Nieto, 715 P.2d 1262 (Colo. App. 1985).

If a sentence imposed is within limits fixed by statute, it will not be disturbed on review. Harris v. People, 174 Colo. 483, 484 P.2d 1223 (1971); People v. Lutz, 183 Colo. 312, 516 P.2d 1132 (1973); People v. Fulmer, 185 Colo. 366, 524 P.2d 606 (1974).

Where procedural due process is accorded a defendant and the sentence imposed is within the statutory limits and is not of such severity as to shock the conscience of the court, it is not necessary to bring the sentence within this constitutional proscription. Wolford v. People, 178 Colo. 203, 496 P.2d 1011 (1972).

For a juvenile tried as an adult, age is not a relevant factor in conducting a proportionality review of a sentence. People v. Moya, 899 P.2d 212 (Colo. App. 1994).

Classification of felony with mandatory sentences not violative of section. The establishment of driving after judgment prohibited as a class 5 felony with mandatory sentencing does not violate the prohibition against cruel and unusual punishment. People v. McKnight, 200 Colo. 486, 617 P.2d 1178 (1980).

The sentence of a 20-year-old non-habitual offender to life imprisonment with no possibility of parole for 40 years--the minimum sentence possible under the statutory scheme--is not disproportionate to the crime of first degree murder. People v. Smith, 848 P.2d 365 (Colo. 1993).

No requirement that mitigating factors be considered in sentencing habitual criminals. The uniquely grave nature of the death penalty is the wellspring from which flows the constitutional requirement that mitigating factors be considered in sentencing, notwithstanding the number or seriousness of defendant's prior offenses; no such requirement is included within the Colorado Constitution's prohibition of cruel and unusual punishment as applied to the sentencing of habitual criminals. People v. Gutierrez, 622 P.2d 547 (Colo. 1981).

And absence of discretion

in sentencing habitual offenders not violative. The absence of sentencing discretion, even when coupled with a prescribed life sentence, does not render § 16-13-101 (2) facially invalid as violative of the prohibition of cruel and unusual punishment in this section. People v. Gutierrez, 622 P.2d 547 (Colo. 1981).

Trial and appellate courts must conduct an abbreviated proportionality review of a life sentences imposed under the habitual criminal statute. Alvarez v. People, 797 P.2d 37 (Colo. 1990).

Proportionality review required upon imposition of a life sentence under the habitual criminal statute. People v. Gaskins, 825 P.2d 30 (Colo. 1992), cert. denied, 505 U.S. 1213, 112 S. Ct. 3015, 120 L. Ed. 2d 888 (1992).

Where defendant was convicted of multiple crimes of violence, the court of appeals was required to conduct a proportionality review, upon the defendant's request, of the consecutive sentence imposed for the crimes of violence, even though the statute mandates that the sentences be consecutive. Because the statutory mandate strips the trial court of discretion in sentencing and removes the trial court's ability to assess the proportionality of the sentences imposed, the court of appeals must conduct a separate abbreviated proportionality review. Close v. People, 48 P.3d 528 (Colo. 2002).

Solem v. Helm three-prong analysis applied in proportionality review of life sentence under eighth amendment. People v. Gaskins, 923 P.2d 292 (Colo. App. 1996).

Request for proportionality review alleging that sentence violates the eighth amendment to the U.S. constitution is subject to the limitation period set forth in § 16-5-402. People v. Moore-El, 160 P.3d 393 (Colo. App. 2007).

Only an abbreviated form of proportionality review, consisting of a comparison of the gravity of the offense and the harshness of the penalty, is required when a defendant, in either a habitual or a non-habitual offender case, challenges the constitutionality of a life sentence. Close v. People, 48 P.3d 528 (Colo. 2002); People v. McNally, 143 P.3d 1062 (Colo. App. 2005).

Only an "abbreviated" proportionality review is needed when the crimes supporting a habitual criminal sentence include grave or serious offenses and a defendant will become eligible for parole. People v. Anaya, 894 P.2d 28 (Colo. App. 1994); People v. Merchant, 983 P.2d 108 (Colo. App. 1999).

An abbreviated proportionality review, in which only the gravity of the crime and the sentence imposed are considered, is all that is required when the offense is a serious one. Great deference must be afforded to the general assembly's authority to establish the punishments for crimes. People v. Mandez, 997 P.2d 1254 (Colo. App. 1999); People v. Oglethorpe, 87 P.3d 129 (Colo. App. 2003).

Court of appeals could not conduct a proper proportionality review without clarification on the record regarding two counts to which the defendant's transcript and the verdict forms rendered contradictory findings of guilt. Sumpter v. People, 994 P.2d 1045 (Colo. 2000).

Where there is wide spread between minimum and maximum punishment, whether any particular sentence is "cruel or unusual" is a matter to be determined under all the facts and circumstances surrounding each offense. People v. Summit, 183 Colo. 421, 517 P.2d 850 (1974).

In order to impose death penalty without violating prohibition against cruel and unusual punishment, capital sentencing scheme must satisfy two requirements: (1) The

discretion of the sentencing body must be suitably directed and limited so as to minimize the risk of wholly arbitrary and capricious action; and (2) the sentencing body must be allowed to consider any relevant mitigating evidence regarding defendant's character and background and the circumstances of the offense. People v. Tenneson, 788 P.2d 786 (Colo. 1990).

Death penalty statute provision under § 16-11-103 (2)(b)(III) held to contravene the prohibition against cruel and unusual punishment when such provision required jury to return a sentence of death for conviction of first degree murder if mitigating and aggravating factors are found to be in equipose without making a separate deliberation to determine whether death is the appropriate penalty to be imposed beyond a reasonable doubt. People v. Young, 814 P.2d 834 (Colo. 1991) (decided under law in effect prior to 1991 repeal and reenactment of § 16-11-103).

Imposition of death penalty is not in itself infliction of cruel and unusual punishment. No independent basis exists under this section on which to base a per se challenge to capital punishment. People v. Davis, 794 P.2d 159 (Colo. 1990), cert. denied, 498 U.S. 1018, 111 S. Ct. 662, 112 L. Ed. 2d 656 (1991).

Execution by lethal gas does not constitute cruel and unusual punishment and is not distinguishable from other permissible methods of execution. People v. Davis, 794 P.2d 159 (Colo. 1990), cert. denied, 498 U.S. 1018, 111 S. Ct. 662, 112 L. Ed. 2d 656 (1991).

The capital sentencing scheme under § 16-11-103 which affords discretion to the prosecutor, who determines against whom to seek a death sentence, to the jury, which determines who is to receive a sentence of death, and to the governor, who determines who shall be granted clemency, does not violate the prohibition against cruel and unusual punishment. People v. Davis, 794 P.2d 159 (Colo. 1990), cert. denied, 498 U.S. 1018, 111 S. Ct. 662, 112 L. Ed. 2d 656 (1991).

No constitutional infirmity in capital sentencing scheme. By requiring that the jury find both that a statutory aggravator has been proven beyond a reasonable doubt and that mitigation does not outweigh aggravation before a defendant is even eligible to receive the death penalty, Colorado's sentencing scheme is sufficiently reliable to pass constitutional muster. Dunlap v. People, 173 P.3d 1054 (Colo. 2007), cert. denied, 552 U.S. 1105, 128 S. Ct. 882, 169 L. Ed. 2d 740 (2008).

Prohibition of smoking in county jail facilities does not constitute cruel and unusual punishment. Elliott v. Bd. of Weld County Comm'rs, 796 P.2d 71 (Colo. App. 1990).

Punishment held not to constitute cruel and unusual punishment. People v. Shaver, 630 P.2d 600 (Colo. 1981).

Where consecutive sentences not excessive or cruel. Consecutive sentences imposed on two counts of assault with a deadly weapon did not amount to excessive, cruel, and unusual punishment, where the two women assaulted were in two different places and were not assaulted contemporaneously or as part of one criminal transaction. Harris v. People, 174 Colo. 483, 484 P.2d 1223 (1971).

When the defendant requests a proportionality review of consecutive sentences imposed under the statute pertaining to crimes of violence, the court is required to review the proportionality of each individual sentence, not the cumulative sentence. The cumulative sentence is not reviewable in the aggregate. Since each sentence represents punishment for a distinct and

separate crime, it follows that a separate proportionality review should be completed for each sentence, even though the defendant is required to serve the sentences consecutively. Close v. People, 48 P.3d 528 (Colo. 2002).

There is no constitutional right to credit of presentence jail time against sentence imposed. People v. Coy, 181 Colo. 393, 509 P.2d 1239 (1973); People v. Nelson, 182 Colo. 1, 510 P.2d 441 (1973).

And defendant's health condition is not generally basis for constitutional challenge that his sentence constitutes cruel and unusual punishment. McKnight v. People, 199 Colo. 313, 607 P.2d 1007 (1980).

Colorado supreme court precedent has determined that the crimes of burglary, attempted burglary, conspiracy to commit burglary, felony menacing, possession or sale of narcotic drugs, aggravated robbery, robbery, and accessory to first-degree murder are grave or serious. Close v. People, 48 P.3d 528 (Colo. 2002).

When the crimes listed above are involved, a sentencing court may proceed directly to the second part of an abbreviated proportionality review: A consideration of the harshness of the penalty. Close v. People, 48 P.3d 528 (Colo. 2002).

Because court precedent has determined that certain crimes are grave or serious, it is highly likely that the legislatively mandated sentence for these crimes will be constitutionally proportionate in nearly every instance. Close v. People, 48 P.3d 528 (Colo. 2002).

Thus, the ability to proceed to the second part of the abbreviated proportionality review, namely the harshness of the penalty, when a grave or serious crime is involved results in a near-certain upholding of the sentence. Close v. People, 48 P.3d 528 (Colo. 2002).

Sentence for burglary conviction not grossly disproportionate. Burglary is a "grave or serious" crime, and the sentence imposed by the trial court fell within the presumptive range established by the legislature. People v. Thomeczek, 284 P.3d 110 (Colo. App. 2011).

The possession and sale of narcotic drugs is a grave and serious offense and supports a sentence of life imprisonment with eligibility for parole after 40 years. People v. Cisneros, 855 P.2d 822 (Colo. 1993).

Violence is a relevant consideration but not the sole criterion by which to evaluate whether defendant's crimes, when examined in combination, are lacking in gravity or seriousness. Conviction for crimes involving sale and distribution of heroin and other drugs along with prior convictions for felonies of robbery, theft, and attempted criminal mischief justifies imposition of life sentence under habitual criminal act and does not violate this section or the eighth amendment to the U.S. Constitution. People v. Mershon, 874 P.2d 1025 (Colo. 1994).

Burglary involves violence or the potential for violence and meets the requirement of gravity or seriousness to support a life sentence with eligibility for parole after 40 years. People v. Cisneros, 855 P.2d 822 (Colo. 1993).

Assault convictions meet the requirement of grave and serious for the purpose of completing an abbreviated proportionality review. Defendant and his associates caused actual harm to the victims and the evidence clearly indicated defendant's culpability in the assaults. Close v. People, 48 P.3d 528 (Colo. 2002).

Petitioner not entitled to an extended proportionality review just because his life expectancy does not exceed the 40-year period of parole ineligibility. People v. Ates, 855 P.2d

822 (Colo. 1993); People v. Cisneros, 855 P.2d 822 (Colo. 1993).

Violation of this section does not state cause of action under federal civil rights act. The fact that defendants, acting under color of state law, may have violated this section or § 27-26-104 (repealed, see now § 17-26-104), providing for proper feeding of prisoners, is not a basis for an action under the federal civil rights act, unless the violations result in a deprivation of some right which the plaintiffs have under the federal constitution and laws. Ruark v. Schooley, 211 F. Supp. 921 (D. Colo. 1962).

And this section is binding upon all departments of government, and is a special restriction upon the courts. People ex rel. Connor v. Stapleton, 18 Colo. 568, 33 P. 167 (1893).

Administrative transfer to prison from reformatory proper. Statutes authorizing administrative boards or a court, on their petition, to transfer to the state prison or other penal institution one originally sentenced to a reformatory are valid, notwithstanding objections that they constitute a denial of due process, confer judicial powers on an administrative body, or authorize the infliction of cruel and unusual punishment, since the power conferred on the boards is one of administrative control or discipline, as distinguished from a judicial function. Where statutes conferring the power of transfer on the administrative boards are effective at the time of the sentence, the possibility of transfer is an incident impliedly annexed to sentencing by the court. Tinsley v. Crespin, 137 Colo. 302, 324 P.2d 1033 (1958).

Conviction and sentence prerequisite to justiciable question. Until some person has been convicted of a crime and a sentence has been imposed which is then asserted to be "cruel and unusual", there is no justiciable question that punishment prescribed by a statute is cruel and unusual. People v. Summit, 183 Colo. 421, 517 P.2d 850 (1974).

Until defendants have actually been sentenced in "cruel or unusual" manner they cannot be heard to say that they or some other person might at some future time be subjected to "cruel or unusual" punishment. People v. Summit, 183 Colo. 421, 517 P.2d 850 (1974).

When question properly before supreme court. Question presented by writ of error, whether the consecutive sentences constitute cruel and unusual punishment, raised for the first time in the postconviction motion is properly before supreme court. Trujillo v. People, 178 Colo. 136, 496 P.2d 1026 (1972).

Whether a punishment is "cruel and unusual" and whether a fine is "excessive" are separate concepts and different criteria are required in making the two determinations. People v. Malone, 923 P.2d 163 (Colo. App. 1995).

In determining the appropriate level of a fine, the court must consider the particular financial circumstances of the defendant, as well as the severity of the offense, the defendant's character and background, and any other appropriate circumstances. If the amount of the fine is so disproportionate to the defendant's circumstances that there can be no realistic expectation that he or she will be able to pay the fine levied, the fine is excessive. People v. Malone, 923 P.2d 163 (Colo. App. 1995); People v. Pourat, 100 P.3d 503 (Colo. App. 2004).

Imposition of the mandatory $1,000 fine imposed by § 18-21-103 for persons convicted of a class 4 felony sex offense was not unconstitutionally excessive where the trial court discussed the defendant's ability to pay the surcharge at the

sentencing hearing and defendant did not object to the amount of the fine or request a reduction of the amount. People v. Bolt, 984 P.2d 1181 (Colo. App. 1999).

Municipal ordinances that provide for a fine of $2,000 per violation were not excessive where one of the ordinances provides that the fine may be up to $2,000 and the other sets forth factors that a court must consider when imposing a fine. Boulder County Apt. Ass'n v. City of Boulder, 97 P.3d 332 (Colo. App. 2004).

Insurance authority lacked standing to assert that fines imposed under former § 8-53-116 violated the provisions of this section where the authority was an "arm of the state" and where, even if the authority had standing, the $6540 fine imposed for delay in reimbursing workers' compensation claimant for medical bill was not excessive. Pueblo Sch. Dist. No. 70 v. Toth, 924 P.2d 1094 (Colo. App. 1996).

If the victim has suffered a pecuniary loss then full restitution is to be ordered regardless of the defendant's ability to pay. Ordering restitution regardless of the defendant's ability to pay is not imposing an excessive fine, because restitution is not a fine. A fine is solely a monetary penalty where restitution is to make the victim whole. People v. Stafford, 93 P.3d 572 (Colo. App. 2004); People v. Cardenas, 262 P.3d 913 (Colo. App. 2011).

Applied in Cardillo v. People, 26 Colo. 355, 58 P. 678 (1899); Flick v. Indus. Comm'n, 78 Colo. 117, 239 P. 1022 (1925); Chasse v. People, 119 Colo. 160, 201 P.2d 378 (1948); Jackson v. City of Glenwood Springs, 122 Colo. 323, 221 P.2d 1083 (1950); Bernard v. Tinsley, 144 Colo. 244, 355 P.2d 1098 (1960), cert. denied, 365 U.S. 830, 81 S. Ct. 718, 5 L. Ed. 2d 708 (1961); Specht v. Tinsley, 153 Colo. 235, 385 P.2d 423 (1963); Campbell v. State, 176 Colo. 202, 491 P.2d 1385 (1971); People v. Manier, 184 Colo. 44, 518 P.2d 811 (1974); People v. Morgan, 189 Colo. 256, 539 P.2d 130 (1975); Heninger v. Charnes, 200 Colo. 194, 613 P.2d 884 (1980); L.O.W. v. District Court, 623 P.2d 1253 (Colo. 1981).

Section 21. Suspension of habeas corpus. The privilege of the writ of habeas corpus shall never be suspended, unless when in case of rebellion or invasion, the public safety may require it.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 32.

Cross references: For provisions regulating the granting of a writ of habeas corpus, see article 45 of title 13.

ANNOTATION

Law reviews. For article, "Martial Law in Colorado", see 5 Den. B. Ass'n Rec. 4 (Feb. 1928). For article, "Criminal Law", which discusses Tenth Circuit decisions dealing with habeas corpus, see 64 Den. U. L. Rev. 225 (1987). For article, "Criminal Procedure", which discusses a Tenth Circuit decision dealing with habeus corpus, see 65 Den. U. L. Rev. 553 (1988). For article, "Criminal Procedure", which discusses Tenth Circuit decisions dealing with habeas corpus, see 67 Den. U. L. Rev. 701 (1990).

"Greatest of all writs". Habeas corpus has been designated the "greatest of all writs", and the precious safeguard of personal liberty, concerning which courts are admonished that there is no higher duty than to maintain it unimpaired. Its

ascendancy among the writs should be ever sustained. Geer v. Alaniz, 138 Colo. 177, 331 P.2d 260 (1958).

Any person has absolute and unconditional right to seek writ of habeas corpus. Stilley v. Tinsley, 153 Colo. 66, 385 P.2d 677 (1963).

Writ of habeas corpus may be sought in supreme court or any district court. People ex rel. Wyse v. District Court, 180 Colo. 88, 503 P.2d 154 (1972).

Each application for habeas corpus must be disposed of by court by exercising sound discretion. People ex rel. Wyse v. District Court, 180 Colo. 88, 503 P.2d 154 (1972).

Writ of habeas corpus is not to be hedged or in anywise circumscribed with technical requirements. People ex rel. Wyse v. District Court, 180 Colo. 88, 503 P.2d 154 (1972).

And conditions to application, other than by statute, may not be imposed. To impose any other or additional conditions than are in § 13-45-101 on one seeking the writ would be doing exactly what the constitution and the general assembly have said shall not be done. To impose conditions on issuance of the writ, such as exhausting other available remedies in certain situations, is pro tanto a suspension of the writ. Stilley v. Tinsley, 153 Colo. 66, 385 P.2d 677 (1963).

The situation where petitions are discouraged to the point where it may be said that, in effect, the writ of habeas corpus has been unconstitutionally suspended should be avoided. Williams v. District Court, 160 Colo. 348, 417 P.2d 496 (1966).

Time limitations of § 16-5-402 do not violate the constitutional prohibition against suspending the right of habeas corpus. People v. Wiedemer, 852 P.2d 424 (Colo. 1993).

Although procedural mechanism for exercise of writ may change. Although the privilege of the writ of habeas corpus is constitutionally guaranteed, the procedural mechanism for its exercise may change. People ex rel. Wyse v. District Court, 180 Colo. 88, 503 P.2d 154 (1972).

Where it appears on the face of an appellant's petition and supporting documents that he is not entitled to habeas relief, court may properly deny the petition without a hearing. Martinez v. Furlong, 893 P.2d 130 (Colo. 1995).

A petition for habeas corpus relief which fails to establish prima facie that the petitioner is not validly confined and is thus entitled to immediate release or that the petitioner has suffered a serious infringement of a fundamental constitutional right resulting in a significant loss of liberty is insufficient and should be dismissed without a hearing. Jones v. Zavaras, 926 P.2d 579 (Colo. 1996).

Defendant's challenges to procedures by which he was sentenced rather than the legality of his confinement may be raised by means of a Crim. P. 35(c) motion but not by means of a habeas corpus petition. Jones v. Zavaras, 926 P.2d 579 (Colo. 1996).

Absent a prima facie showing that the trial judge who sentenced the defendant lacked jurisdiction to do so, the trial court did not err in denying defendant's petition without conducting an evidentiary hearing. Jones v. Zavaras, 926 P.2d 579 (Colo. 1996).

Criminal due process safeguards attach to habeas corpus. Despite a common-law tradition and a constitutional tradition which treat habeas corpus as a civil matter and as a matter to which criminal due process safeguards do not attach, the supreme court is of the opinion that this tradition does not comport with recent developments in the constitutional law. Mora v. District Court, 177 Colo. 381, 494 P.2d 596 (1972).

Criminal safeguards attach regardless of the formal designation of a proceeding if the proceeding substantially involves incarceration or other criminal sanctions. Mora v. District Court, 177 Colo. 381, 494 P.2d 596 (1972).

Contents of petition for habeas corpus. Generally, a petition for writ of habeas corpus should contain in substance merely an allegation that petitioner is unlawfully restrained of his liberty. Statements of evidentiary matter should not be inserted. People ex rel. Palmer v. Adams, 83 Colo. 321, 264 P. 1090 (1928).

Supreme court will decline to take original jurisdiction in habeas corpus proceeding where there is adequate remedy otherwise. People ex rel Palmer v. Adams, 83 Colo. 321, 264 P. 1090 (1928).

And condition of seeking other remedies not suspension of writ. A requirement that a prisoner must pursue his remedies under Rule 35(b), Crim. P. before petitioning for habeas corpus does not constitute a suspension of the writ of habeas corpus. People ex rel. Wyse v. District Court, 180 Colo. 88, 503 P.2d 154 (1972).

No inherent power is lodged in any court to stay order of discharge, for habeas corpus would be deprived of its efficacy if any court should undertake to continue an imprisonment once held to be unlawful. Such action on the part of a court would defeat the very purpose of habeas corpus. This declaration is in harmony with the concept of the individuality, personality and dignity of man, so pervasively present in the federal and state constitutions, and nowhere therein more indelibly engraved than in that portion of the bills of rights in which those governments are charged with never suspending the privilege of habeas corpus, unless when in case of rebellion or invasion, the public safety may require it. Geer v. Alaniz, 138 Colo. 177, 331 P.2d 260 (1958).

Petitioner may not be punished on other grounds. One may seek a writ of habeas corpus without running any risk whatsoever, other than the risk of having his petition denied and the possibility of being chargeable with the costs of the proceedings. He cannot in such proceedings, whereby he seeks release from illegal restraint, be legally incarcerated or punished on other grounds. Stilley v. Tinsley, 153 Colo. 66, 385 P.2d 677 (1963).

Custody reviewable by habeas corpus. The custody of an accused who was committed because he was found incompetent to stand trial may be reviewed at the instance of the accused by a writ of habeas corpus. Parks v. Denver Dist. Court, 180 Colo. 202, 503 P.2d 1029 (1972).

An inmate's claim that he has been improperly denied credit for good time that would result in an earlier parole date is not grounds for habeas relief. An appellant is entitled to a hearing on a petition for habeas corpus only if the petitioner makes a prima facie showing that the questioned confinement is invalid. Vasquez v. Zavaras, 893 P.2d 105 (Colo. 1995).

Applied in In re Moyer, 35 Colo. 159, 85 P. 190, 117 Am. St. R. 189 (1905).

Section 22. Military subject to civil power - quartering of troops. The military shall always be in strict subordination to the civil power; no soldier shall, in time of peace, be quartered in any house without the consent of the owner, nor in time of war except in the manner prescribed by law.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 32.

ANNOTATION

Law reviews. For article, "Martial Law in Colorado", see 5 Den. B. Ass'n Rec. 4 (Feb. 1928). For article, "A Comprehensive Study of the Use of Military Troops in Civil Disorders with Proposals for Legislative Reform", see 43 U. Colo. L. Rev. 399 (1972).

Governor, employing militia to suppress insurrection, is merely acting in his capacity as chief civil magistrate of state and, although exercising his authority conferred by the law through the aid of the military under his command, he is but acting in a civil capacity and not in violation of this section. In re Moyer, 35 Colo. 159, 85 P. 190, 117 Am. St. R. (1905).

Military authorities need not turn over persons arrested during insurrection to civil authorities. Where the militia, being called out by the governor to suppress an insurrection in a county, arrested a person for participating in or aiding and abetting such insurrection, the military authorities were not required to turn over such arrested person to the civil authorities during the continuance of the insurrection, but could detain such prisoner in custody until the insurrection was suppressed, when he should be turned over to the civil authorities to be tried. In re Moyer, 35 Colo. 159, 85 P. 190, 117 Am. St. R. 189 (1905).

Applied in In re Fire & Excise Comm'rs, 19 Colo. 482, 36 P. 234 (1894).

Section 23. Trial by jury - grand jury. The right of trial by jury shall remain inviolate in criminal cases; but a jury in civil cases in all courts, or in criminal cases in courts not of record, may consist of less than twelve persons, as may be prescribed by law. Hereafter a grand jury shall consist of twelve persons, any nine of whom concurring may find an indictment; provided, the general assembly may change, regulate or abolish the grand jury system; and provided, further, the right of any person to serve on any jury shall not be denied or abridged on account of sex, and the general assembly may provide by law for the exemption from jury service of persons or classes of persons.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 32. **L. 43:** Entire section amended, see **L. 45,** p. 424.

Cross references: For the right to trial by impartial jury in criminal prosecutions, see § 16 of this article; for right of trial by jury, see § 16-10-101; for the duty of the court to inform defendant of his right to a jury trial, see Crim. P. 5(a)(2)(VII) and § 16-7-207(1)(f) and (2)(c); for waiver of jury trial, see Crim. P. 23(a)(5) and (a)(6) and C.R.C.P. 38(e) and 39(a); for witnesses before grand jury, see § 16-5-204; for summoning grand jurors, see Crim. P. 6.

ANNOTATION

I. GENERAL CONSIDERATION.

Law reviews. For article, "Martial Law in Colorado", see 5 Den.

B. Ass'n Rec. 4 (Feb. 1928). For note, "Waiver of Jury Trial in Felony Cases--Colorado Law", see 23 Rocky Mt. L. Rev. 334 (1951). For note, "The Right in Colorado of One Accused of a Felony to Waive Jury Without the Consent of the State", see 24 Rocky Mt. L. Rev. 98 (1951). For note, "The Criminal Jury and Misconduct in Colorado", see 36 U. Colo. L. Rev. 245 (1964). For article, "Criminal Procedure", which discusses a Tenth Circuit decision dealing with the right to a jury trial, see 62 Den. U.L. Rev. 182 (1985). For article, "Pronouncements of the U.S. Supreme Court Relating to the Criminal Law Field: 1985-1986", which discusses a case relating to exclusion of persons from grand jury on the basis of race, see 15 Colo. Law. 1611 (1986). For comment, "No More Tears: Anti-Sympathy Jury Instructions Attempt to Disallow Impulsive Emotion", see 66 Den. U. L. Rev. 645 (1989).

Annotator's note. For other annotations concerning the right to trial by jury, see § 18-1-406 and Crim. P. 23.

Applied in Colo. Cent. R. R. v. Humphreys, 16 Colo. 34, 26 P. 165 (1891); In re Senate Bill No. 142, 26 Colo. 167, 56 P. 564 (1899); Stainer v. San Luis Valley Land & Mining Co., 166 F. 220 (8th Cir. 1908); Ingles v. People, 90 Colo. 51, 6 P.2d 455 (1931); Early v. People, 142 Colo. 462, 352 P.2d 112, cert. denied, 364 U.S. 847, 81 S. Ct. 90, 5 L. Ed. 2d 70 (1960); People v. District Court, 199 Colo. 398, 610 P.2d 490 (1980); People ex rel. Hunter v. District Court, 634 P.2d 44 (Colo. 1981); City of Aurora ex rel. People v. Erwin, 706 F.2d 295 (10th Cir. 1983); Ayres v. King, 665 P.2d 594 (Colo. 1983).

II. TRIAL BY JURY.

A. In General.

Fundamental right to trial by jury in criminal cases is paramount constitutional right guaranteed by amendment VI of the U.S. Constitution and this section. People v. Evans, 44 Colo. App. 288, 612 P.2d 1153 (1980).

Where jury trial is granted, right to fair and impartial jury is constitutional right which can never be abrogated. Brisbin v. Schauer, 176 Colo. 550, 492 P.2d 835 (1971).

Prosecutor's comment on defendant's choice of a trial by jury violated the defendant's constitutional rights but, in this case, the prosecutorial misconduct was not reversible error since the evidence at trial was sufficient in both quantity and quality to support the conclusion that the jury could not have arrived at a verdict other than guilty. People v. Rodgers, 756 P.2d 980 (Colo. 1988).

Requirement that defendant waive his or her sixth amendment right to a jury trial on all facts essential to a death penalty eligibility determination jointly with a guilty plea to the underlying capital crime violates the sixth amendment. The right to have a jury trial on sentencing facts is independent of the right to a jury trial on the underlying offense. By coupling the waiver of the jury hearing on a death sentence with the guilty plea to the underlying charge, there is no opportunity for an independent, knowing, voluntary, and intelligent waiver, rather the waiver is automatic. Without such a waiver, the provision is unconstitutional. People v. Montour, 157 P.3d 489 (Colo. 2007).

To cure the constitutional defect, the offending provision is severed. After severing the language, the result is to remand the case back to the trial court for sentencing hearing with a jury unless the defendant waives the sentencing hearing with a jury. This remedy is consistent with the intent of the general assembly to maintain a valid and operative death penalty. The

other remedy, requiring a life sentence when pleading guilty to a capital crime, would subject a defendant to the death penalty only when he or she choose a jury trial; such a result would create an unconstitutional burden on the defendant's sixth amendment right. People v. Montour, 157 P.3d 489 (Colo. 2007).

The U.S. Constitution does not forbid states to prescribe relevant qualifications for their jurors. The states remain free to confine the selection to citizens, to persons meeting specified qualifications of age and educational attainment, and to those possessing good intelligence, sound judgment, and fair character. People v. Lee, 93 P.3d 544 (Colo. App. 2003).

The right to a 12-person jury is purely statutory. The sixth and fourteenth amendments to the U.S. Constitution guarantee the right to trial by jury, but do not, nor does the Colorado Constitution guarantee the right to a 12-person jury. People v. Chavez, 791 P.2d 1210 (Colo. App. 1990).

Constitutional right to a jury of 12 lies only with felony cases and does not extend to misdemeanor cases. The phrase "courts not of record" is a reference to "justice courts" which were eliminated in 1962, and their jurisdiction was combined with county courts in 1962. The key to determining whether a court is "of record" lies in the difference between misdemeanor and felony offenses. People v. Rodriguez, 112 P.3d 693 (Colo. 2005).

Section 18-1-406 (1) and Crim. P. 23, which provide for six jurors in misdemeanor cases, are constitutional under this section of the constitution. People v. Rodriguez, 112 P.3d 693 (Colo. 2005).

The statutory right to a 12-person jury could be waived by counsel's statements. The requirement that a defendant must make a written or oral "announcement" of his intention to waive a jury does not extend to a reduction in the number of jurors. People v. Chavez, 791 P.2d 1210 (Colo. App. 1990).

The defendant's right to a jury of 12 is violated if one juror has an inability to hear, and the effect of this inability is tantamount to the juror not being in attendance for more than one-third of the trial. People v. Trevino, 826 P. 2d 399 (Colo. App. 1991).

As consent of prosecuting attorney cannot be imposed by rule as a condition on the defendant's right to waive trial by jury. Garcia v. People, 200 Colo. 413, 615 P.2d 698 (1980).

This section secures right of trial by jury in criminal cases, but imposes no restriction upon general assembly in respect to trial of civil causes. Huston v. Wadsworth, 5 Colo. 213 (1880); Clough v. Clough, 10 Colo. App. 433, 51 P. 513 (1897), aff'd, 27 Colo. 97, 59 P. 736 (1899); Parker v. McGinty, 77 Colo. 458, 239 P. 10 (1925).

"Criminal cases", as used in this section, refers to cases, which at the time of the adoption of the constitution, were recognized as criminal, or cases which should thereafter be made criminal by statute. Austin v. City & County of Denver, 170 Colo. 448, 462 P.2d 600 (1969), cert. denied, 398 U.S. 910, 90 S. Ct. 1703, 26 L. Ed. 2d 69 (1970).

Defendant not entitled to jury trial on habitual criminal charges. People v. Carrasco, 85 P.3d 580 (Colo. App. 2003); People v. Petschow, 119 P.3d 495 (Colo. App. 2004); People v. Kyle, 111 P.3d 491 (Colo. App. 2004); People v. Benzor, 100 P.3d 542 (Colo. App. 2004); People v. Green, 2012 COA 68M, __ P.3d __.

Complaint which fixes the nature of the suit determines whether an action is tried by a jury and, since a proceeding to establish an attorney's lien is equitable in nature, there is no right to a jury trial in such

actions. In re Rosenberg, 690 P.2d 1293 (Colo. App. 1984).

Right to trial by jury comprehends fair verdict, free from the influence or poison of evidence which should never have been admitted, and the admission of which arouses passions and prejudices which tend to destroy the fairness and impartiality of the jury. Oaks v. People, 150 Colo. 64, 371 P.2d 443 (1962).

In determining whether prosecutorial impropriety mandates a new trial, appellate courts are obliged to evaluate the severity and frequency of the misconduct, any curative measures taken to alleviate the misconduct, and the likelihood that the misconduct constituted a material factor leading to defendant's conviction. People v. Jones, 832 P.2d 1036 (Colo. App. 1991).

In determining whether prosecutor's improper statements so prejudiced the jury as to affect the fundamental fairness of the trial, the court shall consider the language used, the context in which the statements were made, and the strength of the evidence supporting the conviction. Domingo-Gomez v. People, 125 P.3d 1043 (Colo. 2005); Crider v. People, 186 P.3d 39 (Colo. 2008).

Reversible error exists if there are grounds for believing that the jury was substantially prejudiced by improper conduct. Where the prosecutor's ill-advised and improper comments were so numerous and highly prejudicial, the defendant was deprived of a fair trial requiring that the judgment of conviction be reversed. People v. Jones, 832 P.2d 1036 (Colo. App. 1991).

No plain error where court failed to instruct the jury on which of two acts constituted tampering with a witness. Prosecution specifically identified one of the two acts and defendant raised the issue for the first time on appeal. People v. Scialabba, 55 P.3d 207 (Colo. App. 2002).

The constitutional basis for the prosecutorial duty to refrain from improper methods calculated to produce a wrong conviction as well as to use every legitimate means to bring about a just one is the right to trial by a fair and impartial jury guaranteed by both the sixth amendment to the United States Constitution and art. II, §§ 16 and 23, of the Colorado Constitution. Harris v. People, 888 P.2d 259 (Colo. 1995).

Prosecutorial misconduct that misleads a jury can warrant reversal of a conviction because the right to trial includes the right to trial by an impartial jury empaneled to determine the issues solely on the basis of the evidence introduced at trial rather than on the basis of bias or prejudice for or against a party. Harris v. People, 888 P.2d 259 (Colo. 1995).

Change of venue where a fair, impartial jury trial is likely will be denied. But if a community is prejudiced against a citizen or if other circumstances are likely to deny him a fair and impartial jury trial, then a change of venue must be granted. Brisbin v. Schauer, 176 Colo. 550, 492 P.2d 835 (1971).

Informal communications between court and jury, via bailiff, are improper; all communications should be made in open court with the parties afforded an opportunity to make timely objections to any action by the court or jury which might be deemed irregular. Barriner v. District Court, 174 Colo. 447, 484 P.2d 774 (1971).

Presence of alternate juror during jury's deliberations sufficiently impinges upon defendant's constitutional right to a jury that renders its verdict in secret as to create a presumption of prejudice that requires reversal if not rebutted, and, where it is unclear from the record whether the alternate juror was actually present during the jury deliberations, the issue should be remanded for an evidentiary hearing. People v. Boulies, 690 P.2d

1253 (Colo. 1984).

Jurors are constitutional officers; they have their appointed functions to perform, one of which is to fix the penalty in first degree murder cases. Fleagle v. People, 87 Colo. 532, 289 P. 1078 (1930).

Jury is indispensable fact-finding tribunal in all capital cases, and its findings, based on sufficient evidence, will not be disturbed on review. Herrera v. People, 87 Colo. 360, 287 P. 643 (1930).

The constitution and laws of the state provide for the trial by a jury of a person charged with murder. A jury alone determines the facts, and no court, either trial or appellate, has a right to constitute itself a trier of facts, and thus invade the province of a jury. No matter how lightly the court may regard the testimony offered on behalf of the defense, the question of its weight and the credibility of the witnesses is to be determined by the jury, properly instructed as to the law. Unless this course is followed, a defendant is deprived of his constitutional right of a trial by jury. Where there is testimony tending to prove manslaughter, whether or not it is sufficient to justify a veridict of manslaughter is for the jury to determine, and not the court. Gallegos v. People, 136 Colo. 321, 316 P.2d 884 (1957).

Hence, under this section, on charge of murder, trial by jury is imperative. Weiss v. People, 87 Colo. 44, 285 P. 162 (1930).

Separate hearings of issues raised by pleas of insanity and not guilty, in a criminal case, do not violate the constitutional right to a speedy public trial by an impartial jury of twelve, or of due process of law. Leick v. People, 136 Colo. 535, 322 P.2d 674, cert. denied, 357 U. S. 922, 78 S. Ct. 1363, 2 L. Ed. 2d 366 (1958).

Separate housing of men and women jurors for night does not violate the rule against separation of the jury, but is made necessary by the amendment to this section making women eligible for jury service. Eaddy v. People, 115 Colo. 488, 174 P.2d 717 (1946).

Protecting juror deliberation secrecy more important than preventing disregard of law or facts. In contempt of court case against a juror, once the evidence shows any possibility that the juror was attempting to apply the law, further investigation into the jury deliberations must cease. People v. Kriho, 996 P.2d 158 (Colo. App. 1999).

Although there is a statutory right to a unanimous verdict in criminal cases in Colorado, the state constitution does not explicitly guarantee the right to a unanimous verdict. Nevertheless, there are some cases in which the jury may return a general verdict of guilty when instructed on alternative theories of principal and complicitor liability and in which the state constitution has provided a criminal defendant the right to a unanimous jury verdict. People v. Hall, 60 P.3d 728 (Colo. App. 2002).

Trial by jury may be waived. The right to trial by jury, the right to counsel and related matters, are alienable constitutional rights in the nature of personal privileges for the benefit of those seeking protection, and may be waived. Geer v. Alaniz, 138 Colo. 177, 331 P.2d 260 (1958).

Based on the constitutional right to a trial by jury, there is a correlative right to waive a trial by jury, and such a right applies to all criminal cases. People v. Cisneros, 720 P.2d 982 (Colo. App. 1986), cert. denied, 479 U.S. 887, 107 S. Ct. 982, 93 L. Ed. 2d 257 (1986).

Prosecutor has no constitutional right to either demand or waive trial by jury. Garcia v. People, 200 Colo. 413, 615 P.2d 698 (1980).

Right to waive trial by jury is substantive in nature. Garcia v.

People, 200 Colo. 413, 615 P.2d 698 (1980).

Right to waive jury trial applies to all criminal cases. People v. Cisneros, 720 P.2d 982 (Colo. App. 1986), cert. denied, 479 U.S. 887, 107 S. Ct. 982, 93 L. Ed. 2d 257 (1986).

Determination of waiver. A defendant in a criminal case may waive his right to a jury trial; however, that waiver must be understandingly, voluntarily, and deliberately made, and a determination of waiver must be a matter of certainty and not implication. People v. Evans, 44 Colo. App. 288, 612 P.2d 1153 (1980).

But defendant in criminal case does not have constitutional right to waive jury and be tried by the court. People v. Linton, 193 Colo. 64, 565 P.2d 919 (1977).

There is no absolute constitutional right of a criminal defendant to waive his right to trial by jury. Garcia v. People, 200 Colo. 413, 615 P.2d 698 (1980); People v. Cisneros, 720 P.2d 982 (Colo. App. 1986), cert. denied, 479 U.S. 887, 107 S. Ct. 982, 93 L. Ed. 2d 257 (1986); People v. District Court, 843 P.2d 6 (Colo. 1992); People v. Clouse, 859 P.2d 228 (Colo. App. 1992).

Section 18-1-406 (2) and Crim. P. 23(a)(5) deal with question of waiver of trial by jury by a criminal defendant, but statutory section controls over the rule. Garcia v. People, 200 Colo. 413, 615 P.2d 698 (1980).

This section does not guarantee the right to trial by jury in favor of prosecution where an accused is entitled to a jury trial but elects trial before the court. People v. District Court, 843 P.2d 6 (Colo. 1992).

So petty offense may be constitutionally tried to court without jury. Austin v. City & County of Denver, 170 Colo. 448, 462 P.2d 600 (1969), cert. denied, 398 U.S. 910, 90 S. Ct. 1703, 26 L. Ed. 2d 69 (1970).

The proceeding against petitioner is criminal in nature by reason of the imposition of penal sanctions, but the offense charged, the unlawful use of a traffic lane by a motor vehicle, is a petty offense and not a criminal offense the trial of which would entitle petitioner to a jury trial as comprehended by the constitution of Colorado. Austin v. City & County of Denver, 170 Colo. 448, 462 P.2d 600 (1969), cert. denied, 398 U.S. 910, 90 S. Ct. 1703, 26 L. Ed. 2d 69 (1970).

"Petty offense". In the interests of the orderly administration of justice and in the absence of legislative mandate by statute or charter to the contrary, petty offenses under the constitution, general laws, charters, and ordinances, are those crimes or offenses the punishment for which does not exceed in extent imprisonment for more than six months or a fine of more than $500, or a combination of imprisonment and fine within such limits. Austin v. City & County of Denver, 170 Colo. 448, 462 P.2d 600 (1969), cert. denied, 398 U.S. 910, 90 S. Ct. 1703, 26 L. Ed. 2d 69 (1970).

Right to trial by jury has been expanded to include petty offenses. Garcia v. People, 200 Colo. 413, 615 P.2d 698 (1980).

Waiver procedure adequate. Where, when the jury was assembled in the courtroom ready for trial, defendants' counsel orally announced that defendants had decided to waive their right to a jury trail, and the court inquired of each defendant if that was their desire and both indicated in the affirmative, and as a further precaution, the court then insisted that a written waiver of jury trial be prepared and be signed by each defendant and their counsel, which was done, it will be presumed that defendants understandingly, voluntarily, and deliberately decided to waive the jury. People v. Fowler, l83 Colo. 300, 516 P.2d 428 (1973).

Where the record of the trial court discloses that the trial judge orally advised the defendant of his right

to a jury, the defendant further read and signed a written waiver, and he failed to give any indication to the trial court that his waiver was not voluntary, there was substantial evidence to support the findings that the waiver was voluntary. People v. Simms, 185 Colo. 214, 523 P.2d 463 (1974).

Right to jury trials in civil cases is regulated by C.R.C.P. 38. Gibson v. Angros, 30 Colo. App. 95, 491 P.2d 87 (1971).

The provisions of C.R.C.P. 38 do not violate this section or the Colorado mandatory arbitration act because there is no constitutional right to a jury trial, and either party may reject the results of the arbitration and proceed to district court for a de novo trial. Firelock Inc. v. District Court, 776 P.2d 1090 (Colo. 1989).

Trial by jury in civil action or proceeding is not matter of right under our constitution, but our general assembly may provide for it. Londoner v. People ex rel. Barton, 15 Colo. 557, 26 P. 135 (1890); Corthell v. Mead, 19 Colo. 386, 35 P. 741 (1894); Kahm v. People, 83 Colo. 300, 264 P. 718 (1928); Parker v. Plympton, 85 Colo. 87, 273 P. 1030 (1928); Gibson v. Angros, 30 Colo. App. 95, 491 P.2d 87 (1971).

Issue of fact triable to jury upon demand in action for personal injuries. Although there is no constitutional right to a jury trial in civil cases in Colorado, an issue of fact must be tried to a jury upon demand in an action for personal injuries. Gleason v. Guzman, 623 P.2d 378 (Colo. 1981).

Authority of general assembly over civil juries within its sphere is supreme, except as limited by the constitution expressly, or by necessary implication. People v. Wright, 6 Colo. 92 (1881); People ex rel. Attorney Gen. v. Richmond, 16 Colo. 274, 26 P. 929 (1891); City of Denver v. Hyatt, 28 Colo. 129, 63 P. 403 (1900).

But only legislative authority granted over civil juries is to reduce number of jurors. The authority to reduce the number of jurors from 12 is created by this section and in the absence of any express declaration of the further intention regarding trial by juries in civil actions, it follows that the general assembly was granted no other authority than this, and impliedly, that all other rights of trial by jury in civil actions were reserved. City of Denver v. Hyatt, 28 Colo. 129, 63 P. 403 (1900).

There is no constitutional right to jury trial in probate proceeding. In re Estate of Etchart, 179 Colo. 142, 500 P.2d 363 (1972).

The Colorado Constitution does not require a jury trial in civil cases or in probate proceedings. Such right is present only when set forth by statute or rule of court and there is no statute or rule of court in Colorado which requires a trial by jury in a proceeding to determine objections to a final report of a conservator. Jones v. Estate of Lambourn, 159 Colo. 246, 411 P.2d 11 (1966).

There is no constitutional right to a jury trial in an attorney discipline proceeding. In re Egbune, 971 P.2d 1065 (Colo. 1999).

Jury trial not required for less serious delinquency adjudications. Statute limiting right of juvenile to jury trial is constitutional. People in Interest of T. M., 742 P.2d 905 (Colo. 1987) (decided prior to 1987 repeal and reenactment of the Colorado Children's Code).

This section does not apply to contempt proceedings. Wyatt v. People, 17 Colo. 252, 28 P. 961 (1892); People ex rel. Attorney Gen. v. News-Times Publishing Co., 35 Colo. 253, 84 P. 912 (1906), appeal dismissed, 205 U.S. 454, 27 S. Ct. 556, 51 L. Ed. 879 (1907).

Court made a structural constitutional error in sentencing defendant for a class 4 felony when defendant was convicted of a class 5

felony. Because the error was confined to defendant's sentencing and did not affect the trial, jury's conviction for the class 5 felony need not be disturbed. Although it was not clear from the charging documents whether defendant was charged with a class 4 felony or a class 5 felony, that confusion was cleared up when prosecution proffered a jury instruction for the class 5 felony and based its theory of the case on the class 5 felony elements. The court's error, therefore, was not the result of a mistake in the jury instructions. Medina v. People, 163 P.3d 1136 (Colo. 2007).

Structural error applies in this case because the court sentenced defendant for the class 4 felony and there was no jury verdict for that crime. In essence, the court judged defendant guilty of a new crime. The structural error in this case was confined to the sentencing proceedings, so the conviction is affirmed, but the sentence is vacated and the case remanded for resentencing. Medina v. People, 163 P.3d 1136 (Colo. 2007).

Right to jury trial not violated. People v. Will, 730 P.2d 898 (Colo. App. 1986).

B. Required Jury Findings in Criminal Cases.

Court should not apply Apprendi v. New Jersey, 530 U.S. 466, 120 S. Ct. 2348, 147 L. Ed. 2d 435 (2000), retroactively to convictions that were already final when the U.S. supreme court issued its opinion. A new rule of criminal procedure is not applied retroactively unless it forbids criminal punishment of certain kinds of conduct or is a "watershed" rule. Apprendi does not represent a "watershed" rule, that is, a rule that implicates the fundamental fairness of the trial. People v. Bradbury, 68 P.3d 494 (Colo. App. 2002); People v. Boespflug, 107 P.3d 1118 (Colo. App. 2004); People v. Alexander, 129 P.3d 1051 (Colo. App. 2005); People v. Starkweather, 159 P.3d 665 (Colo. App. 2006).

The provisions of Washington v. Blakely, 542 U.S. 296, 124 S. Ct. 2531, 159 L. Ed. 2d 403 (2004), which applies the rule of Apprendi, do not apply retroactively to collateral attacks on judgments that were final when Blakely was announced. People v. Dunlap, 124 P.3d 780 (Colo. App. 2004); People v. Alexander, 129 P.3d 1051 (Colo. App. 2005).

The U.S. supreme court held in Apprendi that, other than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt. People v. Bradbury, 68 P.3d 494 (Colo. App. 2002).

The rules announced in Apprendi v. New Jersey, 530 U.S. 466 (2000), and Blakely v. Washington, 542 U.S. 296 (2004), apply retroactively to all criminal cases pending on direct review or not yet final. In this case, the defendant's conviction was entered after Apprendi was announced, and time to file an appeal had not run when Blakely was announced; therefore, both cases could be applied to defendant's case. People v. McAfee, 160 P.3d 277 (Colo. App. 2007).

A court should not apply Blakely v. Washington, 542 U.S. 296 (2005), retroactively to convictions that were final when the supreme court announced the decision. Blakely v. Washington announced a new procedural rule. A new procedural rule is applied retroactively only if it is a "watershed rule of criminal procedure implicating fundamental fairness and accuracy of the criminal proceeding". Blakely v. Washington does not qualify for the "watershed" exception. People v. Johnson, 142 P.3d 722 (Colo. 2006).

Defendant's sentence was not illegal under Apprendi v. New

Jersey, 530 U.S. 466 (2000). Defendant's sentence did not exceed the statutory maximum. Defendant was sentenced to 15 years, and the presumptive range for aggravated robbery is four to 16 years. The presumptive range for aggravated robbery is extended from 12 years to 16 years because it is an extraordinary risk crime. People v. Kendrick, 143 P.3d 1175 (Colo. App. 2006).

The "presumptive range" of penalties referred to in Apprendi v. New Jersey, 530 U.S. 466 (2000), is only that portion of the sentence that subjects the defendant to incarceration or imprisonment. Therefore, when a defendant receives a sentence of imprisonment within the presumptive range, plus a period of mandatory parole, the sentence is constitutional. People v. Kendrick, 143 P.3d 1175 (Colo. App. 2006).

Defendant is not entitled to a jury finding on the fact of defendant's prior convictions to satisfy Apprendi v. New Jersey, 530 U.S. 466 (2000). People v. Flowers, 129 P.3d 285 (Colo. App. 2005).

Trial court's adjudication of defendant as a sexually violent predator subjecting him to community notification did not violate defendant's right to trial under Apprendi v. New Jersey. Community notification is not additional punishment giving rise to right to trial by jury. People v. Rowland, 207 P.3d 890 (Colo. App. 2009).

Defendant is not entitled to a jury determination of whether defendant's prior convictions were separately brought and tried. People v. Flowers, 129 P.3d 285 (Colo. App. 2005).

The rule announced in Blakely v. Washington, 524 U.S. 296 (2004), does not apply retroactively to cases on collateral review because it is a new rule of criminal procedure. People v. Wenzinger, 155 P.3d 415 (Colo. App. 2006).

A sentence based on extraordinary aggravating factors, § 18-1.3-401 (6), does not require an Apprendi jury finding. The sentence was based on unenumerated and unspecified factors frequently considered in sentencing decisions. Those are not the types of factors considered in Apprendi and its progeny. People v. Rivera, 62 P.3d 1056 (Colo. App. 2002).

Defendant's aggravated sentence did not violate Apprendi principles. Although the sentencing range was beyond the maximum, the enhancement did not require any proof beyond the elements of the charged offenses which were necessarily proved beyond a reasonable doubt. People v. Hogan, 114 P.3d 42 (Colo. App. 2004).

Sentence in the aggravated range proper when based upon a prior conviction even after U.S. supreme court decision in Blakely v. Washington. Language in Colorado constitution does not require application of a more forceful jury-trial requirement than federal constitution. People v. Huber, 139 P.3d 628 (Colo. 2006).

When defendant admits the fact that is the basis for the enhanced sentence, the defendant's sentence was not illegal under Apprendi v. New Jersey, 530 U.S. 466 (2000). Even though it was defense counsel that represented the defendant was on probation during the commission of the felony, the defendant did not object to this statement. Thus, the statement was an admission of the defendant. People v. Fogle, 116 P.3d 1227 (Colo. App. 2004).

Court may not use defendant's admissions to impose an aggravated sentence unless defendant knowingly, voluntarily, and intelligently waives his or her sixth amendment right to have a jury find the facts that support the aggravated sentence. Defendant's admissions in the

presentence investigation report do not qualify as an admitted fact, thus, the court could not rely upon them to aggravate the defendant's sentence. People v. McAfee, 160 P.3d 277 (Colo. App. 2007); People v. Banark, 155 P.3d 609 (Colo. App. 2007).

The court erred in using defendant's admissions to aggravate the sentence, but, in this instance, the error did not require the court to vacate the sentence. When defendant was resentenced, he had already been convicted of a charge of indecent exposure that the court was unaware of. There is every reason to believe that, had the court known of that conviction, it would have relied upon that previous conviction to aggravate the sentence. The previous indecent exposure conviction is a previous conviction that the court could rely upon without a jury finding to support the aggravated sentence. People v. Banark, 155 P.3d 609 (Colo. App. 2007).

Section 18-1.3-401 (6), properly applied, is constitutional in light of Apprendi v. New Jersey, 530 U.S. 466 (2000), and Blakely v. Washington, 542 U.S. 296 (2004). A constitutional aggravated sentence based on § 18-1.3-401 (6) must rely on one of four kinds of facts: (1) Facts found by a jury beyond a reasonable doubt; (2) facts admitted by the defendant; (3) facts found by the judge after the defendant stipulates to judicial fact-finding for sentencing purposes; and (4) facts regarding prior convictions. The first three are "Blakely-compliant" facts, and the fourth is a "Blakely-exempt" fact. Defendant's aggravated sentence was based in part on a prior conviction; therefore, the sentence was constitutional. Lopez v. People, 113 P.3d 713 (Colo. 2005); DeHerrera v. People, 122 P.3d 992 (Colo. 2005); People v. Huber, 139 P.3d 628 (Colo. 2006).

The existence of one Blakely-exempt fact does not alone make a defendant death penalty eligible. The defendant has the right to have the jury weigh all mitigating factors against aggravating factors. People v. Montour, 157 P.3d 489 (Colo. 2007).

A conviction for an offense that occurs after the offense that the court is applying aggravated sentencing to may be a "prior conviction" for "Blakely-exempt" purposes if the conviction is entered before the sentencing on the aggravated sentence offense. Lopez v. People, 113 P.3d 713 (Colo. 2005).

Conviction that occurs while defendant is on probation after initial sentence still qualifies for the previous conviction exception for Blakely v. Washington, 542 U.S. 296 (2004), purposes if the court relies upon that conviction to resentence defendant after a probation violation. People v. Banark, 155 P.3d 609 (Colo. App. 2007).

All convictions obtained in accordance with the sixth and fourteenth amendments of the federal constitution fall within the prior-conviction exception to Apprendi and Blakely. People v. Huber, 139 P.3d 628 (Colo. 2006).

The exception extends beyond the fact of conviction to facts regarding prior convictions. People v. Huber, 139 P.3d 628 (Colo. 2006).

The court properly considered the fact that defendant was on probation in sentencing defendant in the enhanced range. A sentencing court may impose an aggravated range sentence based on any one of four Blakely facts listed above. Here, two of the four exceptions apply. First, defendant through counsel stipulated to the particular judicial fact-finding at issue, so the stipulation exception applies. Second, the fact that defendant was on probation is inextricably linked to his prior conviction, so the "facts regarding prior convictions" exception applies. People

v. Linares-Guzman, 195 P.3d 1130 (Colo. App. 2008).

A defendant's prior-conviction-related probation or supervision falls within the exception. The prior-conviction exception extends to facts regarding prior convictions that are contained in conclusive judicial records. Because a defendant's sentence to probation or supervision can be found in the judicial record, a trial court may properly consider this fact without violating the defendant's Blakely rights. People v. Huber, 139 P.3d 628 (Colo. 2006); People v. Roberts, 179 P.3d 129 (Colo. App. 2007), aff'd, 203 P.3d 513 (Colo. 2009).

Defendant may be constitutionally subjected to an aggravated sentence based on a "simultaneous conviction" under the "prior conviction" exception to Apprendi v. New Jersey. People v. Misenhelter, 214 P.3d 497 (Colo. App. 2009), aff'd, 234 P.3d 657 (Colo. 2010).

The "concurrent or simultaneous" conviction is Blakely-exempt if there is no constitutional error in entering the plea and the conviction predated the sentencing at which it was used for aggravation purposes. Misenhelter v. People, 234 P.3d 657 (Colo. 2010).

A single "Blakely-compliant" fact or "Blakely-exempt" fact is sufficient to support an aggravated sentence. Lopez v. People, 113 P.3d 713 (Colo. 2005); DeHerrera v. People, 122 P.3d 992 (Colo. 2005); People v. Huber, 139 P.3d 628 (Colo. 2006).

The sentence is constitutional even if the court relies on facts that satisfy Blakely and facts that violate Blakely. Lopez v. People, 113 P.3d 713 (Colo. 2005); DeHerrera v. People, 122 P.3d 992 (Colo. 2005).

Defendant admitted facts essential to establish the elements of aggravated incest in conformance with the constitutional safeguards in Apprendi v. New Jersey. Defendant was fully advised and acknowledged his understanding of the elements of aggravated incest, as well as his right to have a jury determine his guilt or innocence beyond a reasonable doubt to that offense. Defendant waived that right knowingly, voluntarily, and intelligently, and the prosecutor set forth the factual basis for the offense. Defendant did not need to be specifically advised that the facts admitted could be used to aggravate the sentence. Thus, the court's reliance on those facts to impose an aggravated sentence was constitutionally sufficient. People v. Misenhelter, 214 P.3d 497 (Colo. App. 2009), aff'd on other grounds, 234 P.3d 657 (Colo. 2010).

On resentencing after a probation revocation, a trial court may only consider a defendant's admissions for sentence aggravation if the trial court has obtained a valid waiver from the defendant regarding the admissions. If a waiver is not obtained, the court must sentence the defendant within the presumptive range. Villanueva v. People, 199 P.3d 1228 (Colo. 2008).

Defendant's aggravated sentence for vehicular assault must be vacated, because the court imposed the sentence by relying upon facts not found by the jury. People v. Smith, 121 P.3d 243 (Colo. App. 2005).

Defendant did not receive aggravated sentence for first degree assault crime, therefore, Apprendi v. New Jersey, 530 U.S. 466 (2000), does not apply. First degree assault is a class 3 felony that is a per se crime of violence and an extraordinary risk crime that triggers a special legislatively created penalty range, not a judicially imposed aggravated sentence. Since defendant was sentenced within special penalty range created by the legislature, there was no Apprendi violation. People v. Trujillo, 169 P.3d 235 (Colo. App. 2007).

Colorado law does not contemplate an increase in the statutory maximum sentence to which a defendant has subjected himself by pleading guilty, based on subsequent jury findings, which are the functional equivalent of elements of a greater offense than the one to which he pled. People v. Lopez, 148 P.3d 121 (Colo. 2006).

Allowing consideration of subsequent jury findings to increase a defendant's statutory maximum sentence would violate the requirement of Crim. P. 11 that the defendant understand the elements of the offense to which he pleads and the effects of his plea before his plea can be accepted. People v. Lopez, 148 P.3d 121 (Colo. 2006).

The three findings for habitual criminal sentencing are not in addition to the "fact" of the prior convictions. Therefore, the court may find that the prior crimes were separately brought and tried, that they arose out of separate and distinct criminal episodes, and that the accused was the person named in each prior conviction without violating the principle in Apprendi v. New Jersey, 530 U.S. 466 (2000). People v. Nunn, 148 P.3d 222 (Colo. App. 2006).

It was plain error for the court to sentence the defendant in the aggravated range based upon the court's factual findings that were neither admitted by the defendant nor found by the jury. People v. Elie, 148 P.3d 359 (Colo. App. 2006).

The fact of a prior misdemeanor conviction falls within the prior conviction exception to the rule of Apprendi v. New Jersey, 530 U.S. 466 (2000). People v. Blessett, 155 P.3d 388 (Colo. App. 2006).

The principle in Apprendi v. New Jersey, 530 U.S. 466 (2000), not violated when court increases defendant's penalty based upon court's finding that defendant was on probation or parole at the time of the offense. The fact that defendant was on probation or parole at the time of the offense is inextricably linked to a prior conviction, so the finding falls into the prior conviction exception in Apprendi. People v. Montoya, 141 P.3d 916 (Colo. App. 2006).

III. REGULATION OF GRAND JURY.

Power to regulate grand jury is expressly delegated to general assembly by this section. de'Sha v. Reed, 194 Colo. 367, 572 P.2d 821 (1977); In re 2000-2001 Dist. Grand Jury Report, 22 P.3d 922 (Colo. 2001).

This section authorizes the general assembly to change, regulate, or abolish the grand jury system, and therefore prosecutions by information may be provided by the general assembly without violating this section. Saleen v. People, 41 Colo. 317, 92 P. 731 (1907).

And changes must apply equally to all. The change, regulation or abolition of the jury system must be so made as to equally affect the whole community in respect to the same rights and immunities, under the same or similar circumstances. In re Lowrie, 8 Colo. 499, 9 P. 489, 54 Am. R. 558 (1885).

Mode of selecting grand jurors. This section limits the number of persons to constitute a grand jury to 12, nine of whom must concur in finding a bill, but the mode of selecting the jurors, until altered by law, remains the same as provided by the territorial statute. The supreme court is not permitted to presume, in the silence of the record, that the court adopted an illegal method in convening the grand jury. Wilson v. People, 3 Colo. 325 (1877).

Challenge to array and challenge to poll of grand jury. People ex rel. Bonfils v. District Court, 29 Colo. 83, 66 P. 1068 (1901).

Practice of effecting charge

through information is not unconstitutional deprivation of protection of grand jury. Sergent v. People, 177 Colo. 354, 497 P.2d 983 (1972).

Grand jury is an accusatory and not an adjudicatory body, therefore there is no constitutional requirement that a grand jury hear and consider exculpatory evidence. Evidence missed by absent juror would only be inculpatory, and since all of the grand jurors were present when the defendant elected to testify before the grand jury and since no exculpatory evidence was presented in those sessions where some jurors were absent, there was no structural error in the grand jury proceedings. People v. Ager, 928 P.2d 784 (Colo. App. 1996).

Section 18-7-302 (4) is a sentence enhancer, not a substantive offense. Therefore, the prosecution must prove the prior convictions to the court, not the jury. The burden of proof to the court is preponderance of the evidence. People v. Schreiber, 226 P.3d 1221 (Colo. App. 2009).

Section 24. Right to assemble and petition. The people have the right peaceably to assemble for the common good, and to apply to those invested with the powers of government for redress of grievances, by petition or remonstrance.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 32.

ANNOTATION

Law reviews. For article, "Martial Law in Colorado", see 5 Den. B. Ass'n Rec. 4 (Feb. 1928). For article, "An Analysis of the Colorado Labor Peace Act", see 19 Rocky Mt. L. Rev. 359 (1947). For comment, "New York State Club Association, Inc. v. City of New York: As 'Distinctly Private' is Defined, Women Gain Access", see 66 Den. U. L. Rev. 109 (1988).

If right of association exists it is relative one, always subject to evaluation in relation to the interest which the state seeks to advance. Sigma Chi Fraternity v. Regents of Univ. of Colo., 258 F. Supp. 515 (D. Colo. 1966).

There was no violation of the right to assemble and petition government due to the murder of a woman by her husband in a county justice center. Duong v. Arapahoe County Comm'rs, 837 P.2d 226 (Colo. App. 1992).

Right of freedom of association of student athletes was not unconstitutionally burdened by rule of high school athletic association which generally prohibited such student athletes who practiced with nonschool teams from competing in interscholastic athletics. Zuments v. Colo. H.S. Activities Ass'n, 737 P.2d 1113 (Colo. App. 1987).

Fraternities are subject to antidiscrimination regulations. The plaintiffs cannot insist on immunity from state regulation. The particular relationship of fraternities to a state university renders the plaintiffs susceptible to regulation which seeks to promote the principle of racial and religious equality. The purpose of a resolution, to eliminate from the charters and rituals of the organizations affected a provision which compels discrimination on the basis of race, color or creed, is valid and clearly within the powers of the board of regents. Sigma Chi Fraternity v. Regents of Univ. of Colo., 258 F. Supp. 515 (D. Colo. 1966).

Presentation of grievances on governor's lawn protected. Where a crowd collected on the governor's lawn and by the use of placards and shouting sought to express their grievances to the governor, but there

was no violence ot discourtesy shown by the crowd, such conduct was protected by this section of the constitution. Flores v. City & County of Denver, 122 Colo. 71, 220 P.2d 373 (1950).

Full protection of the right to petition requires that each district have an identifiable representative at all times. In re Reapportionment of Colo. Gen. Ass'y, 647 P.2d 191 (Colo. 1982).

While the right to petition does not limit citizens to petitioning only those representatives for whom they have voted, it is clear that legislators will be most responsive to citizens who place them in office and who, more importantly, reserve the power to remove a particular legislator from office during his term or return him to office by reelection. In re Reapportionment of Colo. Gen. Ass'y, 647 P.2d 191 (Colo. 1982).

The petition clause of this section grants Colorado citizens a right of access to the courts of this state. Protect Our Mountain v. District Court, 677 P.2d 1361 (Colo. 1984).

POME standard for consideration of motion to dismiss claim for abuse of process based on First Amendment right to petition. Trial court should consider whether the petitioning activities on the part of the party being sued for abuse of process were not immunized from liability by the first amendment because: (1) Those activities are devoid of factual support or, if supportable in fact, have no cognizable basis in law; (2) the primary purpose of the petitioning activities is to harass the other party or to effectuate some other improper objective; and (3) those petitioning activities have the capacity to have an adverse effect on a legal interest of the other party. Protect Our Mountain v. District Court, 677 P.2d 1361 (Colo. 1984) (decided prior to 1981 amendment).

Standard extended to case under C.R.C.P. 106(a)(2) in Concerned Members v. District Court, 713 P.2d 923 (Colo. 1986).

Standard for consideration of motion to dismiss claim of libel based on first amendment right to petition. C.R.C.P. 106 complaint, along with any other related material released to the media, must be shown to have been a defamatory publication made with actual malice, i.e., knowledge that the allegations in the complaint were false or were made with reckless disregard of whether they were false. Concerned Members v. District Court, 713 P.2d 923 (Colo. 1986).

Heightened standard of Protect Our Mountain Environment, Inc. v. District Court, 677 P.2d 1361 (Colo. 1984) (POME), does not apply when the underlying alleged petitioning activity was the filing of an arbitration complaint that led to a purely private dispute. Gen. Steel Domestic Sales v. Bacheller, 2012 CO 68M, 291 P.3d 1.

Applied in Knowlton v. Cervi, 142 Colo. 394, 350 P.2d 1066 (1960).

Section 25. Due process of law. No person shall be deprived of life, liberty or property, without due process of law.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 32.

Cross references: For inalienable rights, see § 3 of this article; for equality of justice, see § 6 of this article; for rights reserved to the people, see § 28 of this article and § 1 of article V of this constitution; for taking of property by eminent domain proceedings, see articles 1 to 7 of title 38; for searches and seizures, see § 7 of this article; for rights of defendant in criminal prosecutions, see § 16 of this article; for

self-incrimination and jeopardy, see § 18 of this article; for the admissibility of laboratory test results, see § 16-3-309.

ANNOTATION

I. GENERAL CONSIDERATION.

Law reviews. For article, "Martial Law in Colorado", see 5 Den. B. Ass'n Rec. 4 (Feb. 1928). For article, "Legality of the Denver Housing

Authority", see 12 Rocky Mt. L. Rev. 30 (1939). For article, "Why Legal Advertising", see 17 Dicta 197 (1940). For article, "An Analysis of the Colorado Labor Peace Act", see 19 Rocky Mt. L. Rev. 359 (1947). For note, "A Non-Judicial Dissent to Amendment of Canon 35", see 34 Dicta 55 (1957). For article, "A Review of the 1959 Constitutional and Administrative Law Decisions", see 37 Dicta 81 (1960). For note, "Colorado's Maximum Recovery for Wrongful Death v. the Constitution", see 38 Dicta 237 (1961). For article, "One Year Review of Constitutional and Administrative Law", see 38 Dicta 154 (1961). For comment on Toland v. Strohl, appearing below, see 34 Rocky Mt. L. Rev. 392 (1962). For article, "One Year Review of Torts", see 40 Den. L. Ctr. J. 160 (1963). For article, "Fair Housing in Colorado", see 42 Den. L. Ctr. J. 1 (1965). For comment on City of Colorado Springs v. Kitty Hawk Dev. Co., appearing below, see 37 U. Colo. L. Rev. 303 (1965). For comment on White v. Davis, appearing below, see 40 U. Colo. L. Rev. 151 (1967). For article, "A Review of Recent Activity in Colorado Water Law", see 47 Den. L. J. 181 (1970). For comment, "Bastardizing the Legitimate Child: The Colorado Supreme Court Invalidates the Uniform Parentage Act Presumption of Legitimacy in R. McG. v. J.W.", see 59 Den. L.J. 157 (1981). For article, "Liberty vs. Equality: Congressional Enforcement Power Under the Fourteenth Amendment", see 59 Den. L.J. 417 (1982). For article, "Governmental Loss or Destruction of Exculpatory Evidence: A Due Process Violation", see 12 Colo. Law. 77 (1983). For article, "Asserting Vested Rights in Colorado", see 12 Colo. Law. 1199 (1983). For casenote, "People v. Quintana: How 'Probative' Is This Colorado Decision Excluding Evidence of Post-Arrest Silence?", see 56 U. Colo. L. Rev. 157 (1984). For article, "Civil Rights", which discusses Tenth Circuit decisions dealing with due process, see 62 Den. U.L. Rev. 62 (1985). For comment, "Setting Boundaries for Student Due Process: Rustad v. United States Air Force and the Right to Counsel in Disciplinary Dismissal Proceedings", see 62 Den. U.L. Rev. 109 (1985). For comment, "Twenty Questions does not Yield Due Process: Chaney v. Brown and the Continued Need to Open Prosecutor's Files in Criminal Proceedings", see 62 Den. U.L. Rev. 193 (1985). For article, "The Federal Due Process and Equal Protection Rights of Non-Indian Civil Litigants in Tribal Courts After Santa Clara Pueblo v. Martinez", see 62 Den. U.L. Rev. 761 (1985). For article, "Austin v. Litvak, Colorado's Statute of Repose for Medical Malpractice Claims: An Uneasy Sleep", see 62 Den. U.L. Rev. 825 (1985). For article, "Economic Analysis of Liberty and Property: A Critique", see 57 U. Colo. L. Rev. 747 (1986). For comment, "Bee v. Greaves: A Pretrial Detainee's Constitutional Right to Refuse Antipsychotic Drugs Under the First and Fourteenth Amendments", see 63 Den. U. L. Rev. 273 (1986). For article, line"Constitutional Law", which discusses Tenth Circuit decisions dealing with due process, see 63 Den. U. L. Rev. 247 (1986). For comment, "The Failure of the Due Process Defense in United States v. Gamble", see 63 Den. U. L. Rev. 327 (1986). For article, "Constitutional Law", which discusses Tenth Circuit decisions dealing with due process, see 64 Den. U.L. Rev. 202 (1987). For article, "Constitutional Law", which discusses Tenth Circuit decisions dealing with due process, see 65 Den. U. L. Rev. 519 (1988). For a discussion of Tenth Circuit decisions dealing with criminal procedure, see 66 Den. U. L. Rev. 739 (1989). For articles, "Civil Rights", "Constitutional Law", and "Criminal Procedure", which discuss Tenth Circuit decisions dealing with due process, see 67 Den. U. L. Rev. 639,

653, and 701 (1990). For article, "Defects, Due Process, and Protective Proceedings", see 27 Colo. Law. 39 (April 1998).

Section deemed guaranty against exercise of arbitrary power. The exercise of arbitrary power by any department of government, or agency thereof, is inconsistent with democracy. The guaranties against the exercise of such arbitrary power are found in this section and section 10 of this article. People v. Harris, 104 Colo. 386, 91 P.2d 989 (1939).

The fourteenth amendment to the United States Constitution and article II, § 25, of the Colorado Constitution protect individuals from arbitrary governmental restrictions on property and liberty interests. Watso v. Dept. of Soc. Servs., 841 P.2d 299 (Colo. 1992).

Due process of law is summarized constitutional guarantee of respect for those personal immunities which are so rooted in the traditions and conscience of the people as to be ranked as fundamental, or are implicit in the concept of ordered liberty. Toland v. Strohl, 147 Colo. 577, 364 P.2d 588 (1961).

Minimum guarantees. The due process clause of this section requires at a minimum the same guarantees as those protected by the due process clause of the federal constitution. Air Pollution Variance Bd. v. Western Alfalfa Corp., 191 Colo. 455, 553 P.2d 811 (1976); City and County of Denver v. Eggert, 647 P.2d 216 (Colo. 1982).

Constitutional guarantees are not always absolute and full exercise thereof is not always possible. Stapleton v. District Court, 179 Colo. 187, 499 P.2d 310 (1972).

State may enlarge, but not abridge, federal concept of due process. Under the United States Constitution the state cannot deny a right or impose a liability which is contrary to the federal concept of due process of law; it does not say that a state has no right, under the state due process clause, to create protections for its citizens which might not be required under the federal concept. People ex rel. Juhan v. District Court, 165 Colo. 253, 439 P.2d 741 (1968).

And federal power will not nullify state's concept of due process. So long as state action does not deny a right protected under the federal concept of due process, or impose a liability prohibited thereby, the federal power will not nullify the rights and protections which, within the state, are recognized as part and parcel of due process under the state constitution. People ex rel. Juhan v. District Court, 165 Colo. 253, 439 P.2d 741 (1968).

Due process takes precedence over legislation. The requirements of due process of law under both the United States and Colorado Constitutions take precedence over statutory enactments of the general assembly. White v. Davis, 163 Colo. 122, 428 P.2d 909 (1967).

The hand of the general assembly is restrained by the due process clause of the state constitution from overturning established principles of private rights and distributive justice. People ex rel. Juhan v. District Court, 165 Colo. 253, 439 P.2d 741 (1968).

The general assembly may not constitutionally authorize the deprivation of a property interest, once conferred, without appropriate procedural safeguards. Weston v. Cassata, 37 P.3d 469 (Colo. App. 2001).

Conformity to due process does not require ideal system, nor does it demand of an act that it provide against every possible hardship that may befall. People ex rel. Dunbar v. First Nat'l Bank, 144 Colo. 412, 356 P.2d 967 (1960).

This section is applicable to rights, not to remedies. White v. Ainsworth, 62 Colo. 513, 163 P. 959, 1918E Ann. Cas. 179 (1917); Scholz v.

Metro. Pathologists, P.C., 851 P.2d 901 (Colo. 1993); Simon v. State Comp. Ins. Auth., 903 P.2d 1139 (Colo. App. 1994); Norsby v. Jensen, 916 P.2d 555 (Colo. App. 1995), rev'd on other grounds, 946 P.2d 1298 (Colo. 1997).

And only rights existing under substantive law. This section operates only to prohibit the deprivation of rights where such rights exist under substantive law. Faber v. State, 143 Colo. 240, 353 P.2d 609 (1960).

And procedural guarantees stemming from state law or local ordinance do not create a constitutionally cognizable property interest under this section. A claim that a right to notice of, and opportunity to participate in, a special use permit hearing provided for in a municipal code was denied therefore does not rise to the level of a due process claim. Hillside Cmty. Church, S.B.C. v. Olson, 58 P.3d 1021 (Colo. 2002).

And not violated by sovereign immunity. This section is not violated by application of the rule that the state and its instrumentalities are not liable in tort actions. Faber v. State, 143 Colo. 240, 353 P.2d 609 (1960).

Assertions of an unconstitutional deprivation of a "right of action" have no merit under the governmental immunity doctrine. In Colorado there is no "right" in the absence of a statute granting such, thus it cannot be taken away or damaged by the application of sovereign immunity to a tort claim. Abeyta v. City & County of Denver, 165 Colo. 58, 437 P.2d 67 (1968).

Scope of judicial review of due process issued is generally limited inquiry, for courts only need find that the legislation is a proper subject of legislative power to uphold a statute. Gates Rubber Co. v. South Sub. Metro. Recreation & Park Dist., 183 Colo. 222, 516 P.2d 436 (1973).

Denial of "due process" includes denial of "equal protection of the law". The contention that a statute abridges the privileges and immunities of citizens and denies equal protection of the law is included within the objection that it denies "due process". They stand or fall together. People v. Max, 70 Colo. 100, 198 P. 150 (1921).

Right to equal protection of the laws is included within due process of law under the Colorado Constitution. Colo. Auto & Truck Wreckers Ass'n v. Dept. of Rev., 618 P.2d 646 (Colo. 1980); People v. Gutierrez, 622 P.2d 547 (Colo. 1981); People v. Chavez, 629 P.2d 1040 (Colo. 1981); People v. Montoya, 647 P.2d 1203 (Colo. 1982); People in Interest of S.P.B., 651 P.2d 1213 (Colo. 1982); People v. Dunoyair, 660 P.2d 890 (Colo. 1983); People in Interest of M.M., 726 P.2d 1108 (Colo. 1986); People in Interest of D.G., 733 P.2d 1199 (Colo. 1987); Mayo v. Nat'l Farmers Union, 833 P.2d 54 (Colo. 1992).

The constitutional guarantee of due process of law includes the right to equal protection of the laws. City of Montrose v. Pub. Utils. Comm'n, 629 P.2d 619 (Colo. 1981).

The right to equal protection of the laws finds support in the due process clause of the Colorado Constitution. DeScala v. Motor Vehicle Div., 667 P.2d 1360 (Colo. 1983).

State law that creates a property interest protected by the fourteenth amendment may relate to a claim of deprivation of due process under state law and form the basis of 42 U.S.C. § 1983 claim. Conde v. State Dept. of Pers., 872 P.2d 1381 (Colo. App. 1994).

Person cannot be deprived of his life or liberty on presumption, unless presumption and fact accord. Du Bois v. Clark, 12 Colo. App. 220, 55 P. 750 (1898).

Subject of an attorney disciplinary proceeding is entitled to

procedural due process, including the right to be heard by a neutral and detached decision maker. In re Egbune, 971 P.2d 1065 (Colo. 1999).

Section 12-47.1-804 (1) did not impose unconstitutional restrictions on ballot access, the right to hold public office, and the right to vote where the state's substantial interest in avoiding corruption and the appearance of corruption in both the gaming industry and local government outweighed the limited burden that § 12-47.1-804 (1) placed on ballot access, the right to hold public office, or on the right to vote. Lorenz v. State, 928 P.2d 1274 (Colo. 1996).

Prospective political candidates lacked standing to challenge § 12-47.1-804 (1) on vagueness grounds where candidates owned a personal interest in gaming licenses or owned corporations that held gaming licenses. Lorenz v. State, 928 P.2d 1274 (Colo. 1996).

Foster parent does not have a protected liberty interest in expecting to continue as foster parent. People ex rel. A.W.R., 17 P.3d 192 (Colo. App. 2000).

Applied in In re Senate Resolution, 9 Colo. 639, 21 P. 478 (1886); Brophy v. Hyatt, 10 Colo. 223, 15 P. 399 (1887); Union Pac. Ry. v. De Busk, 12 Colo. 294, 20 P. 752 (1888); Union Pac. Ry. v. Arthur, 2 Colo. App. 159, 29 P. 1031 (1892); Wadsworth v. Union Pac. Ry., 18 Colo. 600, 33 P. 515 (1893); Union Pac. Ry. v. Tracy, 19 Colo. 331, 35 P. 537 (1894); In re House Bill No. 203, 21 Colo. 27, 39 P. 431 (1895); Newman v. People, 23 Colo. 300, 47 P. 278 (1896); Paddack v. Staley, 24 Colo. 188, 49 P. 281 (1897); Merwin v. Bd. of Comm'rs, 29 Colo. 169, 67 P. 285 (1901); Parsons v. People, 32 Colo. 221, 76 P. 666 (1904); Rio Grande Sampling Co. v. Catlin, 40 Colo. 450, 94 P. 323 (1907); City & County of Denver v. Rogers, 46 Colo. 479, 104 P. 1042 (1909); Cary v. Mine & Smelter Supply Co., 53 Colo. 556, 129 P. 230 (1912); Colo. & S. Ry. v. Davis, 21 Colo. App. 1, 120 P. 1048 (1912); Stanley-Thompson Liquor Co. v. People, 63 Colo. 456, 168 P. 750 (1917); Koen v. Ft. Bent Ditch Co., 67 Colo. 34, 185 P. 653 (1919); People ex rel. Setters v. Lee, 72 Colo. 598, 213 P. 583 (1923); Averch v. City & County of Denver, 78 Colo. 246, 242 P. 47 (1925); Roark v. People, 79 Colo. 181, 244 P. 909 (1926); Miller v. Miller, 79 Colo. 609, 247 P. 567 (1926); Dwyer v. People, 82 Colo. 574, 261 P. 858 (1927); Newton v. Bd. of Comm'rs, 86 Colo. 446, 282 P. 1068 (1929); Ingles v. People, 90 Colo. 51, 6 P.2d 455 (1931); Moore v. Chalmers-Galloway Live Stock Co., 90 Colo. 548, 10 P.2d 950 (1932); Allen v. Bailey, 91 Colo. 260, 14 P.2d 1087 (1932); Hinderlider v. Everett, 92 Colo. 159, 19 P.2d 211 (1933); Bushnell v. People, 92 Colo. 174, 19 P.2d 197 (1933); Miller v. Bd. of County Comm'rs, 92 Colo. 425, 21 P.2d 714 (1933); Ingles v. People, 92 Colo. 518, 22 P.2d 1109 (1933); Fleming v. McFerson, 94 Colo. 1, 28 P.2d 1013 (1933); United States Bldg. & Loan Ass'n v. McClelland, 6 F. Supp. 299 (D. Colo. 1934); Johnson v. McDonald, 97 Colo. 324, 49 P.2d 1017 (1935); Hollenbeck v. City & County of Denver, 97 Colo. 370, 49 P.2d 435 (1935); S. H. Kress & Co. v. Johnson, 16 F. Supp. 5 (D. Colo.), aff'd mem., 299 U.S. 511, 57 S. Ct. 49, 81 L.Ed. 378, reh'g denied, 299 U.S. 623, 57 S. Ct. 229, 81 L.Ed. 458 (1936); Pub. Utils. Comm'n v. Manley, 99 Colo. 153, 60 P.2d 913 (1936); People v. Harris, 104 Colo. 386, 91 P.2d 989, 122 A.L.R. 1034 (1939); Gordon v. Wheatridge Water Dist., 107 Colo. 128, 109 P.2d 899 (1941); Atkinson v. City & County of Denver, 118 Colo. 322, 195 P.2d 977 (1948); Perkins v. King Soopers, Inc., 122 Colo. 263, 221 P.2d 343 (1950); Anderson v. Town of Westminster, 125 Colo. 408, 244 P.2d 371 (1952); Town of Greenwood Vill. v. District Court, 138 Colo. 283, 332 P.2d 210 (1958); Perl-Mack Civic

Ass'n v. Bd. of Dirs. of Baker Metro. & San. Dist., 140 Colo. 371, 344 P.2d 685 (1959); Castro v. People, 140 Colo. 493, 346 P.2d 1020 (1959); Lucas v. District Court, 140 Colo. 510, 345 P.2d 1064 (1959); Overhill Corp. v. City of Grand Junction, 186 F. Supp. 69 (D. Colo. 1960); Bernard v. Tinsley, 144 Colo. 244, 355 P.2d 1098 (1960); People v. Albrecht, 145 Colo. 202, 358 P.2d 4 (1960); Donnell v. Indus. Comm'n, 149 Colo. 228, 368 P.2d 777 (1962); Bitner v. Tinsley, 151 Colo. 367, 378 P.2d 203 (1963); Leach v. Farnsworth & Chambers Co., 231 F. Supp. 157 (D. Colo. 1964); City of Colo. Springs v. Kitty Hawk Dev. Co., 154 Colo. 535, 392 P.2d 467 (1964); Finn v. Indus. Comm'n, 165 Colo. 106, 437 P.2d 542 (1968); Washington v. People, 169 Colo. 323, 455 P.2d 656 (1969); Colo. Chiropractic Ass'n v. State, 171 Colo. 395, 467 P.2d 795 (1970); Dunbar v. Hoffman, 171 Colo. 481, 468 P.2d 742 (1970); People v. Schmidt, 172 Colo. 285, 473 P.2d 698 (1970); Allardice v. Adams County, 173 Colo. 133, 476 P.2d 982 (1970); Aylor v. Aylor, 173 Colo. 294, 478 P.2d 302 (1970); Davis v. Bd. of Educ. for Sch. Dist. No. 50, 335 F. Supp. 73 (D. Colo. 1971); Miller v. Indus. Comm'n, 173 Colo. 476, 480 P.2d 565 (1971); People v. Brown, 174 Colo. 513, 485 P.2d 500 (1971); Wigington v. State Home & Training Sch., 175 Colo. 159, 486 P.2d 417 (1971); Buder v. Reynolds, 175 Colo. 628, 486 P.2d 432 (1971); Sergent v. People, 177 Colo. 354, 497 P.2d 983 (1972); Constantine v. People, 178 Colo. 16, 499 P.2d 309 (1972); Pomponio v. City of Westminster, 178 Colo. 80, 496 P.2d 999 (1972); People v. Armstead, 179 Colo. 387, 501 P.2d 472 (1972); Covell v. Douglas, 179 Colo. 443, 501 P.2d 1047 (1972), cert. denied, 412 U.S. 952, 93 S. Ct. 3000, 37 L.Ed.2d 1006 (1973); Cave v. Colo. Dept. of Rev., 31 Colo. App. 185, 501 P.2d 479 (1972); Stjernholm v. Mazaheri, 180 Colo. 353, 506 P.2d 155 (1973); Duprey v. Anderson, 184 Colo. 70, 518 P.2d 807 (1974); Music City, Inc. v. Estate of Duncan, 185 Colo. 245, 523 P.2d 983 (1974); C.C.C. v. District Court, 188 Colo. 437, 535 P.2d 1117 (1975); Lancaster v. C. F. & I. Steel Corp., 190 Colo. 463, 548 P.2d 914 (1976); Jones v. Hildebrandt, 191 Colo. 1, 550 P.2d 339 (1976), cert. denied, 432 U.S. 183, 97 S. Ct. 2283, 53 L.Ed.2d 209 (1977); Wasson v. Hogenson, 196 Colo. 183, 583 P.2d 914 (1978); Broughall v. Black Forest Dev. Co., 196 Colo. 503, 593 P.2d 314 (1978); Associated Dry Goods Corp. v. City of Arvada, 197 Colo. 491, 593 P.2d 1375 (1979); Howell v. Woodlin Sch. Dist. R-104, 198 Colo. 40, 596 P.2d 56 (1979); People v. DelGuidice, 199 Colo. 41, 606 P.2d 840 (1979); People in Interest of Baby Girl D., 44 Colo. App. 192, 610 P.2d 1086 (1980); Colgan v. State, Dept. of Rev., 623 P.2d 871 (Colo. 1981); People in Interest of C.M., 630 P.2d 593 (Colo. 1981); People v. Shaver, 630 P.2d 600 (Colo. 1981); People v. Brown, 632 P.2d 1025 (Colo. 1981); People v. Christian, 632 P.2d 1031 (Colo. 1981); In re Estate of Daigle, 634 P.2d 71 (Colo. 1981); People v. Noble, 635 P.2d 203 (Colo. 1981); Bollier v. People, 635 P.2d 543 (Colo. 1981); Clasby v. Klapper, 636 P.2d 682 (Colo. 1981); In re P.R. v. District Court, 637 P.2d 346 (Colo. 1981); People v. Smith, 638 P.2d 1 (Colo. 1981); People v. Padilla, 638 P.2d 15 (Colo. 1981); People v. Flowers, 644 P.2d 916 (Colo.), appeal dismissed for want of substantial federal question, 459 U.S. 803, 103 S. Ct. 25, 74 L.Ed.2d 41 (1982); Coquina Oil Corp. v. Harry Kourlis Ranch, 643 P.2d 519 (Colo. 1982); People v. Gallegos, 644 P.2d 920 (Colo. 1982); People v. Mann, 646 P.2d 352 (Colo. 1982); People v. Shaw, 646 P.2d 375 (Colo. 1982); People v. Raffaelli, 647 P.2d 230 (Colo. 1982); People in Interest of A.M.D., 648 P.2d 625 (Colo. 1982); Spelts v. Klausing, 649 P.2d 303 (Colo. 1982); People v. Campisi, 649

P.2d 1053 (Colo. 1982); Fleet Leasing, Inc. v. District Court, 649 P.2d 1074 (Colo. 1982); Smith v. Charnes, 649 P.2d 1089 (Colo. 1982); Hurricane v. Kanover, Ltd., 651 P.2d 1218 (Colo. 1982); Hendershott v. People, 653 P.2d 385 (Colo. 1982), cert. denied, 459 U.S. 1225, 103 S. Ct. 1232, 75 L.Ed.2d 466 (1983); People v. Aragon, 653 P.2d 715 (Colo. 1982); Pub. Serv. Co. v. Pub. Utils. Comm'n, 653 P.2d 1117 (Colo. 1982); People in Interest of O.E.P., 654 P.2d 312 (Colo. 1982); People v. White, 656 P.2d 690 (Colo. 1983); People v. Turman, 659 P.2d 1368 (Colo. 1983); Dawson v. Pub. Employees' Retirement Ass'n, 664 P.2d 702 (Colo. 1983); People v. Velasquez, 666 P.2d 567 (Colo. 1983), appeal dismissed for want of substantial federal question, 465 U.S. 1001, 104 S. Ct. 989, 79 L.Ed.2d 223 (1984); People v. Montoya, 667 P.2d 1377 (Colo. 1983); DuPuis v. Charnes, 668 P.2d 1 (Colo. 1983); People v. Moyer, 670 P.2d 785 (Colo. 1983); People v. Owens, 670 P.2d 1233 (Colo. 1983); People ex rel. Faulk v. District Court ex rel. County of Fremont, 673 P.2d 998 (Colo. 1983); Loup-Miller Const. Co. v. City & County of Denver, 676 P.2d 1170 (Colo. 1984); People v. Norman, 703 P.2d 1261 (Colo. 1985); Williams v. White Mountain Const. Co., 749 P.2d 423 (Colo. 1988); GTE Sprint Commc'ns v. Pub. Utils. Comm'n, 753 P.2d 212 (Colo. 1988); Dickey v. Adams Cty. Sch. Dist. No. 50, 773 P.2d 585 (Colo. App. 1988), aff'd, 791 P.2d 688 (Colo. 1990); Estate of Stevenson v. Hollywood Bar, 832 P.2d 718 (Colo. 1992); People v. Young, 859 P.2d 814 (Colo. 1993).

II. DEFINITIONS.

"Due process of law" and "law of the land" have same meaning. The phrases "due process of law" and "law of the land", although verbally different, express the same thought, and the meaning is the same in every case. In re Lowrie, 8 Colo. 499 (1885).

"Law of the land". By the "law of the land" is clearly intended the general law; a law which hears before it condemns; which proceeds upon inquiry, and renders judgment only after trial. The meaning is that every citizen shall hold his life, his liberty, property and immunities under the protection of the general rules which govern society. In re Lowrie, 8 Colo. 499, 9 P. 489 (1885).

"Law" in the expression "due process of law" does not mean that whatever process is provided by the general assembly shall be the measure of the protection provided by the due process clause. Such a construction would render the guaranty mere nonsense for it would then mean no state shall deprive a person of life, liberty, or property, unless the state shall choose to do so. People ex rel. Juhan v. District Court, 165 Colo. 253, 439 P.2d 741 (1968).

"Life" and "liberty". In interpreting constitutional provisions providing for the right to enjoy life and liberty, the right of personal liberty consists in the power of locomotion--to go where one pleases, and when, and to do that which may lead to one's business or pleasure, only so far restrained as the rights of others may make it necessary for the welfare of all other citizens. Dominquez v. City & County of Denver, 147 Colo. 233, 363 P.2d 661 (1961).

"Liberty", as used in this section and section 3 of this article, connotes far more than mere freedom from physical restraint; it is broad enough to protect one from governmental interference in the exercise of his intellect, in the formation of opinions, in the expression of them and in action or inaction dictated by his judgment, or choice in countless matters of purely personal concern. Zavilla v. Masse, 112 Colo. 183, 147 P.2d 823 (1944).

"Property" defined. The term "property" as used in the due process clause of the state constitution, and protected by the federal constitution, includes the right of the citizen to make any legitimate use or disposition of the asset owned. City of Englewood v. Apostolic Christian Church, 146 Colo. 374, 362 P.2d 172 (1961).

Property is more than the mere thing which a person owns. It is elemental that it includes the right to acquire, use, and dispose of it. The constitution protects these essential attributes of property. City & County of Denver v. Denver Buick, Inc., 141 Colo. 121, 347 P.2d 919 (1959).

The term "property" within the meaning of the due process clause includes the right to make full use of the property which one has the inalienable right to acquire. People v. Nothaus, 147 Colo. 210, 363 P.2d 180 (1961).

III. DUE PROCESS.

A. Generally.

1. Standards for Determining Due Process.

Due process standards of justice are not authoritatively formulated as specifics. Toland v. Strohl, 147 Colo. 577, 364 P.2d 588 (1961).

Test of due process. An act of the general assembly which arbitrarily destroys or impairs the right of the individual to the free use and enjoyment of his property lawfully acquired, and permits price fixing for the benefit of a special group, is lacking in due process, and unconstitutional. Olin Mathieson Chem. Corp. v. Francis, 134 Colo. 160, 301 P.2d 139 (1956).

Due process of law must be tested by those principles of civil liberty and constitutional protection which have become established in our system of laws. People ex rel. Juhan v. District Court, 165 Colo. 253, 439 P.2d 741 (1968).

In addressing due process issues, courts employ a bifurcated analysis requiring an initial delineation of the nature and extent of the asserted interest and, in the event that interest is constitutionally protected, an evaluation of the adequacy of the challenged process. People v. Chavez, 629 P.2d 1040 (Colo. 1981); Watso v. Dept. of Soc. Servs., 841 P.2d 299 (Colo. 1992).

Due process is flexible and calls for such procedural protections as the particular situation demands. People v. Taylor, 618 P.2d 1127 (Colo. 1980).

Due process is a flexible standard and recognizes that not all situations calling for procedural safeguards call for the same kind of procedure. People v. Chavez, 629 P.2d 1040 (Colo. 1981); People v. Lamb, 732 P.2d 1216 (Colo. 1987).

The due process clauses of the federal and state constitutions protect individuals and entities from immediate governmental interference with present property interests - not possible governmental interference with potential property interests. Watso v. Dept. of Soc. Servs., 841 P.2d 299 (Colo. 1992).

Thus a person claiming an unfair governmental deprivation of an interest in property must possess more than an anticipation of ownership of property. Watso v. Dept. of Soc. Servs., 841 P.2d 299 (Colo. 1992).

When the state seeks to terminate the relationship between a parent and child, it must comply with the due process clause, which requires a fundamentally fair procedure. People ex rel. T.D., 140 P.3d 205 (Colo. App.), cert. denied, 549 U.S. 1020, 127 S. Ct. 564, 166 L. Ed. 2d 411, and 549 U.S. 1024, 127 S. Ct. 565, 166 L. Ed. 2d 419 (2006).

For procedural due process purposes, fairness is assessed by application of the three-factor test set forth in Mathews v. Eldridge, 424 U.S. 319, 335, 96 S. Ct. 893, 903, 47 L. Ed. 2d 18 (1976), which requires consideration of three distinct factors: (1) The private interest that will be affected by the official action; (2) the risk of an erroneous deprivation of such interest through the procedures used and the probable value, if any, of additional or substitute procedural safeguards; and (3) the state interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail. People ex rel. T.D., 140 P.3d 205 (Colo. App.), cert. denied, 549 U.S. 1020, 127 S. Ct. 564, 166 L. Ed. 2d 411, and 549 U.S. 1024, 127 S. Ct. 565, 166 L. Ed. 2d 419 (2006).

2. Application of General Due Process Standard.

Statutory presumptions. The constitutional validity of a criminal presumption under the due process clause depends upon the existence of a rational connection between the fact to be inferred and the proven fact. People v. Seven Thirty-five East Colfax, Inc., 697 P.2d 348 (Colo. 1985).

Procedural due process is not violated merely because a single agency investigates, charges, and then adjudicates a claim. There is a presumption of integrity, honesty, and impartiality in favor of those who serve in quasi-judicial capacities and the presumption cannot be overcome absent a personal, financial, or official stake in the decision that evidences a conflict of interest on the part of the decision-maker. Meyerstein v. City of Aspen, 282 P.3d 456 (Colo. App. 2011).

Due process and equal protection rights under the fifth and fourteenth amendments to the U.S. Constitution not violated by denying defendant a free transcript of prior proceedings where transcript would have offered relatively little value to defendant in the presentation of an effective defense. Matthews v. Price, 83 F.3d 328 (10th Cir. 1996).

Due process and equal protection rights under the fifth and fourteenth amendments to the U.S. Constitution not violated by denying defendant an investigator or a psychiatric expert at state expense where defendant did not demonstrate that such services were necessary to an adequate defense or that the court's refusal to appoint such experts substantially prejudiced his defense. Matthews v. Price, 83 F.3d 328 (10th Cir. 1996).

There was no violation of due process under this section due to the murder of a woman by her husband in a county justice center. Duong v. Arapahoe County Comm'rs, 837 P.2d 226 (Colo. App. 1992).

Due process not violated where police report concerning basis of conclusion that driver was under the influence of marijuana was admitted into evidence but where officer who prepared report was not present at revocation hearing since report was available for discovery before hearing and driver could have called officer to testify. Halter v. Dept. of Rev., 857 P.2d 535 (Colo. App. 1993).

No violation of due process rights where court failed to instruct the jury on which of two acts constituted tampering with a witness. Prosecution specifically identified one of the two acts and defendant raised the issue for the first time on appeal. People v. Scialabba, 55 P.3d 207 (Colo. App. 2002).

Two-day suspension with pay constituted de minimis deprivation of a property right, and due process protections were not implicated. Gabel v. Jefferson County Sch. Dist. R-1, 824 P.2d 26 (Colo. App.

1991).

Hearing officer did not deprive employer and insurer of due process in denying their request either to depose experts in different city even though, as a result, experts did not testify since deposition should have been taken in advance and employer and insurer were advised 60 days in advance of hearing date that all evidence was to be presented at that time. IPMC Transp. v. Indus. Claim Appeals Office, 753 P.2d 803 (Colo. App. 1988).

Solatium statute that merely requires a hearing to determine liability but not extent of damages does not deny procedural due process. Dewey v. Hardy, 917 P.2d 305 (Colo. App. 1995).

Fundamental fairness does not require that officers inform suspects of the evidentiary effect of a decision whether to perform roadside sobriety maneuvers when constitutional rights or statutory consequences are not implicated by the choice. McGuire v. People, 749 P.2d 960 (Colo. 1988).

Defendant, who was convicted of vehicular assault while under the influence, vehicular assault by driving recklessly, and driving under the influence, was not denied her right to procedural due process by the prosecution's failure to preserve a second sample of her breath at the time the breathalyzer test was administered to her or to keep the victim's car in storage. Defendant failed to meet the test of materiality set forth in People v. Greathouse (742 P.2d 334 (Colo. 1987)) or the test for bad faith set forth in Arizona v. Youngblood (488 U.S. 51 (1988)). People v. Acosta, 860 P.2d 1376 (Colo. App. 1993).

Regulatory scheme for the control of outdoor advertising which imposed permit requirement and set limitations on placement of roadside signs is not violative of due process, but is reasonably related to the achievement of a legitimate state interest. Orsinger Outdoor Adv. v. State Dept. of Hwys., 752 P.2d 55 (Colo. 1988).

Members of the military are precluded from suing their superior officers for recovery of damages for a claimed violation of state constitutional rights. Thus, a technician in the Colorado Air National Guard was precluded from suing for wrongful termination. Williams v. Colo. Air Nat'l Guard, 821 P.2d 922 (Colo. App. 1991).

A public officer has no property or vested interest in public office, therefore, procedural due process requirements are not applicable when removing a public officer from office. Wilkerson v. State, 830 P.2d 1121 (Colo. App. 1992).

Due process was denied to father whose name was placed on child abuse central registry where the father was denied the opportunity to confront child witness face-to-face at administrative hearing concerning the expungement of the father's name from the registry. Absent finding by the administrative law judge that the witness would suffer harm, the father had the right to confront his accuser. Jefferson v. Colo. Dept. of Soc. Servs., 874 P.2d 408 (Colo. App. 1993).

A public employee who has a vested right to continue in his or her employment may not be deprived of that employment for reasons that have no rational connection with the employment requirements or goals and that are so arbitrary as to offend notions of fairness. Givan v. City of Colo. Springs, 876 P.2d 27 (Colo. App. 1993).

Procedure that permits college president to both initiate and resolve employee dismissal denies employee's right to procedural due process. Saxe v. Bd. of Trs. of Metro. State Coll., 179 P.3d 67 (Colo. App. 2007).

Section 16-8-110 (1) declared unconstitutional as violation of due process to the extent that it allows an accused to be tried on the issue of insanity notwithstanding a judicial finding that the accused is incompetent to proceed. Coolbroth v. District Court, 766 P.2d 670 (Colo. 1988).

Trial court violated defendant's right to due process by imposing a sentence in the aggravated range when defendant was advised only of the possibility of a sentence in the presumptive range at the providency hearing. Defendant's guilty plea, therefore, was not entered knowingly and voluntarily. People v. Corral, 179 P.3d 837 (Colo. App. 2007).

Trial court violated due process when it took no corrective action after an anonymous juror submitted a note demonstrating a presumption of the defendant's guilt prior to hearing evidence. The error was not harmless beyond a reasonable doubt under the constitutional error standard. People v. Harmon, 284 P.3d 124 (Colo. App. 2011).

No constitutional infirmity in capital sentencing scheme. By requiring that the jury find both that a statutory aggravator has been proven beyond a reasonable doubt and that mitigation does not outweigh aggravation before a defendant is even eligible to receive the death penalty, Colorado's sentencing scheme is sufficiently reliable to pass constitutional muster. Dunlap v. People, 173 P.3d 1054 (Colo. 2007), cert. denied, 552 U.S. 1105, 128 S. Ct. 882, 169 L. Ed. 2d 740 (2008).

"Clear and convincing" evidence standard constitutional. The standard of proof ("clear and convincing" evidence) fixed by the general assembly in § 27-10-111 (1) meets the minimum standards of procedural due process. People v. Taylor, 618 P.2d 1127 (Colo. 1980).

Ample evidence of defendants' mistreatment and neglect of cattle supported trial court's decision to permanently enjoin defendants from owning, managing, controlling, or otherwise possessing livestock. The permanent injunction was not overly broad in light of the undisputed facts. Nor did the injunction violate defendants' due process rights under this section and the United States constitution because the injunction served the legitimate public interest of protecting livestock from mistreatment and neglect. Stulp v. Schuman, 2012 COA 144, __ P.3d __.

No substantive due process violation where prosecutors select which of the juveniles who meet the statutory requirement for direct filing will be filed upon in district court. It is a valid exercise of prosecutorial discretion and it is not unreasonable to treat certain offenders differently from others. People v. Hughes, 946 P.2d 509 (Colo. App. 1997).

No substantive due process violation where the mandatory parole scheme imposes a more severe sanction on non-sex offenders than on sex offenders whose crimes are in the same felony classification. People v. Harper, 111 P.3d 482 (Colo. App. 2004).

Neither due process nor equal protection concerns are implicated by a determination of accrued child support debt of an absent parent when there has been no prior order of support where obligor parent was notified and attended all hearings that were conducted to determine child support and the judgment for arrearages and where such parent did not establish that he was treated differently from similarly situated parents. People ex rel. J.A.E.S., 7 P.3d 1021 (Colo. App. 2000).

To satisfy due process concerns, the court must advise a defendant of the direct consequences of his or her guilty plea, but the court

need not advise the defendant of collateral consequences. The loss of the right to vote while imprisoned is a collateral consequence for which no advisement is required. People v. Boespflug, 107 P.3d 1118 (Colo. App. 2004).

To satisfy procedural due process, a "simple unelaborate statement" standard requires a hearing officer to issue a decision stating, at a minimum, the reasons for the decision and the evidence relied upon. Saxe v. Bd. of Trs. of Metro. State Coll., 179 P.3d 67 (Colo. App. 2007).

Parole board's discretion to impose maximum length of reincarceration does not violate due process. Since the reincarceration does not constitute a new sentence, there is no basis for a due process challenge. People v. Barber, 74 P.3d 444 (Colo. App. 2003).

Due process does not require that an inmate receive an additional hearing on his sexual misconduct or reclassification on the sexual violence scale when the reclassification is based on a prior disciplinary hearing conviction for a code of penal discipline offense of a sexual nature. The previous hearing provided sufficient due process protections. Reeves v. Colo. Dept. of Corr., 155 P.3d 648 (Colo. App. 2007).

Trial court created a liberty interest in a potentially reduced sentence in defendant's favor because, in mandatory language, it granted a suspension of 10 years from defendant's 25-year sentence upon defendant's successful completion of sex offender treatment. While the trial court had discretion in determining the original sentence to impose upon defendant, the court exercised that discretion in a way as to create a legitimate claim of entitlement to a 10-year suspension when and if defendant could demonstrate successful completion of sex offender treatment. Defendant was entitled, therefore, to due process protections before the trial court modified the sentence. The trial court imposed the modified sentence in an illegal manner and therefore erred in denying defendant's Crim. P. 35(a) motion. People v. Sisson, 179 P.3d 193 (Colo. App. 2007).

The Colorado Clean Indoor Air Act, part 2 of article 14 of title 25, does not violate substantive due process by imposing criminal liability on bar and restaurant owners for the acts of others. The plain language of subsection (1) prohibits both smoking by patrons and the allowing of smoking by bar and restaurant owners. The act does not criminalize owners for the acts of others. It criminalizes their own actions allowing their patrons to smoke. Coal. for Equal Rights v. Owens, 458 F. Supp. 2d 1251 (D. Colo. 2006), aff'd sub nom. Coal. for Equal Rights, Inc. v. Ritter, 517 F.3d 1195 (10th Cir. 2008).

Benefits received by individuals at state mental hospital from veterans administration and the Colorado old age pension program may be applied to cover costs of care at the hospital under § 27-12-104. Therefore, there was neither an unlawful taking nor any violation of their due process rights. In re Estate of Nau, 183 P.3d 626 (Colo. App. 2007).

B. Jurisdiction.

Requirement of minimum contacts for in personam actions. Due process requires only that in order to subject a defendant to a judgment in personam, if he be not present within the territory of the forum, he have certain minimum contacts with it such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice. Clemens v. District Court, 154 Colo. 176, 390 P.2d 83 (1964); Knight v. District Court, 162 Colo. 14, 424 P.2d 110 (1967).

The due process clause does

not contemplate that a state may make binding a judgment in personam against an individual or corporate defendant with which the state has no contacts, ties, or relations. Clemens v. District Court, 154 Colo. 176, 390 P.2d 83 (1964).

Relationship with, and reliance upon, nonresident attorney may allow exercise of in personam jurisdiction. A professional relationship of substantial duration and a client's claimed reliance upon her nonresident attorney's advice with respect to the client's financial interests and the attorney's failure to communicate with the client or to take any action in regard to the client's interests may be productive of adverse consequences to the client in this state, so as to provide a sufficient connection and render reasonable the exercise of in personam jurisdiction over the nonresident. Waterval v. District Court, 620 P.2d 5 (Colo. 1980), cert. denied, 452 U.S. 960, 101 S. Ct. 3108, 69 L.Ed.2d 971 (1981).

C. Procedural Due Process - Notice and Hearing.

1. Requirements for Notice.

Law reviews. For article, "Extraterritorial Service of Municipally Owned Water Works in Colorado", see 21 Rocky Mt. L. Rev. 56 (1948). For article, "Notice and Opportunity to Be Heard", see 29 Dicta 432 (1952). For note, "Right of Cross-Examination Before Administrative Agencies in Colorado", see 29 Dicta 446 (1952). For article, "Colorado's 'Short-Arm' Jurisdiction", see 37 U. Colo. L. Rev. 309 (1965). For comment on Clemens v. District Court appearing below, see 43 Den. L.J. 215 (1966).

Elements of procedural due process. The elements of the constitutional guaranty of due process in its procedural aspect are notice and an opportunity to be heard or defend before a competent tribunal in an orderly proceeding adapted to the nature of the case; also, to have the assistance of counsel, if desired, and a reasonable time for preparation for trial. Colo. State Bd. of Med. Exam'rs v. Palmer, 157 Colo. 40, 400 P.2d 914 (1965).

The requirements of procedural due process have been met when the individual concerned is under the court's jurisdiction and has been given an opportunity to be heard, regardless of whether he takes advantage of it. McFadzean v. Lohr, 152 Colo. 31, 380 P.2d 20 (1963).

Procedural due process requires that in addition to a fair and open hearing, there must be due notice and an opportunity to be heard, and the procedure must be consistent with the essentials of a fair trial, and the agency must act upon evidence and not arbitrarily. Pub. Utils. Comm'n v. Colo. Motorway, Inc., 165 Colo. 1, 437 P.2d 44 (1968); Buckingham v. Pub. Utils. Comm'n, 180 Colo. 267, 504 P.2d 677 (1972).

Due process implies timely notice and reasonable opportunity to defend rights. Due process of law within the meaning of this section includes law in its regular course of administration through courts of justice; it also implies that any individual whose life, liberty, or property may be affected by any judicial proceeding shall have timely notice thereof and reasonable opportunity to be heard in defense of his rights. In re Dolph, 17 Colo. 35, 28 P. 470 (1891); Woodson v. Ingram, 173 Colo. 65, 477 P.2d 455 (1970).

Due process in having one's rights and duties judicially determined contemplates notice of the proceedings. Michels v. Clemens, 140 Colo. 82, 342 P.2d 693 (1959); Clemens v. District Court, 154 Colo. 176, 390 P.2d 83 (1964).

Due process under applicable rules requires notice, by actual or

substituted service of process. Weber v. Williams, 137 Colo. 269, 324 P.2d 365 (1958).

The essence of procedural due process is fundamental fairness. This embodies adequate advance notice and an opportunity to be heard prior to state action resulting in deprivation of a significant property interest. City & County of Denver v. Eggert, 647 P.2d 216 (Colo. 1982).

Procedural due process requires that a person with a possessory interest in property seized by the state must be afforded an opportunity for a hearing and adequate notice of the hearing. Patterson v. Cronin, 650 P.2d 531 (Colo. 1982).

Proper notice depends on facts and purpose of investigation. The question of what is proper notice, or of what constitutes a specific designation of the issue raised or charges made, depends necessarily upon the facts of each case, the type of investigation being conducted, the violations alleged, and the penalty or order sought to be imposed. White v. Davis, 163 Colo. 122, 428 P.2d 909 (1967); Pub. Utils. Comm'n v. Colo. Motorway, Inc., 165 Colo. 1, 437 P.2d 44 (1968).

Sufficiency of notice. The constitutional sufficiency of the content of a notice to interested parties must depend on the particular facts and circumstances of the case, and therefore the court's inquiry must focus on the reasonableness of the notice, giving due regard to the subject with which the statute deals and the practicalities and peculiarities of the case. Closed Basin Landowners Ass'n v. Rio Grande, 734 P.2d 627 (Colo. 1987).

Person must be apprised of object of hearing. Where the purpose of the proceeding is or may be equivocal from the vantage of the person to be affected, it is the duty of the court to apprise him of the object of the hearing. Austin v. City & County of Denver, 156 Colo. 180, 397 P.2d 743 (1964); People v. Barron, 677 P.2d 1370 (Colo. 1984).

Procedures for notifying defendants, whether owners, drivers, nonresidents or residents, must be such as are reasonably calculated to apprise the defendants of the action pending against them and to afford to them an opportunity to be heard. Clemens v. District Court, 154 Colo. 176, 390 P.2d 83 (1964).

Where a judgment against a defendant under an ordinance may include imprisonment in the first instance, the failure to file a complaint giving adequate notice of the charge is inexcusable. City of Canon City v. Merris, 137 Colo. 169, 323 P.2d 614 (1958); Garcia v. City of Pueblo, 176 Colo. 96, 489 P.2d 200 (1971).

Notice to party's attorney. If the attorney through no fault of his own is denied notice of the critical determination in the case, and by reason thereof fails to take procedural steps necessary to preserve his client's rights, fundamental unfairness results. Procedural due process cannot be satisfied when counsel, upon whom a client is entitled to rely, is not notified of decisions affecting his client's interests. Mountain States Tel. & Tel. Co. v. Dept. of Labor & Emp., 184 Colo. 334, 520 P.2d 586 (1974); Hall v. Home Furniture Co., 724 P.2d 94 (Colo. App. 1986).

Procedural due process may extend statutory or regulatory notice requirements. Hall v. Home Furniture Co., 724 P.2d 94 (Colo. App. 1986).

Actions in rem or quasi in rem require notice. In order that a valid judgment may be rendered in a proceeding in rem or quasi in rem, every person who has an interest in the res must have legal notice of the proceeding and an opportunity to be heard. Weber v. Williams, 137 Colo. 269, 324 P.2d 365 (1958).

Ex parte adjudication without notice is not due process.

Dalton v. People ex rel. Moors, 146 Colo. 15, 360 P.2d 113 (1961).

Absence of notice requirement in statute does not violate due process. Where due process requires notice of hearing to terminate parent-child relationship, and parent had been given adequate notice of the hearing, the absence of a notice requirement in the statute is not a constitutional infirmity. People in Interest of M.M., 726 P.2d 1108 (Colo. 1986).

Rights to notice and hearing prior to civil judgment are subject to waiver. Thus, the parties to a contract may agree in advance to submit a claim to arbitration and to waive any further notice and hearing incident to the entry of judgment on the award. Due process of law requires no more than that the waiver be voluntarily, knowingly, and intelligently made. Columbine Valley Constr. Co. v. Bd. of Dirs., 626 P.2d 686 (Colo. 1981).

And contract manifesting waiver under C.R.C.P. 109 constitutional. When the provisions of a construction contract clearly manifest that waiver which permits the entry of judgment upon the ex parte filing of an arbitration award under C.R.C.P. 109, it is consistent with due process of law. Columbine Valley Constr. Co. v. Bd. of Dirs., 626 P.2d 686 (Colo. 1981).

2. Elements for Hearing.

The essence of due process is fair procedure, but no particular or perfect procedure is required so long as the elements of opportunity for hearing and judicial review are present. Norton v. Colo. State Bd. of Med. Exam'rs, 821 P.2d 897 (Colo. App. 1991); Colo. State Bd. of Med. Exam'rs v. Hoffner, 832 P.2d 1062 (Colo. App. 1992).

Due process is satisfied by providing adequate notice of opposing claims, a reasonable opportunity to defend against those claims, and a fair and impartial decision. Colo. State Bd. of Med. Exam'rs v. Hoffner, 832 P.2d 1062 (Colo. App. 1992).

Due process is satisfied where a lessor has the ability to unconditionally exempt property from the statutory tax liens resulting from a lessee's conduct pursuant to §§ 39-26-117 and 39-22-604. Burtkin Assocs. v. Tipton, 845 P.2d 525 (Colo. 1993).

Because the basic requirement of due process is fundamental fairness, the adequacy of particular procedural protections necessarily must be considered in view of the circumstances of each particular case. Watso v. Dept. of Soc. Servs., 841 P.2d 299 (Colo. 1992).

To determine whether a particular statutory process is fundamentally fair, a balancing test is employed requiring consideration of three factors: (1) The importance of the individual interest at stake; (2) the weight of the governmental interest in retaining the challenged procedures, including the interest in avoiding increased administrative and fiscal burdens; and (3) the degree to which proposed alternative procedures will lessen the risk of an erroneous deprivation of the individual's liberty or property. Watso v. Dept. of Soc. Servs., 841 P.2d 299 (Colo. 1992).

Due process always implies hearing or trial and judgment. It secures the individual from the arbitrary exercise of the powers of government, unrestrained by the established principles of private rights and distributive justice. People v. Max, 70 Colo. 100, 198 P. 150 (1921); La Plata River & Cherry Creek Ditch Co. v. Hinderlider, 93 Colo. 128, 25 P.2d 187 (1933), appeal dismissed for want of final judgment, 291 U.S. 650, 54 S. Ct. 557, 78 L.Ed. 1044 (1934).

An open, overt hearing before a fair tribunal is basic to due process. Austin v. City & County of

Denver, 156 Colo. 180, 397 P.2d 743 (1964).

When matters involving the intent of an attorney cited for contempt for not appearing in court at the designated time happened outside the presence of the court, it is necessary to hold a hearing on the contempt charge, for a procedure which accords with due process of law is essential. Harthun v. District Court, 178 Colo. 118, 495 P.2d 539 (1972).

And there cannot be due process of law unless party affected has his day in court. Due process of law requires that those parties whose interests are at stake be before the court. In re Senate Resolution, 12 Colo. 466, 21 P. 478 (1889); In re Priority of Legislative Appropriations, 19 Colo. 58, 34 P. 277 (1893); Hidden Lake Dev. Co. v. District Court, 183 Colo. 168, 515 P.2d 632 (1973).

But hearing for each member of public is not necessary where public action affects every citizen's rights. People ex rel. State Bd. of Equaliz. v. Hively, 139 Colo. 49, 336 P.2d 721 (1959).

Due process of law does not require every taxpayer to be individually consulted relative to the levying of a tax of a general nature upon his property. People ex rel. State Bd. of Equaliz. v. Hively, 139 Colo. 49, 336 P.2d 721 (1959); Bradfield v. Pueblo, 143 Colo. 559, 354 P.2d 612 (1960).

In most circumstances, a state may not deprive persons of protected liberty interests without first affording such persons meaningful opportunities to prevent such governmental action; however, when a state can demonstrate necessity for immediate action to protect a legitimate interest of its own, adequate post-deprivation hearings may satisfy due process standards. Watso v. Dept. of Soc. Servs., 841 P.2d 299 (Colo. 1992).

No violation of procedural due process where there was no hearing for juvenile to determine whether punishment as an adult was appropriate. Defendant had no liberty interest in being treated as a juvenile and the decision where to file charges was a function of prosecutorial discretion. People v. Hughes, 946 P.2d 509 (Colo. App. 1997).

Due process requires that civil litigants be allowed to secure assistance of counsel. Aspen Props. Co. v. Preble, 780 P.2d 57 (Colo. App. 1989).

Failure of law to require hearing not cured by holding one as matter of favor. When the validity of a law or ordinance is questioned upon the ground that it authorized the taking of property without satisfactory notice or hearing, the objection is not obviated by proof that a hearing has been had, as a matter of favor, in the case. Nor does it satisfy the requirements of this section that the assessment is fair and just. Brown v. City of Denver, 7 Colo. 305, 3 P. 455 (1884).

Quasi-judicial actions of administrative agencies require notice and hearing. Actions of administrative agencies which are quasi-judicial in nature involve the determination of juridical facts on which the impact of a law upon an individual depends. Therefore, procedural due process requires that an agency when acting in a quasi-judicial capacity give notice and afford a hearing to every affected individual. Shoenberg Farms, Inc. v. People ex rel. Swisher, 166 Colo. 199, 444 P.2d 277 (1968).

But quasi-legislative actions do not. Administrative agencies act in quasi-legislative capacities when pursuant to legislative authority they enact rules or promulgate orders to carry out the purposes of the legislation. Where an administrative agency is acting in a quasi-legislative capacity, procedural due process does not require notice and hearing.

Shoenberg Farms, Inc. v. People ex rel. Swisher, 166 Colo. 199, 444 P.2d 277 (1968).

Where an administrative or municipal agency is acting in a quasi-legislative rather than a quasi-judicial capacity, there is no constitutional requirement for notice and a hearing. Cottrell v. City & County of Denver, 636 P.2d 703 (Colo. 1981); State Farm v. City of Lakewood, 788 P.2d 808 (Colo. 1990).

If an administrative adjudication turns on questions of fact, due process requires that the parties be apprised of all the evidence to be submitted and considered, and that they be afforded a reasonable opportunity in which to confront adverse witnesses and to present evidence and argument in support of their position. Hendricks v. Indus. Claim Appeals Office, 809 P.2d 1076 (Colo. App. 1990).

The disregard of the express stipulation of the parties concerning the issue of medical improvement was a violation of procedural due process because claimant was not afforded the opportunity to submit evidence or argument in support of claimant's position. Hendricks v. Indus. Claim Appeals Office, 809 P.2d 1076 (Colo. App. 1990).

In reviewing a student expulsion hearing, the district court must examine the entire procedure used in the student's expulsion, including the board's exercise of discretion to provide a certain level of due process to the student. Nichols ex rel. Nichols v. DeStefano, 70 P.3d 505 (Colo. App. 2002), aff'd by operation of law, 84 P.3d 496 (Colo. 2004).

Rather than a narrow focus on particular factors, the court must examine the totality of the procedures afforded and their effect on the fundamental fairness of the hearing. Nichols ex rel. Nichols v. DeStefano, 70 P.3d 505 (Colo. App. 2002), aff'd by operation of law, 84 P.3d 496 (Colo. 2004).

To ensure the fairness of expulsion hearings, due process requires, at a minimum, notice and an opportunity to be heard in a meaningful manner. Nichols ex rel. Nichols v. DeStefano, 70 P.3d 505 (Colo. App. 2002), aff'd by operation of law, 84 P.3d 496 (Colo. 2004).

3. Application of Notice and Hearing Requirements.

Due process requires industrial commission to enact rules governing procedures under the subsequent injury fund in order to inform employers and claimants of the procedures for invoking participation of the subsequent injury fund in workmen's compensation proceedings. Sears, Roebuck & Co. v. Baca, 682 P.2d 11 (Colo. 1984).

Summary revocation of fireworks licenses was improper without the secretary of state making an initial finding of deliberate and wilful conduct because the licensee suffers an immediate loss of livelihood without due process protections of prior notice and formal hearing. Sanchez v. State, 730 P.2d 328 (Colo. 1986).

License conditions and revocation authorized by law and constitution. The gaming commission was within its statutory authority in conditioning a key employee license on payment of back child support and taxes and revoking such license for failure to comply with such conditions. The gaming commission did not abuse its discretion or violate due process in so revoking the license where the licensee was given a reasonable opportunity to comply with such conditions, failed to provide requested income tax returns, and made false statements of material fact to the investigator regarding the filing of tax returns and where the gaming commission provided the licensee with substantial evidentiary leeway, allowed the licensee to cross-examine and

impeach the investigator, and gave the licensee the opportunity to argue the proper standard for license revocation. Feeney v. Colo. Ltd. Gaming Control Comm'n, 890 P.2d 173 (Colo. App. 1994).

Liquor license is a property right entitled to the due process protections of notice and an opportunity to be heard. Price Haskel v. Denver Dept. of Excise & Licenses, 694 P.2d 364 (Colo. App. 1984).

Plaintiffs were constitutionally entitled to procedural due process because they had a property right, albeit not an unlimited one, in continued receipt of welfare benefits. Weston v. Cassata, 37 P.3d 469 (Colo. App. 2001).

Minimum procedural due process requirements to terminate property rights in continued employment is notice and opportunity for hearing appropriate to the nature of the case. Univ. of S. Colo. v. State Pers. Bd., 759 P.2d 865 (Colo. App. 1988).

Dismissed public employee with a protected property interest in continued employment is entitled to due process protection, including notice of the charges against him and an opportunity to respond prior to termination. Ellis v. City of Lakewood, 789 P.2d 449 (Colo. App. 1989).

A court violates an attorney's due process rights if the court does not provide reasonable notice of the charges and an opportunity to be heard when it delays final adjudication and sentencing on a contempt charge until after the trial that created the contempt situation. People v. Jones, 262 P.3d 982 (Colo. App. 2011).

Formality and procedural requisites for pre-termination hearing can vary and need not definitively resolve the propriety of the discharge but should be essentially a determination of whether there are reasonable grounds to serve as a basis for the discharge. Univ. of S. Colo. v. State Pers. Bd., 759 P.2d 865 (Colo. App. 1988).

Postdeprivation remedies available to defendant are not sufficient to bar due process claim of terminated employee under federal civil rights statute where actions of supervisor are not random and unauthorized, but rather anticipated and authorized by the governmental entity. Price v. Boulder Valley Sch. D. R-2, 782 P.2d 821 (Colo. App. 1989), aff'd in part and rev'd in part on other grounds, 805 P.2d 1085 (Colo. 1991).

Employee given sufficient notice by letter that informed the employee that he would have to defend himself against incidents which occasioned corrective action, in addition to more recent conduct, at meeting to determine final disposition of corrective action taken against employee. McLaughlin v. Levine, 727 P.2d 410 (Colo. App. 1986).

A workers' compensation claimant has a property interest in receiving treatment and supplies that may reasonably be needed at the time of injury or occupational disease and thereafter during the disability to cure and relieve the employee from the effects of the injury. Procedural due process is required before the benefits may be terminated. Colo. Comp. Ins. Auth. v. Nofio, 886 P.2d 714 (Colo. 1994).

Where persons did not allege that the inclusion of their names on the registry prescribed by § 19-3-313, had in any manner interfered with their present occupations, asserting instead that such inclusion could jeopardize future efforts by them to obtain employment in day care centers or licensed care facilities, their anticipations of potential job situations did not constitute property interests for purposes of constitutional due process protections. Watso v. Dept. of Soc. Servs., 841 P.2d 299 (Colo. 1992).

Ex parte order changing

custody of child without notice to a parent violates due process and is void. Ashlock v. District Court, 717 P.2d 483 (Colo. 1986).

Full and fair hearing denied where court, in the interest of administrative efficiency, limited both sides to six hours for the presentation of evidence and cross-examination, which resulted in wife only receiving 30 minutes to present her case-in-chief and precluded her from testifying. A court's interest in administrative efficiency may not be given precedence over a party's right to due process. In re Goellner, 770 P.2d 1387 (Colo. App. 1989).

Full and fair hearing not denied by clock trial and trial judge did not abuse discretion where the time limits imposed on the parties were not inadequate for the nature of the proceeding at the outset and did not become inadequate due to developments during the proceeding. Maloney v. Brassfield, 251 P.3d 1097 (Colo. App. 2010).

Due process does not require greater allocation of time during a clock trial for the party that bears the burden of proof. Maloney v. Brassfield, 251 P.3d 1097 (Colo. App. 2010).

Full and fair hearing not denied in dissolution proceeding where party's counsel, who had agreed at pretrial conference on length of case presentation, could not complete the presentation despite being given extra time. There was no due process violation because counsel's inability to complete case presentation was attributable to counsel's choices regarding the use of available time rather than any unwillingness of the court to allow each party adequate time. In re Yates, 148 P.3d 304 (Colo. App. 2006).

Confidential informant testimony in penal disciplinary hearings may remain confidential if allowing the accused access to the full statement would legitimately jeopardize the security of the institution. The code of penal discipline provides a sufficient basis to protect the rights of the accused to a fundamentally fair hearing by requiring an administrative law judge to make an independent determination that the confidential information is reliable and by requiring that the accused inmate receive an accurate summary of the confidential information. Mariani v. Colo. Dept. of Corr., 956 P.2d 625 (Colo. App. 1997).

Necessity for notice and hearing in matters involving property. Whenever it is sought to deprive a person of his property, or to create a charge against it, preliminary to, or which may be made the basis of taking it, the owner must have notice of the proceeding, and be afforded an opportunity to be heard as to the correctness of the assessment or charge. It matters not what the character of the proceeding may be, by virtue of which his property is to be taken, whether administrative, judicial, summary or otherwise; at some stage of it, and before the property is taken or the charge becomes absolute against either the owner or his property, an opportunity for the correction of wrongs and errors which may have been committed must be given. Brown v. City of Denver, 7 Colo. 305, 3 P. 455 (1884); Jenks v. Stump, 41 Colo. 281, 93 P. 17 (1907); Smith Bros. Cleaners & Dyers v. People ex rel. Rogers, 108 Colo. 449, 119 P.2d 623 (1941).

As in respect to process, the constitution places life, liberty, and property upon an equality, and a party cannot be deprived of his property without service of process in the manner provided by law. Du Bois v. Clark, 12 Colo. App. 220, 55 P. 750 (1898).

Due process of law affords to everyone the right to have the complaint, in any proceeding affecting

his property, made in a court of competent jurisdiction, to have due notice thereof, and opportunity to defend. Brown v. City of Denver, 7 Colo. 305, 3 P. 455 (1884); Archuleta v. Archuleta, 52 Colo. 601, 123 P. 821 (1912).

When a property right is subject to direct and material infringement by an administrative action, the holder of the right is entitled to notice and hearing upon the matter as a matter of procedural due process. Pub. Utils. Comm'n v. DeLue, 175 Colo. 317, 486 P.2d 1050 (1971).

In eminent domain proceedings an order for immediate possession does not necessarily involve the title to the lands but it does affect possession so that the imperative requirement of the statute "shall determine" would imply some notice to the one in actual possession with some opportunity afforded him to testify or otherwise establish an amount sufficient to pay for the land taken and damages thereto when the same is ascertained by a commission or jury. Swift v. Smith, 119 Colo. 126, 201 P.2d 609 (1948).

Rights granted under a certificate of public convenience and necessity are property rights, and due process requires a full hearing if anything granted in the certificate is to be taken away. Pub. Serv. Co. v. Pub. Utils. Comm'n, 174 Colo. 470, 485 P.2d 123 (1971).

However, dangerous property may be destroyed without notice. So far as property is inoffensive or harmless, it can only be condemned or destroyed by legal proceedings, with due notice to the owner; but so far as it is dangerous to the safety or health of the community, due process of law may authorize its summary destruction. Thiele v. City & County of Denver, 135 Colo. 442, 312 P.2d 786 (1957).

And property may be taken without notice in emergency situation. Although notice and hearing must ordinarily be given before the property is taken, when an emergency situation exists and it is necessary for the protection of the public health, safety, or welfare for the state to take immediate action, due process is satisfied if the property owner is given the opportunity to challenge the act of the state after the taking. Srb v. Bd. of County Comm'rs, 43 Colo. App. 14, 601 P.2d 1082 (1979).

Property owners waived issue of defective notice on appeal when they appeared at zoning board hearing and did not raise the issue. Zavala v. City & County of Denver, 759 P.2d 664 (Colo. 1988).

When a statute does not require or prohibit specific conduct, but merely adjusts a statutory benefit level, procedural due process does not require notice and an opportunity to avoid the impact of the new law; the legislative process provides all the process that is due. McInerney v. Pub. Employees' Retirement Ass'n, 976 P.2d 348 (Colo. App. 1998).

Due process does not require city council to provide notice or opportunity to be heard to owners of property located within proposed quasi-municipal corporation prior to city council's approval of initial petition to organize said special district. State Farm v. City of Lakewood, 788 P.2d 808 (Colo. 1990).

Setting water rate schedules is legislative and does not require notice and hearing. The setting of water rate schedules for future city-wide application clearly is legislative in nature. Cottrell v. City & County of Denver, 636 P.2d 703 (Colo. 1981).

Procedural due process requires that, in order to protect a bank customer's expectation of privacy in bank records, the customer must be given notice of the judicial or administrative subpoenas prior to their

execution. People v. Lamb, 732 P.2d 1216 (Colo. 1987).

Failure to provide individual defendant with notice prior to execution of administrative subpoenas for production of corporate bank records during investigation into securities law violations did not require suppression of such bank records because the defendant was not prejudiced as the subpoenas were issued in full compliance with statutory and constitutional requirements except for notice. People v. Lamb, 732 P.2d 1216 (Colo. 1987).

Availability of a hearing subsequent to the production and disclosure of bank records pursuant to judicial or administrative subpoenas is inadequate to protect a customer's privacy right in the records since once the right has been violated there is no effective way to restore it. People v. Lamb, 732 P.2d 1216 (Colo. 1987).

Making a hospital lien that was perfected by filing in personal injury litigation applicable to PIP benefits provided by the same carrier is not a denial of due process. While the means of notice may not be optimum, any deficiency does not rise to constitutional dimensions. Rose Med. Center v. State Farm, 903 P.2d 15 (Colo. App. 1994).

General tax may be imposed without notice. The general assembly has the power to provide for the payment of special improvements by general taxation without notice or hearing as to individual benefits resulting from the improvement and to authorize municipalities to incur a general primary indebtedness to create such an improvement. Bradfield v. Pueblo, 143 Colo. 559, 354 P.2d 612 (1960).

Taxpayer must have notice and opportunity to contest assessment. It is sufficient to satisfy due process if at some stage of the proceedings before a special tax assessment becomes irrevocably fixed, the taxpayer shall have an opportunity to be heard, of which he must have notice, either personal by publication or by a law fixing the time and place of the hearing. Oberst v. Mays, 148 Colo. 285, 365 P.2d 902 (1961).

If the law provides for notice to the owner of property to be affected, and gives him an opportunity to appear at a specified time and place, before a board or tribunal competent to administer proper relief in order that he may be heard concerning the correctness of a charge against his property before it is made conclusive, this section is satisfied. Brown v. City of Denver, 7 Colo. 305, 3 P. 455 (1884); Smith Bros. Cleaners & Dyers v. People ex rel. Rogers, 108 Colo. 449, 119 P.2d 623 (1941).

Sheriff's decision not to reissue concealed handgun permit was a quasi-judicial decision. Copley v. Robinson, 224 P.3d 431 (Colo. App. 2009).

Sheriff's refusal to reissue concealed handgun permit was based on proceedings and procedures that violated applicant's procedural due process rights. Copley v. Robinson, 224 P.3d 431 (Colo. App. 2009).

Applicant was denied due process because he was not apprised of or allowed to review adverse evidence or given the opportunity to confront adverse evidence and witnesses. Copley v. Robinson, 224 P.3d 431 (Colo. App. 2009).

Sheriff's findings of fact and conclusions of law, prepared on remand from the district court, did not satisfy statutory requirement for a written statement of the grounds for suspension or revocation. By the time case proceeded to district court, it was too late for sheriff to inform applicant of the evidence against him and the grounds for sheriff's decision in order to provide applicant with a reasonable opportunity to exercise his statutory rights to supplement the record or request a second review to confront

such evidence. Copley v. Robinson, 224 P.3d 431 (Colo. App. 2009).

Right to drive automobile not absolute. While one's interest in maintaining a driver's license is an interest that requires a due process hearing before termination, the right to drive an automobile upon the public highways is not absolute. Heninger v. Charnes, 200 Colo. 194, 613 P.2d 884 (1980).

Hearing not required prior to immobilization of vehicle. A hearing is not constitutionally mandated prior to the immobilization of a motor vehicle for parking violations, so long as a prompt and adequate proceeding is available upon demand after the immobilization has occurred. Patterson v. Cronin, 650 P.2d 531 (Colo. 1982).

Personal service of parking summons not required. Fundamental principles of due process do not require personal service of parking summonses. Patterson v. Cronin, 650 P.2d 531 (Colo. 1982).

Commitment of intoxicated persons requires only neutral fact finder's independent determination. A judicial hearing as a prerequisite to commitment of a clearly dangerous intoxicated person would hinder the government's efforts in controlling alcohol abuse without providing additional procedural safeguards. Due process demands only that a neutral fact finder independently determine that the statutory requirements for commitment and release are satisfied. Due process does not dictate that the neutral and detached fact finder be law-trained or a judicial or administrative officer. Carberry v. Adams County Task Force on Alcoholism, 672 P.2d 206 (Colo. 1983).

Civil litigant may be excluded from hearings on matters of law. The rights of a civil litigant are not violated by the court's refusal to allow the client access to an in-chambers conference dealing only with matters of law. Bd. of County Comm'rs v. Blecha, 697 P.2d 416 (Colo. App. 1985).

Forcible entry and detainer statute satisfies due process so long as continuances are permitted in cases requiring extensive trial preparation. Butler v. Farner, 704 P.2d 853 (Colo. 1985).

Failure of agency to give notice of noncompliance under prior law does not deprive billboard owner of due process where he receives adequate notice of noncompliance through application for a permit under the new law. Nat'l Advert. Co. v. Dept. of Hwys., 718 P.2d 1038 (Colo. 1986).

Arbitrator's award of punitive damages did not violate employer's due process rights. Employer sought order compelling arbitration and did not contend that arbitrator failed to assure the employer of procedural due process. Padilla v. D.E. Frey & Co., Inc., 939 P.2d 475 (Colo. App. 1997).

Procedural due process does not entitle a sex offender to a hearing on the sex offender's dangerousness before requiring the sex offender to register. Due process does not guarantee the right to a hearing to establish a fact that is not material under the statute. Dangerousness is not material under the registration statute, the duty to register is triggered by conviction of sex offense. The statute even states the crime for which the registrant was convicted may not reflect the current level of dangerousness. People ex rel. C.B.B., 75 P.3d 1148 (Colo. App. 2003).

Applied in Wyatt v. People, 17 Colo. 252, 28 P. 961 (1892); Kite v. People, 32 Colo. 5, 74 P. 886 (1903); People ex rel. Attorney Gen. v. News-Times Publishing Co., 35 Colo. 253, 84 P. 912 (1906), dismissed for want of jurisdiction, 205 U.S. 454, 27 S. Ct. 556, 51 L.Ed. 879 (1907); Bratton v. Dice, 93 Colo. 593, 27 P.2d

1028 (1933); Prouty v. Heron, 127 Colo. 168, 255 P.2d 755 (1953); Hibbard, Spencer, Bartlett & Co. v. District Court, 138 Colo. 270, 332 P.2d 208 (1958); Pub. Utils. Comm'n v. Donahue, 138 Colo. 492, 335 P.2d 285 (1959); Martinez v. Southern Ute Tribe, 150 Colo. 504, 374 P.2d 691 (1962); Smith v. Putnam, 250 F. Supp. 1017 (D. Colo. 1965); Big Top, Inc. v. Hoffman, 156 Colo. 362, 399 P.2d 249 (1965); Jesseph v. People, 164 Colo. 312, 435 P.2d 224 (1967); Frazzini v. Wolf, 168 Colo. 454, 452 P.2d 13 (1969); Johnson v. People in Interest of W__ J__, 170 Colo. 137, 459 P.2d 579 (1969); Woodson v. Ingram, 173 Colo. 65, 477 P.2d 455 (1970); Robinson v. People in Interest of Zollinger, 173 Colo. 113, 476 P.2d 262 (1970); Harrison v. City & County of Denver, 175 Colo. 249, 487 P.2d 373 (1971); Jones v. Civil Serv. Comm'n, 176 Colo. 25, 489 P.2d 320 (1971); T & T Loveland Chinchilla Ranch, Inc. v. Claimants in re Death of Bourn, 178 Colo. 65, 495 P.2d 546 (1972); Buckingham v. Pub. Utils. Comm'n, 180 Colo. 267, 504 P.2d 677 (1972); McCamant v. City & County of Denver, 31 Colo. App. 287, 501 P.2d 142 (1972); P eople v. Varner, 181 Colo. 146, 508 P.2d 390 (1973); City & County of Denver v. Juvenile Court, 182 Colo. 157, 511 P.2d 898 (1973); In re Franks, 189 Colo. 499, 542 P.2d 845 (1975), cert. denied, 423 U.S. 1043, 96 S. Ct. 766, 46 L.Ed.2d 632 (1976); Denver Welfare Rights Org. v. Pub. Utils. Comm'n, 190 Colo. 329, 547 P.2d 239 (1976); Air Pollution Variance Bd. v. Western Alfalfa Corp., 191 Colo. 455, 553 P.2d 811 (1976); Lloyd A. Fry Roofing Co. v. State Dept. of Health Air Pollution Variance Bd., 191 Colo. 463, 553 P.2d 800 (1976); Boyles v. Lampert, 687 P.2d 468 (Colo. App. 1984); Ault v. Dept. of Rev., 697 P.2d 24 (Colo. 1985); People in Interest of D.G., 733 P.2d 1199 (Colo. 1987); Colo. State Bd. of Nursing v. Lang, 842 P.2d 1383 (Colo. App. 1992); Colo. Dept. of Pub. Health & Env't v. Bethell, 60 P.3d 779 (Colo. App. 2002); Maloney v. Brassfield, 251 P.3d 1097 (Colo. App. 2010).

D. Statutory Notice of Proscribed Conduct.

1. Standards for Vagueness.

Regulations and statutes are presumed to be constitutional until shown otherwise. Kuiper v. Well Owners Conservation Ass'n, 176 Colo. 119, 490 P.2d 268 (1971); Hartley v. City of Colo. Springs, 764 P.2d 1216 (Colo. 1988); Sanderson v. People, 12 P.3d 851 (Colo. App. 2000).

Every statute is presumed constitutional unless proven beyond a reasonable doubt to be constitutionally invalid. Lujan v. Colo. State Bd. of Educ., 649 P.2d 1005 (Colo. 1982); Claim of Woloson, 796 P.2d 1 (Colo. App. 1989); Watso v. Dept. of Soc. Servs., 841 P.2d 299 (Colo. 1992).

Under rational basis analysis, plaintiff has the burden of proving a statute constitutionally invalid beyond a reasonable doubt. Branson v. City & County of Denver, 707 P.2d 338 (Colo. 1985); City of Montrose v. Pub. Utils. Comm'n, 732 P.2d 1181 (Colo. 1987); Dove v. Delgado, 808 P.2d 1270 (Colo. 1991); Scholz v. Metro. Pathologists, P.C., 81 P.2d 901 (Colo. 1993).

An ordinance or statute is presumed to be constitutional, and the burden is on the party attacking it to establish that it is unconstitutional beyond a reasonable doubt. People ex rel. Arvada v. Nissen, 650 P.2d 547 (Colo. 1982); Casados v. City & County of Denver, 832 P.2d 1048 (Colo. App. 1992), rev'd on other grounds, 862 P.2d 908 (Colo. 1993), cert. denied, 511 U.S. 1005, 114 S. Ct. 1372, 128 L.Ed.2d 48 (1994).

The same standard of review should be used for an executive order that is used for a statute or ordinance. Casados v. City & County of Denver,

832 P.2d 1048 (Colo. App. 1992), rev'd on other grounds, 862 P.2d 908 (Colo. 1993), cert. denied, 511 U.S. 1005, 114 S. Ct. 1372, 128 L.Ed.2d 48 (1994).

Courts must construe a statute so as to uphold its constitutionality whenever a reasonable and practical construction may be applied to it. People v. Tippett, 733 P.2d 1183, (Colo. 1987); Rickstrew v. People, 822 P.2d 505 (Colo. 1991).

Municipal ordinance is resumed to be constitutional, and, unless the ordinance adversely affects a fundamental constitutional right, the burden is upon the party challenging the ordinance to prove its constitutionality beyond a reasonable doubt. If the constitutionality of an assailed ordinance is debatable, the ordinance should be upheld. Bell & Pollock, P.C. v. City of Littleton, 910 P.2d 69 (Colo. App. 1995).

One who asserts statute's unconstitutionality carries burden of establishing it beyond reasonable doubt. People v. Taggart, 621 P.2d 1375 (Colo. 1981); People v. Beruman, 638 P.2d 789 (Colo. 1982); Kibler v. State, 718 P.2d 531 (Colo. 1986); Colo. Soc. of Comm. & Inst. Psychologists, Inc. v. Lamm, 741 P.2d 707 (Colo. 1987); Claim of Woloson, 796 P.2d 1 (Colo. App. 1989); Bloomer v. Boulder County Bd. of Comm'rs, 799 P.2d 942 (Colo. 1990); People ex rel. A.P.E., 988 P.2d 172 (Colo. App. 1999), rev'd on other grounds, 20 P.3d 1179 (Colo. 2001).

Party challenging constitutionality of statute for vagueness must prove beyond a reasonable doubt that the statute is so vague or indefinite that it fails to provide fair notice of the prohibited conduct or that it fails to provide sufficiently definite standards for nonarbitrary, nondiscriminatory enforcement. High Gear and Toke Shop v. Beacom, 689 P.2d 624 (Colo. 1984); People v. Chastain, 733 P.2d 1206 (Colo. 1987); Hartley v. City of Colo. Springs, 764 P.2d 1216 (Colo. 1988).

Due process satisfied by notice through publication of statutes. The requirements of due process are satisfied by the notice which is given through publication of the statutes. People v. McKnight, 200 Colo. 486, 617 P.2d 1178 (1980).

Teachers are presumed to know the standards that govern their conduct. A teacher is not entitled to actual notice of the policy but is entitled to reasonable notice, which may be accomplished through publication. Due process principles are satisfied as long as the notice is reasonably calculated to reach the intended party. Bd. of Educ. of Jefferson County v. Wilder, 960 P.2d 695 (Colo. 1998).

Authoritative judicial construction of a statute provides sufficient notice to potential wrongdoers and guarantees against discriminatory enforcement so as to defeat a challenge of unconstitutional vagueness. People v. Taggart, 621 P.2d 1375 (Colo. 1981).

A statute or ordinance which is unconstitutionally vague constitutes a denial of due process of law under the United States and Colorado Constitutions. People v. Moyer, 670 P.2d 785 (Colo. 1983); Casados v. City & County of Denver, 832 P.2d 1048 (Colo. App. 1992), rev'd on other grounds, 862 P.2d 908 (Colo. 1993), cert. denied, 511 U.S. 1005, 114 S. Ct. 1372, 128 L.Ed.2d 48 (1994).

Test of unconstitutional vagueness. A statute which either requires or forbids an act in terms so vague that men of common intelligence must guess at its meaning and differ as to its application violates the first essential of due process of law. Memorial Trusts, Inc. v. Beery, 144 Colo. 448, 356 P.2d 884 (1960); People v. Heckard, 164 Colo. 19, 431 P.2d 1014 (1967); Watso v. Dept. of Soc. Servs., 841 P.2d 299 (Colo. 1992).

If a statute gives fair descriptions of the conduct forbidden and men of common intelligence can readily apprehend the statute's meaning and application, it will not be declared unconstitutional for vagueness. Howe v. People, 178 Colo. 248, 496 P.2d 1040 (1972); People v. District Court, 185 Colo. 78, 521 P.2d 1254 (1974).

Legislation which provides an adequate warning as to what conduct falls under its ban, and marks boundaries sufficiently distinct for judges and juries fairly to administer the law satisfies the constitutional requirements. Statutory language which gives sufficient notice to the person and furnishes guides for the adjudicative process meets the test of definiteness. Dominquez v. City & County of Denver, 147 Colo. 233, 363 P.2d 661 (1961).

Statutory prohibitions must, therefore, contain language that provides fair notice of what conduct is prohibited and provides enforcement authorities with sufficiently definite standards to ensure uniform, non-discriminatory enforcement of those prohibitions. Watso v. Dept. of Soc. Servs., 841 P.2d 299 (Colo. 1992).

The controlling principle in a void for vagueness challenge is whether the questioned law either forbids or requires the doing of an act in terms so vague that men of ordinary intelligence must necessarily guess as to its meaning and differ as to its application. People ex rel. City of Arvada v. Nissen, 650 P.2d 547 (Colo. 1982); People v. Riley, 708 P.2d 1359 (Colo. 1985); People v. Forgey, 770 P.2d 781 (Colo. 1989); Bell & Pollock, P.C. v. City of Littleton, 910 P.2d 69 (Colo. App. 1995).

The essence of a vagueness challenge is that the law fails to reasonably forewarn persons of ordinary intelligence of what is prohibited and lends itself to arbitrary and discriminatory enforcement because it fails to provide explicit standards for those who apply it. Englewood v. Hammes, 671 P.2d 947 (Colo. 1983); Casados v. City & County of Denver, 832 P.2d 1048 (Colo. App. 1992), rev'd on other grounds, 862 P.2d 908 (Colo. 1993), cert. denied, 511 U.S. 1005, 114 S. Ct. 1372, 128 L.Ed.2d 48 (1994).

The test for vagueness is commonly expressed as whether a statute describes prohibited conduct in terms such that men of ordinary intelligence must necessarily guess as to its meaning and differ as to its application. People v. McKnight, 200 Colo. 486, 617 P.2d 1178 (1980); Williams v. City & County of Denver, 622 P.2d 542 (Colo. 1981); People v. Beruman, 638 P.2d 789 (Colo. 1982); People v. Tippett, 733 P.2d 1183 (Colo. 1987); People ex rel. A.P.E., 988 P.2d 172 (Colo. App. 1999), rev'd on other grounds, 20 P.3d 1179 (Colo. 2001).

Test applied in Exotic Coins, Inc. v. Beacom, 699 P.2d 930 (Colo.), appeal dismissed, 474 U.S. 892, 106 S. Ct. 214, 88 L.Ed.2d 214 (1985); People v. Batchelor, 800 P.2d 599 (Colo. 1990).

School district's controversial materials policy is not impermissibly vague. Teacher's actions in exposing students in a classroom setting to a significant amount of nudity, sexual content, and graphic violence was a controversial learning resource under any rational interpretation and required approval; therefore his claims that the existing controversial materials policy was impermissibly vague as applied to him were unsupportable where the policy was a comprehensible standard reasonably related to legitimate pedagogical concerns. Bd. of Educ. of Jefferson County v. Wilder, 960 P.2d 695 (Colo. 1998).

When a statute is challenged as void for vagueness, the essential inquiry is whether the statute describes the forbidden conduct in terms so vague that persons of common intelligence cannot readily understand

its meaning and application. People v. Gross, 830 P.2d 933 (Colo. 1992); People v. Longoria, 862 P.2d 266 (Colo. 1993).

Doctrine of vagueness has its roots in the due process clause requirement that there be adequate notice of what conduct is proscribed by a criminal statute. People v. District Court, 185 Colo. 78, 521 P.2d 1254 (1974).

The root of the vagueness doctrine is fairness and notice of the prohibited conduct. Casados v. City & County of Denver, 832 P.2d 1048 (Colo. App. 1992), rev'd on other grounds, 862 P.2d 908 (Colo. 1993), cert. denied, 511 U.S. 1005, 114 S. Ct. 1372, 128 L.Ed.2d 48 (1994).

An essential of due process is that statute state its mandate with reasonable clarity. People v. McKnight, 200 Colo. 486, 617 P.2d 1178 (1980).

Civil as well as penal enactments are subject to constitutional challenge on grounds of vagueness. Sellon v. City of Manitou Springs, 745 P.2d 229 (Colo. 1987).

A void for vagueness challenge may be applied to a condition of probation. People v. Devorss, 277 P.3d 829 (Colo. App. 2011).

Statute must be sufficiently general for application under varied circumstances. A statute must be sufficiently specific in order to give fair notice of the standards for its implementation and, simultaneously, sufficiently general to address the essential problem under varied circumstances and during changing times. Ams. United for Separation of Church & State Fund, Inc. v. State, 648 P.2d 1072 (Colo. 1982).

While an ordinance must be sufficiently specific to give fair warning of the proscribed conduct, it also often must remain sufficiently general to be capable of application under varied circumstances. People ex rel. City of Arvada v. Nissen, 650 P.2d 547 (Colo. 1982).

Although the statute must define the criminal offense with sufficient definiteness to give fair warning of the prohibited conduct, it must also be general enough to address the problem under varied circumstances and during changing times. People v. Longoria, 862 P.2d 266 (Colo. 1993).

Statutes must give notice of proscribed conduct. To the extent that a statute places a penalty upon completed acts, concepts of fairness require that it be sufficiently definite to give notice as to what conduct is necessary to avoid those penalties. Memorial Trusts, Inc. v. Beery, 144 Colo. 448, 356 P.2d 884 (1960).

Inherent in due process is the concept of fairness which requires the general assembly to frame criminal statutes with sufficient clarity so as to inform persons subject to such laws of the standards of conduct imposed, i.e., give a fair warning of the forbidden acts. People v. Heckard, 164 Colo. 19, 431 P.2d 1014 (1967).

Due process and fundamental fairness require that a statute give a person of ordinary intelligence fair notice that his contemplated conduct is unlawful. People v. Boyd, 642 P.2d 1 (Colo. 1982).

The due process clauses of the United States and Colorado Constitutions require that criminal laws be sufficiently specific to give fair warning of the proscribed conduct to persons of ordinary intelligence. People v. Castro, 657 P.2d 932 (Colo. 1983).

Due process requires penal statutes to provide fair warning of the conduct prohibited as well as to set forth definite and precise standards capable of fair application by judges, juries, police, and prosecutors. Rickstrew v. People, 822 P.2d 505 (Colo. 1991).

Constitutional due process requires that penal statutes be

sufficiently definite to give fair warning of proscribed or required conduct so that persons may guide their actions accordingly, and must define an offense with sufficient clarity to prevent arbitrary and discriminatory enforcement. People v. Reed, 932 P.2d 842 (Colo. App. 1996).

And of punishment. In addition to a statement that an act is punishable, penal statutes must also clearly indicate the punishment applicable to a particular violation. People v. Boyd, 642 P.2d 1 (Colo. 1982).

The due process guarantee of fair warning applies only to conduct giving rise to criminal liability or punishment. Provision regarding legal possession of marihuana does not describe criminally culpable conduct, but rather describes legal conduct that excuses an otherwise criminal act. People v. Reed, 932 P.2d 842 (Colo. App. 1996).

A statute confronting first amendment freedoms must be specific enough not to inhibit the exercise of those freedoms. People v. Batchelor, 800 P.2d 599 (Colo. 1990).

Violators statute which subjects to criminal prosecution or to action for damages must give definite notice. Memorial Trusts, Inc. v. Beery, 144 Colo. 448, 356 P.2d 884 (1960).

The terms of a penal statute creating a new offense must be sufficiently explicit to inform those who are subject to its provisions of what conduct on their part will render them liable to its penalties. Memorial Trusts, Inc. v. Beery, 144 Colo. 448, 356 P.2d 884 (1960).

As should statute subjecting violators to injunction or to deprivation of prospective gain, where the secondary effect of such a sanction is to destroy the value of an existing investment of time or money. Memorial Trusts, Inc. v. Beery, 144 Colo. 448, 356 P.2d 884 (1960).

A provision is not void for vagueness if it fairly describes the conduct forbidden, and persons of common intelligence can readily understand its meaning and application. Eckley v. Colo. Real Estate Comm'n, 752 P.2d 68 (Colo. 1988); Casados v. City & County of Denver, 832 P.2d 1048 (Colo. App. 1992), rev'd on other grounds, 862 P.2d 908 (Colo. 1993), cert. denied, 511 U.S. 1005, 114 S. Ct. 1372, 128 L.Ed.2d 48 (1994); Colo. State Bd. of Med. Exam'rs v. Hoffner, 832 P.2d 1062 (Colo. App. 1992).

Colorado Constitution does not require explanation of every consequence of a state-conferred status. People v. McKnight, 200 Colo. 486, 617 P.2d 1178 (1980).

Any criminal statute where vagueness is alleged must be closely scrutinized. People v. District Court, 185 Colo. 78, 521 P.2d 1254 (1974).

Criminal laws must be drafted to provide police and prosecution with clearly defined standards to lessen the effect of personal judgment and discrimination upon enforcement processes. People v. Heckard, 164 Colo. 19, 431 P.2d 1014 (1967).

Indefinite standards of enforcement violate due process. Indefiniteness which leaves to officer, court, or jury the determination of standards in a case-by-case process invalidates legislation as being violative of due process. Dominquez v. City & County of Denver, 147 Colo. 233, 363 P.2d 661 (1961).

Criminal legislation is not invalidated simply because particular act may violate multiple provisions. People v. Taggart, 621 P.2d 1375 (Colo. 1981).

Statutory terms need not be defined with mathematical precision. Rather, the statutory language must be sufficiently specific to give fair warning of the prohibited conduct, but must also be sufficiently general to address the problem under varied circumstances and during changing

times. Davis v. State Bd. of Psychologist Exam'rs, 791 P.2d 1198 (Colo. App. 1989); Colo. State Bd. of Med. Exam'rs v. Hoffner, 832 P.2d 1062 (Colo. App. 1992); Delta Sales Yard v. Patten, 870 P.2d 554 (Colo. App. 1993).

A high degree of exactitude in draftsmanship is not required for an ordinance to pass due process scrutiny. Price v. City of Lakewood, 818 P.2d 763 (Colo. 1991); Casados v. City & County of Denver, 832 P.2d 1048 (Colo. App. 1992), rev'd on other grounds, 862 P.2d 908 (Colo. 1993), cert. denied, 511 U.S. 1005, 114 S. Ct. 1372, 128 L.Ed.2d 48 (1994).

Due process has never required mathematical exactitude in legislative draftsmanship. People ex rel. City of Arvada v. Nissen, 650 P.2d 547 (Colo. 1982); People v. Castro, 657 P.2d 932 (Colo. 1983); People v. Ford, 773 P.2d 1059 (Colo. 1989); Casados v. City & County of Denver, 832 P.2d 1048 (Colo. App. 1992), rev'd on other grounds, 862 P.2d 908 (Colo. 1993), cert. denied, 511 U.S. 1005, 114 S. Ct. 1372, 128 L.Ed.2d 48 (1994).

Statutory terms need not be defined with mathematical precision. Rather, the statutory language must be sufficiently specific to give fair warning of the prohibited conduct, but must also be sufficiently general to address the problem under varied circumstances and during changing times. Colo. State Bd. of Med. Exam'rs v. Hoffner, 832 P.2d 1062 (Colo. App. 1992).

Neither scientific exactitude nor optimal lucidity of expression is required in statutory drafting. People v. Taggart, 621 P.2d 1375 (Colo. 1981).

Statute is not necessarily unconstitutional due to imprecision of terms as long as the legislative intent is clear. Rickstrew v. People, 822 P.2d 505 (Colo. 1991).

A criminal statute need not contain precise definitions of every word or phrase constituting an element of the offense. People v. Tippett, 733 P.2d 1183, (Colo. 1987).

Words and phrases used in statutes are to be considered in their generally accepted meaning, and the court has a duty to construe the statute so that it is not void for vagueness when a reasonable and practical construction can be given to its language. People v. Rosburg, 805 P.2d 432 (Colo. 1992); Colo. State Bd. of Med. Exam'rs v. Hoffner, 832 P.2d 1062 (Colo. App. 1992).

General assembly is not required to define readily comprehensible and everyday terms which it uses in statutes. People v. McKnight, 200 Colo. 486, 617 P.2d 1178 (1980).

Use of two different words or phrases, each of which expresses the same common meaning, does not render a statute internally inconsistent. Howe v. People, 178 Colo. 248, 496 P.2d 1040 (1972).

Mere fact that a statute's broadest reach is as yet undetermined does not render that statute constitutionally infirm. People v. Alexander, 663 P.2d 1024 (Colo. 1983).

Inclusion of a specific intent requirement does not guarantee that an ordinance is not unconstitutionally vague. Longmont v. Gomez, 843 P.2d 1321 (Colo. 1993).

Due process guarantees protect an individual from the retroactive effect of a judicial decision only when that decision serves to deprive the individual of fair warning that his conduct will give rise to criminal liability or punishment. People v. Grenemyer, 827 P.2d 603 (Colo. App. 1992).

Two inquiries are critical to a determination of whether there has been a due process violation based on retrospective consequences of a judicial decision, namely: (1) Whether the judicial decision had the effect of

enhancing punishment for a previously committed crime; and (2) whether the judicial decision was "unforeseeable". People v. Grenemyer, 827 P.2d 603 (Colo. App. 1992).

Overbreadth doctrine neither compels indiscriminate invalidation nor confers standing to challenge constitutionality. The doctrine of overbreadth does not compel indiscriminate facial invalidation of every statute which may chill protected expression, nor does it confer standing to challenge the facial constitutionality of a statute on every defendant whose conduct falls within its prohibitions. Williams v. City & County of Denver, 622 P.2d 542 (Colo. 1981).

Term "overbreadth" refers to at least two types of constitutional infirmity. A statute suffers from overbreadth if it threatens the existence of a fundamental right by encompassing protected activities within its prohibition. A penal statute is also said to be overbroad if it prohibits activity that is legitimate in the sense that it cannot be proscribed by exercise of the state's police power, i.e., that such prohibition is not reasonably related to a legitimate governmental interest. People v. Gross, 830 P.2d 933 (Colo. 1992).

And person to whom statute constitutionally applied cannot challenge statute. A person to whom a statute may be constitutionally applied will not be heard to challenge that statute on the ground that it may be unconstitutionally applied to others in circumstances which are not before the court. Williams v. City & County of Denver, 622 P.2d 542 (Colo. 1981).

Except in first amendment cases. The rules of standing are broadened in first amendment cases to permit a party to assert the facial overbreadth of statutes which may chill the protected expression of third parties, regardless of whether the statute could be constitutionally applied to the conduct of the party before the court. People v. Seven Thirty-five East Colfax, Inc., 697 P.2d 348 (Colo. 1985).

Applied in Colo. Racing Comm'n v. Smaldone, 177 Colo. 33, 492 P.2d 619 (1972); People v. Moore, 193 Colo. 81, 562 P.2d 749 (1977).

2. Application of Vagueness Standards.

Dram shop liability statute is not unconstitutionally vague, nor does it violate equal protection of the laws since the statute is rationally related to the legitimate state purpose of preventing negligence by consumers of alcohol. Sigman v. Seafood Ltd. P'ship I, 817 P.2d 527 (Colo. 1991).

The term "habitual intemperance" in § 12-36-117 (1)(i) is not unconstitutionally vague. The term refers to repeated, uncontrolled, excessive drinking and is sufficiently specific that persons licensed to practice medicine can distinguish between permissible and impermissible conduct. Colo. State Bd. of Med. Exam'rs v. Hoffner, 832 P.2d 1062 (Colo. App. 1992).

Definition of practice of medicine in § 12-36-106 not unconstitutionally vague. People v. Jeffers, 690 P.2d 194 (Colo. 1984).

Grounds for discipline in the Nurse Practice Act provide adequate notice of the proscribed conduct so as not to be unconstitutionally vague. Kibler v. State, 718 P.2d 531 (Colo. 1986).

Section 12-47-128 (5)(l), which prohibited any liquor licensee's employee from soliciting patrons to purchase "any alcoholic beverage or any other thing of value" for the soliciting employee or other employee, was not unconstitutionally vague or overbroad and was rationally related to a legitimate state interest. People v. Becker, 759 P.2d 26 (Colo. 1988) (decided under law in effect prior to 1986 amendment).

Statutory definition of "child abuse" furnishes adequate notice to wrongdoers. The term "negligently" as used in § 18-6-401 is not irreconcilably at odds with "tortured" and "cruelly punished", and the statutory definition of "child abuse" is sufficiently particular to furnish adequate notice to potential wrongdoers of the proscribed conduct and to protect against discriminatory enforcement. People v. Taggart, 621 P.2d 1375 (Colo. 1981) (decided under § 18-6-401 prior to 1980 amendment).

The term "pattern of sexual abuse" is clearly and unambiguously defined in § 18-3-401 (2.5) and, therefore, the sentencing enhancement provision of § 18-3-405 (2)(c) which incorporates that term is not unconstitutionally vague. People v. Longoria, 862 P.2d 266 (Colo. 1993).

Definition of "sexual contact" in § 18-3-401 (4) is not unconstitutionally vague. People v. West, 724 P.2d 623 (Colo. 1986); People in Interest of J.A., 733 P.2d 1197 (Colo. 1987); People v. Jensen, 747 P.2d 1247 (Colo. 1987).

Statute setting out and defining all elements of crime not vague. A first-degree sexual assault statute is not unconstitutionally vague where it sets out the act, the requisite mental state, and the content of the threat used to force the victim's submission, and each of these elements is defined. People v. Thatcher, 638 P.2d 760 (Colo. 1981).

Section 18-5-504 provides ample notice to the populace of the prohibited conduct and a sufficiently precise standard for those charged with its enforcement to satisfy constitutional standards of specificity and to withstand a void for vagueness challenge. People v. O'Cana, 725 P.2d 1139 (Colo. 1986).

Definition of "burglary tools" not unconstitutionally vague. People v. Chastain, 733 P.2d 1206 (Colo. 1987).

Definition of "knife" not unconstitutionally vague. People v. Gross, 830 P.2d 933 (Colo. 1992); People ex rel. A.P.E., 988 P.2d 172 (Colo. App. 1999), rev'd on other grounds, 20 P.3d 1179 (Colo. 2001).

Public nuisance statute, § 16-13-303 (1)(c), is not unconstitutionally vague. People v. One 1967 Pontiac (GTO), 678 P.2d 1016 (Colo. 1984).

Obscenity statute (§§ 18-7-101 and 18-7-102) provides sufficiently adequate standards to enable courts and juries to apply the law consistently and is not impermissibly vague. People v. Ford, 773 P.2d 1059 (Colo. 1989).

Riot provisions give clear warning that defined conduct forbidden. Sections 18-9-101 (2) and 18-9-104 give clear warning that knowing participation in the defined conduct is forbidden and provide explicit standards to guide persons charged with their enforcement. People v. Bridges, 620 P.2d 1 (Colo. 1980).

The term "metallic knuckles" as used in § 18-12-102 (2) is unambiguous and the prohibition against possession of metallic knuckles in § 18-12-102 (4) is neither facially void for vagueness as to the prohibition of possession of metallic knuckles nor unconstitutionally vague as applied to the defendant. People ex rel. A.P.E., 988 P.2d 172 (Colo. App. 1999), rev'd on other grounds, 20 P.3d 1179 (Colo. 2001).

Term "purporting" in § 38-35-109 (3) is not unconstitutionally vague. People v. Forgey, 770 P.2d 781 (Colo. 1989).

"Emergency" sufficiently understood to be applied without violating due process. "Emergency" has a sufficiently well understood common meaning within the context of § 42-2-206 to be applied by a judge or jury without violating the due process rights of the defendant. People v. McKnight, 200 Colo. 486, 617 P.2d

1178 (1980).

The phrase "proximate cause" is sufficiently intelligible to satisfy both federal and Colorado constitutional standards of due process of law and may be used in criminal statutes. People v. Baca, 668 P.2d 1370 (Colo. 1983); People v. Rostad, 669 P.2d 126 (Colo. 1983).

Statute which requires jury to determine question of "reasonableness" is not too vague to afford a practical guide for accepted behavior. People v. McKnight, 200 Colo. 486, 617 P.2d 1178 (1980).

Constitution does not require explanation of every possible penalty for violating administrative order revoking driver's license. Constitutional due process standards do not mandate that notice be given to persons adjudged habitual traffic offenders under § 42-2-203 as to the possible criminal penalty for driving in violation of an administrative order revoking the habitual traffic offender's driver's license. People v. McKnight, 200 Colo. 486, 617 P.2d 1178 (1980).

Since "percent by weight" language in § 18-3-107 (2)(c) establishes sufficient standard by which to measure blood alcohol levels, such language is not vague and does not violate due process. Rickstrew v. People, 822 P.2d 505 (Colo. 1991) (decided under law in effect prior to 1989 amendment).

Term used in § 42-6-134 provides sufficient notice of proscribed conduct. The term "sold or otherwise disposed of as salvage". as used in § 42-6-134, is sufficiently definite so as to provide notice to potential wrongdoers of the proscribed conduct and to protect against discriminatory enforcement. Colo. Auto & Truck Wreckers Ass'n v. Dept. of Rev., 618 P.2d 646 (Colo. 1980).

Designating prominent landmarks as boundary of hunting area not arbitrary nor irrational. It is neither arbitrary nor irrational to designate as the boundary of a closed hunting area prominent landmarks which members of the hunting public can easily recognize and respect. Collopy v. Wildlife Comm'n, 625 P.2d 994 (Colo. 1981).

The term "any other conduct" used in ordinance proscribing harassment is unconstitutionally vague because it does not provide limits on executive discretion and a person of ordinary intelligence could not determine in advance whether a specific act would result in criminal prosecution. Longmont v. Gomez, 843 P.2d 1321 (Colo. 1993).

Definition of "window sign" contained in Denver revised municipal code is not vague. Williams v. City & County of Denver, 622 P.2d 542 (Colo. 1981).

Municipal police department standard requiring police officers to use the "highest standard of efficiency and safety" survives a vagueness challenge. Turney v. Civil Serv. Comm'n, 222 P.3d 343 (Colo App. 2009).

Definition of "religious institution" in zoning ordinance was not unconstitutionally vague. City of Colo. Springs v. Blanche, 761 P.2d 212 (Colo. 1988).

Section of ordinance which only generally describes assault weapons but does not prohibit or require the doing of anything is not unconstitutionally vague. Robertson v. City & County of Denver, 874 P. 2d 325 (Colo. 1994).

Section of ordinance is unconstitutionally vague if it does not provide adequate information to determine whether a pistol has the kind of "design history" that would make it covered by the ordinance. Robertson v. City & County of Denver, 874 P.2d 325 (Colo. 1994).

Term "intended" in § 12-22-502 is vague so is severed from the definition of "drug paraphernalia",

but the terms "designed" and "primarily" are not vague. High Gear & Toke Shop v. Beacom, 689 P.2d 624 (Colo. 1984).

Fair warning held not given. A state agency regulation prohibiting activities "unduly designed to increase the consumption of alcoholic beverages" fails to give fair warning necessary to comply with due process. Citizens for Free Enter. v. Dept. of Rev., 649 P.2d 1054 (Colo. 1982).

Sufficient procedural safeguards. In determining if a specific code provision gives sufficient procedural safeguards, guidance may be obtained from other provisions of the code, but it cannot be assumed from the statutory scheme itself that, unless expressly so provided, the criteria for issuing an initial liquor license or for suspending or revoking a liquor license, necessarily apply to the renewal of a liquor license. Squire Restaurant & Lounge v. Denver, 890 P.2d 164 (Colo. App. 1994).

"Good cause" standard fails to give sufficient notice. Standard in liquor code of "good cause" as the criterion for determining if a liquor license is renewed, without any implementing rules, fails to give sufficient definiteness of what conduct and conditions are required to avoid nonrenewal, fails to insure rational and consistent administrative action and effective subsequent judicial review of that action, and therefore violates due process. Some limit must be provided by the department of excise and licenses to guide discretion in determining if "good cause" for refusing to renew a liquor license exists. Squire Restaurant & Lounge v. Denver, 890 P.2d 164 (Colo. App. 1994).

Municipal ordinance requiring taxes be paid "promptly" is not unconstitutionally vague. The ordinance read as a whole is not unconstitutionally vague and there is no need to determine whether the specific word "promptly" is unconstitutionally vague. Bell & Pollock, P.C. v. City of Littleton, 910 P.2d 69 (Colo. App. 1995).

The small business exemption in § 25-14-205 (1)(h) of the Colorado Clean Indoor Air Act is not unconstitutionally vague nor are the definitions in § 25-14-203 (5)(a) and (5)(b). Coal. for Equal Rights v. Owens, 458 F. Supp. 2d 1251 (D. Colo. 2006), aff'd sub nom. Coal. for Equal Rights, Inc. v. Ritter, 517 F.3d 1195 (10th Cir. 2008).

Defendant's no contact with persons under age 18 order was not facially or as applied to defendant unconstitutionally vague. The language of the order was sufficiently clear to warn defendant to avoid the mere proximity of a child. Sitting in a restaurant booth next to a child even though defendant did not look at, speak to, or touch the child violated that order. People v. Devorss, 277 P.3d 829 (Colo. App. 2011).

IV. EQUAL PROTECTION.

A. Generally.

And guarantees like treatment for similarly situated parties. The right to equal protection of the laws guarantees that all parties who are similarly situated receive like treatment by the law. J.T. v. O'Rourke ex rel. Tenth Judicial Dist., 651 P.2d 407 (Colo. 1982); People in Interest of M.C., 750 P.2d 69 (Colo. App. 1987), aff'd, 774 P.2d 857 (Colo. 1989); People v. Garberding, 787 P.2d 154 (Colo. 1990); Bloomer v. Boulder County Bd. of Comm'rs, 799 P.2d 936 (Colo. 1990); Estate of Stevenson v. Hollywood Bar, 832 P.2d 718 (Colo. 1992); Mayo v. Nat'l Farmers Union, 833 P.2d 54 (Colo. 1992); State, Dept. of Health v. The Mill, 887 P.2d 993 (Colo. 1994); People v. Gardner, 919 P.2d 850 (Colo. App. 1995).

The general assembly may prescribe more severe penalties for conduct it perceives to have more severe consequences, even if the differences are only a matter of degree, so long as the classifications of criminal behavior are based on differences reasonably related to the general purpose of the legislation. Therefore §§ 18-8-706 and 18-8-704 are factually distinguishable and reasonable grounds exist to support differences in punishment provided for each. People v. Gardner, 919 P.2d 850 (Colo. App. 1995).

However, statutes that impose different penalties for what ostensibly might be different conduct, but offer no intelligible standard for distinguishing the proscribed conduct, violate equal protection. People v. Gardner, 919 P.2d 850 (Colo. App. 1995).

To withstand an equal protection challenge, a statutory classification must turn on reasonably intelligible standards and be sufficiently coherent and discrete so that persons of average intelligence can reasonable distinguish the conduct proscribed. People v. Gardner, 919 P.2d 850 (Colo. App. 1995).

The right to equal protection of the laws applies only where there is state action, rather than private individual action. Mayo v. Nat'l Farmers Union, 833 P.2d 54 (Colo. 1992).

The direct file statute does not discriminate against a juvenile in district court based on whether it was a direct file or transfer, so the statute does not violate the requirement of uniform operation of laws. Flakes v. People, 153 P.3d 427 (Colo. 2007).

B. Fundamental Rights/Interests/Liberties.

Nonresidents do not have fundamental right to vote in elections in this state. Millis v. Bd. of County Comm'rs, 626 P.2d 652 (Colo. 1981).

The fundamental right of citizens to participate equally in the political process is guaranteed by the equal protection clause and any attempt to infringe on an independently identifiable group's ability to exercise that right is subject to strict judicial scrutiny. Evans v. Romer, 854 P.2d 1270 (Colo. 1993), cert. denied, 510 U.S. 959, 114 S. Ct. 419, 126 L.Ed.2d 365 (1994); Evans v. Romer, 882 P.2d 1335 (Colo. 1994), aff'd, 517 U.S. 620, 116 S. Ct. 1620, 134 L. Ed. 2d 855 (1996).

A resident of a state has no constitutional right to sue the state or its political subdivisions. The right to maintain an action against a governmental entity is derived from statutes. Simon v. State Comp. Ins. Auth., 903 P.2d 1139 (Colo. App. 1994), rev'd on other grounds, 946 P.2d 1298 (Colo. 1997).

The right to recover damages in tort is not a fundamental right. Dove v. Delgado, 808 P.2d 1270 (Colo. 1991).

Constitutional privacy interest that of reproductive autonomy. The privacy interest implicated in Griswold v. Connecticut, 381 U.S. 479, 85 S.Ct. 1678, 14 L.Ed.2d 510 (1965), was that of reproductive autonomy. R. McG. v. J.W., 200 Colo. 345, 615 P.2d 666 (1980).

And interest belongs to individual. The privacy interest in reproductive autonomy belongs to the individual and not to the family as a unit. R. McG. v. J.W., 200 Colo. 345, 615 P.2d 666 (1980).

Plaintiffs' interests as parents responsible for maintaining the stability and autonomy of their family relationships are rights subject to the protection of procedural due process standards. Watso v. Dept. of Soc. Servs., 841 P.2d 299 (Colo. 1992).

A parent has a fundamental liberty interest in the care, custody,

and management of a child. However, that parental right to due process is subject to the power of the state to act in the child's best interest. People in Interest of M.H., 855 P.2d 15 (Colo. App. 1993); People in Interest of E.I.C., 958 P.2d 511 (Colo. App. 1998).

And suit by unmarried natural father to establish paternity does not implicate interest. A suit by a natural father not married to a natural mother to establish his paternity of a child born to the natural mother while she was married to another did not implicate the privacy interest in reproductive autonomy of the natural mother and her spouse. R. McG. v. J.W., 200 Colo. 345, 615 P.2d 666 (1980).

Abortion and child support. There is no violation of equal protection in the statutory obligation of both parents to pay child support or in the denial to an unwed father of the right to demand the termination of pregnancy. People in Interest of S.P.B., 651 P.2d 1213 (Colo. 1982).

Child support. There is no violation of equal protection in the statutory obligation to pay child support retroactive to the date of the child's birth because it treats unmarried parents and married parents the same. People ex rel. B.W., 17 P.3d 199 (Colo. App. 2000).

Court's construction of Uniform Parentage Act violated section. Juvenile court's construction of the Uniform Parentage Act, denying a natural father not married to the natural mother the statutory capacity or standing to commence a paternity action in connection with a child born to the natural mother during her marriage to another in order to establish that he was the natural father of the child, violated equal protection of the laws under the fourteenth amendment to the United States Constitution, this section, and the equal rights amendment to the Colorado Constitution, § 29 of art. II, Colo. Const. R. McG. v. J.W., 200 Colo. 345, 615 P.2d 666 (1980).

Education not fundamental right. The Colorado Constitution does not establish education as a fundamental right, and it does not require that the general assembly establish a central public school finance system restricting each school district to equal expenditures per student. Lujan v. Colo. State Bd. of Educ., 649 P.2d 1005 (Colo. 1982).

Education is not a fundamental right under the United States Constitution. Lujan v. Colo. State Bd. of Educ., 649 P.2d 1005 (Colo. 1982).

Uniform taxation not fundamental right. The right to uniform state taxation is not fundamental and therefore does not require application of the strict scrutiny standard. Colo. Dept. of Soc. Servs. v. Bd. of County Comm'rs, 697 P.2d 1 (Colo. 1985).

Right to drive automobile not fundamental. The right to drive an automobile upon the public highways of Colorado does not enjoy the selective status of fundamentality. Heninger v. Charnes, 200 Colo. 194, 613 P.2d 884 (1980).

Freedom of movement of juvenile not fundamental right. Juvenile's liberty interest in freedom of movement is not a fundamental right and ordinance prohibiting loitering by juveniles does not unconstitutionally infringe upon liberty interest where ordinance was narrowly drawn and state interests justified juvenile curfew. People in Interest of J.M., 768 P.2d 219 (Colo. 1989).

Position as officer of state parole board not fundamental right. An officer of the state parole board has no property or vested interest in the public office and procedural protections of due process do not apply. Wilkerson v. State of Colo., 830 P.2d 1121 (Colo. App. 1992).

Involuntary commitment to

a mental hospital is a deprivation of liberty which the state cannot accomplish without procedural safeguards. People v. Taylor, 618 P.2d 1127 (Colo. 1980).

Commitment to a mental institution constitutes a severe infringement on the basic interest of an individual to be free from governmental restraint and thus requires due process protection. People v. Chavez, 629 P.2d 1040 (Colo. 1981).

And individual's and state's interests balanced in short-term certification hearing. Since certification under § 12-10-107 carries a possibility of confinement within a treatment facility for up to three months, the proper standard of proof in a short-term certification hearing is found by balancing the individual's interest in not being confined against the state's interest in providing care and treatment, while minimizing the risk of erroneous decisions. People v. Taylor, 618 P.2d 1127 (Colo. 1980).

State has interest in providing treatment to one whose mental condition poses threat. The state's interest in certifying an individual for short-term treatment is to provide care to one whose mental condition poses a threat to society or to the person himself. People v. Taylor, 618 P.2d 1127 (Colo. 1980).

Liberty interest and physical restraints attendant to psychiatric commitment. A minor has a protectible liberty interest in being free from the physical restraints attendant to commitment in a psychiatric hospital. In re P.F. v. Walsh, 648 P.2d 1067 (Colo. 1982).

Receipt of workers' compensation benefits is not a fundamental right. Pace Membership Warehouse v. Axelson, 938 P.2d 504 (Colo. 1997).

An interest in one's reputation is entitled to constitutional protection only if an injury to that reputation is accompanied by an impairment to some more tangible interest. Carlson v. Indus. Claim Appeals Office, 950 P.2d 663 (Colo. App. 1997).

A person has a protected property interest only if he or she has a legitimate claim of entitlement to it as opposed to a unilateral expectation. The fact that the general assembly created a right to a hearing in certain circumstances does not mean that the person granted that right is independently entitled to a hearing as a matter of constitutional law. Carlson v. Indus. Claim Appeals Office, 950 P.2d 663 (Colo. App. 1997).

A person is not deprived of a liberty interest if he or she is not rehired in one position but is free to seek another. Carlson v. Indus. Claim Appeals Office, 950 P.2d 663 (Colo. App. 1997).

The possibility of future harm to prospective employment is too intangible to comprise a constitutional deprivation of a protected liberty interest. Carlson v. Indus. Claim Appeals Office, 950 P.2d 663 (Colo. App. 1997).

C. Standard for Review of Equal Protection Claims.

First prerequisite to meritorious equal protection claim is showing that the state has adopted a classification that affects similarly situated groups in an unequal manner. People in Interest of M.C., 750 P.2d 69 (Colo. App. 1987), aff'd, 774 P.2d 857 (Colo. 1989); Western Metal v. Acoustical & Const., 851 P.2d 875 (Colo. 1993).

If persons are not situated similarly, their equal protection challenge must fail. Western Metal v. Acoustical & Const., 851 P.2d 875 (Colo. 1993); State, Dept. of Health v. The Mill, 887 P.2d 993 (Colo. 1994); Diamond Shamrock Ref. and Mktg. Co. v. Colo. Dept. of Labor & Employment, 976 P.2d 286 (Colo. App.

1998).

A threshold question in an equal protection challenge is whether the classes created by a statute are similarly situated but nonetheless are subjected to disparate treatment. Harris v. The Ark, 810 P.2d 226 (Colo. 1991); People v. Black, 915 P.2d 1257 (Colo. 1996).

Identical treatment not required. Equal protection does not require that all persons be dealt with identically, but it does require that a distinction have some relevance to the purpose for which the classification is made. People v. Fetty, 650 P.2d 541 (Colo. 1982).

Because there are differences between the respective disabilities and legal incapacities of mentally disabled persons and minors, there is no constitutional requirement that these categories of persons be treated exactly the same way. People in Interest of M.M., 726 P.2d 1108 (Colo. 1986).

But classifications based on impermissible criteria prohibited. The equal protection guarantee of this provision insures that all individuals be treated fairly in their exercise of fundamental rights and that suspect classifications based on impermissible criteria be eliminated. Lujan v. Colo. State Bd. of Educ., 649 P.2d 1005 (Colo. 1982).

Classification bearing reasonable relationship to legitimate purpose permitted. In the absence of a suspect class or the infringement upon a fundamental right, a statutory classification will be upheld if it bears a reasonable relationship to a legitimate governmental purpose. People v. Montoya, 647 P.2d 1203 (Colo. 1982).

The legislature is permitted to adopt any classification as long as the classification bears a reasonable relationship to a proper legislative purpose and is not arbitrary or discriminatory. People in Interest of D.G., 733 P.2d 1199 (Colo. 1987).

When the classification does not involve a fundamental right, suspect class, or classification based on gender, the court must use a rational basis test to determine whether the statute violates the person's right to equal protection of the laws. Charlton v. Kimata, 815 P.2d 946 (Colo. 1991); Rodriguez v. Schutt, 896 P.2d 881 (Colo. App. 1994), rev'd on other grounds, 914 P.2d 921 (Colo. 1996).

The test to be applied to determine whether equal protection standards have been violated is whether the classification is reasonable and bears a rational relationship to legitimate state objectives. J.T. v. O'Rourke ex rel. Tenth Judicial Dist., 651 P.2d 407 (Colo. 1982); Branson v. City & County of Denver, 707 P.2d 338 (Colo. 1985); Tassian v. People, 731 P.2d 672 (Colo. 1987).

Due process requires that legislation bear a rational relationship to a legitimate end of government. Colo. Soc. of Comm. & Inst. Psychologists, Inc. v. Lamm, 741 P.2d 707 (Colo. 1987); Bloomer v. Boulder County Bd. of Comm'rs, 799 P.2d 942 (Colo. 1990).

Equal protection and statutory classifications. Equal protection of the laws requires that statutory classifications be based on differences that are real in fact and are reasonably related to the general purposes of the enacted legislation. People v. Montoya, 647 P.2d 1203 (Colo. 1982); People v. Weller, 679 P.2d 1077 (Colo. 1984); People v. Finnessey, 747 P.2d 673 (Colo. 1987).

Where the statutory classification does not infringe on a fundamental right or adversely affect a suspect class--such as one based on race or national origin--or does not establish a classification triggering an intermediate level of scrutiny--such as classifications based on illegitimacy or gender--a rational basis standard of review is the controlling legal norm in resolving an equal protection challenge. Harris v. The Ark, 810 P.2d 226 (Colo.

1991); People v. Black, 915 P.2d 1257 (Colo. 1996).

Regulatory classification ordinarily upheld if distinctions reasonable and rational. A regulatory classification which neither impinges on fundamental rights nor affects suspect classes will be upheld if the distinctions made have a reasonable basis and are rationally related to a legitimate state interest. Collopy v. Wildlife Comm'n, 625 P.2d 994 (Colo. 1981); Tassian v. People, 731 P.2d 672 (Colo. 1987); City of Montrose v. Pub. Utils. Comm'n, 732 P.2d 1181 (Colo. 1987).

There is no rational basis for a classification that provides greater benefits for less severe injuries, and so the definition of "employee" in the Workers' Compensation Act must be construed to entitle an unpaid student intern to an imputed wage for purposes of calculating medical impairment benefits for an unscheduled injury when the intern would be entitled to such benefits for a presumptively less severe scheduled injury. Kinder v. Indus. Claim Appeals Office, 976 P.2d 295 (Colo. App. 1998).

Administrative convenience, by itself, does not constitute a valid basis for the imposition of disparate treatment upon persons who, with respect to activity in question, are basically in same position as others who are not singled out for different treatment. Tassian v. People, 731 P.2d 672 (Colo. 1987).

Gender-based distinctions must serve important governmental objectives, and a discriminatory classification must be substantially related to the achievement of those objectives in order to withstand judicial scrutiny under the equal protection clause. People in Interest of S.P.B., 651 P.2d 1213 (Colo. 1982).

Wealth not suspect classification. Wealth alone is not a suspect classification in Colorado. The Colorado Constitution does not forbid disparities in wealth, nor does it forbid persons residing in one district from taxing themselves at a rate higher than persons in another district. Lujan v. Colo. State Bd. of Educ., 649 P.2d 1005 (Colo. 1982).

For the three standards of review within equal protection analysis, see Lujan v. Colo. State Bd. of Educ., 649 P.2d 1005 (Colo. 1982); 7250 Corp. v. Bd. of County Comm'rs, 799 P.2d 917 (Colo. 1990); Evans v. Romer, 854 P.2d 1270 (Colo. 1993), cert. denied, 510 U.S. 959, 114 S. Ct. 419, 126 L.Ed.2d 365 (1994).

Intermediate standard of review for equal protection claims. The legislative classification must be narrowly tailored to serve a substantial governmental interest. 7250 Corp. v. Bd. of County Comm'rs, 799 P.2d 917 (Colo. 1990).

The intermediate standard of review should be applied where the activity arguably involves some degree of constitutionally protected expression, but where the expressive component of such activity is secondary to the conduct itself. 7250 Corp. v. Bd. of County Comm'rs, 799 P.2d 917 (Colo. 1990).

The rational basis test requires a court to determine, first, whether the classification has some rational basis in fact and, second, whether it is rationally related to a legitimate interest. Rodriguez v. Schutt, 896 P.2d 881 (Colo. App. 1994), rev'd on other grounds, 914 P.2d 921 (Colo. 1996).

In the absence of a fundamental right, a suspect class, or a classification triggering an intermediate standard of scrutiny, a rational basis of review applies to equal protection claims. Ramseyer v. Colo. Dept. of Soc. Servs., 895 P.2d 1188 (Colo. App. 1995).

Rational relationship standard, rather than intermediate standard of review, was proper

standard to apply in determining whether classifications created under the Workers' Compensation Act of Colorado based upon age and degree of disability were valid under the state constitution. Romero v. Indus. Claim Appeals Office, 902 P.2d 896 (Colo. App. 1995), aff'd, 912 P.2d 62 (Colo. 1996).

Economic regulations are reviewed under "rational basis" test for purposes of equal protection to determine whether state action was rationally related to a legitimate state purpose. Mountain States Tel. & Tel. v. Pub. Utils. Comm'n, 763 P.2d 1020 (Colo. 1988).

The classification made by § 34-60-118.5 is rationally related to a legitimate state purpose, and there is no equal protection violation where the statute vests the oil and gas commission with jurisdiction over parties with a dispute over only the timing of a payment but does not vest such jurisdiction if there is a dispute over whether a payment is owed. Grynberg v. Colo. Oil & Gas Comm'n, 7 P.3d 1060 (Colo. App. 1999).

Time, place, and manner restrictions upon conduct involving some expressive component is permitted as long as restrictions are content neutral, do not unreasonably limit alternative avenues of communication, and are tailored to effectuate a substantial governmental interest. Such restrictions need not eliminate all less restrictive alternatives. 7250 Corp. v. Bd. of County Comm'rs, 799 P.2d 917 (Colo. 1990).

Standard for review of opportunity to recover attorney's fees. Equality of opportunity to recover attorney's fees is not a fundamental right, and therefore the rational relationship test, not the strict scrutiny test, is the appropriate standard for equal protection review. Torres v. Portillos, 638 P.2d 274 (Colo. 1981).

There is a rational basis in § 19-2-511 for distinguishing between out-of-state runaways and in-state runaways. The state has a legitimate state interest in conducting effective and timely police interrogation as part of the investigation process. People v. Blankenship, 119 P.3d 552 (Colo. App. 2005).

D. Application of Equal Protection Standards.

1. Driving Privileges.

Revocation of driver's license does implicate procedural due process protections. People v. McKnight, 200 Colo. 486, 617 P.2d 1178 (1980).

Proceeding revoking habitual offender's driver's license deemed civil. The administrative proceeding to revoke a driver's license because of an habitual traffic offender status is a civil one. People v. McKnight, 200 Colo. 486, 617 P.2d 1178 (1980).

Procedures for revocation of driver's license adequate to accord due process. The Colorado procedures for revocation of a driver's license, which require notice and administrative hearing in advance of revocation and which permit appeal of any order of revocation, are fully adequate to accord procedural due process to the licensee. People v. McKnight, 200 Colo. 486, 617 P.2d 1178 (1980).

Procedures to determine habitual traffic offender status fundamentally fair. The procedures upon which prosecutions under § 42-2-206 are based are fundamentally fair, are adequate to assure an accurate determination of habitual traffic offender status, and accord due process of law to a licensee later accused of "driving after judgment prohibited". People v. McKnight, 200 Colo. 486, 617 P.2d 1178 (1980).

Equal protection was not violated by statutory scheme

prohibiting issuance of probationary license to driver whose license was revoked administratively for operating a motor vehicle with an excessive alcoholic content but permitting issuance of such a license to a driver whose license was revoked following conviction of the criminal offense of DUI or DWAI. Bath v. State Dept. of Rev., 758 P.2d 1381 (Colo. 1988); Hancock v. State Dept. of Rev., 758 P.2d 1372 (Colo. 1988).

When disparate treatment is not violative of equal protection. Although under the implied consent law a person refusing to submit to a chemical test is subject to a mandatory revocation without any opportunity for a probationary license, while a person actually convicted of driving under the influence is subject to a mandatory revocation but nonetheless may apply for a probationary license, this disparity in treatment does not violate equal protection of the laws. Drake v. Colo. Dept. of Rev., 674 P.2d 359 (Colo. 1984).

Right to equal protection not violated where driver's license was revoked for failure to provide urine sample under § 42-4-1202 which does not provide for alternative types of drug testing in the event of physical impairment. Halter v. Dept. of Rev., 857 P.2d 535 (Colo. App. 1993).

Legislative choice affording certain class of traffic offenders opportunity to obtain license reasonable. The legislative choice to afford a certain class of traffic offenders manifesting a history of alcohol abuse an opportunity to obtain a probationary license under certain conditions, but prohibiting the issuance of any license to a habitual traffic offender, is not unreasonable. Heninger v. Charnes, 200 Colo. 194, 613 P.2d 884 (1980).

Use of hearsay evidence in license revocation hearing constitutional. If the hearsay evidence which is relied upon to establish an element for revocation of a driver's license is sufficiently reliable and trustworthy, evidence possesses probative value commonly accepted by reasonable and prudent persons in the conduct of their affairs and the licensee had the right to present evidence rebutting any element of the prima facie case, then the hearing officer may, without violating due process, rely on such hearsay evidence alone, in entering a finding for revocation. Colo. Dept. of Rev. v. Kirke, 743 P.2d 16 (Colo. 1987); Colo. Div. of Rev. v. Lounsbury, 743 P.2d 23 (Colo. 1987); Dawson v. State Dept. of Rev., 757 P.2d 1144 (Colo. App. 1988).

Where hearsay statements were made in the course and conduct of the officer's duties and where licensee had the statutory right to subpoena and cross-examine the officer regarding such statements, the hearsay evidence was sufficiently reliable and trustworthy and licensee's due process rights were not violated by the use of such evidence at the driver's license revocation hearing. Colo. Div. of Rev. v. Lunsbury, 734 P.2d 23 (Colo. 1987); Charnes v. Lobato, 743 P.2d 27 (Colo. 1987); Heller v. Velasquez, 743 P.2d 34 (Colo. 1987); Charnes v. Olona, 743 P.2d 36 (Colo. 1987).

DUI officer's testimony was sufficiently reliable and trustworthy when the statement that he conveyed was made by an investigating officer in the course of his law enforcement duties and after he had requested the assistance of the DUI officer to determine whether there was alcohol involvement. Colo. Dept. of Rev. v. Kirke, 743 P.2d 16 (Colo. 1987).

Failure to provide itemized accounting of prior traffic violations in notice not violative of due process. Ryan v. Charnes, 738 P.2d 1175 (Colo. 1987).

Penalty for driving while license denied, suspended, or revoked upheld. Section 42-2-130(3) furthers a legitimate governmental

purpose by penalizing drivers under denial, suspension, or revocation who commit additional traffic offenses and does not violate equal-protection guarantees. Allen v. Charnes, 674 P.2d 378 (Colo. 1984).

Application of habitual offender provision to prior liquor offense conviction constitutional. In view of the pronounced legislative policy of providing maximum safety for highway travelers and users, the application of § 42-2-202 (2)(a)(I), referring to habitual offenders, to a prior conviction under prior § 13-5-30 (now § 42-4-1202) clearly comports with due process of law. Van Gerpen v. Peterson, 620 P.2d 714 (Colo. 1980).

Implied consent provision constitutional. In a revocation under the implied consent statute, there is no statutory discretion in the hearing officer to authorize dispositional alternatives upon a determination of a driver's unjustified refusal to submit to a chemical test. Therefore the section does not violate due process of law. Davis v. Colo. Dept. of Rev., 623 P.2d 874 (Colo. 1981).

Failure to warn a driver that evidence of his refusal to take blood or breath test may be used against him at trial coupled with the subsequent use of the evidence at trial does not violate due process under either the federal or the state constitution. Cox v. People, 735 P.2d 153 (Colo. 1987).

2. Juvenile Cases.

Juveniles adjudicated delinquent and adults convicted of crimes are not similarly situated. People in Interest of M.C., 750 P.2d 69 (Colo. App. 1987), aff'd, 774 P.2d 857 (Colo. 1989).

Where a person is adjudicated a delinquent child at age 17 and is 18 at the time of the dispositional order, equal protection is not violated where the juvenile court retains jurisdiction and proceeds with disposition, even though similar situated adults are subject to different sanctions contained in the criminal code. People in Interest of M.C., 774 P.2d 857 (Colo. 1989).

There is no error in the use of the rational basis test with regard to juvenile's commitment. While commitment of an adjudicated delinquent offender implicates a significant liberty interest, that interest is not so fundamental as to require the employment of a strict scrutiny analysis to resolve a challenge premised upon denial of equal protection of the laws. People v. T.S.R., 843 P.2d 105 (Colo. App. 1992).

Detention of juveniles possessing deadly weapons prior to the conclusion of formal adjudicatory proceedings serves a legitimate state objective in view of the relationship between possession of a deadly weapon by a juvenile and the risk of imminent and serious harm to the community or the juvenile. Trial court's findings that confinement of juveniles in certain secure detention facilities constituted punishment did not resolve the issue of the facial validity of statute creating presumption of dangerousness. A court must consider the legislative purposes giving rise to the statute, the relationship between the statutory provisions and the purposes, and the procedures authorized by the statute. People v. Juvenile Court, 893 P.2d 81 (Colo. 1995).

It is a valid exercise of prosecutorial discretion for prosecutors to select which of the juveniles who meet the statutory requirement for direct filing will be filed upon in district court. It is not unreasonable to treat certain offenders differently from others and no equal protection or substantive due process violation arises. People v. Hughes, 946 P.2d 509 (Colo. App. 1997).

3. Criminal Statutes - Sentencing.

General conspiracy statute and specific statute punishing marihuana conspiracies are not proscribing identical conduct; therefore, their imposition of different penalties does not violate equal protection. People v. Finnessey, 747 P.2d 673 (Colo. 1987).

When an offender who acts with a less culpable intent may receive a greater penalty than the offender who acts with a greater culpable intent, such a statutory scheme is unreasonably structured and does not meet the requirements of equal protection, even though the two offenses result in the same harm. People v. Blizzard, 852 P.2d 418 (Colo. 1993) (decided under law in effect prior to 1991 amendment); Smith v. People, 852 P.2d 420 (Colo. 1993).

Punishment reasonably related to legitimate governmental interest. The fixing of punishments for offenders, based upon the date on which their crimes were committed, is reasonably related to these legitimate governmental interests and is not violative of equal protection. People v. Montoya, 647 P.2d 1203 (Colo. 1982).

Defendant not denied equal protection where tried under general theft statute rather than specific theft of television service statute where specific statute was enacted after defendant's arrest and applied to offenses occurring after effective date. People v. Collyer, 736 P.2d 1267 (Colo. App. 1987).

Inmate classification decisions are within the discretion of department of corrections officials. As such, defendant's continued medium security classification violates neither the liberty interest protected under the due process clause nor the guarantee of equal protection so long as the classification bears a rational relationship to a legitimate state purpose. Milligan v. State Dept. of Corr., 751 P.2d 75 (Colo. App. 1988).

Subjecting parolees to the discretion of the parole board rather than the Code of Penal Discipline does not violate equal protection. Parolees are not similarly situated with inmates in this case. Although inmates and parolees are both technically under the custody of the department of corrections, they are supervised by different entities. Parolees are supervised by the parole board and the inmates are supervised by the department of corrections, each a separate entity in the executive branch. People v. Barber, 74 P.3d 444 (Colo. App. 2003).

Equal protection of the laws is not violated by sentencing in the aggravated range for a crime of violence based on the use of a deadly weapon during the commission of first degree assault. People v. Montoya, 736 P.2d 1208 (Colo. 1987).

No equal protection violation where conviction for child abuse resulting in death under § 18-1-105 and this section is interpreted to preclude a sentence reduction below the mandatory minimum as compared to a reduction or modification of a mandatory crime of violence sentence. People v. Smith, 992 P.2d 635 (Colo. App. 1999).

Equal protection is not violated when a defendant is charged for the same conduct with both unlawful use of a controlled substance and unlawful possession of a controlled substance because unlawful use and unlawful possession are distinct offenses that each require proof of at least one fact that the other does not. People v. District Ct. of 11th Jud. Dist., 964 P.2d 498 (Colo. 1998).

No equal protection violation where person convicted of class four felony theft is punished more severely than a class four felony sex offender. Felony classes do not themselves create "classes" for purposes of equal protection analysis;

defendant is only "similarly situated" with defendants who commit the same or similar acts. People v. Friesen, 45 P.3d 784 (Colo. App. 2001); People v. Walker, 75 P.3d 722 (Colo. App. 2002).

No equal protection violation because nonviolent sex offense is not identical to a violent sex offense and the punishments for the different types of offenses are not the same. People v. Strean, 74 P.3d 387 (Colo. App. 2002).

While charges are similar, difference between attempted first degree extreme indifference murder and assault in the first degree is not so lacking in objective content as to render the penalty differential for the offenses violative of equal protection. People v. Ellis, 30 P.3d 774 (Colo. App. 2001).

No equal protection violation where defendant received more severe sentence as an accessory than he would have received for false reporting. The two offenses are distinguishable. A deliberate attempt to thwart law enforcement is more destructive than conduct not designed to do so. People v. Preciado-Flores, 66 P.3d 155 (Colo. App. 2002).

No equal protection violation where the mandatory parole scheme imposes a more severe sanction on non-sex offenders than on sex offenders whose crimes are in the same felony classification. People v. Harper, 111 P.3d 482 (Colo. App. 2004).

Defendant's claim that he was punished more harshly under subsection (2) than if he were sentenced under subsection (1) based on parole eligibility is not an equal protection violation. The general assembly could have rationally concluded to differ the sentences since subsection (1) is triggered by two previous convictions and subsection (2) is triggered by three previous convictions. People v. Dean, 2012 COA 106, 292 P.3d 1066.

Ordering restitution regardless of the defendant's ability to pay does not violate due process. However, due process does provide that probation may not be revoked if the defendant establishes that he or she is unable to make restitution payments. People v. Stafford, 93 P.3d 572 (Colo. App. 2004).

No equal protection violation where offender convicted of a nonsexual offense would receive mandatory parole, but an offender convicted of a comparable nonsexual offense in which there is an underlying factual basis of unlawful sexual behavior would receive discretionary parole under § 17-2-201 (5)(a). Offenders are not similarly situated because different behavior triggers the different parole requirements. People v. Fritschler, 87 P.3d 186 (Colo. App. 2003).

The terms "serious bodily injury" and "bodily injury" in § 18-1-901 do not suffer from an equal protection problem because they only overlap if serious bodily injury is given an unreasonably broad interpretation. People v. Summitt, 104 P.3d 232 (Colo. App. 2004), aff'd in part and rev'd in part on other grounds, 132 P.3d 320 (Colo. 2006).

No violation of equal protection because the Colorado Organized Crime Control Act (COCCA) punishes defendant with a class 2 felony when the two underlying predicate crimes are misdemeanors. The additional requirement that the offense be conducted as a part of an enterprise satisfies the related legislative purpose of deterring organized crime. People v. McGlotten, 166 P.3d 182 (Colo. App. 2007).

Defendant's claim that § 18-6-401 (1)(c) violated equal protection fails because subsections (1)(c) and (7)(a)(I) to (VI) do not affect persons who are similarly situated. People v. Laurent, 194 P.3d 1053

(Colo. App. 2008) (decided under law in effect prior to 2006 amendment to § 18-6-401 (1)(c)).

Defendant who pleads guilty may not bring an as-applied equal protection postconviction challenge. People v. Ford, 232 P.3d 260 (Colo. App. 2009).

4. Jury Selection.

Evaluating claims of racial discrimination in jury selection under the equal protection clause involves the following: (1) The defendant must show the prosecution has excluded potential jurors based on race; (2) if so shown, the prosecution must articulate a race-neutral explanation for removing the jurors in question; (3) if so articulated, the court must decide if the defendant carried the burden of proving purposeful discrimination. People v. Cerrone, 854 P.2d 178 (Colo. 1993).

Test applied in People v. Mendoza, 876 P.2d 98 (Colo. App. 1994); People v. Hughes, 946 P.2d 509 (Colo. App. 1997); People v. Collins, 187 P.3d 1178 (Colo. App. 2008).

Objection to allegedly improper exclusion of juror on account of race must be made before venire is dismissed and the trial begins. People v. Mendoza, 876 P.2d 98 (Colo. App. 1994).

Excluding a person from jury service because of the person's race is unconstitutional discrimination against the prospective juror as well as the defendant. Fields v. People, 732 P.2d 1145 (Colo. 1987).

Defendant must be allowed to rebut the prosecutor's explanation of why three Hispanic jurors were excused when there is a claim of racial discrimination in peremptory challenges. People v. Mendoza, 876 P.2d 98 (Colo. App. 1994).

Total exclusion of Spanish-surnamed persons from the group of prospective jurors brought to voir dire established a prima facie case of racial discrimination and a denial of equal protection. Prosecution could offer no specific explanation for excluding Spanish-surnamed persons and general assertions that there was no discrimination was insufficient to rebut the showing of discrimination. People v. Cerrone, 829 P.2d 468 (Colo. App. 1991).

Where defendant claimed racial discrimination in peremptory challenges, a systematic pattern of exclusions is neither necessary nor sufficient for making out a prima facie showing, but may be part of the totality of the circumstances. People v. Hughes, 946 P.2d 509 (Colo. App. 1997).

Great deference is given to the trial court's findings based largely on its ability to assess the demeanor and credibility of the prosecutor. People v. Hughes, 946 P.2d 509 (Colo. App. 1997).

Question of whether a party has established a prima facie case of racial discrimination during the jury selection process is a matter of law to which an appellate court should apply a de novo standard of review. Valdez v. People, 966 P.2d 587 (Colo. 1998).

Once proponent has articulated race-neutral reasons for exercising a peremptory challenge, trial court's determination of whether proponent has exercised purposeful racial discrimination is reviewed only for clear error. People v. Collins, 187 P.3d 1178 (Colo. App. 2008).

Striking a single potential juror for a discriminatory reason violates the equal protection clause even where jurors of the same race are seated. People v. Collins, 187 P.3d 1178 (Colo. App. 2008).

5. Elections.

Differing treatment of political organizations and political parties under § 1-4-801 serves the

compelling state interest of protecting the integrity of the electoral process, therefore, such treatment does not deprive political organizations of equal protection under the law. Colo. Libertarian Party v. Sec'y of State, 817 P.2d 998 (Colo. 1991), cert. denied, 503 U.S. 985, 112 S. Ct. 1670, 118 L. Ed. 2d 390 (1992).

Nomination petition requirement does not violate equal protection. Requirement that nominating petitions circulated by individuals or political organizations contain the name of a single candidate only does not violate equal protection. Nat'l Prohibition Party v. State of Colo., 752 P.2d 80 (Colo. 1988).

General assembly has the power to determine the qualifications of voters in all public and quasi-municipal corporations, and all reasonable provisions with reference thereto will be upheld. Millis v. Bd. of County Comm'rs, 626 P.2d 652 (Colo. 1981).

Charter provisions granting the right to vote to nonresident property owners does not violate plaintiff's right to equal protection. May v. Town of Mountain Vill., 969 P.2d 790 (Colo. App. 1998).

Plaintiffs were not denied access to the political process and charter provision that grants nonresident property owners the right to vote does not violate plaintiff's right to equal protection under this section. May v. Town of Mountain Vill., 969 P.2d 790 (Colo. 1998).

6. Miscellaneous.

Rational classifications do not violate equal protection. In implementing social programs designed to promote public health, safety, and welfare, the state is not required to treat all persons or entities equally for purposes of imposing a tax. Claim of Woloson, 796 P.2d 1 (Colo. App. 1989).

Where judge's directive prohibited pro se litigants from paying filing fees by personal checks, equal protection clause was violated absent rational basis for distinguishing between pro se litigants and litigants represented by attorneys. Tassian v. People, 731 P.2d 672 (Colo. 1987).

Act requiring sand and gravel pit owners and operators who excavate pits after 1980 to obtain well permits and augmentation plans while exempting other owners and operators of sand and gravel pits does not violate equal protection or due process requirements. Act represents a rational effort of the general assembly to achieve the legitimate governmental purpose of developing a program of administration of sand and gravel pits. Central Colo. Water v. Simpson, 877 P.2d 335 (Colo. 1994).

Due process and equal protection rights under the fifth and fourteenth amendments to the U.S. Constitution not violated by denying defendant a free transcript of prior proceedings where transcript would have offered relatively little value to defendant in the presentation of an effective defense. Matthews v. Price, 83 F.3d 328 (10th Cir. 1996).

Due process and equal protection rights under the fifth and fourteenth amendments to the U.S. Constitution not violated by denying defendant an investigator or a psychiatric expert at state expense where defendant did not demonstrate that such services were necessary to an adequate defense or that the court's refusal to appoint such experts substantially prejudiced his defense. Matthews v. Price, 83 F.3d 328 (10th Cir. 1996).

The statutory employer provisions of the Worker's Compensation Act do not violate the state constitutional guarantee of equal protection of the laws in terms of similarly situated employees. The classification is reasonably related to

the legitimate governmental objective of providing monetary relief for injured employees, without regard to fault. Curtiss v. GSX Corp. of Colo., 774 P.2d 873 (Colo. 1989).

The industrial claim appeals panel's interpretation of worker's compensation exemption does not violate equal protection requirements. The owners of other real property are not similarly situated with owners or occupants of qualified residential real property. The exemption is compatible with the normal expectations of property owners who contract with craftsmen and artisans for work on residential properties. Brown v. Muto, 943 P.2d 38 (Colo. App. 1996).

Because fundamental rights are not implicated by the Workers' Compensation Act, the rational basis standard of review applies to claims that a part of the act violates equal protection. Waddell v. Indus. Claim Appeals Office, 964 P.2d 552 (Colo. App. 1998).

Section 8-42-104(2), which provides for apportionment of liability for workers' compensation claims does not deny equal protection to an employee who becomes permanently and totally disabled as the result of multiple industrial accidents even though such an employee may receive fewer benefits than an employee who is permanently and totally disabled as the result of a single industrial accident. Waddell v. Indus. Claim Appeals Office, 964 P.2d 552 (Colo. App. 1998).

Exclusion of fringe benefits of employment from definition of "wages" of employees in agricultural industry violates equal protection guarantees. Higgs v. Western Landscaping & Sprinkler Sys., Inc., 804 P.2d 161 (Colo. 1991).

Employment Security Act is constitutional exercise of police powers. The act assures a measure of security to citizens against the hazard of unemployment and in furtherance of that end the general assembly is authorized to levy a tax on employers to defray the cost thereof. Claim of Woloson, 796 P.2d 1 (Colo. App. 1989).

State personnel statutory section setting forth a monthly maximum salary level limitation for state employees does not violate equal protection standard. Section 24-50-104, which sets forth such limitation represents a reasonable exercise of the general assembly's responsibility for maintaining the fiscal integrity of the state personnel system and does not discriminate between members of specific classes or grades of employees. Dempsy v. Romer, 825 P.2d 44 (Colo. 1992).

A policy of not promoting state employees with ongoing administrative appeals is rationally related to the legitimate government purposes of maintaining workplace harmony and avoiding disruption. Teigen v. Renfrow, 511 F.3d 1072 (10th Cir. 2007).

For purposes of the equal protection clause, department of corrections defendants had a legitimate interest as a state employer in preventing employees who had invoked the administrative appeal process from moving into new positions within the agency or receiving other discretionary employment benefits. Teigen v. Renfrow, 511 F.3d 1072 (10th Cir. 2007).

A rational basis exists for using the federal criteria and for including garnished income in determining eligibility for old age pension benefits. Ramseyer v. Colo. Dept. of Soc. Servs., 895 P.2d 1188 (Colo. App. 1995).

Financing provisions of social services code not violative of equal protection because a rational relationship exists between the requirement that local entities must

support a portion of the costs of programs serving the disadvantaged within their localities and the purposes of the code. Colo. Dept. of Soc. Servs. v. Bd. of County Comm'rs, 697 P.2d 1 (Colo. 1985).

Neither the equal protection clause of the fourteenth amendment to the United States Constitution nor the due process clause of this section requires that mathematical symmetry be attained between benefits received and payment for those benefits. City of Montrose v. Pub. Utils. Comm'n, 732 P.2d 1181 (Colo. 1987).

Where the general assembly enacts legislation for a special purpose that is limited in its application and applied differently in various pilot districts, such legislation does not violate equal protection where there is a legitimate governmental interest and procedures created by the act are reasonably related to that interest. Firelock Inc. v. District Court, 776 P.2d 1090 (Colo. 1989).

Intentional discriminatory enforcement of regulations must be shown by persons asserting deprivation of equal protection through arbitrary and capricious enforcement. Zavala v. City & County of Denver, 759 P.2d 664 (Colo. 1988).

That some individuals escape prosecution under an ordinance is insufficient to establish intentional selective enforcement. Zavala v. City & County of Denver, 759 P.2d 664 (Colo. 1988).

The mere failure of a governmental regulation to allow all possible and reasonable exceptions to its application is not sufficient to render the regulation unconstitutional. Society of Comm. & Inst. Psychologists v. Lamm, 741 P.2d 707 (Colo. 1987).

Premises liability provision in § 13-21-115 is constitutional. Giebink v. Fischer, 709 F. Supp. 1012 (D. Colo. 1989).

Premises liability provision in § 13-21-115 is unconstitutional and violative of both the federal and state constitutional guarantees of equal protection of the laws. Gallegos v. Phipps, 779 P.2d 856 (Colo. 1989); Klausz v. Dillion Co., Inc., 779 P.2d 863 (Colo. 1989) (disagreeing with Giebink v. Fischer cited above).

Body execution statute does not offer equal opportunity for limiting confinement to indigent debtor and the debtor with means to satisfy monetary judgment, and is thus a violation of equal protection and unconstitutional. Kinsey v. Preeson, 746 P.2d 542 (Colo. 1987).

Body execution statute, under "rational basis" test, is unconstitutional. Even absent a determination by the court that imprisonment resulting from an execution against the body of a debtor affects a fundamental right or involves a suspect class, § 13-59-103 is unconstitutional. Kinsey v. Preeson, 746 P.2d 542 (Colo. 1987).

Release procedures of the Colorado Sex Offenders Act are not unconstitutional as being violative of due process or equal protection. People v. Kibel, 701 P.2d 37 (Colo. 1985); People v. Adrian, 701 P.2d 45 (Colo. 1985).

Governmental Immunity Act does not violate equal protection of the law. Lee v. Colo. Dept. of Health, 718 P.2d 221 (Colo. 1986).

Distinction made by the general assembly between persons injured as a result of inadequate design of a public facility for which there is governmental immunity and persons injured as a result of negligence in the construction or maintenance of a public facility for which there is no governmental immunity is reasonable under the rational basis test. Willer v. City of Thornton, 817 P.2d 514 (Colo. 1991); Simon v. State Comp. Ins. Auth., 903 P.2d 1139 (Colo. App. 1994), rev'd on other grounds, 946 P.2d 1298 (Colo. 1997).

Simple negligence as basis for 42 U.S.C. § 1983 claim. Where state law affords a plaintiff an adequate remedy to obtain redress for deprivation of his liberty interests, plaintiff's due process rights have not been violated and plaintiff consequently has no claim under 42 U.S.C. § 1983. Collier v. Denver, 697 P.2d 396 (Colo. App. 1984), cert. dismissed, 716 P.2d 1124 (Colo. 1986).

The Colorado Clean Indoor Air Act's (CCIA) airport smoking concession exemption does not violate the equal protection clause of the fourteenth amendment to the U.S. constitution. The Colorado legislature, by exempting airport smoking concessions from the CCIA's operation, rationally distinguished those concessions from the majority of other indoor facilities in the state that are open to the public. Coal. for Equal Rights v. Ritter, 517 F.3d 1195 (10th Cir. 2008).

Commission order directing utility to reacquire assets transferred without its prior approval was rationally related to the legitimate state interest of protecting ratepayers. Mountain States Tel. & Tel. v. Pub. Utils. Comm'n, 763 P.2d 1020 (Colo. 1988).

Using rational basis analysis, the general assembly could have reasonably concluded that § 40-3-106 (4) would be a disincentive for municipalities to negotiate inflated franchise fees since such a fee will ultimately be paid for by the residents of the municipality. City of Montrose v. Pub. Utils. Comm'n, 732 P.2d 1181 (Colo. 1987). 1020 (Colo. 1988).

Plaintiffs have no standing to claim a denial of equal protection in the zoning of county owned as contrasted to commercial quarry operations. Cottonwood Farms v. Bd. of County Comm'rs, 725 P.2d 57 (Colo. App. 1986), aff'd, 763 P.2d 551 (Colo. 1988).

And even if plaintiffs did have standing to claim denial of equal protection, such claim is without merit. A county's facilities and operations are exempted by § 30-28-110 (1) from zoning regulations, and ordinances or regulations which exempt public operated facilities from zoning requirements while maintaining regulation of private operations have been upheld repeatedly against constitutional attack. Cottonwood Farms v. Bd. of County Comm'rs, 725 P.2d 57 (Colo. App. 1986), aff'd, 763 P.2d 551 (Colo. 1988).

Advertisers who purchase advertising space only are not similarly situated to advertisers who purchase preprinted inserts. Therefore the equal protection argument fails. Walgreen Co. v. Charnes, 911 P.2d 667 (Colo. App. 1995).

Retention of immunity of counties for dangerous conditions upon county roads is not violative of equal protection or due process. Failure to include county roads in statutory waiver of sovereign immunity bears a reasonable relationship to the legitimate governmental interest of protecting counties from being financially overburdened by liability for dangerous conditions that exist on county roads and that the county is financially unable to remedy. Bloomer v. Boulder County Bd. of Comm'rs, 799 P.2d 942 (Colo. 1990).

Rule adopted by high school athletic association, which generally prohibited student athletes who practiced with nonschool teams from competing in interscholastic athletics, does rationally further legitimate state purposes and was not enforced in an arbitrary, capricious, or haphazard manner so that plaintiff's right to equal protection of the laws was not violated. Zuments v. Colo. H.S. Activities Ass'n, 737 P.2d 1113 (Colo. App. 1987).

Rule adopted by school board that prohibited the

employment of active school board members as teachers because of a conflicts of interest policy, but which did not prohibit the spouses of such members from teaching, did rationally further a legitimate governmental interest. Montrose County Sch. Dist. v. Lambert, 826 P.2d 349 (Colo. 1992).

Valedictorian who gave a speech at graduation that was different from the speech she submitted to the principal for review prior to graduation is not similarly situated to other valedictory speakers. Corder v. Lewis Palmer Sch. Dist. No. 38, 566 F.3d 1219 (10th Cir.), cert. denied, __ U.S. __, 130 S. Ct. 742, 175 L. Ed. 2d 515 (2009).

School district's unwritten policy of reviewing valedictory speeches prior to graduation ceremony was reasonably related to pedagogical concerns. Corder v. Lewis Palmer Sch. Dist. No. 38, 566 F.3d 1219 (10th Cir.), cert. denied, __ U.S. __, 130 S. Ct. 742, 175 L. Ed. 2d 515 (2009).

Receipt of workers' compensation benefits is not a fundamental right and strict and intermediate scrutiny do not apply to statutory classifications based on age. Accordingly the rational basis standard of review applies to an equal protection challenge to a workers' compensation statute. Culver v. Ace Elec., 971 P.2d 641 (Colo. 1999).

Constitutionality of social security benefit offset. Section 8-42-103(1)(c), providing for an offset of social security retirement benefits against worker's compensation benefits, does not violate equal protection under this constitutional provision. Stolworthy v. Clark, 952 P.2d 1198 (Colo. App. 1997), aff'd sub nom. Culver v. Ace Elec., 971 P.2d 641 (Colo. 1999); Culver v. Ace Elec., 952 P.2d 1200 (Colo. App. 1997), aff'd, 971 P.2d 641 (Colo. 1999).

Avoiding duplicative benefits serves a legitimate governmental interest, and imposing an offset is rationally related to that interest. Culver v. Ace Elec., 952 P.2d 1200 (Colo. App. 1997), aff'd, 971 P.2d 641 (Colo. 1999).

C.A.R. 3.4 does not violate plaintiff's constitutional right to equal protection because parents whose rights are terminated under article 5 of the Colorado Children's Code are not similarly situated to parents where rights are involuntarily terminated under article 3 of the code. C.A.R. 3.4 applies to parents subject to dependency and neglect proceedings under article 3 of the Colorado Children's Code. As such, the proceedings focus primarily on the protection and safety of the children, not on the custodial interests of the parent. Further, such a proceeding can be initiated only by the state. People ex rel. T.D., 140 P.3d 205 (Colo. App.), cert. denied, 549 U.S. 1020, 127 S. Ct. 564, 166 L. Ed. 2d 411, and 549 U.S. 1024, 127 S. Ct. 565, 166 L. Ed. 2d 419 (2006).

V. POLICE POWER.

A. Generally.

Condition on exercise of governmental regulation. The Colorado and federal constitutions condition the exercise of governmental regulation for public health, safety, and welfare by requiring that the intended goals shall be achieved through methods consistent with due process of law. Denver Cleanup Serv., Inc. v. Pub. Utils. Comm'n, 192 Colo. 537, 561 P.2d 1252 (1977).

Police power is inherent attribute of sovereignty with which the state is endowed for the protection and general welfare of its citizens. The constitution presupposes the existence of the police power and is to be construed with reference to that fact. In re Interrogatories of Governor, 97 Colo. 587, 52 P.2d 663 (1935).

And, while very broad and far-reaching, police power is exercisable only within limits of constitution. Olin Mathieson Chem. Corp. v. Francis, 134 Colo. 160, 301 P.2d 139 (1956).

Constitutionally protected rights in property are subject to regulation by proper exercise of police power of state. Where utility customer was aware that construction of its system was attended with risk, it is not only the right but the duty of an appellate court to determine the issues, regardless of interim construction. Pub. Serv. Co. v. Pub. Utils. Comm'n, 765 P.2d 1015 (Colo. 1988).

Statutes must be narrowly drawn to effect legislative purpose and must not be overbroad. People ex rel. Losavio v. J.L., 195 Colo. 494, 580 P.2d 23 (1978).

Relationship to legitimate state goals required. An attack upon a statute on grounds that it violates due process by exceeding the authority under the police power can only be sustained where the statute is shown to have no relation to legitimate state goals. People v. Taylor, 189 Colo. 202, 540 P.2d 320 (1975).

A statute which bears no rational relationship to the legislative end sought to be achieved violates due process and is unconstitutional. People ex rel. Losavio v. J.L., 195 Colo. 494, 580 P.2d 23 (1978).

Governmental purpose cannot be pursued by means stifling fundamental personal liberties. Even though the governmental purpose may be legitimate and substantial, that purpose cannot be pursued by means that broadly stifle fundamental personal liberties when the end can be more narrowly achieved. City of Lakewood v. Pillow, 180 Colo. 20, 501 P.2d 744 (1972); People v. Von Tersch, 180 Colo. 295, 505 P.2d 5 (1973).

Reasonable conditions imposed for exercise of police power valid as long as they are reasonably conceived. Bethlehem Evangelical Lutheran Church v. City of Lakewood, 626 P.2d 668 (Colo. 1981).

Act may not operate arbitrarily. Unless an act by its terms imports evil or is calculated to operate arbitrarily, oppressively, or unreasonably, it will not be held void, and the fact that in its operation as a police measure it may increase their labor, decrease the value of their property, or otherwise inconvenience individuals, does not render an act unconstitutional. In re Interrogatories of Governor, 97 Colo. 587, 52 P.2d 663 (1935); Cottrell Clothing Co. v. Teets, 139 Colo. 558, 342 P.2d 1016 (1959).

Courts determine reasonableness of police regulations. The general assembly is not the final judge of the limitations of the police power, and, because the legislative action must be reasonably necessary for the public benefit, the validity of all police regulations depends upon whether they can ultimately pass the judicial test of reasonableness. Olin Mathieson Chem. Corp. v. Francis, 134 Colo. 160, 301 P.2d 139 (1956).

It is the duty and responsibility of the judiciary, through the decision of controversies before it, to safeguard constitutional guarantees of maximum free and unrestricted use of property by the citizen and to strike down enactments which unreasonably and unnecessarily impose new restraints upon freedom of action in the use and enjoyment thereof. City & County of Denver v. Denver Buick, Inc., 141 Colo. 121, 347 P.2d 919 (1959).

Whether an act of a legislative body adopted as a police regulation has any reasonable connection with public health, morals, safety, or welfare, is a question for the determination of the judiciary. City of Englewood v. Apostolic Christian Church, 146 Colo. 374, 362 P.2d 172 (1961).

It is the duty of the supreme

court to examine a statute challenged on constitutional grounds to determine whether it has a substantial relation to the objects which the exercise of the police power is designed to secure and whether it is appropriate for the promotion of such objects. Western Power & Gas Co. v. Southeast Colo. Power Ass'n, 164 Colo. 344, 435 P.2d 219 (1967).

Statute may be held constitutionally invalid as applied when it operates to deprive one of a protected right, although its general validity as a measure enacted in the legitimate exercise of the state police power may be beyond question. People ex rel. Orcutt v. Instantwhip Denver, Inc., 176 Colo. 396, 490 P.2d 940 (1971).

Application of statute directly interfering with constitutional rights unconstitutional. The doctrine of unconstitutional application requires a demonstration that the application of a statute to a defendant under the circumstances of his case would directly interfere with his rights arising under the federal or state constitution. Heninger v. Charnes, 200 Colo. 194, 613 P.2d 884 (1980).

State has right through its general assembly to classify persons based upon reasonable and natural distinctions to accomplish the legitimate purposes of its police power. Vogts v. Guerrette, 142 Colo. 527, 351 P.2d 851 (1960); Vanderhoof v. People, 152 Colo. 147, 380 P.2d 903 (1963); People v. Trujillo, 178 Colo. 147, 497 P.2d 1 (1972).

A state may classify with reference to the evil to be prevented, and if the class discriminated against is or reasonably might be considered to define those from whom the evil mainly is to be feared, it properly may be picked out. A lack of abstract symmetry does not matter. People v. Trujillo, 178 Colo. 147, 497 P.2d 1 (1972).

If advantage sought by statute is personal as distinguished from general, the police powers may not be invoked. Olin Mathieson Chem. Corp. v. Francis, 134 Colo. 160, 301 P.2d 139 (1956).

Vested rights do not accrue to thwart reasonable exercise of police power for public good. Lakewood Pawnbrokers, Inc. v. City of Lakewood, 183 Colo. 370, 517 P.2d 834 (1973).

Power embraces public financial safety. The police power relates not merely to the public health and to public physical safety, but also to public financial safety. Laws may be passed within the police power to protect the public from financial loss. Ziegler v. People, 109 Colo. 252, 124 P.2d 593 (1942).

Defendant's right of due process was not violated by statute prohibiting possession of a "knife", defined so as to include a screwdriver, where an implicit element of the crime was the intent to possess, use, or carry such an instrument as a weapon. People v. Gross, 830 P.2d 933 (Colo. 1992).

Use of highways subject to police regulation. Right to use the highway of a state is not absolute but it may be limited by a proper exercise of the police power of the state based upon a reasonable relationship to the public health, safety, and welfare. Asphalt Paving Co. v. Bd. of County Comm'rs, 162 Colo. 254, 425 P.2d 289 (1967); Zaba v. Motor Vehicle Div., 183 Colo. 335, 516 P.2d 634 (1973).

Requirement that vehicle owners surrender titles upon disposition of vehicles reasonable. Any classification with respect to motor vehicle owners being required to surrender their certificate of title upon the sale or other disposition of their vehicles as salvage is reasonably related to a legitimate governmental purpose. Colo. Auto & Truck Wreckers Ass'n v. Dept. of Rev., 618 P.2d 646 (Colo. 1980).

Burden of establishing unreasonableness of regulation upon challenging party. Berg v. Colo. State Dept. of Soc. Servs., 694 P.2d 1291 (Colo. App. 1984).

Defendant's right of due process was not violated by fact that state board of accountancy initiated investigation of defendant as well as acted as the hearing board as the board is required by statute to initiate proceedings, hear evidence, and render decisions and there is no statutory provision authorizing a hearing officer for such proceedings. Mertsching v. Webb, 757 P.2d 1102 (Colo. App. 1988).

Applied in Thiele v. City & County of Denver, 135 Colo. 442, 312 P.2d 786 (1957); People v. Prante, 177 Colo. 243, 493 P.2d 1083 (1972); Carl Ainsworth, Inc. v. Town of Morrison, 189 Colo. 223, 539 P.2d 1267 (1975); City & County of Denver v. Nielson, 194 Colo. 407, 572 P.2d 484 (1977).

B. Business.

Right to carry on legitimate business is property right. Olin Mathieson Chem. Corp. v. Francis, 134 Colo. 160, 301 P.2d 139 (1956).

And cannot be abridged unless public interest requires it and means are reasonable. The right to carry on a legitimate business cannot be taken away or abridged by an exercise of the police power, unless it appears first, that the interests of the public generally, as distinguised from those of a particular class, require such interference, and second, that the means are reasonably necessary for the accomplishment of the purpose and not unduly oppressive upon individuals. Olin Mathieson Chem. Corp. v. Francis, 134 Colo. 160, 301 P.2d 139 (1956).

Under the American constitutional concept of fundamental freedoms and liberties an individual has the right to engage in a lawful business which is harmless in itself and useful to the community, unhampered by unreasonable and arbitrary governmental interference or regulation. City & County of Denver v. Denver Buick, Inc., 141 Colo. 121, 347 P.2d 919 (1959).

But unrestricted privilege to engage in business, or to conduct it as one pleases, is not guaranteed by the constitution. In re Interrogatories of Governor, 97 Colo. 587, 52 P.2d 663 (1935); Cottrell Clothing Co. v. Teets, 139 Colo. 558, 342 P.2d 1016 (1959).

Business activities are subject to reasonable regulation by the state in the exercise of the police power to preserve and enhance the public health, safety, and welfare. Colo. Auto & Truck Wreckers Ass'n v. State Dept. of Rev., 618 P.2d 646 (Colo. 1980).

Statute attempting to vest in officials unlimited power regarding lawful business void. A statute which attempts to vest in public officials arbitrary discretion and unlimited power with respect to a lawful business, without prescribing uniform rules and regulations, so that the officials as well as those affected thereby may govern themselves accordingly, is unconstitutional as violative of the provisions of this section. People v. Stanley, 90 Colo. 315, 9 P.2d 288 (1932); People v. Young, 139 Colo. 357, 339 P.2d 672 (1959).

Person has no absolute or constitutional property right to engage in practice of profession such as law, medicine, or dentistry. And if a natural person or a private corporation, an artificial person, is unable to meet or fulfil the reasonable conditions, he or it may not be heard to complain. He is deprived of no constitutional or statutory right whether the inability to comply with the regulations of the general assembly is due, as in the case of a corporation, to natural or inherent difficulties or in the case of a natural

person, inability to bring himself within the requirements because of mental or moral unfitness. People v. Painless Parker Dentist, 85 Colo. 304, 275 P. 928, cert. denied, 280 U.S. 566, 50 S. Ct. 25, 74 L. Ed. 620 (1929).

But right to practice profession, once legally granted, is within rights protected by the constitutions of the United States and of the state of Colorado, which provide that no person shall be deprived of life, liberty, or property without due process of law. Prouty v. Heron, 127 Colo. 168, 255 P.2d 755 (1953); State Bd. of Registration for Prof'l Eng'rs v. Antonio, 159 Colo. 51, 409 P.2d 505 (1966).

Ordinances regulating activities which may imperil public safety valid. It is within the police power of the legislative body of a municipal corporation to enact ordinances dealing with activities which may imperil public safety, and such an ordinance vesting discretion in the licensing body to grant or withhold a license for a gasoline filling station is valid. Starkey v. City of Longmont, 91 Colo. 387, 15 P.2d 620 (1932).

Regulation of establishments with liquor licenses permitted. A state agency regulation governing activities in establishments with liquor licenses based on crime prevention considerations is directly related to the promotion of public safety and welfare and thus is within the scope of the police power. Citizens for Free Enter. v. State Dept. of Rev., 649 P.2d 1054 (Colo. 1982).

State may prescribe regulations to secure people against fraud. A state may prescribe all such regulations as, in its judgment, will secure or tend to secure the people against the consequences of fraud and may institute any reasonable preventive remedy required by the frequency of fraud, or the difficulty experienced by individuals in circumventing it, especially when other means have not proved to be efficacious. Zeigler v. People, 109 Colo. 252, 124 P.2d 593 (1942).

Fair trade laws subject to due process. Fair trade laws which have been given an exemption from antitrust statutes to validate them, remain subject to constitutional requirements of due process. Olin Mathieson Chem. Corp. v. Francis, 134 Colo. 160, 301 P.2d 139 (1956).

To extent fair trade law is coercive it is lacking in due process, is confiscatory, and tends to establish a monopoly. Olin Mathieson Chem. Corp. v. Francis, 134 Colo. 160, 301 P.2d 139 (1956).

Price control unconstitutional only if arbitrary. The constitution does not secure to anyone liberty to conduct his business in such fashion as to inflict injury upon the public at large, or upon any substantial group of the people. Price control, like any other form of regulation, is unconstitutional only if arbitrary, discriminatory, or demonstrably irrelevant to the policy the general assembly is free to adopt, and hence an unnecessary and unwarranted interference with individual liberty. Smith Bros. Cleaners & Dyers v. People ex rel. Rogers, 108 Colo. 449, 119 P.2d 623 (1941).

General assembly cannot fix prices unless business is affected with public interest. The general assembly is without constitutional power to fix prices at which commodities may be sold, unless the business or property involved is affected with a public interest. Olin Mathieson Chem. Corp. v. Francis, 134 Colo. 160, 301 P.2d 139 (1956).

For price fixing statute to be upheld there must be some semblance of a public necessity for the act and it must have some relation to the public health, morals, and safety. Further, the price fixing agency must be duly constituted by law and due notice of its action given. The prices

fixed must have some regard to reason besides having a public concern. Olin Mathieson Chem. Corp. v. Francis, 134 Colo. 160, 301 P.2d 139 (1956).

General assembly cannot permit state agency to fix prices without hearing. Olin Mathieson Chem. Corp. v. Francis, 134 Colo. 160, 301 P.2d 139 (1956).

And general assembly cannot delegate to private parties power to fix prices for profit, without hearing or standards, binding noncontracting parties without an agreement between the manufacturer and the seller. Olin Mathieson Chem. Corp. v. Francis, 134 Colo. 160, 301 P.2d 139 (1956).

The general assembly cannot lawfully delegate authority to another, who may at his election, alter such resale price according to his personal whim or caprice and for his own benefit. Olin Mathieson Chem. Corp. v. Francis, 134 Colo. 160, 301 P.2d 139 (1956).

Sales which injure public alone may be prohibited. A statute attempting to prohibit all sales below cost would be unconstitutional, and only such sales may be prohibited which are intended to injure the public in a manner warranting the exercise of the police power. Olin Mathieson Chem. Corp. v. Francis, 134 Colo. 160, 301 P.2d 139 (1956).

Sunday closing ordinances do not violate this section. They are sustained as constitutional upon the theory that they promote the general welfare of the people. Their enactment is within the police power of municipalities. Rosenbaum v. City & County of Denver, 102 Colo. 530, 81 P.2d 760 (1938).

Public utilities subject to regulation. The activities of public utilities in rendering service to the public are subject to reasonable regulations in the exercise of the police power. Western Power & Gas Co. v. Southeast Colo. Power Ass'n, 164 Colo. 344, 435 P.2d 219 (1967).

Production or sale of food or clothing cannot be subjected to legislative regulation on the basis of a public use. Olin Mathieson Chem. Corp. v. Francis, 134 Colo. 160, 301 P.2d 139 (1956).

The total prohibition of the manufacture, sale, or possession of a nutritious, wholesome, and healthful food product, clearly and distinctively labeled, with its ingredients fully and correctly disclosed, and where marketed in a manner free from misrepresentation, is in excess of the police power of the state and must be declared invalid under the due process clause of the constitution of Colorado. People ex rel. Orcutt v. Instantwhip Denver, Inc., 176 Colo. 396, 490 P.2d 940 (1971).

Jurisdiction over foreign manufacturer causing injury in state constitutional. The assertion of jurisdiction over a foreign manufacturer of a product allegedly causing an injury in the state does not offend traditional notions of fair play and substantial justice and is consistent with due process of law. Le Manufacture Francaise Des Pneumatiques Michelin v. District Court, 620 P.2d 1040 (Colo. 1980).

Applied in State Bd. of Dental Exam'rs v. Savelle, 90 Colo. 177, 8 P.2d 693, appeal dismissed, 287 U.S. 562, 53 S. Ct. 5, 77 L. Ed. 496 (1932); City & County of Denver v. Schmid, 98 Colo. 32, 52 P.2d 388 (1935); Cleere v. Bullock, 146 Colo. 284, 361 P.2d 616 (1961); Abdoo v. City & County of Denver, 156 Colo. 127, 397 P.2d 222 (1964); Dunbar v. Hoffman, 171 Colo. 481, 468 P.2d 742 (1970); Pub. Serv. Co. v. Pub. Utils. Comm'n, 174 Colo. 470, 485 P.2d 123 (1971); Harbour v. Colo. State Racing Comm'n, 32 Colo. App. 1, 505 P.2d 22 (1973); Moore v. District Court, 184 Colo. 63, 518 P.2d 948 (1974); Spero v. Bd. of Trustees, 35 Colo. App. 64, 529 P.2d 327 (1974).

C. Property.

1. In General.

Law reviews. For article, "Civil Rights", which discusses Tenth Circuit decisions dealing with due process and the deprivation of property, see 61 Den. L.J. 173 (1984).

Constitutionally protected rights in property are subject to regulation by proper exercise of police power of state. Western Power & Gas Co. v. Southeast Colo. Power Ass'n, 164 Colo. 344, 435 P.2d 219 (1967).

By exercise of inherent police power, the sovereign, purposing to promote public health, may fairly and reasonably restrict the use of property. In re Interrogatories of Governor, 97 Colo. 587, 52 P.2d 663 (1935); Cottrell Clothing Co. v. Teets, 139 Colo. 558, 342 P.2d 1016 (1959).

Where public health and safety will be best conserved reasonable restrictions may be imposed upon the use of property. City & County of Denver v. Denver Buick, Inc., 141 Colo. 121, 347 P.2d 919 (1959).

An owner of property has the right to put his property to any legitimate use, unless the contemplated use is prohibited by the legislative arm of government through a proper exercise of the police power. City of Englewood v. Apostolic Christian Church, 146 Colo. 374, 362 P.2d 172 (1961); Western Income Props., Inc. v. City & County of Denver, 174 Colo. 533, 485 P.2d 120 (1971).

Where there is a seeming conflict between an assertion that one is deprived of his property without due process of law on the one hand, and a reasonable exercise of the police power on the other, the latter takes precedence and a violation of due process cannot be asserted to stay the legitimate exercise of police power. Western Power & Gas Co. v. Southeast Colo. Power Ass'n, 164 Colo. 344, 435 P.2d 219 (1967); Aztec Minerals Corp. v. Romer, 940 P.2d 1025 (Colo. App. 1996).

But restraints must be reasonably necessary to public welfare. An exercise of the police power can never be justified unless it is reasonably necessary in the interests of the public order, health, safety, and welfare. Olin Mathieson Chem. Corp. v. Francis, 134 Colo. 160, 301 P.2d 139 (1956).

One of the essential elements of property is the right to its unrestricted use and enjoyment; and that use cannot be interfered with beyond what is necessary to provide for the welfare and general security of the public. City & County of Denver v. Denver Buick, Inc., 141 Colo. 121, 347 P.2d 919 (1959); Wright v. City of Littleton, 174 Colo. 318, 483 P.2d 953 (1971).

A citizen cannot be deprived of any of the essential attributes of property unless the restraint is reasonably necessary in the protection of the public morals, health, safety, or welfare. City of Englewood v. Apostolic Christian Church, 146 Colo. 374, 362 P.2d 172 (1961).

If a restriction upon the use of property is to be upheld as a valid exercise of the police power it must bear a fair relation to the public health, safety, morals, or welfare and have a definite tendency to promote or protect the same. City of Colo. Springs v. Grueskin, 161 Colo. 281, 422 P.2d 384 (1966).

Or they cannot be sustained. Any regulation or restriction upon the use of property which bears no relation to public safety, health, morals, or general welfare, cannot be sustained as a proper exercise of the police power of a municipality. City & County of Denver v. Denver Buick, Inc., 141 Colo. 121, 347 P.2d 919 (1959); Western Income Props., Inc. v. City & County of Denver, 174 Colo.

533, 485 P.2d 120 (1971).

If a statute purporting to have been enacted under the police power to protect the public health, morals, safety, or common welfare has no real or substantial relation to these objects, and for that reason is a clear invasion of the constitutional freedom of the people to use, enjoy, or dispose of their property without unreasonable governmental interference, the courts will declare it void. Western Power & Gas Co. v. Southeast Colo. Power Ass'n, 164 Colo. 344, 435 P.2d 219 (1967).

General assembly may change law creating property rights. Although rights of property which have been created by the common law cannot be taken away without due process, the law itself, as a rule of conduct, may be changed at will by the general assembly, may create new rights or provide that rights which have previously existed shall no longer arise and it has full power to regulate and circumscribe the methods and means of enjoying those rights, so long as there is no interference with constitutional guarantees. O'Quinn v. Walt Disney Prods., Inc., 177 Colo. 190, 493 P.2d 344 (1972).

Necessity for notice and hearing in matters involving property. The essence of procedural due process is fundamental fairness. This embodies adequate advance notice and an opportunity to be heard prior to state action resulting in deprivation of a significant property interest. It likewise entitles a litigant to timely notice of decisions which have adjudicated his property interests, in relation to available appellate remedies. Brown v. City of Denver, 7 Colo. 305, 3 P. 455 (1884); Du Bois v. Clark, 12 Colo. App. 220, 55 P. 750 (1898); Jenks v. Stump, 41 Colo. 281, 93 P. 17 (1907); Archuleta v. Archuleta, 52 Colo. 601, 123 P. 821 (1912); Smith Bros. Cleaners & Dyers, Inc. v. People ex rel. Rogers, 108 Colo. 449, 119 P.2d 623 (1941); Swift v. Smith, 119 Colo. 126, 201 P.2d 609 (1948); Pub. Serv. Co. v. Pub. Utils. Comm'n, 174 Colo. 470, 485 P.2d 123 (1971); Pub. Utils. Comm'n v. DeLue, 175 Colo. 317, 486 P.2d 1050 (1971); Mountain States Tel. & Tel. Co. v. Dept. of Labor and Emp., 184 Colo. 334, 520 P.2d 586 (1974).

Use of property is both liberty and property right. The privilege of a citizen to use his property according to his will is not only a liberty but a property right, subject only to such restraints as the common welfare may require. City & County of Denver v. Denver Buick, Inc., 141 Colo. 121, 347 P.2d 919 (1959); City of Englewood v. Apostolic Christian Church, 146 Colo. 374, 362 P.2d 172 (1961).

The right to the use and enjoyment of property for lawful purposes is the very essence of the incentive to property ownership and is a property right fully protected by the due process clause of the federal and state constitutions. Western Income Props., Inc. v. City & County of Denver, 174 Colo. 533, 485 P.2d 120 (1971).

The right of an owner of property to fix the price at which he will sell it is an inherent attribute of the property itself and is within the protection of the state and federal constitutions. Olin Mathieson Chem. Corp. v. Francis, 134 Colo. 160, 301 P.2d 139 (1956).

Privilege of contracting is both liberty and property right, and if A. is denied the right to contract and acquire property in a manner which he has hitherto enjoyed under the law, and which B., C., and D. are still allowed by the law to enjoy, it is clear that he is deprived of both liberty and property to the extent that he is thus denied the right to contract. In re House Bill No. 203, 21 Colo. 27, 39 P. 431 (1895).

The right to contract is a property right, protected by the due process clause of the constitution and

cannot be abridged by legislative enactment. Olin Mathieson Chem. Corp. v. Francis, 134 Colo. 160, 301 P.2d 139 (1956); In re Nichols, 38 Colo. App. 82, 553 P.2d 77 (1976).

No constitutional right to gain maximum profit from use of property. There is simply no constitutionally protected right under the federal or state constitutions to gain the maximum profit from the use of property. Nopro v. Town of Cherry Hills Vill., 180 Colo. 217, 504 P.2d 344 (1972).

The Colorado Clean Indoor Air Act does not violate due process by infringing bar and restaurant owners' use of their property. Coal. for Equal Rights v. Owens, 458 F. Supp. 2d 1251 (D. Colo. 2006), aff'd sub nom. Coal. for Equal Rights, Inc. v. Ritter, 517 F.3d 1195 (10th Cir. 2008).

Due process applicable in quasi-judicial proceeding as to property. Principles of procedural due process apply no less to quasi-judicial proceedings where a property right is subject to a direct and material infringement. Mountain States Tel. & Tel. Co. v. Dept. of Labor & Emp., 184 Colo. 334, 520 P.2d 586 (1974).

Right to use water is property right. A priority of right to the use of water, being property, is protected by this section so that no person can be deprived of it without due process of law. Strickler v. City of Colo. Springs, 16 Colo. 61, 26 P. 313 (1891); Farmers Irrigation Co. v. Game & Fish Comm'n, 149 Colo. 318, 369 P.2d 557 (1962).

As is legal right to damage for injury. A legal right to damage for an injury is property and one cannot be deprived of his property without due process. Game & Fish Comm'n v. Farmers Irrigation Co., 162 Colo. 301, 426 P.2d 562 (1967).

Landowner not entitled to compensation for damage following hunting foreclosure on property. Losses of $250 per annum in crop damage due to geese choosing certain land as a flocking location after the state had foreclosed the hunting of geese on the landowner's property fell well within the ambit of what Justice Holmes once aptly described as "the petty larceny of the police power" and did not entitle the landowner to compensation. Collopy v. Wildlife Comm'n, 625 P.2d 994 (Colo. 1981).

Procedures for resolving airport construction contract dispute did not violate contractor's right to compensation under the due process clause of the fourteenth amendment and this section. Kiewit Western Co. v. City & County of Denver, 902 P.2d 421 (Colo. App. 1994).

Applied in Taylor v. Hake, 92 Colo. 330, 20 P.2d 546 (1933); Capitol Fed. Sav. & Loan Ass'n v. Smith, 136 Colo. 265, 316 P.2d 252 (1957); Sch. Dist. No. 23 v. Sch. Planning Comm'n, 146 Colo. 241, 361 P.2d 360 (1961); Mountain View Elec. Ass'n v. Pub. Utils. Comm'n, 167 Colo. 200, 446 P.2d 424 (1968); Thornton v. City of Colo. Springs, 173 Colo. 357, 478 P.2d 665 (1970); Univ. of Colo. v. Silverman, 192 Colo. 75, 555 P.2d 1155 (1976).

2. Taking Property for Public Use.

Taking private property for public use without compensation deemed denial of due process. If a state, by its laws, should authorize private property to be taken for public use without compensation (except to prevent its falling into the hands of an enemy, or to prevent the spread of a conflagration, or in virtue of some other imminent necessity where the property itself is the cause of the public detriment), it would be depriving a man of his property without due process of law. Jenks v. Stump, 41 Colo. 281, 93 P. 17 (1907).

Nothing can be more firmly established in our law than the principle

that one may not be deprived of his property except by due process of law. Weber v. Williams, 137 Colo. 269, 324 P.2d 365 (1958).

Legislative action violating due process. Any legislative action which takes away any of the essential attributes of property, or imposes unreasonable restrictions thereon, or destroys property or its value, violates the due process clause of the constitutions of the United States and the state of Colorado and deprives the owner of his property. City & County of Denver v. Denver Buick, Inc., 141 Colo. 121, 347 P.2d 919 (1959).

Reasonableness standard applicable. Although, under its police power, there are situations in which a government may deprive the owner of a certain use of property and not be in violation of the prohibition against taking private property without just compensation, nevertheless, there must be a recognition that that exercise of the police power can be valid under--and only under--a standard of reasonableness. Combined Commc'ns Corp. v. City & County of Denver, 189 Colo. 462, 542 P.2d 79 (1975).

Respect must be had for cause and object of taking. In judging what is due process of law, respect must be had to the cause and object of the taking of private property, and if found to be suitable or admissible in the special case, it will be adjudged to be due process of law; but if found to be arbitrary, oppressive and unjust, it may be declared to be not due process of law. Jenks v. Stump, 41 Colo. 281, 93 P. 17 (1907).

Recognized distinction between eminent domain and police power. There is a recognized distinction between the exercise of the power of eminent domain and the exercise of the police power, which results in noncompensatory reasonable restrictions in respect to private interests which must yield to the public interest. Bethlehem Evangelical Lutheran Church v. City of Lakewood, 626 P.2d 668 (Colo. 1981).

And dedication encroaching on building impermissible exercise of police power. Insofar as a required dedication encroaches on a property owner's building, it is an impermissible exercise of the police power. Bethlehem Evangelical Lutheran Church v. City of Lakewood, 626 P.2d 668 (Colo. 1981).

Requirement of compensation applies to every exercise of governmental power. The constitutional requirement of due process of law, which embraces compensation for private property taken for public use, applies in every case of the exertion of governmental power. If, in the execution of any power, no matter what it is, the government, federal or state, finds it necessary to take private property for public use, it must obey the constitutional injunction to make or secure just compensation to the owner. City & County of Denver v. Denver Buick, Inc., 141 Colo. 121, 347 P.2d 919 (1959).

Goodwill and profits are not regarded as elements of just compensation under due process or just compensation clauses of the federal and state constitutions. Auraria Businessmen Against Confiscation, Inc. v. Denver Urban Renewal Auth., 183 Colo. 441, 517 P.2d 845 (1974).

So long as statute in abrogation of common law does not attempt to remove right which has already accrued, there is no taking. O'Quinn v. Walt Disney Prods., Inc., 177 Colo. 190, 493 P.2d 344 (1972).

Right of eminent domain recognizes due process provision of the constitution, provides for the legal and orderly acquisition of private property for public use, and for just compensation for the taking. Town of Sheridan v. Valley San. Dist., 137 Colo. 315, 324 P.2d 1038 (1958).

Interference with access to

business. The fact that a municipality may under its police power interfere to a certain extent with access to and from premises does not mean necessarily that such interference constitutes a "taking" for which under amendments 5 and 14, U.S. Const., under § 15 of art. II, Colo. Const., and this section there must be compensation. Rather, to constitute such a taking there must be an unreasonable or substantial deprivation of access. City of Boulder v. Kahn's, Inc., 190 Colo. 90, 543 P.2d 711 (1975).

Supreme court on its own motion will take notice of invalidity of municipal ordinance enacted in support of exhorbitant demands which authorizes the taking of private property without due process of law. Town of Sheridan v. Valley San. Dist., 137 Colo. 315, 324 P.2d 1038 (1958).

Application of § 43-2-201 does not constitute a governmental taking for which compensation is required. Bd. of County Comm'rs v. Flickinger, 687 P.2d 985 (Colo. 1984).

Redemption interest under § 39-12-103 (3) is a penalty, and when the government exacts a penalty, it may deduct the penalty from a money judgment without effecting a taking. Because the taxpayers had no reasonable expectation that they were exempt from this penalty, the redemption interest charged by the county implicates no property interest and there is no violation of the takings clauses. Dove Valley Bus. Park v. County Comm'rs, 945 P.2d 395 (Colo. 1997).

Enactment of § 34-1-305 did not deprive plaintiffs of reasonable use of property where plaintiffs were still entitled without limitation to all uses permitted under the zoning governing their land on effective date of act. Cottonwood Farms v. Bd. of County Comm'rs, 725 P.2d 57 (Colo. App. 1986), aff'd, 763 P.2d 551 (Colo. 1988).

There is no denial of due process where a landowner is compelled to connect his sewer line to that of a sanitation district without personal notice or opportunity for a hearing. Alperstein v. Three Lakes Water & Sanitation, 710 P.2d 1186 (Colo. App. 1985), cert. denied, 475 U.S. 1140, 106 S. Ct. 1791, 90 L.Ed.2d 336 (1986).

For purposes of calculating and modifying child support, trial court did not impermissibly interfere with husband's constitutional property rights by including in gross income an amount which a one-time post-decree inheritance could be expected to yield. In re Armstrong, 831 P.2d 501 (Colo. App. 1992).

Seizure of property under tax lien pursuant to § 39-26-117 or § 39-22-604 is not a taking nor an infringement upon due process. An exercise of the power to assess and collect taxes is distinguishable from the power to take private property for a public use, and the ability of a lessor to exempt property used by a lessee from the statutory liens all but forecloses a due process claim. Burtkin Assocs. v. Tipton, 845 P.2d 525 (Colo. 1993).

Applied in Colo. Anti-Discrimination Comm'n v. Case, 151 Colo. 235, 380 P.2d 34 (1962).

3. Taxation.

Power of general taxation for public purposes does not infringe upon this section or the due process clause of the federal constitution. People ex rel. Rogers v. Letford, 102 Colo. 284, 79 P.2d 274 (1938).

General tax may be imposed without notice. Bradfield v. Pueblo, 143 Colo. 559, 354 P.2d 612 (1960).

Otherwise valid taxes may be imposed upon a group of people who will not necessarily benefit as long as the proceeds are devoted to public and governmental purposes. Friends of Cham. Music v. Denver, 696

P.2d 309 (Colo. 1985).

Taxpayer must have notice and opportunity to contest assessment. Brown v. City of Denver, 7 Colo. 305, 3 P. 455 (1884); Smith Bros. Cleaners & Dyers v. People ex rel. Rogers, 108 Colo. 449, 119 P.2d 623 (1941), overruled on another point, Shoenberg Farms, Inc. v. People ex rel. Swisher, 166 Colo. 199, 444 P.2d 277 (1968); Oberst v. May, 148 Colo. 285, 365 P.2d 902 (1961).

Rigid rule of equality of taxation not required. Neither due process nor equal protection imposes upon a state any rigid rule of equality of taxation. Tom's Tavern, Inc. v. City of Boulder, 186 Colo. 321, 526 P.2d 1328 (1974).

Validity of assessment depends on provisions of statute, not application. A valid assessment cannot be made under an invalid law or ordinance, and its constitutionality is to be tested, not by what has been done under it, but by what it authorizes to be done by virtue of its provisions. Brown v. City of Denver, 7 Colo. 305, 3 P. 455 (1884).

Special assessment without benefit violates due process. To enforce a special assessment for a purpose which does not confer a special benefit upon the property upon which it is levied would result in taking property without compensation, and without due process of law. Pomroy v. Bd. of Pub. Waterworks, Dist. No. 2, 55 Colo. 476, 136 P. 78 (1913); Santa Fe Land Imp. Co. v. City & County of Denver, 89 Colo. 309, 2 P.2d 238 (1931).

The right to assess and collect a special improvement tax exists only where a special benefit is conferred upon the property subjected thereto, and in the absence of such benefit, a levy amounts to confiscation without due process. City & County of Denver v. Greenspoon, 140 Colo. 402, 344 P.2d 679 (1959).

Difficulty in computing, assessing, and collecting tax does not affect validity thereof as against due process. People ex rel. Dunbar v. First Nat'l Bank, 144 Colo. 412, 356 P.2d 967 (1960).

Withdrawal of succession tax exemptions. Where exemptions are withdrawn by the state as to a tax imposed on the privilege of succession before the privilege is fully exercised, there is no invasion of the due process of law clauses of the federal and state constitutions. People ex rel. Rogers v. Waterman's Estate, 108 Colo. 263, 116 P.2d 204 (1941).

Ad valorem taxation. Except as to procedural questions, the due process of law clauses have no application to ad valorem taxation. City & County of Denver v. Lewin, 106 Colo. 331, 105 P.2d 854 (1940).

Taxation of property according to value, regardless of participation in water system, constitutional. The fact that property may be taxed according to its value, regardless of whether the owners choose to participate in a proposed water system, does not have any constitutional significance. Millis v. Bd. of County Comm'rs, 626 P.2d 652 (Colo. 1981).

A decision of a water conservancy district to raise revenue for the district by the levy and collection of taxes upon all property within the district, collecting even from those who did not receive project water, was not an unconstitutional application of a statute in violation of the due process clauses of the Colorado and United States Constitutions. Pueblo West Metro. v. S.E. Colo. Water Cons., 721 P.2d 1220 (Colo. App. 1986), cert. denied, 748 P.2d 349 (Colo. 1988).

Denial of interest on overpayment of unemployment compensation tax does not violate due process where no statute provided for interest; only the legislature can direct the assessment of interest against the state. Martin Marietta v. Division of Emp. & Training, 784 P.2d 850 (Colo.

App. 1989).

Statute that creates a tax lien on an owner's property that such owner has leased and allowed lessee to use on the premises does not violate due process. Statute which constitutes valid exercise of power to assess and collect taxes will not be declared unconstitutional based on lessor's failure to satisfy the statutory exemptions to such statute. Burtkin Assocs. v. Tipton, 845 P.2d 525 (Colo. 1993).

Exemptions to tax liens are constitutional, as long as they are not arbitrary and unreasonable. Van Dorn Retail Mgt., Inc. v. City & County of Denver, 902 P.2d 383 (Colo. App. 1994).

Subjecting newspaper advertising supplements to imposition of use tax while other forms of advertising not taxed may deny equal protection to advertisers using newspaper supplements. Walgreen Co. v. Charnes, 859 P.2d 235 (Colo. App. 1992).

Applied in Hildreth v. City of Longmont, 47 Colo. 79, 105 P. 107 (1909); Milheim v. Moffat Tunnel Imp. Dist., 72 Colo. 268, 211 P. 649 (1922); Bd. of Comm'rs v. Davis, 94 Colo. 330, 30 P.2d 266 (1934); Rinn v. Bedford, 102 Colo. 475, 84 P.2d 827 (1938); Potter v. Armstrong, 110 Colo. 198, 132 P.2d 788 (1942); Jackson v. City of Glenwood Springs, 122 Colo. 323, 221 P.2d 1083 (1950); Ping v. City of Cortez, 139 Colo. 575, 342 P.2d 657 (1959); City of Englewood v. Wright, 147 Colo. 537, 364 P.2d 569 (1961); People v. Cooke, 150 Colo. 52, 370 P.2d 896 (1962); Bishop v. Salida Hosp. Dist., 158 Colo. 315, 406 P.2d 329 (1965).

4. Zoning.

Zoning authorized by police power. Police power is the authority under which zoning ordinances have been universally upheld, which prevents one man from so using his property as to prevent others from making a corresponding full and free use of their property. City of Englewood v. Apostolic Christian Church, 146 Colo. 374, 362 P.2d 172 (1961); Western Income Props., Inc. v. City & County of Denver, 174 Colo. 533, 485 P.2d 120 (1971).

Zoning is a proper exercise of state police power. Rademan v. City & County of Denver, 186 Colo. 250, 526 P.2d 1325 (1974).

Zoning constitutes partial taking of property. Zoning, since it restricts an owner's right to use his property, constitutes a partial taking. Serv. Oil Co. v. Rhodus, 179 Colo. 335, 500 P.2d 807 (1972).

Some rights yield to valid zoning. Even though the rights of freedom of association and of privacy are cherished rights, they must yield to valid zoning regulations. Rademan v. City & County of Denver, 186 Colo. 250, 526 P.2d 1325 (1974).

But if zoning ordinance impinges on fundamental rights, the ordinance may be sustained only upon a showing that the burden imposed is necessary to protect a compelling and substantial government interest. Rademan v. City & County of Denver, 186 Colo. 250, 526 P.2d 1325 (1974).

Zoning ordinances are subject to usual limitations applicable to the exercise of the police power. Wright v. City of Littleton, 174 Colo. 318, 483 P.2d 953 (1971).

Ordinances reasonably related to public welfare valid. Municipal zoning ordinances are constitutional in principle as a valid exercise of the police power when reasonably related to public health, safety, morals, or general welfare. Wright v. City of Littleton, 174 Colo. 318, 483 P.2d 953 (1971); Serv. Oil Co. v. Rhodus, 179 Colo. 335, 500 P.2d 807 (1972); Wilkinson v. Bd. of County Comm'rs, 872 P.2d 1269 (Colo. App. 1993).

Under the police power, zoning ordinances are upheld imposing limitations upon the use of land, provided that the regulations are reasonable, and provided further that the restrictions in fact have a substantial relation to the public health, safety, or general welfare. City of Englewood v. Apostolic Christian Church, 146 Colo. 374, 362 P.2d 172 (1961); Western Income Props., Inc. v. City & County of Denver, 174 Colo. 533, 485 P.2d 120 (1971).

The provisions of zoning ordinances which do not deprive a party of title to his lots, possession or the power to dispose of them, but would deprive him of the right to put them to a legitimate use which does not injure the public, without compensation would clearly deprive him of his property without due process of law. The federal and state constitutions not only inhibit this, but it would be repugnant to justice, independent of constitutional provisions on the subject. City & County of Denver v. Denver Buick, Inc., 141 Colo. 121, 347 P.2d 919 (1959).

A zoning ordinance will be upheld by the courts only if it has some tendency reasonably to serve the public health, safety, morals, or general welfare, or that it was even fairly debatable that such restriction tended to promote or protect these objectives. Western Income Props., Inc. v. City & County of Denver, 174 Colo. 533, 485 P.2d 120 (1971).

Zoning ordinance is unconstitutional if it can be shown that it is not substantially related to public health, safety, or welfare. Ford Leasing Dev. Co. v. Bd. of County Comm'rs, 186 Colo. 418, 528 P.2d 237 (1974).

Prohibition of most profitable use of land not unconstitutional. A zoning ordinance is not unconstitutional because it prohibits a landowner from using or developing his land in the most profitable manner. Baum v. City & County of Denver, 147 Colo. 104, 363 P.2d 688 (1961); Nirk v. City of Colo. Springs, 174 Colo. 273, 483 P.2d 371 (1971); Sellon v. City of Manitou Springs, 745 P.2d 229 (Colo. 1987).

Deprivation of the most profitable use of the property does not result in a due process violation where the governmental interest in the regulatory scheme is substantial and the property owner is given a reasonable period of time to relocate a business. 7250 Corp. v. Bd. of County Comm'rs, 799 P.2d 917 (Colo. 1990).

Limitation of use is an essential and fundamental purpose of all zoning. The due process and just compensation clauses of the federal and state constitutions do not require that a landowner be permitted to make the best, maximum, or most profitable use of his property. Baum v. City & County of Denver, 147 Colo. 104, 363 P.2d 688 (1961).

The due process and just compensation clauses of the federal and state constitutions do not require that zoning ordinances permit a landowner to make the most profitable use of his property or be held to be unconstitutional in their operation. Madis v. Higginson, 164 Colo. 320, 434 P.2d 705 (1967); Wright v. City of Littleton, 174 Colo. 318, 483 P.2d 953 (1971); Bird v. City of Colo. Springs, 176 Colo. 32, 489 P.2d 324 (1971).

And disparity of values between restricted and unrestricted use of land is not controlling in an attack against the constitutionality of a zoning ordinance. Frankel v. City & County of Denver, 147 Colo. 373, 363 P.2d 1063 (1961).

But prevention of reasonable use is unconstitutional. A zoning ordinance is unconstitutional as applied to a person's property if its enforcement would preclude the use of the property for any purpose to which it is reasonably adaptable. Trans-Robles Corp. v. City of Cherry Hills Vill., 30 Colo. App. 511, 497 P.2d 335 (1972),

aff'd, 181 Colo. 356, 509 P.2d 797 (1973); Ford Leasing Dev. Co. v. Bd. of County Comm'rs, 186 Colo. 418, 528 P.2d 237 (1974).

Unless current use is prohibited under new ordinance, no vested rights are affected, and ordinance does not preclude use of property for any reasonable purpose. Landmark Land v. City and County of Denver, 728 P.2d 1281 (Colo. 1986), appeal dismissed for want of a substantial federal question, 483 U.S. 1001, 107 S. Ct. 3222, 97 L.Ed.2d 729 (1987).

When the zoning does not deny a landowner of all economically viable use of his property, there is no constitutional violation. Applebaugh v. Bd. of County Comm'rs, 837 P.2d 304 (Colo. App. 1992).

To prevail in inverse condemnation claim, plaintiff must show that county's land use regulations preclude the use of the property for any reasonable purpose. The fundamental issue in a "takings" claim based upon land use regulation is whether an aggrieved landowner retains any use for which the property is reasonably suited. Wilkinson v. Bd. of County Comm'rs, 872 P.2d 1269 (Colo. App. 1993).

Showing necessary to establish unconstitutionality of zoning ordinance. To establish the unconstitutionality of the existing zoning ordinance as applied to specific property, a landowner must show not only that the existing zone deprives him of the use of his property without due process of law, but also that all zone categories between the existing zone and the requested zone also do not afford any reasonable use of the property. Trans-Robles Corp. v. City of Cherry Hills Vill., 30 Colo. App. 511, 497 P.2d 335 (1972).

To successfully attack the validity of a zoning ordinance it is incumbent upon plaintiffs to establish that as applied to their property the ordinance is confiscatory and deprives them of the use of their land without due process of law. Baum v. City & County of Denver, 147 Colo. 104, 363 P.2d 688 (1961); City & County of Denver v. Chuck Ruwart Chevrolet, Inc., 32 Colo. App. 191, 508 P.2d 789 (1973).

A landowner must establish beyond a reasonable doubt that his property cannot be devoted to any reasonable lawful use under a zoning ordinance, before the courts can interfere with the discretion of zoning authorities in fixing zoning boundaries, or hold such ordinance to be unconstitutional as violative of due process. City & County of Denver v. Am. Oil Co., 150 Colo. 341, 374 P.2d 357 (1962).

Showing inapplicable if property owner only seeks to maintain original zone. The rule that to establish the unconstitutionality of the existing zoning ordinance as applied to specific property, a landowner must show not only that the existing zone deprives him of the use of his property without due process of law, but also that all zone categories between the existing zone and the requested zone do not afford any reasonable use of the property, is inapplicable where the property owner does not seek a zone change, but is attempting to maintain the original zone. Trans-Robles Corp. v. City of Cherry Hills Vill., 30 Colo. App. 511, 497 P.2d 335 (1972).

Ripeness of claim for unconstitutional taking. A claim for an unconstitutional taking by a zoning ordinance or regulation is not ripe unless the plaintiff has obtained a final definitive position from the local zoning authority regarding how it will apply the ordinance or regulation at issue to the particular land in question. Amwest Investments v. City of Aurora, 701 F.Supp. 1508 (D. Colo. 1988); Wilkinson v. Bd. of County Comm'rs, 872 P.2d 1269 (Colo. App. 1993).

Restriction on property use need not be by formal rezoning. An ordinance may properly restrict land use if it is substantially related to a legitimate governmental concern. Landmark Land v. City & County of Denver, 728 P.2d 1281 (Colo. 1986).

Municipality's discretion to promulgate zoning regulations is not absolute but subject to constitutional limitations applicable to all governmental legislative decisions. Zavala v. City & County of Denver, 759 P.2d 664 (Colo. 1988).

Basis for argument that property taken without due process. In a zoning case, the constitutional argument that property was taken without due process must be predicated upon the acquisition and use of property under one zoning regulation and the unconstitutional deprivation of that property by a change of zoning. Bear Valley Drive-In Theater Corp. v. Bd. of County Comm'rs, 173 Colo. 57, 476 P.2d 48 (1970).

Standard of review applicable to zoning ordinances depends upon whether a fundamental right is affected. If an ordinance restricts a fundamental right or creates a suspect class, its constitutionality is to be measured by a heightened standard of inquiry into its purposes and effects. Zavala v. City & County of Denver, 759 P.2d 664 (Colo. 1988).

Zoning ordinance is presumed to be valid. Baum v. City & County of Denver, 147 Colo. 104, 363 P.2d 688 (1961); Wright v. City of Littleton, 174 Colo. 318, 483 P.2d 953 (1971); Bd. of County Comm'rs v. Simmons, 177 Colo. 347, 494 P.2d 85 (1972); City & County of Denver v. Chuck Ruwart Chevrolet, Inc., 32 Colo. App. 191, 508 P.2d 789 (1973); Ford Leasing Dev. Co. v. Bd. of County Comm'rs, 186 Colo. 418, 528 P.2d 237 (1974); Tri-State Generation & Transmission Co. v. City of Thornton, 647 P.2d 670 (Colo. 1982); 7250 Corp. v. Bd. of County Comm'rs, 799 P.2d 917 (Colo. 1990); Wilkinson v. Bd. of County Comm'rs, 872 P.2d 1269 (Colo. App. 1993).

Courts indulge every intendment in favor of validity of zoning ordinance. Baum v. City & County of Denver, 147 Colo. 104, 363 P.2d 688 (1961); City & County of Denver v. Chuck Ruwart Chevrolet, Inc., 32 Colo. App. 191, 508 P.2d 789 (1973).

One assailing validity of zoning ordinance has burden of proving it beyond a reasonable doubt. Baum v. City & County of Denver, 147 Colo. 104, 363 P.2d 688 (1961); Wright v. City of Littleton, 174 Colo. 318, 483 P.2d 953 (1971); Bd. of County Comm'rs v. Simmons, 177 Colo. 347, 494 P.2d 85 (1972); Ford Leasing Dev. Co. v. Bd. of County Comm'rs, 186 Colo. 418, 528 P.2d 237 (1974); Tri-State Generation & Transmission Co. v. City of Thornton, 647 P.2d 670 (Colo. 1982); Sellon v. City of Manitou Springs, 745 P.2d 229 (Colo. 1987); Wilkinson v. Bd. of County Comm'rs, 872 P.2d 1269 (Colo. App. 1993).

In an attack against the constitutionality of a zoning ordinance, plaintiffs must sustain the burden of establishing the invalidity thereof beyond a reasonable doubt. Baum v. City & County of Denver, 147 Colo. 104, 363 P.2d 688 (1961); Frankel v. City & County of Denver, 147 Colo. 373, 363 P.2d 1063 (1961).

The burden is on the plaintiffs to show that they have been deprived of all reasonable use of their property by the operation of the zoning ordinance. Wright v. City of Littleton, 174 Colo. 318, 483 P.2d 953 (1971).

Where the plaintiffs are not challenging the constitutionality of the zoning ordinance as such, but rather its application to them, the burden of proof on this issue is upon the plaintiffs. Wright v. City of Littleton, 174 Colo. 318, 483 P.2d 953 (1971).

Proof required for determination that property unconstitutionally confiscated. Proof that property was not suitable for any use under immediate zoning categories must be had as a prerequisite to a determination that the property was being unconstitutionally confiscated. Bd. of County Comm'rs v. Simmons, 177 Colo. 347, 494 P.2d 85 (1972).

Burden of proof not met. Where contentions regarding the actions of a zoning board were debatable and where there was no showing that the property was not suitable for use under intermediate zoning categories, the burden of proving the invalidity of a zoning ordinance beyond a reasonable doubt was not met. Bd. of County Comm'rs v. Simmons, 177 Colo. 347, 494 P.2d 85 (1972).

Where the plaintiffs offered no evidence to prove that it was not possible to use and develop the property for any or all of the uses enumerated in the city's zoning ordinance, there was no showing that the city's zoning deprived the plaintiffs of their property without just compensation, nor without due process. Wright v. City of Littleton, 174 Colo. 318, 483 P.2d 953 (1971).

Where land users make no showing that other users within same zoning district are permitted to do what they have been denied the right to do, a court finds no denial of due process or equal protection. Bd. of County Comm'rs v. Thompson, 177 Colo. 277, 493 P.2d 1358 (1972).

Zoning necessarily requires establishment of boundary lines between different districts. Nopro v. Town of Cherry Hills Vill., 180 Colo. 217, 504 P.2d 344 (1972).

Selection of boundary line is legislative function with which the courts should not interfere. Nopro v. Town of Cherry Hills Vill., 180 Colo. 217, 504 P.2d 344 (1972).

When courts will interfere. Only where the determination of the zoning authority is so unreasonable, arbitrary, capricious and unjustifiable as to amount to a violation of constitutional rights are the courts permitted to interfere. Nopro v. Town of Cherry Hills Vill., 180 Colo. 217, 504 P.2d 344 (1972).

Use permissible in one zone may be nonpermissible in another. In zoning there are lines which may be drawn between nonpermissible uses in one area as opposed to permissible uses in another. Complete prohibition in one zone and a permissible use or activity in another is not uncommon and such classifications, if reasonable, have been upheld. Western Income Props., Inc. v. City & County of Denver, 174 Colo. 533, 485 P.2d 120 (1971).

The fact that, under zoning laws, adjoining properties in other districts may be put to different and possibly more advantageous uses does not afford a basis for concluding there is a denial of equal protection of the laws. Nopro v. Town of Cherry Hills Vill., 180 Colo. 217, 504 P.2d 344 (1972).

Existence of nonconforming uses within zoning district does not affect validity of classification, particularly where such uses are few in number. Frankel v. City & County of Denver, 147 Colo. 373, 363 P.2d 1063 (1961).

A residential zoning ordinance is not discriminatory because it exempts from its operation similar uses existing in the district at the effective date of the ordinance. Frankel v. City & County of Denver, 147 Colo. 373, 363 P.2d 1063 (1961).

Purpose for protection of nonconforming use. The constitutional protection afforded the owner of property on which a nonconforming use exists, exists only in order to permit the continuance of the use to the extent necessary to safeguard the investment of the property owner. Serv. Oil Co. v. Rhodus, 179 Colo. 335, 500 P.2d 807

(1972).

If owner of nonconforming use suffers destruction of improvements, he becomes the owner of unimproved property, which may be restricted as to use without a denial of due process. Serv. Oil Co. v. Rhodus, 179 Colo. 335, 500 P.2d 807 (1972); Hartley v. City of Colo. Springs, 764 P.2d 1216 (Colo. 1988).

Nonconforming uses receive constitutional protection from unreasonable zoning regulations. Hartley v. City of Colo. Springs, 764 P.2d 1216 (Colo. 1988).

Reasonableness of regulation prohibiting nonconforming use. A zoning ordinance prohibiting resumption of a discontinued nonconforming use is reasonable if it specifies a reasonable time period for terminating the nonconforming use. Hartley v. City of Colo. Springs, 764 P.2d 1216 (Colo. 1988).

Reasonableness of time period for terminating a nonconforming use. Reasonableness depends upon a balancing of the burden placed upon the property owner against the benefits gained by termination of the nonconforming use. 7250 Corp. v. Bd. of County Comm'rs, 799 P.2d 917 (Colo. 1990).

Six-month period is reasonable where the governmental interest in nude entertainment ordinance is substantial. 7250 Corp. v. Bd. of County Comm'rs, 799 P.2d 917 (Colo. 1990).

Unreasonable conditions on preexisting nonconforming use invalid. A zoning ordinance restricting the use of property in a district which has flourished as a business and commercial district for more than 50 years, which imposes onerous and unreasonable conditions and terms under which preexisting lawful uses of property may be continued as nonconforming uses, and describes numerous events and means by which a former lawful use may be terminated cannot be upheld as a valid exercise of the police power of a municipality. City & County of Denver v. Denver Buick, Inc., 141 Colo. 121, 347 P.2d 919 (1959).

Businesses may be excluded from residential districts. A zoning ordinance establishing restrictive residential districts from which are excluded all business or commercial uses, including apartment houses and other multiple-unit dwellings, bears a rational relation to the health, safety, morals, and general welfare of the community. Frankel v. City & County of Denver, 147 Colo. 373, 363 P.2d 1063 (1961).

But zoning ordinances which wholly exclude churches in residential districts are unconstitutional. An absolute prohibition bears no substantial relation to the public health, safety, morals, or general welfare of the community. City of Englewood v. Apostolic Christian Church, 146 Colo. 374, 362 P.2d 172 (1961).

Zoning ordinance in which the right of church to locate in an area is permissive rather than absolute is constitutional. City of Colo. Springs v. Blanche, 761 P.2d 212 (Colo. 1988).

Ordinance commanding specific use of property to be strictly construed. At the common law an owner of property has a vested right to make the fullest legitimate use of such property. It follows that express legislative prohibition within the perimeter of constitutional permission is necessary in order to place restrictions upon the legitimate use of property. An ordinance purporting to command a specific use of property as a condition precedent to the right to do business is in derogation of the common law and must be strictly construed in favor of the person against whom its provisions are sought to be applied. City & County of Denver v.

Denver Buick, Inc., 141 Colo. 121, 347 P.2d 919 (1959).

Where zoning resolution was not validly adopted, the owner cannot use reliance on the resolution as basis for estoppel. Bear Valley Drive-In Theater Corp. v. Bd. of County Comm'rs, 173 Colo. 57, 476 P.2d 48 (1970).

Due process procedures to be followed when amending zoning map. City of Fort Collins v. Dooney, 178 Colo. 25, 496 P.2d 316 (1972).

City council must afford due process as delineated in zoning code. A city council, in the exercise of its police power, must afford procedural due process as it has been delineated in its zoning code. McArthur v. Zabka, 177 Colo. 337, 494 P.2d 89 (1972).

Assumption that as to zoning city council will follow dictates of charter and ordinances. From the standpoint of due process, property owners have the right to proceed upon the assumption that a city council will follow the dictates of its own charter and the ordinances enacted pursuant thereto in reference to zoning. McArthur v. Zabka, 177 Colo. 337, 494 P.2d 89 (1972).

Contract zoning is illegal as an ultra vires bargaining away of police power. Ford Leasing Dev. Co. v. Bd. of County Comm'rs, 186 Colo. 418, 528 P.2d 237 (1974).

Extensive public reliance on a zoning ordinance immunizes such ordinance from belated attack on various procedural grounds where the ordinance has been in effect for over ten years. Trainor v. City of Wheat Ridge, 697 P.2d 37 (Colo. App. 1984).

Federal preemption. Where the federal government has authorized a specific use of federal lands, a board of county commissioners cannot apply its zoning regulations to prohibit that use, because of the doctrine of preemption. Brubaker v. Bd. of County Comm'rs, 652 P.2d 1050 (Colo. 1982).

Applied in Hale v. City & County of Denver, 159 Colo. 341, 411 P.2d 332 (1966); Famularo v. Bd. of County Comm'rs, 180 Colo. 333, 505 P.2d 958 (1973).

VI. CRIMINAL TRIALS.

A. Right to Fair Trial.

Due process encompasses fair trial in criminal cases. Firmly embedded in both federal and state due process is the fair trial concept in criminal cases. Oaks v. People, 150 Colo. 64, 371 P.2d 443 (1962).

It is fundamental that a defendant is entitled to a fair trial by an impartial jury. Maes v. District Court, 180 Colo. 169, 503 P.2d 621 (1972).

Interest of accused, whose life and liberty are in jeopardy, to fair trial by impartial jury is paramount. Stapleton v. District Court, 179 Colo. 187, 499 P.2d 310 (1972).

A fair trial is necessary to satisfy due process requirements of the state constitution. Norman v. People, 178 Colo. 190, 496 P.2d 1029 (1972).

And due process may require limitations upon exercise of rights of free speech and of press, depending on the circumstances of the case. Stapleton v. District Court, 179 Colo. 187, 499 P.2d 310 (1972).

Right to due process not violated when certain witnesses not ordered to speak with defense counsel or submit to depositions. Fundamental fairness not affected by the ruling. There was no indication the prospective witnesses would be unavailable during trial. People v. Melanson, 937 P.2d 826 (Colo. App. 1996).

Defendant is entitled to fair trial but not perfect trial. People v. Barker, 180 Colo. 28, 501 P.2d 1041 (1972).

Test for fairness of trial applied in this state is whether the trial is free of any prejudicial error affecting

the substantial rights of the accused. Lee v. People, 170 Colo. 268, 460 P.2d 796 (1969).

A defendant alleging a biased trial judge must establish that the judge had a substantial "bent of mind" against him. A judge's comments that disappoint, discomfort, or embarrass counsel in the presence of the jury, without more, are rarely enough. People v. Baenziger, 97 P.3d 271 (Colo. App. 2004).

Trial court's comments, either individually or cumulatively, did not establish that court was intolerant of defense counsel to the extent that the court displayed a negative bent toward him, warranting reversal. People v. Gibson, 203 P.3d 571 (Colo. App. 2008).

Judge did not show bias or partiality in sua sponte ruling when judge, without prompting from opposing counsel, barred defendant's expert from answering a question asked by the defense. The court record contains no evidence of an attitude of hostility or ill will, nor does a single ruling by the court, even if erroneous, indicate bias or partiality. People v. Walden, 224 P.3d 369 (Colo. App. 2009).

Due process of law means impartial trial and unanimous verdict by a jury on the issue of the penalty to be imposed. Wharton v. People, 104 Colo. 260, 90 P.2d 615 (1939).

Right to trial by jury, etc., are alienable rights. The right to trial by jury, the right to counsel, the right not to incriminate one's self, and related matters are known as alienable constitutional rights or as rights in the nature of personal privilege for the benefit of the person who may seek their protection. Geer v. Alaniz, 138 Colo. 177, 331 P.2d 260 (1958).

Such rights, whenever assertable, may be waived. Geer v. Alaniz, 138 Colo. 177, 331 P.2d 260 (1958).

When constitutionally unfair trial takes place. Apart from trials conducted in violation of express constitutional mandates, a constitutionally unfair trial takes place where the barriers and safeguards are so relaxed or forgotten that the proceeding is more a spectacle or trial by ordeal than a disciplined contest. Lee v. People, 170 Colo. 268, 460 P.2d 796 (1969).

Entire course of proceedings determines due process. Regard for the requirement of the due process clause inescapably imposes upon the supreme court an exercise of judgment upon the whole course of proceedings resulting in a conviction in order to ascertain whether they offend those canons of decency and fairness which express the notions of justice of English-speaking peoples even toward those charged with the most heinous offenses. Toland v. Strohl, 147 Colo. 577, 364 P.2d 588 (1961).

Right to fair trial does not depend upon degree of culpability disclosed by evidence; an accused whose guilt is evident is to be tried by the same norms as one whose guilt is not so evident. Oaks v. People, 150 Colo. 64, 371 P.2d 443 (1962).

Personal interpreter for defendant, in addition to official interpreter for court, is not necessary to assure due process. People v. Avila, 797 P.2d 805 (Colo. App. 1990).

Right to fair trial not violated where jurors were allowed to predeliberate in a criminal trial, but jurors were instructed to keep an open mind, the record does not show any predeliberation occurred, and the overwhelming evidence of defendant's guilt does not put into doubt the reliability of his judgment of conviction. People v. Preciado-Flores, 66 P.3d 155 (Colo. App. 2002).

Trial court did not violate defendant's due process rights in refusing to instruct the jury on two

lesser included offenses the defendant requested in a subsequent trial when the defendant was convicted of the lesser included offenses in the previous trial. The trial court adequately instructed the jury on the defendant's theory of the case protecting the defendant's due process rights. Although the trial court did not instruct the jury on the lesser included offenses the defendant requested, the court did instruct the jury on different lesser included offenses that allowed the defendant to argue his theory of the case. People v. Trujillo, 83 P.3d 642 (Colo. 2004).

Jury instructions correctly described the four-step process for death penalty sentencing in Colorado. Contrary to defendant's argument, Colorado does not have a presumption of life imprisonment. The "beyond a reasonable doubt" standard at the third and fourth steps refers to a standard imposed on the jury, not a burden placed on either party. The phrase "beyond a reasonable doubt" as used in this context simply conveys the level of certainty the jury must possess before returning a death sentence. The instructions repeatedly stated that a death sentence could only be returned if the jury unanimously agreed beyond a reasonable doubt that death was the appropriate penalty. The instructions were not erroneous because they stated that the jury should impose a life sentence if convinced that life was the appropriate penalty. Dunlap v. People, 173 P.3d 1054 (Colo. 2007), cert. denied, 552 U.S. 1105, 128 S. Ct. 882, 169 L. Ed. 2d 740 (2008).

The court did not abuse its discretion in denying defendant's challenge for cause. The juror's responses, as a whole, reflect that, while serving as a juror may have been difficult, he or she would base his or her decision on the evidence and the law and would follow the court's instructions. People v. Montoya, 141 P.3d 916 (Colo. App. 2006).

Applied in City of Canon City v. Merris, 137 Colo. 169, 323 P.2d 614 (1958); Tinsley v. Crespin, 137 Colo. 302, 324 P.2d 1033 (1958); Davidson Chevrolet, Inc. v. City & County of Denver, 138 Colo. 171, 330 P.2d 1116 (1958); Thompson v. People, 139 Colo. 15, 336 P.2d 93 (1959), cert. denied, 361 U.S. 972, 80 S. Ct. 606, 4 L.Ed.2d 552 (1960); Leick v. People, 140 Colo. 564, 345 P.2d 1054 (1959); Penney v. People, 146 Colo. 95, 360 P.2d 671 (1961); Pacheco v. People, 146 Colo. 200, 360 P.2d 975 (1961); Herren v. People, 147 Colo. 442, 363 P.2d 1044 (1961); Carr v. District Court, 157 Colo. 226, 402 P.2d 182 (1965); Von Pickrell v. People, 163 Colo. 591, 431 P.2d 1003 (1967); Maciel v. People, 172 Colo. 8, 469 P.2d 135 (1970); Martinez v. People, 172 Colo. 82, 470 P.2d 26 (1970); Schwader v. District Court, 172 Colo. 474, 474 P.2d 607 (1970); Jorgenson v. People, 174 Colo. 144, 482 P.2d 962 (1971); People v. Fidler, 175 Colo. 90, 485 P.2d 725 (1971); Simms v. People, 175 Colo. 195, 486 P.2d 22 (1971); People v. Abrahamsen, 176 Colo. 52, 489 P.2d 206 (1971); People v. Jones, 176 Colo. 61, 489 P.2d 596 (1971); People v. Falgout, 176 Colo. 94, 489 P.2d 195 (1971); Edwards v. People, 176 Colo. 478, 491 P.2d 566 (1971); Brown v. People, 177 Colo. 397, 494 P.2d 587 (1972); People v. Vinnola, 177 Colo. 405, 494 P.2d 826 (1972); People v. Silcott, 177 Colo. 451, 494 P.2d 835 (1972); Maynes v. People, 178 Colo. 88, 495 P.2d 551 (1972); Harthun v. District Court, 178 Colo. 118, 495 P.2d 539 (1972); Meader v. People, 178 Colo. 383, 497 P.2d 1010 (1972); People v. Woll, 178 Colo. 443, 498 P.2d 935 (1972); White v. District Court, 180 Colo. 152, 503 P.2d 342 (1972); Massey v. District Court, 180 Colo. 359, 506 P.2d 128 (1973); Bryan v. Conn, 187 Colo. 275, 530 P.2d 1274 (1975); Byers v. Leach, 187 Colo. 312, 530 P.2d 1276 (1975); People v. Culp, 189 Colo. 76, 537 P.2d 746 (1975);

People v. Bastardo, 191 Colo. 521, 554 P.2d 297 (1976); People v. Wilkinson, 37 Colo. App. 531, 555 P.2d 1167 (1976); Les v. Meredith, 193 Colo. 3, 561 P.2d 1256 (1977); Garcia v. District Court, 197 Colo. 38, 589 P.2d 924 (1979); People v. Ortega, 198 Colo. 179, 597 P.2d 1034 (1979); People v. Archuleta, 43 Colo. App. 474, 607 P.2d 1032 (1979).

B. Pre-trial Proceedings and Rights.

Law enforcement officer's actions in the course of undercover activities did not constitute such outrageous governmental conduct as to deny the minor defendant his due process rights. People in Interest of M.N., 761 P.2d 1124 (Colo. 1988); People in Interest of J.A.L., 761 P.2d 1137 (Colo. 1988).

Placing defendant under undetermined criminal charges. Placing defendant under the cloud of undetermined criminal charges for an indeterminate and unreasonable period of time is violative of due process. People v. Aragon, 643 P.2d 43 (Colo. 1982).

Tainted fruit doctrine does not require the automatic suppression of later statements made by the defendant or by witnesses whose identity was derived from the defendant's initial, unwarned statement. Although the lack of a Miranda warning creates a presumption of compulsion, the presumption can be rebutted and the initial statement shown to be voluntary in light of the totality of the circumstances. People v. T.C., 898 P.2d 20 (Colo. 1995).

There must be sufficient attenuation between the involuntary statements and the statements sought to be introduced such that the taint of the illegality is removed. People v. T.C., 898 P.2d 20 (Colo. 1995); People v. Barnard, 12 P.3d 290 (Colo. App. 2000).

Assertion of right to cease interrogation and invoke right to counsel must be clear and unequivocal. When faced with an ambiguous or equivocal statement, the police have no duty to clarify the suspect's intent, but rather may proceed with the interrogation. People v. Gray, 975 P.2d 1124 (Colo. App. 1998).

Written confession was not coerced where detectives advised defendant that it "could help" to give the court a written account of his commission of the crime but did not promise leniency in exchange. People v. Gray, 975 P.2d 1124 (Colo. App. 1998).

Special interrogation techniques designed to induce a confession, such as withholding information from defendant, confronting him with inconsistencies in his stories, and using specialized knowledge to point out weaknesses in his explanations for the victim's injuries, do not constitute coercion. People v. Gray, 975 P.2d 1124 (Colo. App. 1998).

Evidence at sanity trial that defendant asserted his constitutional rights after being given Miranda warnings which was presented for the purpose of proving defendant's rationality constituted reversible error as a violation of his due process rights. People v. Galimanis, 765 P.2d 644 (Colo. App. 1988), cert. granted, 783 P.2d 838 (Colo. 1989), cert. denied, 805 P.2d 1116 (Colo. 1991), cert. denied, 501 U.S. 1238, 111 S. Ct. 2872, 115 L.Ed.2d 1037 (1991).

C. Right to Public Trial.

1. Open Proceedings.

Accused in criminal case has right to public trial. Anderson v. People, 176 Colo. 224, 490 P.2d 47 (1971), cert. denied, 405 U.S. 1042, 92 S. Ct. 1376, 31 L.Ed.2d 583 (1972).

The right to a public trial includes proceedings to select jury.

The right to a public trial includes that stage of the proceedings which is devoted to the selection of a jury. Anderson v. People, 176 Colo. 224, 490 P.2d 47 (1971), cert. denied, 405 U.S. 1042, 92 S. Ct. 1376, 31 L.Ed.2d 583 (1972).

Right to public trial is not absolute, for in some instances, the right to a public trial may be subordinated to the higher right and duty of the court to insure that the defendant receives a fair trial. Anderson v. People, 176 Colo. 224, 490 P.2d 47 (1971), cert. denied, 405 U.S. 1042, 92 S. Ct. 1376, 31 L.Ed.2d 583 (1972).

Limited exclusion of public held not reversible error. Where the defendant is not the victim of any unjust prosecution, the limited exclusion of the general public at his trial during the time that a jury is chosen cannot be elevated to the constitutional plateau of reversible error to escape the jury's verdict. Anderson v. People, 176 Colo. 224, 490 P.2d 47 (1971), cert. denied, 405 U.S. 1042, 92 S. Ct. 1376, 31 L.Ed.2d 583 (1972).

Defendant is not entitled to have motion for acquittal heard in open court in his presence rather than in chambers in his absence. Schott v. People, 174 Colo. 15, 482 P.2d 101 (1971).

Defendant was not denied the right to a public trial when the court conducted individual voir dire of prospective jurors outside the presence of the general public on pretrial publicity and allowed only one press representative when the suggestion to do so was a strategic decision made by defense counsel in a pretrial motion. People v. Dunlap, 124 P.3d 780 (Colo. App. 2004).

2. Publicity.

Effect of prejudicial publicity. Publicity can be so "massive, pervasive and prejudicial" that the denial of a fair trial may be presumed. Walker v. People, 169 Colo. 467, 458 P.2d 238 (1969); People v. Simmons, 183 Colo. 253, 516 P.2d 117 (1973).

Fallible men and women can scarcely reach a disinterested verdict based exclusively on what they heard in court when, before they entered the jury box, their minds were saturated by press and radio for months preceding by matter designed to establish the guilt of the accused. A conviction so secured obviously constitutes a denial of due process of law. Walker v. People, 169 Colo. 467, 458 P.2d 238 (1969).

Defendant need not show specific prejudice. The trial court erred in holding that a showing must be made that the jurors were actually directly affected by the publicity. The defendant need not show specific prejudice against him from massive publicity through an examination of the voir dire proceedings. Walker v. People, 169 Colo. 467, 458 P.2d 238 (1969).

In order for reversal to be called for in absence of massive publicity that could be said to have contaminated the community, the defendant must establish a nexus between the publicity and the alleged denial of a fair trial. Sergent v. People, 177 Colo. 354, 497 P.2d 983 (1972).

Pretrial publicity. The mere existence of extensive pretrial publicity, by itself, does not trigger a due process entitlement to a change of venue. People v. Bartowsheski, 661 P.2d 235 (Colo. 1983); People v. Heller, 698 P.2d 1357 (Colo. App. 1984), rev'd on other grounds, 712 P.2d 1023 (Colo. 1986).

A defendant, in order to prevail on this argument, must show that the publicity was so "massive, pervasive, and prejudicial" as to create a presumption of an unfair trial or, alternatively, that the publicity created actual hostility on the part of the jurors. People v. Bartowsheski, 661 P.2d 235 (Colo. 1983); People v. Tafoya, 703

P.2d 663 (Colo. App. 1985).

Defendant failed to meet this burden where the trial court allowed extensive in camera voir dire and gave cautionary remarks to the jury concerning avoidance of publicity and where the defendant failed to exhaust his peremptory challenges. People v. Tafoya, 703 P.2d 663 (Colo. App. 1985).

Denial of motion to appoint public opinion pollster at state expense to determine the extent of the pretrial publicity did not deny due process of law since there was no showing of the necessity for or right to a state financed pollster in the case. People v. McCrary, 190 Colo. 538, 549 P.2d 1320 (1976).

Television camera in courtroom did not prevent fair trial. Where there was no record of any unusual publicity or that any part of the courtroom proceedings was ever transmitted to any viewer by television or radio, the use of a single, concealed television camera in the courtroom, strictly regulated pursuant to the rule of the supreme court then in effect, did not prevent a fair trial. Gonzales v. People, 165 Colo. 322, 438 P.2d 686 (1968).

The mere presence of a camera in the courtroom does not in itself deny a defendant due process. People v. Wieghard, 727 P.2d 383 (Colo. App. 1986).

D. Timing of Trial.

Undue haste in administration of criminal law is as much to be condemned as unnecessary delay. The true course lies between these two extremes. Toland v. Strohl, 147 Colo. 577, 364 P.2d 588 (1961).

The supreme court cannot approve as meeting the standards of due process of law summary, hasty, middle-of-the-night justice. Toland v. Strohl, 147 Colo. 577, 364 P.2d 588 (1961).

Delay of arrest can reach a point where the delay is so long that the prejudice to the defendant caused by it becomes so great that due process and fundamental fairness require that the charges be dismissed. People v. Hutchinson, 192 Colo. 204, 557 P.2d 376 (1976); People v. Hall, 729 P.2d 373 (Colo. 1986).

Factors to be examined in determining if delay of arrest violates due process and fundamental fairness include: (1) Loss of defense witnesses; (2) whether the delay was purposeful and intended to prejudice the defendant; (3) the kind and quantum of evidence available to the prosecution; and (4) general considerations of justice and fair play. People ex rel. Coca v. District Court, 187 Colo. 280, 530 P.2d 958 (1975); People v. Hall, 729 P.2d 373 (Colo. 1986).

Delay of trial for criminal investigation. When the government takes time before seeking an indictment for purposes of conducting further criminal investigation, fundamental fairness is not violated unless this procedure shocks the community's sense of fair play and decency. People v. Small, 631 P.2d 148 (Colo. 1981), cert. denied, 454 U.S. 1101, 102 S. Ct. 678, 70 L.Ed.2d 644 (1981).

To prosecute a defendant following investigative delay does not deprive him of due process, even if his defense might have been somewhat prejudiced by the lapse of time. People v. Small, 631 P.2d 148 (Colo. 1981), cert. denied, 454 U.S. 1101, 102 S. Ct. 678, 70 L.Ed.2d 644 (1981).

Delay in prosecution did not deny the defendant due process. Five witnesses had died or could not be located, the delay was not purposeful, the victim's body was not located until four months after the defendant was charged, and the interests of justice and fair play did not warrant dismissal of charges. People v. Melanson, 937 P.2d 826 (Colo. App. 1996).

Decision to grant or deny motion for continuance is committed

to sound discretion of the trial court and will be reversed on appeal only upon a showing of a clear abuse of discretion resulting in manifest injustice. People v. Garcia, 690 P.2d 869 (Colo. App. 1984).

Trial court was not obligated to continue trial because of defense team's strategic decision not to appear. People v. Thomas, 962 P.2d 263 (Colo. App. 1997).

Speedy trial. An accused's right to be treated with fundamental fairness is implicit in the concept of due process of law and is more expansive than the specific constitutional guarantee of the right to a speedy trial. Barela v. People, 826 P.2d 1249 (Colo. 1992).

E. Right to Counsel.

Right of indigents to presence of legal counsel. Due process requirements prohibit the denial of the right to the presence of legal counsel to indigents, when it has been made available to those able to afford counsel. Mora v. District Court, 177 Colo. 381, 494 P.2d 596 (1972).

Right to counsel encompasses a guarantee that defense counsel shall have sufficient time to prepare for scheduled proceedings and to protect his client's constitutional rights. People v. Meyers, 617 P.2d 808 (Colo. 1980); People v. Garcia, 690 P.2d 869 (Colo. App. 1984).

Late appointment of counsel per se does not violate constitutional right to counsel; rather, it should be considered with other attendant circumstances, such as the gravity of the charge, the complexity of the case, the experience and knowledge of the attorney, and the opportunity for consultation and preparation. People v. Meyers, 617 P.2d 808 (Colo. 1980).

Limitation on fees payable to appointed counsel is not itself a violation of defendant's equal protection right without a showing it caused ineffective assistance of counsel. People v. District Court, 761 P.2d 206 (Colo. 1988).

Inadequate preparation considered due process violation. If with the later discovered evidence the jury would not have convicted the defendant it can be said that the conviction can be laid at the door of inadequate preparation on the part of both sides, and this has the magnitude of a failure of due process and calls for a new trial. People v. Armstead, 179 Colo. 387, 501 P.2d 472 (1972).

Pro forma appearance without preparation or meaningful consultation infers ineffective assistance. Where a last-minute appointment of counsel results in a pro forma entry of appearance without preparation or meaningful consultation with the accused, such token representation raises a strong inference, if not an outright presumption, that the accused has been denied effective assistance of counsel. People v. Meyers, 617 P.2d 808 (Colo. 1980).

Defense team's election not to appear for commencement of trial did not "deprive" defendant of counsel in the constitutional sense. People v. Thomas, 962 P.2d 263 (Colo. App. 1997).

No constitutional right to postconviction counsel exists; however, a limited statutory right exists. The statutory right to postconviction counsel is neither automatic nor unlimited. It is limited to cases where a defendant's Crim. P. 35(c) petition is not wholly unfounded and has arguable merit, as determined by the court and the state public defender's office. Silva v. People, 156 P.3d 1164 (Colo. 2007).

If postconviction counsel is required according to the limited statutory right, that counsel must provide effective assistance as measured by the two-pronged Strickland v. Washington test. Silva v.

People, 156 P.3d 1164 (Colo. 2007).

When a defendant agrees to an extension of probation, the defendant does not have a sixth amendment right to be advised of or receive the right to counsel before signing the extension. A motion to extend probation is not a critical stage of the proceeding requiring the right to counsel because the defendant is not faced with consequential significant deprivation of liberty and is not entitled to a hearing in the absence of such a request. People v. Hotle, 216 P.3d 68 (Colo. App. 2008).

F. Pleas.

1. General.

Due process prerequisites of guilty plea. Vanderhoof v. People, 152 Colo. 147, 380 P.2d 903 (1963).

Due process of law mandates that a guilty plea must be voluntarily and understandingly made before a valid judgment can be entered thereon. People v. Chavez, 730 P.2d 321 (Colo. 1986); People v. Ball, 813 P.2d 759 (Colo. App. 1990).

Notice to defendant of charge. A plea cannot be either a voluntary or a knowing and intelligent admission of guilt unless the defendant receives real notice of the true nature of the charge against him. The degree of explanation required of a court depends on the nature and complexity of the crime. People v. Leonard, 673 P.2d 37 (Colo. 1983); Harshfield v. People, 697 P.2d 391 (Colo. 1985); People v. Cabral, 698 P.2d 234 (Colo. 1985); People v. Ball, 813 P.2d 759 (Colo. App. 1990).

To establish that due process has been satisfied, the record must show affirmatively that the defendant understood the critical elements of the crime to which his guilty plea was entered. Harshfield v. People, 697 P.2d 391 (Colo. 1985).

Due process requires that, in order to provide the basis for a judgment of conviction, a guilty plea must be made voluntarily. Lacy v. People, 775 P.2d 1 (Colo. 1989).

In order to meet the constitutional requirement of voluntariness, the record as a whole must affirmatively show that the defendant understood the constitutional rights he was waiving and the critical elements of the crime to which the plea was tendered. Lacy v. People, 775 P.2d 1 (Colo. 1989); People v. Ball, 813 P.2d 759 (Colo. App. 1990); People v. Chavez, 832 P.2d 1026 (Colo. App. 1991).

An information charging a defendant is sufficient if it informs the defendant of the charges against him so as to enable him to prepare a defense and plead the judgment in bar of any further prosecutions for the same offense. Thus an information informing the defendant that he was charged with felony-murder committed while he was in immediate flight from both a robbery and an attempted robbery was not unconstitutionally vague in failing to specify which felony was being relied upon. People v. Hickam, 684 P.2d 228 (Colo. 1984).

In order to satisfy the requirement that defendant understands the critical elements of the crime, the court should explain the critical elements in terms which are understandable to the defendant and the extent of such explanation is dependent upon the nature and complexity of the crime. Lacy v. People, 775 P.2d 1 (Colo. 1989).

Regardless of the complexity of the crime, the record must demonstrate that the defendant understood any mental state element of the crime to which he pled guilty in order to satisfy due process requirements. Lacy v. People, 775 P.2d 1 (Colo. 1989).

In regard to a guilty plea, due process does not require either a specific waiver of constitutional

protections to establish the fact that the defendant understood the nature of the constitutional protections he was waiving or that the record demonstrate an adequate factual basis for the plea. Lacy v. People, 775 P.2d 1 (Colo. 1989).

No constitutional defect existed where defendant pleaded guilty after court informed defendant of possible penalty that was greater than presumptive range for crime. People v. Silva, 782 P.2d 846 (Colo. App. 1989).

Constitutional due process requirements regarding advisement of possible penalties do not apply to Crim. P. 11(b) in a hearing to revoke a deferred judgment. Defendant's admission that he violated the terms of the deferred judgment was valid. Due process does not require that defendant be readvised of the potential penalties after defendant was advised of the possible penalties when entering into the deferred judgment. People v. Finney, 2012 COA 38, __ P.3d __.

Denial of motion to withdraw guilty pleas was not an abuse of discretion by the trial court where the pleas were entered in accordance with due process of law. People v. Chavez, 730 P.2d 321 (Colo. 1986).

Trial court need not advise accused of any legal consequences of guilty plea, particularly those arising from the accused's own future misconduct. People v. McKnight, 200 Colo. 486, 617 P.2d 1178 (1980).

A defendant entering a guilty plea is afforded due process if the trial court advises the defendant of direct consequences of the conviction. People v. Jones, 957 P.2d 1046 (Colo. App. 1997).

2. Reliance on Promises.

Due process requires that defendant be given reasonable notice that he is subject to enhanced sentencing under § 18-1-105 (9)(a)(III). People v. Murphy, 722 P.2d 407 (Colo. 1986); People v. Lacey, 723 P.2d 111 (Colo. 1986).

This section guarantees that a promise by the government will be enforced in a manner which guarantees fundamental fairness to the defendant when the defendant has reasonably relied to his detriment on such promise. People v. McCormick, 839 P.2d 474 (Colo. App. 1992).

Suppression of statement under use-immunity principle. Where a police officer obtains a statement from a suspect in exchange for his implicit promise not to prosecute her for what she tells him and the suspect has reasonably and detrimentally relied upon the promise, a remedy that accords substantial justice is to treat the statement as if it has been obtained pursuant to a grant of use-immunity. The statement must be suppressed under the use-immunity principle, as well as any evidence derived directly or indirectly from the statement. People v. Manning, 672 P.2d 499 (Colo. 1983).

Enforcement of governmental promises in criminal proceeding. When a defendant has been charged with a crime and is represented by counsel, and a law enforcement officer involved in the investigation of the case requests a videotaped interview pertaining to the defendant's criminal activities and expressly promises not to use the videotape in any criminal proceeding against him, and thereafter the accused, in reasonable detrimental reliance upon the officer's promise, submits to the incriminating interview, the due process clauses of the United States and Colorado Constitutions entitle the accused to enforcement of the governmental promise where no other remedy is appropriate to effectuate the accused's legitimate expectation engendered by the governmental promise. People v. Fisher, 657 P.2d 922 (Colo. 1983); People v. Fanger, 748

P.2d 1332 (Colo. App. 1987).

When defendant agrees to government's plea offer that includes testimony against co-defendant and based on this, co-defendant pleads guilty, government cannot withdraw offer and use information obtained through the agreement to convict the defendant. People v. Fanger, 748 P.2d 1332 (Colo. App. 1987).

Due process requires that if defendant relies to his detriment on government's promise in plea agreement, specific performance of agreement is appropriate. People v. Macrander, 756 P.2d 356 (Colo. 1988).

Introduction of evidence obtained while defendant acted as a drug enforcement administration informant did not violate defendant's due process rights where agents made no promise not to prosecute but only that they would communicate her cooperation to the prosecution. Moreover, defendant's statements were admissible to impeach her when she took the stand and testified she was entrapped. People v. Ridley, 872 P.2d 1377 (Colo. App. 1994).

G. Jury.

Due process under this section does not guaranty right to trial by jury in favor of prosecution in cases where an accused is entitled to a jury trial but elects trial before the court. People v. District Court, 843 P.2d 6 (Colo. 1992).

Due process guaranty compels the conclusion that prosecution alone cannot compel trial by jury where defendant may not receive a fair trial. People v. District Court, 843 P.2d 6 (Colo. 1992).

Provisions of § 16-10-101, which require the people's consent as a prerequisite to defendant's waiver of trial by jury, held facially constitutional; however, as applied section may violate the right to due process afforded by this section. People v. District Court, 843 P.2d 6 (Colo. 1992).

Unqualified prosecution consent requirement to defendant's waiver of trial by jury may violate defendant's constitutional right to due process where defendant contends that such trial would constitute an unfair proceeding before a biased jury. People v. District Court, 843 P.2d 6 (Colo. 1992).

It is incumbent upon a criminal defendant, in seeking waiver of jury trial, to raise due process concerns with the trial court; trial court may evaluate whether a defendant's due process rights may be violated only after the defendant makes a showing that inability to waive trial by jury infringes on defendant's due process rights. People v. District Court, 843 P.2d 6 (Colo. 1992).

In determining whether defendant's due process rights to a fair trial would be violated by denying defendant's waiver of jury trial, trial court may consider the extent to which a change in venue may cure biases or prejudice against the defendant. People v. District Court, 843 P.2d 6 (Colo. 1992).

Retrial of defendant on kidnapping charge, after the first trial was declared a mistrial without objection from either party, did not violate statute requiring the verdict of the jury to be unanimous or the defendant's right to due process because the federal constitution does not guarantee a defendant a unanimous verdict of either guilty or not guilty. People v. Barton, 58 P.3d 1075 (Colo. App. 2002).

Voir dire inquiry is permissible into matters of racial prejudice in the interest of obtaining a fair and impartial jury. Maes v. District Court, 180 Colo. 169, 503 P.2d 621 (1972); People v. Baker, 924 P.2d 1186 (Colo. App. 1996).

Opinions concerning death penalty. Trial court did not abuse its

discretion in denying defendant's challenges to jurors who expressed belief in the appropriateness of the death penalty when, based on the record, it appeared that the court had found that the personal beliefs of the jurors would not keep them from being fair and impartial and following the law as instructed. People v. Thomas, 962 P.2d 263 (Colo. App. 1997).

Failure to instruct on presumption of innocence constitutes denial of due process of law. People v. Hill, 182 Colo. 253, 512 P.2d 257 (1973).

However, use of disapproved instruction on presumption of innocence does not violate due process. Constantine v. People, 179 Colo. 202, 499 P.2d 309 (1972).

Jury instructions which fail to define all the elements of an offense charged are constitutionally deficient. People v. Mattas, 645 P.2d 254 (Colo. 1982); Evans v. People, 706 P.2d 795 (Colo. 1985).

The culpable mental state of an offense is an essential element, and the failure to include the applicable culpable mental state in the elemental instruction is a constitutional deficiency. People v. Pickering, 725 P.2d 5 (Colo. App. 1985).

An incorrect jury instruction in a criminal case is not a structural error; instead, such instruction is subject only to harmless or plain error review, following the U.S. supreme court precedent in Neder v. United States, 527 U.S. 1 (1999). Therefore, if a conviction is not attributable to the incorrect instruction, a conviction shall not be overturned and all contrary precedent is disapproved of. The test is "whether the guilty verdict actually rendered in the trial was surely unattainable to the error". Griego v. People, 19 P.3d 1 (Colo. 2001) (disapproving on this point Cooper v. People, 973 P.2d 1234 (Colo. 1999), Bogdanov v. People, 941 P.2d 247 (Colo. 1997), People v. Vance, 933 P.2d 576 (Colo. 1997), People v. Villa-Villa, 983 P.2d 181 (Colo. App. 1999)).

Plain error analysis should not apply when a sentencing court enters a conviction different from that provided for by a jury's finding of guilt based upon a jury instruction that correctly and completely describes all the elements of a less serious offense rather than misdescribing or omitting an element of an offense. Medina v. People, 163 P.3d 1136 (Colo. 2007).

Misdescribed or omitted element in jury instruction may give rise to different arguments on appeal. A defendant may seek a new trial, arguing that the error undermined the validity of the conviction. Defendant also may seek resentencing, arguing that the error led the court to impose sentence in violation of the Apprendi v. New Jersey decision. People v. Medina, 140 P.3d 64 (Colo. App. 2005), aff'd on other grounds, 163 P.3d 1136 (Colo. 2007).

Jury instructions and the prosecutor's comment that contradictorily indicated that the jury was not required to consider self-defense in deciding whether defendant committed felony menacing and reckless endangerment and could consider self-defense only as it related to charges of attempted first degree murder were erroneous. The finding did not warrant reversal, however, because the error did not undermine the fundamental fairness of the trial as to cast serious doubt on the reliability of the jury's verdict. People v. Bachofer, 192 P.3d 454 (Colo. App. 2008).

Constitutional harmless error analysis is reserved only for those cases in which the defendant preserved a claim for review by raising a contemporaneous objection. If the defendant fails to object at trial,

plain error applies. People v. Miller, 113 P.3d 743 (Colo. 2005).

Trial court erred by giving a theft instruction that did not make clear that prosecution had to prove, beyond a reasonable doubt, that defendant knew he did not have authorization to take the store's property. Because defendant did not object to the theft instruction at trial, however, the proper standard of review is plain error. People v. Gibson, 203 P.3d 571 (Colo. App. 2008).

Although the flawed instruction was error it was not plain error because there was not a reasonable possibility that the erroneous instruction contributed to the conviction in a manner that cast doubt on the reliability of the verdict. Neither the prosecution nor defendant presented any evidence to indicate defendant thought he was authorized to take property from the store, and defendant never argued that the evidence suggested he believed he was authorized to take property from the store. People v. Gibson, 203 P.3d 571 (Colo. App. 2008).

"After deliberation" is not a part of the "culpable mental state". However, where no part of the doctor's testimony subject to the instruction addressed the issue whether the defendant acted with deliberation, error was harmless. People v. Thomas, 962 P.2d 263 (Colo. App. 1997).

A jury may return a general verdict of guilty on a single count alleged to have occurred under alternative theories without depriving the defendant of the right to a unanimous verdict. However, each theory presented must be supported by sufficient evidence, and if there is insufficient evidence of any alternative theory, the general verdict will be set aside. People v. Hall, 60 P.3d 728 (Colo. App. 2002).

Permitting an instruction on an alternative theory of liability for the same charged offense not supported by sufficient evidence does not rise to the level of a constitutional error where the conviction for that offense is otherwise supported by sufficient proof. Additionally, where the evidence presented at trial against a criminal defendant is otherwise sufficient to support the determination of guilt, providing the jury with an instruction containing a factually insufficient theory of liability for the same charged offense does not alone violate the due process clause. People v. Dunaway, 88 P.3d 619 (Colo. 2004).

The court made a structural constitutional error in sentencing defendant for a class 4 felony when defendant was convicted of a class 5 felony. Although it was not clear from the charging documents whether defendant was charged with a class 4 felony or a class 5 felony, that confusion was cleared up when prosecution proffered a jury instruction for the class 5 felony and based its theory of the case on the class 5 felony elements. The court's error, therefore, was not the result of a mistake in the jury instructions. Medina v. People, 163 P.3d 1136 (Colo. 2007).

Structural error applies in this case because the court sentenced defendant for the class 4 felony and there was no jury verdict for that crime. In essence, the court judged defendant guilty of a new crime. The structural error in this case was confined to the sentencing proceedings, so the conviction is affirmed, but the sentence is vacated and the case remanded for resentencing. Medina v. People, 163 P.3d 1136 (Colo. 2007).

H. Insanity Defense.

Availability of defense of insanity. A statute providing that insanity shall be no defense to a criminal charge would be unconstitutional. People ex rel. Juhan v. District Court, 165 Colo. 253, 439 P.2d 741 (1968).

One who is insane when he commits an act prohibited by law cannot be held guilty of a crime. People ex rel. Juhan v. District Court, 165 Colo. 253, 439 P.2d 741 (1968).

Defendant who raises sanity issue is constitutionally entitled to separate hearing to determine competence to stand trial because a different standard determines competence to stand trial from that which determines the validity of a defense of not guilty by reason of insanity. Parks v. Denver District Court, 180 Colo. 202, 503 P.2d 1029 (1972); Leick v. People, 136 Colo. 535, 322 P.2d 674, cert. denied, 357 U.S. 922, 78 S. Ct. 1363, 2 L.Ed.2d 366 (1958).

Trial of an incompetent defendant constitutes structural error. The effect of erroneously allowing an incompetent defendant to stand trial is unquantifiable and indeterminate. Such an error is consistent with the types of errors that the U.S. supreme court has deemed "structural" and requires automatic reversal. People v. Mondragon, 217 P.3d 936 (Colo. App. 2009).

Statute allowing a court to order a competency evaluation of defendant on its own motion does not force a defendant to choose between the privilege against self-incrimination and the right to a competency determination. A defendant may remain silent during the court-ordered evaluation under § 16-8-107 and then be examined by a psychiatrist of his own choice under § 16-8-108. Therefore, under the statutory scheme, the defendant could obtain a competency evaluation and protect his privilege against self-incrimination unless and until he relied upon the lack of mental capacity to commit the charged crimes. People v. Thomas, 962 P.2d 263 (Colo. App. 1997).

I. Defendant's Rights at Trial.

1. To be Present.

Defendant may be excluded from hearing on matters of law. Where the question raised by a motion concerns only matters of law, the exclusion of the defendant from such a hearing does not violate the constitutional right to be present at every stage of the trial. Schott v. People, 174 Colo. 15, 482 P.2d 101 (1971).

While the defendant must be present at every critical stage of the proceeding in a criminal prosecution, the replaying of a tape of a disciplinary hearing involving one of the defendant's witnesses was not a critical stage. People v. Valdez, 725 P.2d 29 (Colo. App. 1986), aff'd, 789 P.2d 406 (Colo. 1990), cert. denied, 498 U.S. 871, 111 S. Ct. 193, 112 L.Ed.2d 156 (1990).

Commencing the suppression hearing before defendant's late arrival did not so undermine the fundamental fairness of the trial to cast serious doubt on the reliability of defendant's conviction. Defense counsel did not object to starting the hearing without defendant, defendant did not testify at the hearing, and defendant did not identify anything specific that would have been done differently if defendant had been present for the entire hearing. People v. Garcia, 251 P.3d 1152 (Colo. App. 2010).

Prison clothing. In absence of objection, fair trial was not denied by permitting defendant to stand trial in nonidentifiable prison clothing without informing him of right to wear civilian clothes. People v. Romero, 694 P.2d 1256 (Colo. 1985).

The court's failure to allow the defendant and the defendant's counsel the opportunity to appear and review the jury's request to review the trial transcript was harmless error. Since the court is vested with the discretion to allow the

jury to review transcripts and the defendant cannot show that this case was prejudiced by allowing the jury to review the transcript, there is no reversible error. People v. Dunlap, 124 P.3d 780 (Colo. App. 2004).

The defendant's right to be present was not violated when the defendant did not attend a general orientation session upon the recommendation of the defendant's defense counsel. People v. Dunlap, 124 P.3d 780 (Colo. App. 2004).

2. To Testify.

Defendant's right to testify. A defendant has a due process right to testify in his own defense under this section. People v. Myrick, 638 P.2d 34 (Colo. 1981).

And this right is so fundamental that the authority to decide whether to testify must be allocated to the client. People v. Curtis, 657 P.2d 990 (Colo. App. 1982), aff'd, 681 P.2d 504 (Colo. 1984); People v. Ziglar, 45 P.3d 1266 (Colo. 2002).

The right to testify may not be impermissibly "chilled" by penalties imposed for exercising that right. People v. Myrick, 638 P.2d 34 (Colo. 1981); People v. Anderson, 954 P.2d 627 (Colo. App. 1997).

Where a defendant's mental disease or defect renders him incompetent to decide whether or not to exercise his right to testify in his own defense, he is incompetent to stand trial. People v. Mondragon, 217 P.3d 936 (Colo. App. 2009).

A defendant's right to testify may be found to be impermissibly burdened when there is an issue involving the constitutional admissibility of evidence or when the defendant is forced to choose between the right to testify and some other constitutional right. Defendant's decision not to testify was a strategic choice, not one that implicated his constitutional rights. Therefore, there was no merit to the claim that the prosecution may not introduce relevant, otherwise admissible evidence in its case-in-chief simply because defendant believed that its admission would compel him to give the jury a response if he took the stand. People v. Skufca, 176 P.3d 83 (Colo. 2008).

A defendant who testifies does not generally and automatically waive the privilege against self-incrimination as to pending collateral criminal charges. Allowing a defendant-witness's credibility to be assailed through cross-examination concerning related criminal charges does not necessarily compromise defendant's right to testify at trial or the right not to incriminate oneself in the pending matter. People v. Skufca, 176 P.3d 83 (Colo. 2008).

Waiver of the right must be voluntary, knowing, and intentional, and the existence of effective waiver should be ascertained by the trial court on the record. Palmer v. People, 680 P.2d 525 (Colo. 1984); People v. Curtis, 681 P.2d 504 (Colo. 1984); People v. Blecha, 940 P.2d 1070 (Colo. App. 1996), aff'd, 962 P.2d 931 (Colo. 1998).

Trial court has a duty to determine whether the waiver of the right to testify by the defendant was in fact voluntary, knowing, and intentional. People v. Pietrantonio, 727 P.2d 407 (Colo. App. 1986); People v. Chavez, 853 P.2d 1149 (Colo. 1993).

Not all burdens placed on a defendant's choice of whether to testify constitute impermissible impediments to the exercise of his or her constitutional right to testify. People v. Myrick, 638 P.2d 34 (Colo. 1981); People v. Anderson, 954 P.2d 627 (Colo. App. 1997).

It is required practice that every defendant be advised on the record and outside the presence of

the jury that the defendant has the right to testify, that the ultimate decision whether to testify must be made by the defendant, that no one can prevent the defendant from doing so, that should the defendant choose to testify, the prosecutor will be permitted to cross-examine the defendant concerning prior felony convictions, and that if cross-examination discloses prior convictions, the jury can be instructed to consider them only as they bear upon the defendant's credibility. People v. Chavez, 832 P.2d 1026 (Colo. App. 1991), aff'd, 853 P.2d 1149 (Colo. 1993); People v. Blecha, 940 P.2d 1070 (Colo. App. 1996), aff'd, 962 P.2d 931 (Colo. 1998).

If a defendant is facing habitual criminal counts, the defendant is entitled to be advised that any admissions made by him during the substantive phase of the trial cannot be used by the prosecution to prove the habitual offender charges. People v. Chavez, 832 P.2d 1026 (Colo. App. 1991), aff'd, 853 P.2d 1149 (Colo. 1993).

When a severed possession of weapon by a prior offender charge is pending and untried, trial court's Curtis advisement that a prior felony can only be used for impeachment is misleading. Whether defendant is entitled to a new trial on the weapon's charge requires defendant to establish that he or she detrimentally relied upon the misleading advisement. People v. Emert, 240 P.3d 514 (Colo. App. 2010).

The advisement by the trial court of the defendant's right to testify was inadequate when the court failed to inform defendant that the decision to testify was personal to the defendant and failed to advise defendant as to the limited evidentiary use of any admission by the defendant. People v. Chavez, 832 P.2d 1026 (Colo. App. 1991), aff'd, 853 P.2d 1149 (Colo. 1993).

The advisement by the trial court of the defendant's right to testify was inadequate when the court failed to inform the defendant of the consequences of testifying or not testifying including that if she testified that the prosecution could use her previous convictions to impeach her testimony and if she didn't that the jury would be instructed concerning her right against self-incrimination. People v. Milton, 864 P.2d 1097 (Colo. 1993).

Right to testify not improperly denied even though court did not advise defendant that his decision was his personal right. But the court did ask the defendant several times if his decision was his personal decision, which the defendant answered each time in the affirmative. People v. Howard, 886 P.2d 296 (Colo. App. 1994).

Absence of trial court's findings of defendant's waiver of right to testify cannot be bootstrapped into an implicit determination of the involuntariness of defendant's waiver. People v. Howard, 886 P.2d 296 (Colo. App. 1994).

Court's failure to tell defendant that if he chose to testify the jury would be instructed to consider knowledge of prior felony convictions only as they bore on his credibility, determined to be harmless because defendant had no prior felonies. People v. Howard, 886 P.2d 296 (Colo. App. 1994).

Trial court's advisement that the jury would be instructed to consider the defendant's felony conviction as it bears on the defendant's character was deficient. The evidentiary concept of character and the trait of credibility are substantively different terms when used by the trial court. By using character instead of credibility, the trial court incorrectly advised the defendant of the consequences of testifying at his or her trial. People v. Harding, 104 P.3d 881 (Colo. 2005).

No valid waiver of right to testify was made since although the defendant's statement that he did not want to testify was evidence of a voluntary waiver, without an adequate advisement of his right to testify, the defendant's statements did not demonstrate a knowing and intelligent waiver of his right to testify. People v. Chavez, 853 P.2d 1149 (Colo. 1993).

It is contrary to the Curtis advisement requirement to require the defendant to prove that he was prejudiced by the trial court's inadequate and misleading advisement regarding the right to testify. People v. Chavez, 853 P.2d 1149 (Colo. 1993).

For pre-Curtis cases, the right to effective assistance of counsel provides the appropriate legal norm for resolving defendant's claim that he was not adequately advised by counsel of his right to testify. People v. Naranjo, 840 P.2d 319 (Colo. 1992).

Advisement of the defendant's right to testify did not violate the constitution even though the defendant was not told that the same jury would hear the defendant's subsequent habitual criminal trial. Evidence fails to show the defendant did not voluntarily, knowingly, and intentionally waive the right to testify as reviewed under the same constitutional test applied to waiver of the right to counsel. People v. Boehmer, 872 P.2d 1320 (Colo. App. 1993).

Trial court did not commit reversible error by failing to explicitly advise defendant that the jury could be given a limiting instruction to consider evidence of prior felonies only as it related to defendant's credibility as a witness where the advisement was in every other respect sufficient under Curtis. People v. Blecha, 940 P.2d 1070 (Colo. App. 1996), aff'd, 962 P.2d 931 (Colo. 1998).

While trial court failed to use the word "credibility" in giving defendant Curtis advisement, trial court's remarks were sufficient to apprise defendant that his prior conviction would be admissible to impeach the credibility of his testimony where the trial court informed defendant that his prior conviction would "be presented" for the purpose of influencing whether "the jury chooses to believe you or not." People v. Whitley, 998 P.2d 31 (Colo. App. 1999).

Under the Strickland ineffective-assistance standard, a defendant will establish a violation of his right to testify when he proves by a preponderance that: defense counsel's action or inaction in counseling the defendant on his right to testify fell below the level of professional competence demanded of attorneys, depriving defendant of his ability to make an informed and voluntary decision; and there is a reasonable probability that, but for defense counsel's deficient performance, the result of the trial would have been different. People v. Naranjo, 840 P.2d 319 (Colo. 1992).

It is not reversible error per se when the defendant's waiver of the right to testify does not appear on the record. Tyler v. People, 847 P.2d 140 (Colo. 1993).

Initially, burden is on the prosecution to show a voluntary, knowing, and intentional waiver of the defendant's right to testify. Once this burden is met, however, burden shifts to the defendant to present evidence from which the court may reasonably infer otherwise. Tyler v. People, 847 P.2d 140 (Colo. 1993).

While counsel may not prevent a defendant from presenting an alibi during his own testimony without waiver of right to testify, where defendant's alibi is to be established by testimony of witnesses other than defendant, the decision whether to present such defense is a strategic and tactical decision within the exclusive province of defense counsel. People v.

Tackett, 742 P.2d 957 (Colo. App. 1987).

Where admissibility of prior felony conviction for impeachment of defendant's testimony is challenged on constitutional grounds, a defendant is not required to testify at trial to preserve issue for appeal. People v. Henderson, 745 P.2d 265 (Colo. App. 1987).

Defendant's fifth amendment right not to testify was not violated when the trial court was unwilling to limit the prosecution's cross-examination after defendant was going to testify regarding the involuntariness of his statements. The prosecution's proffered questions regarding how the alleged coercion could have caused the alleged involuntary statements were within the scope of the proposed direct examination of defendant. The court properly used its discretion in ruling it would allow the prosecution's proffered cross-examination if defendant testified regarding his alleged involuntary statements. People v. Gomez-Garcia, 224 P.3d 1019 (Colo. App. 2009).

Court did not deny defendant due process by requiring defendant to testify on the first day of trial. The order of proof at trial is a matter within the court's discretion. Court required defendant to testify in order to make use of jury's time. Defendant had previously expressed his intent to testify, and court permitted defendant to testify again, following the testimony of his expert witness. People v. Walden, 224 P.3d 369 (Colo. App. 2009).

Trial court abused its discretion in finding defendant competent to stand trial, because it applied incorrect legal standards in several respects. First, the court did not consider whether defendant met his burden of proof by a preponderance of the evidence. Instead, the court examined the evidence in the light most favorable to defendant. Second, the court did not properly assess defendant's competency according to whether defendant possessed a sufficient present ability to consult with counsel with a reasonable degree of rational understanding, and a present rational and factual understanding of the proceedings against him. Instead, the court appears to have based its competency determination exclusively on whether defendant factually understood the proceedings and whether he had the cognitive ability to assist in his defense or cooperate with his counsel, regardless of whether his perceptions and understandings were grounded in reality. People v. Mondragon, 217 P.3d 936 (Colo. App. 2009).

J. Evidence.

1. Duty to Preserve and Provide Access to Evidence.

Defendant's right to discovery. Where the defense has made a specific request for certain information in the possession or control of the prosecution, discovery of that information is constitutionally compelled, not only when it is exculpatory, but when it is of material importance to the defense. People v. Thatcher, 638 P.2d 760 (Colo. 1981).

The use of discovery material for impeachment purposes implicates the due process rights of the defendant and is of material importance to the defense. People v. Thatcher, 638 P.2d 760 (Colo. 1981).

Generally, defendant has no constitutional right to compel disclosure of a confidential informant, but consideration of fundamental fairness sometimes requires that identity of such informant be revealed. People v. Dailey, 639 P.2d 1068 (Colo. 1982); People v. Vigil, 729 P.2d 360 (Colo. 1986).

Suppression of evidence

denies due process. Evidence which might be helpful to a defendant and which is suppressed by the police or the prosecution before or during trial or which is ignored by a trial court when presented to it, results in a denial of due process of law just as surely as would the knowing use of perjured testimony. Cheatwood v. People, 164 Colo. 334, 435 P.2d 402 (1967).

Evidence which is suppressed by the police or prosecution results in a denial of due process. People v. Scheidt, 187 Colo. 20, 528 P.2d 232 (1974).

A failure of the prosecution to produce evidence favorable to the accused, relating to the issue of either guilt or punishment, amounts to a denial of due process. Sandoval v. People, 180 Colo. 180, 503 P.2d 1020 (1972).

The suppression of evidence favorable to the defendant, coupled with the district attorney's unfair and misleading closing argument, constituted a deprivation of due process. People v. Walker, 180 Colo. 184, 504 P.2d 1098 (1972).

The suppression of material evidence relative to guilt or innocence upon request is a denial of due process. People v. Angelini, 649 P.2d 341 (Colo. App. 1982); People v. Greathouse, 742 P.2d 334 (Colo. 1987).

Reversal on the basis of failure to disclose material information in the prosecution's possession is only mandated if the information might have affected the outcome of the trial. People v. Armstrong, 664 P.2d 716 (Colo. App. 1982).

Nondisclosure of evidence affecting credibility. When the reliability of a witness may well be determinative of guilt or innocence, nondisclosure of evidence affecting credibility falls within this general rule. People v. Angelini, 649 P.2d 341 (Colo. App. 1982).

Capital cases carry strong presumption that possible exculpatory evidence should be disclosed and information that became available after the defendant was sentenced to death is to be evaluated by the trial judge. In a capital case in which the death sentence is imposed, even if information is determined not to be material, the prosecution must make an extraordinary showing of a compelling interest in withholding such information. People v. Rodriguez, 786 P.2d 1079 (Colo. 1989).

Demand for evidence which is unknown to defendant is not a prerequisite to the right to the production of favorable evidence. People v. Walker, 180 Colo. 184, 504 P.2d 1098 (1972).

No suppression of evidence by prosecution for failure of police to obtain a rape test once defendant rejected the examination and when there was no showing that the evidence would have been material. People v. Wagner, 725 P.2d 51 (Colo. App. 1986).

Failure to make evidence available for independent testing. The failure of the prosecution to make available to the defendant an opportunity for independent trace metal testing may deprive the defendant of due process of law. People ex rel. Gallagher v. District Court, 656 P.2d 1287 (Colo. 1983).

Prosecution cannot discharge its duty to provide exculpatory evidence through an open records policy when such evidence cannot be ascertained by reviewing the defendant's file; however, evidence that crime victim failed to identify defendant's fellow burglar in a lineup would not have raised a reasonable doubt in the minds of the jury, and failure to provide defendant's counsel with such evidence is not reversible error. People v. Hernandez, 686 P.2d 1325 (Colo. 1984).

Duty to preserve evidence known to be material is part of the

duty to disclose. The principle underlying this rule is the constitutional requirement that a criminal defendant be afforded due process. People v. Harmes, 38 Colo. App. 378, 560 P.2d 470 (1976).

Although the state is required to preserve evidence which might be favorable to the accused, the defendant must make some showing that the evidence is exculpatory in order to establish a due process violation. People v. Loggins, 709 P.2d 25 (Colo. App. 1985); People v. Erickson, 883 P.2d 511 (Colo. App. 1994).

The state is required to employ regular procedures to preserve evidence when it is reasonably foreseeable that such evidence might be favorable to the accused. People v. Greathouse, 742 P.2d 334 (Colo. 1987); People v. Erickson, 883 P.2d 511 (Colo. App. 1994).

When the police conduct scientific tests, they must preserve samples to permit the defendant to accomplish independent testing, permit the defendant's experts to monitor the police testing, or provide some other suitable means to allow the defendant to verify independently the appropriateness of the procedures and the accuracy of the results of the testing. People v. Greathouse, 742 P.2d 334 (Colo. 1987).

Failure of the prosecution to prevent destruction of a motor vehicle which was the subject of a vehicular homicide charge violated the due process rights of defendant since it not only left the defendant without physical evidence of the cause of the accident but also removed the opportunity for the defendant's expert to examine the vehicle. People v. Sheppard, 701 P.2d 49 (Colo. 1985).

But the negligence of police in failing to prevent damage to defendant's motor vehicle by thieves in police lot did not violate the defendant's due process rights. Trial court properly found that the damage was not the result of police bad faith conduct, the evidence sought by defendant had no apparent exculpatory value, and other admissible evidence was at least as reliable as the evidence defendant sought. People v. Scarlett, 985 P.2d 36 (Colo. App. 1998).

Inadvertent destruction of videotape did not preclude admission of testimony of persons who had viewed it, where still photos had been generated from the tape prior to its destruction and were available for purposes of cross-examining witnesses. People v. Braunthal, 31 P.3d 167 (Colo. 2001).

Failure to preserve evidence is tantamount to suppression. When evidence can be collected and preserved in the performance of routine procedures by state agents, failure to do so is tantamount to suppression of the evidence, and the state must employ regular procedures to preserve evidence which a state agent, in the regular performance of his duties, could reasonably foresee might be favorable to the accused. People ex rel. Gallagher v. District Court, 656 P.2d 1287 (Colo. 1983); People v. Greathouse, 742 P.2d 334 (Colo. 1987).

Test for violation when evidence lost or destroyed. The three-pronged test for determining whether a defendant's due process rights have been violated when evidence has been lost or destroyed is: (1) Whether the evidence was suppressed or destroyed by the prosecution; (2) whether the evidence is exculpatory; and (3) whether the evidence is material to the defendant's case. People v. Holloway, 649 P.2d 318 (Colo. 1982).

The destruction of an officer's handwritten notes and the admission into evidence of a typewritten copy that the officer testified was identical to the original notes did not deny defendant's right to due process. People v. Nunez, 698 P.2d

1376 (Colo. App. 1984), aff'd on other grounds, 737 P.2d 422 (Colo. 1987).

Compliance with the test for materiality of evidence under People v. Greathouse (742 P.2d 334) is sufficient to satisfy the second and third parts of this test. People v. Enriquez, 763 P.2d 1033 (Colo. 1988).

Test applied in People v. Sams, 685 P.2d 157 (Colo. 1984); People v. Marquiz, 685 P.2d 242 (Colo. App. 1984), aff'd, 726 P.2d 1105 (Colo. 1986); People v. Nave, 689 P.2d 645 (Colo. App. 1984); People v. Viduya, 703 P.2d 1281 (Colo. 1985); People v. Moore, 701 P.2d 1249 (Colo. App.), cert. denied, 706 P.2d 802 (Colo. 1985); People v. Wagner, 725 P.2d 51 (Colo. App. 1986); People v. Ford, 736 P.2d 1249 (Colo. App. 1986); People v. Silva, 782 P.2d 846 (Colo. App. 1989); Longmont v. Gomez, 843 P.2d 1321 (Colo. 1993).

Test for materiality of evidence. To satisfy the test of constitutional materiality, the evidence must possess both an exculputory value that was apparent before the evidence was destroyed, and be of such a nature that the defendant would be unable to obtain comparable evidence by other reasonably available means. People v. Greathouse, 742 P.2d 334 (Colo. 1987); People v. Humes, 762 P.2d 665 (Colo. 1988); People v. Erickson, 883 P.2d 511 (Colo. App. 1994); People v. Trujillo, 62 P.3d 1034 (Colo. App. 2002), rev'd on other grounds, 83 P.3d 642 (Colo. 2004).

It is the defendant's burden to establish that the evidence was lost or destroyed by state action. People v. Greathouse, 742 P.2d 334 (Colo. 1987).

Accused who establishes that destroyed evidence is material is not required to make additional showing of favorable character of evidence to show that failure to preserve such potentially exculpatory evidence violated due process. People v. Enriquez, 763 P.2d 1033 (Colo. 1988).

In the context of a completed trial, material evidence is that which, when evaluated in light of the entire record, likely would have affected the outcome of the trial. People v. Morgan, 681 P.2d 970 (Colo. App. 1984), cert. denied, 469 U.S. 881, 105 S. Ct. 248, 83 L.Ed.2d 185 (1984).

Defendant failed to establish that his trial would have culminated in a different result if he had known the victim was contemplating a tort action against him. Therefore, prosecution's failure to reveal such fact did not violate defendant's due process rights. People v. Deninger, 772 P.2d 674 (Colo. App. 1989).

Character of evidence destroyed, not the prosecution's culpability, determines whether there has been a violation of due process. People v. Collins, 730 P.2d 293 (Colo. 1986).

Failure of defendant to show the exculpatory value of evidence or bad faith on the part of police meant that failure to preserve evidence did not violate due process. People v. Franklin, 782 P.2d 1202 (Colo. App. 1989); People v. Bachofer, 192 P.3d 454 (Colo. App. 2008).

No due process violation found where investigator failed to videotape or audiotape initial interview with defendant. People v. Raibon, 843 P.2d 46 (Colo. App. 1992).

No suppression of evidence by prosecution for failure of police to retain officer's handwritten notes of interrogation, where notes formed basis for report that accurately reflected defendant's statements and that was given to defense counsel. People v. Erickson, 883 P.2d 511 (Colo. App. 1994).

No due process violation where police fail to require defendant to undergo rape examination since the fact of sexual intercourse was not a fact in issue. People v. Wagner, 725 P.2d 51 (Colo. App. 1986).

No due process violation

where prosecution destroys recording of defendant's statement because a certified transcript of the statement was retained, and the defendant did not allege that the destroyed recording contained evidence material to his case that was not in the transcript. Banks v. People, 696 P.2d 293 (Colo. 1985).

Faulty recording of defendant's statements was not destruction of evidence. When tape recording of defendant's statement was unintelligible, there was no evidence to be destroyed. To suppress statements made when recording failed would have a chilling effect on whether statements would be recorded, and the court wants to encourage the police to record their interviews. People v. Casias, 59 P.3d 853 (Colo. 2002).

There is no bad faith for failing to preserve a videotape of the incident when the videotape automatically records over itself every 24 hours. People v. Abdu, 215 P.3d 1265 (Colo. App. 2009).

Failure to preserve a second sample of the defendant's blood for independent testing did not violate his due process rights because the test for materiality was not met. People v. Humes, 762 P.2d 665 (Colo. 1988).

Unintentional failure to maintain integrity of second sample not violative of due process when test results of second sample were not exculpatory. Havens v. Charnes, 738 P.2d 1202 (Colo. App. 1987).

Negligent destruction of evidence is tantamount to suppression. People v. Harmes, 38 Colo. App. 378, 560 P.2d 470 (1976).

Negligent destruction of victim's blood sample prior to testing violated due process as it denied evidence to the defendant which might have assisted the defendant's self-defense claim. People v. Collins, 730 P.2d 293 (Colo. 1986).

No duty to gather exculpatory evidence. There is no duty for criminal investigators to gather possible exculpatory evidence or, having gathered it, to preserve it for possible use by the defendant, where there is no indication that the police acted in bad faith in allowing the evidence to become unusable without accomplishing tests for possibly relevant information. People v. Roark, 643 P.2d 756 (Colo. 1982); People v. Braxton, 807 P.2d 1214 (Colo. App. 1990).

The right to due process of law does not include the right to be afforded scientific testing in all circumstances. The state may not suppress evidence, but it need not gather evidence for the accused. People v. Wagner, 725 P.2d 51 (Colo. App. 1986).

Police investigators have no duty to search out exculpatory evidence unless there is a reasonable possibility that the evidence could have been of assistance to the defense. People v. Vigil, 718 P.2d 496 (Colo. 1986).

Incriminating evidence is not exculpatory because it is not alone conclusive of criminal conduct. People v. Braunthal, 31 P.3d 167 (Colo. 2001).

Loss of evidence resulting from police officers' failure to record a monitored conversation between defendant and informant did not constitute a violation of defendant's due process rights. People v. Rivera, 765 P.2d 624 (Colo. App. 1988).

Failure to investigate does not constitute the suppression of evidence, nor may the defendant compel the state to search out and gather evidence that could be exculpatory. The police do not have a duty to procure all evidence from a crime scene that might be favorable to the defendant. People v. Moore, 701 P.2d 1249 (Colo. App. 1985); People v. Apodaca, 998 P.2d 25 (Colo. App. 1999).

Nor to preserve explosives or bombs. The prosecution does not have the duty to preserve high

explosives, homemade bombs, or dangerous materials if that requirement would endanger lives and the public safety. People v. Clements, 661 P.2d 267 (Colo. 1983).

Failure to preserve hazardous substances which cannot be stored safely. The "destruction of evidence" rule cannot be applied mechanically in a way that endangers the lives of public safety officers or forces the police to preserve hazardous substances which cannot be stored safely. People v. Clements, 661 P.2d 267 (Colo. 1983).

Perjured testimony and suppressed evidence constitute due process violations. The rights of the accused were violated when the prosecution offered perjured testimony and withheld evidence favorable to the accused. DeLuzio v. People, 177 Colo. 389, 494 P.2d 589 (1972).

A due process violation occurred when the district attorney permitted a witness to testify that no deal had been made, when, in fact, sentence concessions had been made, and no effort was made by the prosecution to correct the error. DeLuzio v. People, 177 Colo. 389, 494 P.2d 589 (1972).

But failure by prosecution to correct false testimony does not. When a witness testifies that he was unable to make an identification in a lineup while a police officer's notes show that the witness stated, when questioned by the officer, that a person other than the defendant could have been a participant in the crime, there is no failure on the part of the prosecution to correct false testimony which would rise to the level of denial of due process. Sandoval v. People, 180 Colo. 180, 503 P.2d 1020 (1972).

The primary concerns in selecting a remedy for the governmental destruction of evidence are the preservation of the integrity of the truth-finding process and the deterrence of the destruction of material evidence by the police or prosecutor. People v. Collins, 730 P.2d 293 (Colo. 1986).

The conduct of the prosecution may be taken into account when fashioning a remedy for the governmental destruction of evidence. People v. Collins, 730 P.2d 293 (Colo. 1986).

Sanction as to lost evidence. Suppression of reference to the lost evidence by the prosecution held to be a proper sanction. People v. Reese, 670 P.2d 11 (Colo. App. 1983).

Failure to dismiss charges held not to deprive defendant of due process. People v. Morgan, 681 P.2d 970 (Colo. App. 1984), cert. denied, 469 U.S. 881, 105 S. Ct. 248, 83 L.Ed.2d 185 (1984).

Dismissal of criminal case for loss of exculpatory evidence by prosecution is an unduly disproportionate sanction and an abuse of discretion. People v. Sams, 685 P.2d 157 (Colo. 1984).

Dismissal of charges is an appropriate sanction to the governmental destruction of evidence when no other remedy would produce a fair result; however, a less drastic solution can often be adopted. People v. Collins, 730 P.2d 293 (Colo. 1986).

Reduction of charge as sanction was more severe than necessary to protect due process rights of defendant. People v. Roan, 685 P.2d 1369 (Colo. 1984).

Remedy fashioned by the trial court was appropriate to deal with accidental governmental destruction of victim's blood sample as the defendant was allowed to present evidence concerning what the blood sample might have proved and to present testimony, previously excluded, concerning specific violent conduct by the victim on a prior occasion. People v. Collins, 730 P.2d 293 (Colo. 1986).

2. Admissibility of Evidence.

Ruling on defendant's motion to suppress prior conviction evidence. A timely judicial ruling on a defendant's motion to suppress prior conviction evidence for the purpose of impeachment serves the vital function of providing the defendant with the meaningful opportunity to make the type of informed decisions contemplated by the fundamental nature of the right to testify in one's own defense. Apodaca v. People, 712 P.2d 467 (Colo. 1985).

The trial court's refusal to rule on the defendant's motion to prohibit prosecutorial use of defendant's 1976 military conviction until such time as the prosecution actually sought to impeach the defendant constituted an impermissible burden on the defendant's constitutional right to testify in his own defense. Apodaca v. People, 712 P.2d 467 (Colo. 1985).

Admission of previous convictions as evidence of habitual criminality is violative. The use of defendant's testimonial admissions to prior felony convictions as substantive evidence of his habitual criminality violates due process of law, by unduly burdening defendant's constitutional right to testify in his own defense. People v. Chavez, 632 P.2d 574 (Colo. 1981); People v. Hernandez, 686 P.2d 1325 (Colo. 1984).

A foreign felony conviction is admissible for impeachment purposes in a Colorado proceeding if it complies with constitutional due process requirements with respect to making a plea knowingly and voluntarily. People v. Henderson, 745 P.2d 265 (Colo. App. 1987).

Admission of prior act evidence when defendant had been acquitted of the prior act does not violate due process or double jeopardy. Kinney v. People, 187 P.3d 548 (Colo. 2008).

Informing jury of defendant's acquittal of a prior act is up to the discretion of the trial court on a case-by-case basis as long as the information's probative value substantially outweighs its prejudicial effect. Kinney v. People, 187 P.3d 548 (Colo. 2008).

An acquittal instruction is appropriate when the testimony or evidence presented at trial about the prior act indicates that the jury has likely learned or concluded that the defendant was tried for the prior act and may be speculating as to the defendant's guilt or innocence in that prior trial. Kinney v. People, 187 P.3d 548 (Colo. 2008).

Appellate court will review trial court's decision for an abuse of discretion. Kinney v. People, 187 P.3d 548 (Colo. 2008).

Conviction obtained unconstitutionally cannot be subsequently used. A prior conviction obtained in violation of a constitutional right of the accused cannot be used in a subsequent criminal proceeding to support guilt or to enhance punishment. Watkins v. People, 655 P.2d 834 (Colo. 1982); People v. Quintana, 707 P.2d 355 (Colo. 1985).

Due process not violated where trial court denied defendant permission to test, drill, or sample the victims' property to rebut charges of theft and conspiracy to commit theft. A violation occurs only when the defendant can make a plausible showing that the excluded evidence was relevant and material to his defense and not merely a showing that the evidence might have had some possible benefit. People v. Collie, 995 P.2d 765 (Colo. App. 1999).

Trial court's ruling that defendant's suppression hearing testimony was admissible to impeach sister's character testimony did not violate constitutional protections. The fourth amendment right to suppress inadmissible testimony, the fifth amendment right against

self-incrimination, and the sixth amendment right to present evidence in a defense are all at play in the question of whether the prosecution could use defendant's suppression testimony that he had sexual contact with the victim to impeach the defendant's sister's character testimony that the defendant would not commit sexual assault. The following factors supported the court's ruling to admit the testimony: The evidence was not offered on the issue of guilt; the defendant still has an obligation to present truthful testimony; the defendant's statement was made under oath, not based on a hypothetical assumption that defendant was guilty of the crime; and the trial court's willingness to allow the defendant to use leading questions when presenting defendant's sister's testimony. Thus, each of defendant's constitutional rights were protected. People v. Dembry, 91 P.3d 431 (Colo. App. 2003).

Evidence offered for impeachment purposes of a defendant's refusal to consent to a search does not impermissibly burden the fourth amendment right to be free from unreasonable searches and seizures. If defendant testifies at trial, evidence of the refusal to consent may be admitted to impeach defendant's testimony, and the prosecution may comment on the refusal in closing argument. People v. Chavez, 190 P.3d 760 (Colo. App. 2007).

Defendant's right to remain silent was not violated when defendant volunteered that he had invoked his right to remain silent when being questioned about his refusal to consent to search. Since the information was volunteered by defendant and prosecution did not comment on it in the presence of the jury, there was no error. People v. Chavez, 190 P.3d 760 (Colo. App. 2007).

No violation of due process where court granted defendant wide latitude to present evidence regarding the safety and effectiveness of rebirthing therapy, and defendant, the child's mother, and an expert witness were all allowed to testify as to both the safety and the effectiveness of holding therapy. People v. Watkins, 83 P.3d 1182 (Colo. App. 2003).

Due process prohibits the admission of involuntary statements into evidence. The prosecution must establish by a preponderance of the evidence that the statements were made voluntarily under the totality of the circumstances. People v. Humphrey, 132 P.3d 352 (Colo. 2006).

A trial court's findings related to the voluntariness of the statements are subject to due deference if supported by the evidence in the record. The suspect's limited physical, emotional, and psychological state at the time of the interrogation coupled with the officer's psychological coercion questioning after informing the suspect that the victim died made the defendant's statements involuntary. People v. Humphrey, 132 P.3d 352 (Colo. 2006).

3. Witnesses.

Right to adduce evidence may not be limited by statute. A statute which creates exclusive procedures for examining the accused and for the giving of expert testimony interferes with the constitutional right of the parties to adduce such evidence as they think useful. Early v. People, 142 Colo. 462, 352 P.2d 112, cert. denied, 364 U.S. 847, 81 S. Ct. 90, 5 L.Ed.2d 70 (1960).

Even though court finds that disclosure to defendant might endanger confidential informant, court has duty to examine in camera the complete tapes supporting search warrant in connection with a veracity challenge. People v. Cook, 722 P.2d 432 (Colo. App. 1986).

Excuse by court of defense

witness on basis that the witness would exercise his fifth amendment privilege not to testify during cross-examination by the prosecution was not a denial of due process. People v. Maestas, 685 P.2d 791 (Colo. App. 1984).

When the answers sought from the witness asserting the privilege relate to the reliability of the witness's observation of the charged offense, in the absence of other opportunities for impeachment, the witness's entire testimony must be disallowed. People v. Brown, 119 P.3d 486 (Colo. App. 2004).

Defendant's due process rights not denied when subpoenaed witness did not testify where there is no suggestion that a subpoenaed witness' unavailability was due to any action or omission by the prosecution or court, defendant's due process rights were not violated. People v. Chastain, 733 P.2d 1206 (Colo. 1987).

Deportation of alien witness does not violate due process. Where there is no showing that the evidence lost through deportation of alien witness would be both material and favorable to the defense in ways not merely cumulative to the testimony of available witnesses, no violation of defendant's due process rights has occurred. People v. Garcia, 735 P.2d 897 (Colo. App. 1986).

Trial judge's action of personally escorting a child victim to and from the witness stand could have been perceived by the jury as an endorsement of the child's credibility, thus impinging upon the defendant's right to a fair trial. People v. Rogers, 800 P.2d 1327 (Colo. App. 1990).

K. Pre-trial and In-court Identification.

Photographic identification while case is in investigatory stage must be approved. Brown v. People, 177 Colo. 397, 494 P.2d 587 (1972); People v. Moreno, 181 Colo. 106, 507 P.2d 857 (1973).

If procedures used are not suggestive and do not coerce identification. Brown v. People, 177 Colo. 397, 494 P.2d 587 (1972); People v. Moreno, 181 Colo. 106, 507 P.2d 857 (1973).

When photographic displays are not suggestive and line-ups are fairly conducted, the defendant is not deprived of due process of law. Maynes v. People, 178 Colo. 88, 495 P.2d 551 (1972); People v. Borghesi, 40 P.3d 15 (Colo. App. 2001), aff'd in part and rev'd in part on other grounds, 66 P.3d 93 (Colo. 2003).

In-court identification of defendant at trial is touchstone of due process. People v. Renfrow, 172 Colo. 399, 473 P.2d 957 (1970).

Test as to constitutionality of out-of-court identification of defendant. An out-of-court identification of the defendant is measured against due process of law by asking whether the confrontation was so unnecessarily suggestive and conducive to irreparable mistaken identification that the defendant was denied due process of law. Whitman v. People, 170 Colo. 189, 460 P.2d 767 (1969); Phillips v. People, 170 Colo. 520, 462 P.2d 594 (1969); Constantine v. People, 178 Colo. 16, 495 P.2d 208 (1972); People v. Ross, 179 Colo. 293, 500 P.2d 127 (1972); People v. Beasley, 43 Colo. App. 488, 608 P.2d 835 (1979).

Pretrial identification procedures which, given the totality of the circumstances, are so unnecessarily suggestive as to render the identification unreliable violate due process. People v. Weller, 679 P.2d 1077 (Colo. 1984).

The test applied to determine the validity of a one-on-one showup is whether the procedure was likely to result in an unreliable identification, based upon the totality of the circumstances, after consideration of the relevant factors. People v. Weller, 679 P.2d 1077 (Colo. 1984).

Due process is denied when an in-court identification is based on an out-of-court identification which is so unnecessarily suggestive as to render the in-court identification unreliable. People v. Tivis, 727 P.2d 392 (Colo. App. 1986).

A witness' observations at the scene of the crime alone does not constitute an independent source for an out-of-court identification. People v. Lewis, 975 P.2d 160 (Colo. 1999).

Answer to this question depends on totality of circumstances surrounding the confrontation. Phillips v. People, 170 Colo. 520, 462 P.2d 594 (1969); Constantine v. People, 178 Colo. 16, 495 P.2d 208 (1972); People v. Ross, 179 Colo. 293, 500 P.2d 127 (1972); People v. Montanez, 944 P.2d 529 (Colo. App. 1996).

Cases with respect to whether line-up procedures are violative of due process must necessarily be decided on a case-by-case basis, so in every case, the trial judge must determine the identification issue based upon the totality of the circumstances. People v. Knapp, 180 Colo. 280, 505 P.2d 7 (1973).

A claimed violation of due process of law in the conduct of a confrontation depends on the totality of the circumstances surrounding it. Fresquez v. People, 178 Colo. 220, 497 P.2d 1246 (1972).

An out-of-court identification made as a result of an unnecessarily suggestive identification procedure is inadmissible as violative of due process unless the identification can be shown under the totality of circumstances to be reliable, despite the suggestiveness of the procedure used. People v. Mattas, 645 P.2d 254 (Colo. 1982); Gimmy v. People, 645 P.2d 262 (Colo. 1982).

Factors to be considered in evaluating these circumstances are: (1) The witness' opportunity to view the criminal; (2) the witness' degree of attention; (3) the accuracy of any prior description; (4) the witness' level of certainty; and (5) the time elapsed since the crime. People v. Smith, 620 P.2d 232 (Colo. 1980); People v. Walker, 666 P.2d 113 (Colo. 1983); People v. Tivis, 727 P.2d 392 (Colo. App. 1986); People v. Montanez, 944 P.2d 529 (Colo. App. 1996).

Factors applied in People v. Daniels, 973 P.2d 641 (Colo. App. 1998).

In-court identification permitted unless pretrial procedure impermissibly suggestive. Where there is a pretrial identification by photograph, an in-court identification is permitted unless there is a showing that the pretrial procedure is so impermissibly suggestive as to give rise to a very substantial likelihood of irreparable misidentification. People v. Bowen, 176 Colo. 302, 490 P.2d 295 (1971).

Due process is violated when an in-court identification is based on an out-of-court identification that is so unnecessarily suggestive as to render the in-court identification unreliable. People v. Dunlap, 124 P.3d 780 (Colo. App. 2004).

One-on-one showups do not violate due process. One-on-one showups are not favored and tend to be suggestive but are not per se violative of due process. People v. Smith, 620 P.2d 232 (Colo. 1980); People v. Trujillo, 75 P.3d 1133 (Colo. App. 2003).

Plainclothes officer's one-on-one showup identification following the pursuit and capture of a just-apprehended suspect did not violate defendant's due process right because police officer is a trained observer, has a primary interest in capturing the right person, can be expected to be relatively calm, deliberate, and less suggestible, and is familiar with the identification process. People v. Howard, 215 P.3d 1134 (Colo. App. 2008).

Unnecessarily suggestive line-up denies due process. Where the circumstances of a line-up are so unnecessarily suggestive and conducive to irreparable mistaken identity, the line-up constitutes a denial of due process of law. Edmisten v. People, 176 Colo. 262, 490 P.2d 58 (1971).

It is the substantial chance that a suggestive identification procedure has resulted in a misidentification of the defendant at trial that raises the due process question. People v. Renfrow, 172 Colo. 399, 473 P.2d 957 (1970).

Prosecution does not have a per se burden to show that in-court identification testimony is not the product of an unduly suggestive procedure. People v. Montanez, 944 P.2d 529 (Colo. App. 1996).

Complete judicial determination can only be made at time of in-court identification. People v. Renfrow, 172 Colo. 399, 473 P.2d 957 (1970).

Trial court must hold hearing to determine if taint exists. Where there is a question of whether an in-court identification would be tainted by a prior out-of-court identification, the trial court must hold a hearing to determine if there is a taint or whether there is an idependent source upon which the eyewitness can base his in-court identification. People v. Bowen, 176 Colo. 302, 490 P.2d 295 (1971).

Where there is a suggestion of an illegal line-up it is the duty of the trial court to first determine at an in camera hearing whether the in-court identification has been tainted by the illegal line-up, before permitting the in-court identification to be made. Espinoza v. People, 178 Colo. 391, 497 P.2d 994 (1972).

At an in camera hearing on line-up identification, the court must determine in the first instance whether a witness' in-court identification testimony bears an unconstitutional taint. Sandoval v. People, 180 Colo. 180, 503 P.2d 1020 (1972).

Test of suggestibility best left for resolution in trial court. Unless the record establishes taint of mistaken identity, the test of suggestibility is best left for resolution in the trial court. Edmisten v. People, 176 Colo. 262, 490 P.2d 58 (1971).

Admission of in-court identification without determination may be constitutional error. The admission of an in-court identification without first determining that it was not tainted by an illegal line-up but was of independent origin may be constitutional error. Espinoza v. People, 178 Colo. 391, 497 P.2d 994 (1972).

But such error may be considered harmless, even if there has been an illegal line-up confrontation, if the identification witness makes an in-court identification based on sufficient independent observations of the defendant, disassociated from the pretrial line-up. Espinoza v. People, 178 Colo. 391, 497 P.2d 994 (1972).

Where the trial court refused to permit defense counsel to present testimony at the in camera hearing bearing upon the legality of the pretrial line-up but the record supported an informed judgment, based on clear and convincing evidence, that the in-court identification had an independent source separate and apart from the questioned line-up and the defendant does not contend that the in-court identification was tainted for any reason other than the possible absence of counsel at the line-up, the error of the trial court in denying the in camera inquiry will be held to be harmless. Espinoza v. People, 178 Colo. 391, 497 P.2d 994 (1972).

In-court identification allowed if based on independent source. Even where there has been an illegal confrontation, a witness may make an in-court identification if there is an independent source upon which to

base such an identification apart from the illegal confrontation. Glass v. People, 177 Colo. 267, 493 P.2d 1347 (1972).

If an in-court identification has an independent source other than an unconstitutional line-up or its admission is harmless error, a conviction will be upheld. Brady v. People, 175 Colo. 252, 486 P.2d 436 (1971).

Assuming absence of counsel at line-up, unfair suggestiveness that might lead to irreparable in-court misidentification, does not result where the record supports an informed judgment that the in-court identifications have an independent source, separate and apart from the line-up. People v. Duncan, 179 Colo. 253, 500 P.2d 137 (1972).

An in-court identification by a witness is permissible only if the prosecution can show by clear and convincing evidence that the in-court identification is not the product of an unconstitutional pretrial identification but, rather, is based upon an independent source such as the witness' observations of the accused during the commission of the offense. People v. Mattas, 645 P.2d 254 (Colo. 1982); Gimmy v. People, 645 P.2d 262 (Colo. 1982); People v. Madonna, 651 P.2d 378 (Colo. 1982); People v. Holden, 703 P.2d 603 (Colo. App. 1985); People v. Tivis, 727 P.2d 392 (Colo. App. 1986).

"Per se exclusionary rule", as defined in Gilbert v. California, 388 U.S. 263, 87 S. Ct. 1951, 18 L.Ed.2d 1178 (1967), is not intended to be imposable in all cases where there can be an independent source for an in-court identification in the case of an illegal line-up of a defendant in a criminal case. People v. Bowen, 176 Colo. 302, 490 P.2d 295 (1971).

State can purge any improper line-up identification of any "primary taint", by showing that there was other evidence in the record which would satisfy the independent origin test and the requirements of due process. Stewart v. People, 175 Colo. 304, 487 P.2d 371 (1971).

State must establish independence by clear and convincing proof. Courtroom identification is not admissible at all unless the state can establish by clear or convincing proof that the testimony is not the fruit of the earlier identification. Edmisten v. People, 176 Colo. 262, 490 P.2d 58 (1971).

But in-court identification to be suppressed if without sufficient independent origin. Any in-court identification of a defendant, whether it is based on an unconstitutional line-up or not, should be suppressed because it is tainted by the unconstitutional line-up resulting in identification without sufficient independent origin. Edmisten v. People, 176 Colo. 262, 490 P.2d 58 (1971).

In-court identification held supported by independent source. A victim's in-court identification of the defendant, based on her observation of him during the assault, is permissible as being supported by an independent source. People v. Martinez, 652 P.2d 174 (Colo. App. 1981).

In-court identifications held proper as having independent basis. Martinez v. People, 174 Colo. 125, 482 P.2d 375 (1971); Stewart v. People, 175 Colo. 304, 487 P.2d 371 (1971); Gallegos v. People, 176 Colo. 191, 489 P.2d 1301 (1971); Brown v. People, 177 Colo. 397, 494 P.2d 587 (1972); People v. Duncan, 179 Colo. 253, 500 P. 2d 137 (1972); People v. Nunez 684 P.2d 945 (Colo. 1984); People v. Tivis, 727 P.2d 392 (Colo. App. 1986).

In-court identification not tainted by pretrial procedure. Black v. People, 174 Colo. 410, 484 P.2d 787 (1971); Candelaria v. People, 177 Colo. 136, 493 P.2d 355 (1972); Lablanc v. People, 177 Colo. 250, 493 P.2d 1089 (1972); Massey v. People, 178 Colo. 141, 498 P.2d 953 (1972); Fresquez v.

People, 178 Colo. 220, 497 P.2d 1246 (1972); People v. Barker, 180 Colo. 28, 501 P.2d 1041 (1972); People v. York, 189 Colo. 16, 537 P.2d 294 (1975).

In-court identification allowed despite inability to make photographic identification. While a witness' inability to identify the defendant from the books of photographs is relevant, it does not preclude her from making an identification upon seeing the defendant in court. Gimmy v. People, 645 P.2d 262 (Colo. 1982).

In-court identification violating due process. People v. Palmer, 194 Colo. 186, 570 P.2d 251 (1977).

Suggestibility in identification also concerns weight of evidence. The matter of suggestibility in identification concerns not the admissibility but only the weight of the evidence. Schott v. People, 174 Colo. 15, 482 P.2d 101 (1971); Jaggers v. People, 174 Colo. 430, 484 P.2d 796 (1971); Edmisten v. People, 176 Colo. 262, 490 P.2d 58 (1971).

Although the trial court erred in precluding the defendant from presenting another person in court for purposes of comparing his appearance with that of the defendant, such error was harmless since other available evidence of identification was overwhelming. People v. Bell, 809 P.2d 1026 (Colo. App. 1990).

The standard for photographic displays involves a two-part test. First, the court must determine whether the photo array was impermissibly suggestive. The defendant has the burden of proving the first prong. If defendant meets his burden, the burden shifts to the people to show that, despite the improper suggestiveness, the identification was nevertheless reliable under the totality of the circumstances. Bernal v. People, 44 P.3d 184 (Colo. 2002); People v. Hogan, 114 P.3d 42 (Colo. App. 2004).

To determine whether a photo identification procedure is impermissibly suggestive, the following factors may be considered: The size of the array; the manner of its presentation by the officers; and the details of the photographs themselves. Bernal v. People, 44 P.3d 184 (Colo. 2002); People v. Hogan, 114 P.3d 42 (Colo. App. 2004).

The factors to consider in determining whether, despite a suggestive display, the identification was nonetheless reliable are: The opportunity of the witness to view the criminal at the time of the crime; the witness's degree of attention; the accuracy of the witness's prior description of the criminal; the level of certainty demonstrated by the witness at the confrontation; and the length of time between the crime and the confrontation. Bernal v. People, 44 P.3d 184 (Colo. 2002).

When determining whether an array of photos is impermissibly suggestive, a disparity in facial hair is a factor to be considered. However, such a disparity does not necessarily make an array of photos impermissibly suggestive. People v. Plancarte, 232 P.3d 186 (Colo. App. 2009).

Photographic lineup held not impermissibly suggestive. People v. Weller, 679 P.2d 1077 (Colo. 1984); People v. Hogan, 114 P.3d 42 (Colo. App. 2004).

Objection to in-court identification waived when defendant did not object until after he had cross-examined the witness and elicited more testimony on the identification. People v. Willis, 708 P.2d 125 (Colo. App. 1985).

Out-of-court identification for photographic array held unduly suggestive. People v. Stevens, 643 P.2d 39 (Colo. App. 1981).

When an out-of-court identification procedure violates due process. An out-of-court identification procedure violates due

process when the totality of the circumstances shows that the confrontation was so impermissibly suggested as to give rise to a substantial likelihood of misidentification. Factors to be considered in evaluating the surrounding circumstances include the opportunity of the witness to review the accused at the time of the crime, the witness' degree of attention, the accuracy of the witnesses' prior description of the accused, the level of certainty demonstrated by the witness at the confrontation, and the length of time between the crime and the confrontation. People v. Borrego, 668 P.2d 21 (Colo. App. 1983); People v. Schruder, 735 P.2d 905 (Colo. App. 1986).

Notwithstanding the fact that the trial court made no findings regarding the totality of the circumstances and applied an improper standard in admitting the identification testimony, other events and evidence at trial rendered the court's erroneous treatment of the identification harmless beyond a reasonable doubt. People v. Schruder, 735 P.2d 905 (Colo. App. 1986).

The state cannot be required to provide exact replicas of the defendant for a line-up; a line-up is proper if the persons are reasonably matched by race, approximate age, and other physical characteristics. People v. Bolton, 859 P.2d 311 (Colo. App. 1993).

If defendant "fairly leaps out" of the line-up, identification may be tainted. People v. Bolton, 859 P.2d 311 (Colo. App. 1993).

Pretrial identification held not unconstitutionally suggestive. People v. Mack, 638 P.2d 257 (Colo. 1981); People v. Martinez, 734 P.2d 126 (Colo. App. 1986); People v. Bolton, 859 P.2d 311 (Colo. App. 1993); People v. Martinez, 32 P.3d 520 (Colo. App. 2001).

Applied in People v. Lovato, 180 Colo. 445, 506 P.2d 361 (1973); People v. Williams, 183 Colo. 241, 516 P.2d 114 (1973); People v. Montanez, 944 P.2d 529 (Colo. App. 1996).

L. Prosecutorial Misconduct.

Law reviews. For note, "Using Poor Form as a Proxy for Poor Substance: A Look at Wend v. People and its Categorical Rule Prohibiting Prosecutors From Using the Word 'Lie'", see 83 U. Colo. L. Rev. 633 (2012).

The actions of a prosecutor, although procedurally within the law, may result in a violation of the defendant's rights to due process and fundamental fairness. People v. Aragon, 643 P.2d 43 (Colo. 1982).

Prosecutorial misconduct. While certain prosecutorial misconduct may result in a denial of a fair trial, the nature of the misconduct must have affected the trial process itself. People v. McKay, 191 Colo. 381, 553 P.2d 380 (1976).

Since defendant was warned that failure to accept plea agreement would result in filing of additional habitual criminal charges and defendant rejected agreement, there was no due process violation when prosecutor filed additional charges upon which defendant was convicted. People v. Talley, 677 P.2d 394 (Colo. App. 1983).

Prosecution's closing arguments were so flagrantly improper as to constitute plain error that should have prompted corrective action by the trial court even absent timely objection. People v. McBride, 228 P.3d 216 (Colo. App. 2009).

Prosecutor's repeated accusations that defense had "lied" were plainly improper under settled Colorado law. The arguments were more flagrantly wrong than those condemned in prior Colorado cases because the prosecutor based the "liar" accusations not just on defendant's own

statements but also on legitimate opening statements and cross-examinations by the defense attorney. People v. McBride, 228 P.3d 216 (Colo. App. 2009).

Prosecutor made a blatantly improper character attack when prosecutor grossly misused evidence admitted for the limited purpose of helping the jury evaluate defendant's intent and called defendant "a coward". People v. McBride, 228 P.3d 216 (Colo. App. 2009).

Prosecution's repeated personal attacks on defense expert who relied on crime scene evidence to opine that the shooting had occurred differently than the victim had testified went so far beyond accepted limits as to constitute obvious error. People v. McBride, 228 P.3d 216 (Colo. App. 2009).

Prosecutorial misconduct deprived defendant of fair trial. Improper reference to defendant's prior criminal record, improper questions asked on cross-examination of defendant, and improper rebuttal to defendant's closing arguments were so prejudicial as to deny defendant a fair trial. People v. Adams, 708 P.2d 813 (Colo. App. 1985).

Prosecutor's closing argument discussing the "stages of a trauma victim" amounted to expert testimony, and it was error to permit such argument without expert witness testimony. The prosecutor's argument improperly bolstered the victim's testimony, which was critical to defendant's conviction. This conduct was highly improper and, thus, requires reversal. People v. Davis, 280 P.3d 51 (Colo. App. 2011).

In determining whether prosecutorial misconduct mandates a new trial, an appellate court must evaluate the severity and frequency of misconduct, any curative measures taken by the trial court to alleviate the misconduct, and the likelihood that the misconduct constituted a material factor leading to the defendant's conviction. The misconduct did not rise to a level requiring a new trial. People v. Hogan, 114 P.3d 42 (Colo. App. 2004).

Prosecutor's pervasive use of the word "lie" during both opening and closing arguments constituted prosecutorial misconduct. Even under the plain error standard applicable in the absence of a contemporaneous objection, the court found that such misconduct affected the basic fairness of the trial requiring reversal. Wend v. People, 235 P.3d 1089 (Colo. 2010).

Prosecutor's objections, which were overruled by the trial court, had no legal basis, and appear on their face to be intended to comment on the credibility of witnesses, while inappropriate and unprofessional, did not deny defendant a fair trial considering the length of the trial, the number of witnesses, and the length of the jury's deliberations. People v. Reali, 895 P.2d 161 (Colo. App. 1994).

The prosecutor's remarks as a whole during closing and rebuttal arguments did not rise to the level of plain error. The prosecutor relied on the evidence presented and argued reasonable inferences from those facts presented. People v. Rivas, 77 P.3d 882 (Colo. App. 2003).

Prosecutor's reference in closing argument to evidence or lack of evidence and inferences that could be drawn from it were not improper, and prosecutor did not attempt to alter the burden of proof. People v. Gibson, 203 P.3d 571 (Colo. App. 2008).

Prosecutor's statements during closing argument, although in error, did not constitute plain error and warrant reversal. The statements were isolated and did not appear to be made in bad faith. People v. Al-Yousif, 206 P.3d 824 (Colo. App. 2006).

Prosecutor's remarks in

rebuttal closing did not rise to the level of denigration of the defense or "character assassination" when viewed in light of defense counsel's closing. To the extent the remarks could be viewed as going beyond the bounds of proper rebuttal argument, trial court's actions in sustaining the objections and striking the latter remarks were sufficient to cure any prejudice to defendant. People v. Rojas, 181 P.3d 1216 (Colo. App. 2008).

Prosecutor's statement that defense theory of case was "garbage" and "trash" in closing arguments was harmless error. People v. Sandoval-Candelaria, __ P.3d __ (Colo. App. 2011).

The prosecution's impeachment of defendant's expert by questioning the expert about his fee and arguing it could present a bias was proper and did not denigrate the expert witness. People v. Sommers, 200 P.3d 1089 (Colo. App. 2008).

The prosecution's statement that he represents the state was not prejudicial. The prosecutor's statement factually states his role in the process and was brief and isolated so as to not affect the verdict. People v. Sommers, 200 P.3d 1089 (Colo. App. 2008).

Prosecution's comments regarding reasonable doubt did not create a reasonable likelihood that the jury could have incorrectly applied the reasonable doubt standard. Prosecution's comment was the unremarkable proposition that the jury can deliberate as long as it wanted before determining reasonable doubt. People v. Gomez-Garcia, 224 P.3d 1019 (Colo. App. 2009).

Deputy district attorney's statement to police officers that defendant was not entitled to an attorney was only an opinion regarding an undecided question of law, thus, it does not rise to the level of outrageous government conduct. Effland v. People, 240 P.3d 868 (Colo. 2010).

Prosecutor's characterization of photographs as "child pornography", use of rhetorical device during opening statement, and use of the term "grooming" during closing argument do not amount to prosecutorial misconduct. People v. Douglas, 2012 COA 57, __ P.3d __.

M. Standards and Burden of Proof.

Proof beyond reasonable doubt and presumption of innocence components of due process. Proof beyond a reasonable doubt and presumption of innocence are principles of law applicable to criminal cases which have been so universally accepted and applied as to have become component parts of the term "due process of law". People v. Hill, 182 Colo. 253, 512 P.2d 257 (1973).

Issues essential to guilt require proof beyond reasonable doubt. A fundamental principle of law applicable to criminal cases which has become part of due process of law is the doctrine that, at the outset of the trial, an accused person is presumed to be innocent of the offense charged against him, that the state must satisfy the jury of the guilt of the defendant beyond a reasonable doubt, and that if upon any material issue of fact essential to guilt the jury has a reasonable doubt, the defendant is entitled to the benefit of that reasonable doubt and a verdict of not guilty. People ex rel. Juhan v. District Court, 165 Colo. 253, 439 P.2d 741 (1968).

Where the sufficiency of the evidence is challenged on appeal, a reviewing court must determine whether the evidence, viewed as a whole and in the light most favorable to the prosecution, is sufficient to support a conclusion by a reasonable person that the defendant is guilty of the crimes charged beyond a

reasonable doubt. The evidence, whether direct or circumstantial, must be both substantial and sufficient to support the determination of guilt. People v. Valdez, 56 P.3d 1148 (Colo. App. 2002); People v. Gibson, 203 P.3d 571 (Colo. App. 2008).

Due process guarantees to the criminal defendant that the prosecution must prove every factual element necessary to constitute the crime charged beyond a reasonable doubt before the defendant may be convicted and subjected to punishment. Vega v. People, 893 P.2d 107 (Colo. 1995).

Jury instruction in trial for fraud by check violated due process by shifting the burden of producing evidence or the burden of persuasion on an essential element of the crime, where instruction created a mandatory presumption that defendant knew he had insufficient funds to pay the check. People v. Felgar, 58 P.3d 1122 (Colo. App. 2002).

And accused need not prove any defense by preponderance of evidence. The due process clause of the state constitution includes the doctrine that the state must prove guilt beyond a reasonable doubt and that the accused cannot be required by legislative enactment to prove insanity or any other defense by a preponderance of the evidence. People ex rel. Juhan v. District Court, 165 Colo. 253, 439 P.2d 741 (1968).

In light of the entire record, prosecutor's cross-examination and closing argument did not shift the burden of proof. Prosecutor's actions only weakly implied defendant had the burden of proof, more likely the prosecutor's actions were intended to highlight the strength of the case and dispel negative implications raised by defense counsel's questions of its own expert. Also, the court instructed the jury on the burden of proof, thus there was no abuse of discretion by the trial court in failing to declare a mistrial. People v. Santana, 255 P.3d 1126 (Colo. 2011).

Requiring defendant to prove "emergency" in habitual offender provision constitutional. To require the defendant to prove the "emergency" referred to in § 42-2-206 does not shift the burden of proof with respect to any fact essential to the offense charged contrary to the dictates of due process of law. People v. McKnight, 200 Colo. 486, 617 P.2d 1178 (1980).

Defendant has burden to show prior conviction unconstitutional. In seeking suppression of a conviction used for impeachment purposes, the defendant has the burden of making a prima facie showing that the prior conviction violated his constitutional right to counsel. People v. Meyers, 617 P.2d 808 (Colo. 1980); Watkins v. People, 655 P.2d 834 (Colo. 1982).

In determining whether a conviction is constitutionally flawed, the defendant must make a prima facie showing that the prior conviction was obtained in violation of his constitutional rights. People v. Valdez, 725 P.2d 29 (Colo. App. 1986), aff'd, 789 P.2d 406 (Colo. 1990).

And a prima facie showing means evidence which, when considered in a light most favorable to the defendant with all reasonable inferences drawn in his favor, will permit the court to conclude that the defendant's plea of guilty was not obtained in accordance with his constitutional rights to due process. People v. Valdez, 725 P.2d 29 (Colo. App. 1986), aff'd, 789 P.2d 406 (Colo. 1990).

Upon which showing, burden shifts to prosecution. Where the defendant makes a prima facie showing of constitutional invalidity, the prosecution's burden is to establish by a preponderance of the evidence the constitutional validity of a prior felony conviction before that conviction may

be used for impeachment purposes. People v. Meyers, 617 P.2d 808 (Colo. 1980); Watkins v. People, 655 P.2d 834 (Colo. 1982); People v. Valdez, 725 P.2d 29 (Colo. App. 1986), aff'd, 789 P.2d 406 (Colo. 1990).

A defendant attacking the constitutionality of a prior conviction in habitual criminal proceedings must make a prima facie showing that the guilty plea was unconstitutionally obtained, and having done so, the conviction is not admissible unless the prosecution establishes by a preponderance of the evidence that the conviction was obtained in accordance with the defendant's constitutional rights. People v. Chavez, 832 P.2d 1026 (Colo. App. 1991).

Willful concealment of goods under this section that results in prima facie evidence of intent to commit theft does not violate due process standards. The statute does not eliminate the prosecution's burden of proving intent to commit crime beyond a reasonable doubt. "Prima facie" does not require the fact finder to conclude that the prosecution has met such burden, but establishes a permissible inference. People in re R.M.D., 829 P.2d 852 (Colo. 1992).

N. Sentencing.

Unitary trial with single verdict does not offend defendant's various constitutional rights: There is no constitutionally protected right to allocution; the single verdict procedure does not necessarily chill the exercise of basic constitutional rights; the federal constitution does not compel a two-part trial, and for a state to permit a jury to fix the penalty in a first degree murder case when in all other instances the penalty is imposed by a judge, after presentencing hearings, is not an unreasonable or arbitrary classification. People ex rel. McKevitt v. District Court, 167 Colo. 221, 447 P.2d 205 (1968).

No constitutional right to evidentiary hearing. Failure to provide an evidentiary hearing on the validity of a prior conviction during a discretionary sentencing proceeding does not violate either amendment XIV of the U.S. Constitution or this section. People v. Padilla, 907 P.2d 601 (Colo. 1995).

Double sentencing for single transaction unjust. When the burglary and the larceny involve one transaction, typical of many burglary-larceny situations, double sentencing for the same transaction is inherently wrong and basically unjust and evades the legislative intent. These offenses should be merged by concurrent sentencing. Maynes v. People, 169 Colo. 186, 454 P.2d 797 (1969).

Section 18-1-105 (9)(a)(IV) does not violate equal protection. Sentence beyond presumptive range based in part on fact that defendant was on bond at the time he committed felony was valid. People v. Walters, 796 P.2d 13 (Colo. App. 1990).

Imposition of least drastic means of punishment is not required to provide defendant due process. People v. Davis, 794 P.2d 159 (Colo. 1990), cert. denied, 498 U.S. 1018, 111 S. Ct. 662, 112 L.Ed.2d 656 (1991).

There is no constitutional right to credit for presentence confinement. Godbold v. District Court, 623 P.2d 862 (Colo. 1981).

Due process does not prohibit the sentencing authority from increasing a sentence upon retrial when conduct or events, such as a conviction, are affirmatively identified as the justification for the increased sentence and such identification rebuts any presumption of vindictive retaliation by the sentencing authority. People v. Wieghard, 742 P.2d 977 (Colo. App. 1987).

Due process generally prohibits imposition of an enhanced

sentence on retrial unless such sentence is based upon objective, identifiable conduct of the defendant occurring after imposition of the original sentence. This rule is designed to avoid any vindicativeness in resentencing or retaliation predicated upon defendant's exercise of his right of appeal. People v. Walters, 802 P.2d 1155 (Colo. App. 1990).

No equal protection violation where general assembly chose to punish with the same severity all cases where kidnapping was accompanied by sexual assault, making no distinction between misdemeanor and felony sexual assault. People v. Williams, 89 P.3d 492 (Colo. App. 2003).

Indeterminate sentencing for sex offenders does not violate various constitutional rights. Indeterminate sentencing for sex offenders does not violate procedural due process. A defendant is given an opportunity to be heard at sentencing, and, since the statute does not require any further findings by a court to impose indeterminate sentencing, the defendant is not entitled to any further opportunity to be heard. People v. Oglethorpe, 87 P.3d 129 (Colo. App. 2003).

Indeterminate sentencing for sex offenders does not violate procedural due process. The opportunities in § 18-1.3-1006 (1) satisfy continuing due process requirements by providing an adequate continuing opportunity to be heard on the issue of release after a sentence has been imposed. People v. Oglethorpe, 87 P.3d 129 (Colo. App. 2003).

Substantive due process is not infringed by sex offender indeterminate sentencing. Indeterminate sentencing does implicate a fundamental right; therefore, it is subject to the rational basis test. The sentencing scheme is rationally related to the government's legitimate interest in shielding the public from untreated sex offenders and rehabilitating and treating those offenders. People v. Oglethorpe, 87 P.3d 129 (Colo. App. 2003).

Indeterminate sentencing for sex offenders does not violate equal protection. The threshold question in any equal protection challenge is whether the person allegedly subject to the disparate treatment is in fact similarly situated. In this case, the defendant is similarly situated with other offenders convicted of the same or similar crimes and subject to the same law, so there is no disparate treatment. People v. Oglethorpe, 87 P.3d 129 (Colo. App. 2003).

Consideration of victim character evidence did not render sentencing proceedings fundamentally unfair and did not violate defendant's due process rights. People v. Lassek, 122 P.3d 1029 (Colo. App. 2005).

O. Appeal.

Indigent defendants entitled to appellate review. The constitutional guarantees of due process and equal protection assure a defendant the right to appellate review without invidious discrimination on account of his indigency. His right to appeal from his conviction is the same as that of a person with financial means. Haines v. People, 169 Colo. 136, 454 P.2d 595 (1969).

Constitutional harmless error review applies only if the defendant preserves a claim for review by tending a contemporaneous objection. If the defendant fails to object at trial, plain error applies. People v. Miller, 113 P.3d 743 (Colo. 2005).

P. Postconviction Treatment.

Due process clause does not subject inmate's treatment by prison authorities to judicial oversight as

long as the conditions or degree of confinement to which the prisoner is subjected is within the sentence imposed and does not otherwise violate the constitution. White v. People, 866 P.2d 1371 (Colo. 1994).

The constitutional protections of due process apply to disciplinary hearings imposed upon inmates when (1) the deprivation suffered by the inmate is a truly serious one of real substance and (2) relevant state policies condition the imposition of the deprivation on the occurrence of certain well-defined events or facts. Lawson v. Zavaras, 966 P.2d 581 (Colo. 1998).

However, an inmate in a disciplinary hearing enjoys only the most basic due process rights, including, at a minimum, notice and the opportunity for a meaningful hearing before an impartial tribunal. Because of the special characteristics of the prison environment, it is permissible for the impartiality of prison officials serving as hearing officers to be encumbered by various conflicts of interest that, in other contexts, would be adjudged of sufficient magnitude to violate due process. Washington v. Atherton, 6 P.3d 346 (Colo. App. 2000).

Inmate's due process rights not violated by hearing officer who justifiably refused to let two witnesses testify at disciplinary hearing and who allowed inmate to designate witnesses, attempted to contact inmate's witnesses, afforded inmate extensive time and leeway to testify, and continued the hearing twice to allow inmate additional time to identify a guard as a potential witness. Woolsey v. Dept. of Corr., 66 P.3d 151 (Colo. App. 2002).

When a defendant agrees to an extension of probation, the defendant does not have a due process right to be advised of or receive the right to counsel before signing the extension. People v. Hotle, 216 P.3d 68 (Colo. App. 2008).

The deprivation suffered as a result of return to prison from a work release jail environment is not of sufficient substance to create a liberty interest requiring the application of the constitutional protections of due process. Lawson v. Zavaras, 966 P.2d 581 (Colo. 1998).

Equal protection rights not violated by requiring defendant to enter sex offender treatment program before granting parole, even if participation in the program requires longer period of imprisonment than other non-sex offender inmates who have violated the conditions of their parole. White v. People, 866 P.2d 1371 (Colo. 1994).

Regulations that cause sex offenders to be treated differently than other offenders are not violative of the equal protection clause. White v. People, 866 P.2d 1371 (Colo. 1994).

Defendant's liberty interest not violated by requirement in § 16-8-115 (4)(a) that he register as a sex offender as a condition of his conditional release since the requirement was in place prior to his conditional release. People v. Durapau, 12 COA 67, 280 P.3d 42.

Failure to allow defendant opportunity to present evidence at hearing concerning revocation of probation did not violate due process or equal protection. People v. McCarty, 851 P.2d 181 (Colo. App. 1992).

Due process rights under the fifth and fourteenth amendments to the U.S. Constitution not denied by exclusion of hearsay evidence sought to be introduced that was not relevant in time or place to the charges against the defendant and therefore was not material to the defendant's defense. Matthews v. Price, 83 F.3d 328 (10th Cir. 1996).

Section 18-1-105 (9)(a)(III) does not violate equal protection for lack of express provisions concerning the rights to reasonable notice and to have the prosecution prove the asserted

probationary status where those rights exist independently of the statute. People v. Murphy, 722 P.2d 407 (Colo. 1986); People v. Lacey, 723 P.2d 111 (Colo. 1986).

Key test in determining if due process precludes the retrospective application of a judicial decision in a criminal case is whether the judicial decision is sufficiently foreseeable to afford a defendant fair warning that the judicial interpretation given the relevant statute would be applied in defendant's case. Aue v. Diesslin, 798 P. 2d 436 (Colo. 1990); People v. Vanrees, 80 P.3d 840 (Colo. App. 2003), rev'd on other grounds, 125 P.3d 403 (Colo. 2005); People v. White, 179 P.3d 58 (Colo. App. 2007).

The fact that some inmates benefitted from parole board's erroneous interpretation that § 17-2-201 (5)(a) required mandatory rather than discretionary parole for sex offenders not sentenced under the Sex Offenders Act does not require that the board continue to misinterpret said section in order to afford equal protection to inmates who have not reached their parole date. Aue v. Diesslin, 798 P.2d 436 (Colo. 1990).

Defendant is not entitled to same type of hearing as original sentencing hearing upon revocation of probation and resentencing. People v. McCarty, 851 P.2d 181 (Colo. App. 1992), aff'd, 874 P.2d 394 (Colo. 1994).

No due process violation where district court prohibited a defendant from having unsupervised contact with her children as a condition of probation. People v. Forsythe, 43 P.3d 652 (Colo. App. 2001).

Q. Juvenile Delinquency.

Juvenile cases conducted according to due process, not criminal law. There is no constitutional requirement that proceedings in juvenile cases shall be conducted according to the criminal law, or that proceedings need take any particular form, so long as the essentials of due process and fair treatment are accorded. In re People in Interest of J.A.M., 174 Colo. 245, 483 P.2d 362 (1971).

In a delinquency proceeding the quantum of proof required by the due process and equal protection clauses of the fourteenth amendment is proof beyond a reasonable doubt and not just a preponderance of evidence; this does not justify the conclusion that a juvenile delinquency proceeding is now deemed to be a criminal proceeding. People ex rel. Rodello v. District Court, 164 Colo. 530, 436 P.2d 672 (1968).

The warnings incorporated in a Miranda advisement have been codified in the juvenile context by § 19-2-210, together with the requirement that the juvenile be accompanied by a parent, guardian, or custodian during the advisement and interrogation. People v. T.C., 898 P.2d 20 (Colo. 1995).

The remedy for a violation of the requirement of an advisement of rights under Miranda or § 19-2-210 is suppression of the statements obtained. However, that remedy only applies to statements made as a result of custodial interrogation. People v. T.C., 898 P.2d 20 (Colo. 1995).

When juvenile entitled to preliminary hearing. A juvenile who is detained is entitled to a preliminary hearing by constitutional mandate. Juveniles charged in delinquency proceedings with crimes subject to Crim. P. 5 and 7 (felonies and class 1 misdemeanors) are entitled to a preliminary hearing. Juveniles held on lesser charges are not granted a right to a preliminary hearing by statute or by rule. J.T. v. O'Rourke ex rel. Tenth Judicial Dist., 651 P.2d 407 (Colo. 1982).

If a juvenile is entitled to pretrial detention credit, it must be authorized by statute. The Colorado supreme court has expressly refused to recognize any constitutional right to presentence confinement credit against an adult sentence. People v. T.S.R., 843 P.2d 105 (Colo. App. 1992).

There is nothing unfair or shocking to the conscience either in the trial court's imposition of a two-year commitment for juvenile as provided by § 19-2-704 (3) or in its refusal to grant credit for pre-dispositional detention. People v. T.S.R., 843 P.2d 105 (Colo. App. 1992).

Standards of proof in hearings on juvenile probation violations. Minimal due process guarantees of fundamentally fair procedures require no less than proof beyond a reasonable doubt of juvenile probation violations based upon alleged acts which would constitute crimes if done by adults. People in Interest of C.B., 196 Colo. 362, 585 P.2d 281 (1978).

VII. CRIMINAL STATUTES.

No equal protection violation. Statute that sets a maximum period of incarceration for probation and a work release statute permitting a maximum period of incarceration establish general statutory probation dispositions for all defendants who are eligible for probation and do not create classifications that disparately affect the defendant. People v. Garberding, 787 P.2d 154 (Colo. 1990).

Minimum and maximum sentences. Equal protection requires that the minimum and maximum sentences imposed by the statute and not those by the judge are the same for all persons charged with the same or similar offense; the sentencing judge has discretion in the individual treatment of each defendant within those limits. People v. Garberding, 787 P.2d 154 (Colo. 1990); People v. McCarty, 851 P.2d 181 (Colo. App. 1992).

A state's ability to define the elements of criminal offenses and specify aggravating and mitigating circumstances for sentencing purposes is limited when it attempts to evade the level of proof constitutionally required to establish criminal offenses by restructuring existing crimes to make some essential elements of the crime into sentencing factors instead. A court evaluating such an attempt should consider: (1) The degree to which the existence of the fact in question determines the sentence imposed; (2) the authority given to the court to make findings that greatly affect the possible sentence without notice to the defendant or a hearing; and (3) whether it appears that the legislature altered the elements of the underlying offense at the time the sentencing provision was enacted in order to evade the constitutionally mandated burden of proof. Vega v. People, 893 P.2d 107 (Colo. 1995).

Equal protection demands that statutory classifications of crimes be premised on distinctions that are real in fact and reasonably related to the general purposes of criminal legislation. People v. Rickstrew, 775 P.2d 570 (Colo. 1989); People v. Czemerynski, 786 P.2d 1100 (Colo. 1990); People v. Suazo, 867 P.2d 161 (Colo. App. 1993).

Different provisions proscribing same conduct with disparate sanctions unconstitutional. Equal protection of the laws is violated if different statutes proscribe the same criminal conduct with disparate criminal sanctions. People v. Marcy, 628 P.2d 69 (Colo. 1981); Crespin v. People, 721 P.2d 688 (Colo. 1986); People v. Young, 758 P.2d 667 (Colo. 1988).

Different statutory provisions, proscribing with different penalties what ostensibly might be

different acts, but offering no intelligent standard for distinguishing the proscribed conduct, violate equal protection. People v. Mumaugh, 644 P.2d 299 (Colo. 1982).

Equal protection of the laws under the Colorado constitution is violated when criminal statutes proscribe identical conduct but impose different criminal sanctions for that conduct. People v. Dunoyair, 660 P.2d 890 (Colo. 1983).

Subjecting a defendant to a more severe sanction for criminal conduct identical to that proscribed by another statute is a violation of equal protection. People v. Owens, 670 P.2d 1233 (Colo. 1983); People v. Weller, 679 P.2d 1077 (Colo. 1984).

Whether conviction and imposition of different penalties for resisting arrest and for second degree assault would constitute imposition of different penalties for the same criminal conduct, in violation of the equal protection clause, depends upon an inquiry into the point at which the defendant was arrested and the point at which he was "in custody". People v. Armstrong, 720 P.2d 165 (Colo. 1986).

Different provisions proscribing same conduct with disparate sanctions constitutional when one provision is a "strict liability" offense and other provision creates an offense of "mental culpability". People v. Wilhelm, 676 P.2d 702 (Colo. 1984).

The federal and state constitutional guarantees of equal protection and due process as well as guarantees against double jeopardy are not violated even though one course of conduct is proscribed by two different statutes since the legislature unmistakably intended to authorize cumulative punishment under the two statutes. People v. Haymaker, 716 P.2d 110 (Colo. 1986); People v. Powell, 716 P.2d 1096 (Colo. 1986); People v. Reger, 731 P.2d 752 (Colo. App. 1986).

A sentence imposed beyond the presumptive range for a defendant convicted of both first degree sexual assault with a deadly weapon and a crime of violence does not deny equal protection of law since it cannot be said that the sentencing statutes permit different degrees of punishment for persons in the defendant's situation. People v. Haymaker, 716 P.2d 110 (Colo. 1986).

Equal protection clause violated only where two statutes proscribe identical conduct while applying different criminal penalties, i.e., a felony and a misdemeanor. Where felony election statute and misdemeanor election statute are sufficiently distinguishable, no violation of equal protection exists. People v. Onesimo Romero, 746 P.2d 534 (Colo. 1987).

Where there is a rational basis for different sanctions in two criminal offense statutes, there is no equal protection violation. People v. Wheatley, 805 P.2d 1148 (Colo. App. 1990).

Where a reasonable difference or distinction can be drawn between conduct prohibited by two statutes, the imposition of different criminal penalties for such conduct does not violate equal protection of the laws. Leaving the scene of an accident resulting in death (a felony offense) is conduct distinguishable from failing to report an accident (a class 2 traffic offense); therefore, there is no implication of equal protection. People v. Rickstrew, 775 P.2d 570 (Colo. 1989).

Vehicular homicide and driving under influence provisions proscribe different conduct. Because the death of another is an essential element of vehicular homicide, but not of driving under the influence, the offenses proscribe dissimilar conduct, and a person prosecuted under the vehicular homicide statute is not situated similarly to a person charged with driving under the influence.

People v. Duemig, 620 P.2d 240 (Colo. 1980), cert. denied, 451 U.S. 971, 101 S. Ct. 2048, 68 L.Ed.2d 350 (1981).

Felony criminal extortion statute consists of elements distinctive from elements of misdemeanor harassment statute and there is rational basis for classifying such crimes differently. People v. Czemerynski, 786 P.2d 1100 (Colo. 1990).

General criminal attempt statute and specific attempt provision. There was no violation of equal protection in defendant's conviction under specific attempt provision of second degree assault statute, despite defendant's contention that the general criminal attempt statute, § 18-2-101, proscribes the same conduct. People v. Weller, 679 P.2d 1077 (Colo. 1984).

First degree assault and crime of violence different from second degree assault and crime of violence. To prove first degree assault and crime of violence, an additional element must be proven -- that the use of the deadly weapon actually caused the serious bodily injury. People v. Mozee, 723 P.2d 117 (Colo. 1986).

The actus reus of felony menacing is more specific than that of disorderly conduct with a deadly weapon. Therefore, the equal protection clause is not violated by subjecting defendants to potential criminal liability for both. People v. Torres, 848 P.2d 911 (Colo. 1993).

Statutory definition of extreme indifference murder violates equal protection of the laws because that crime is not sufficiently distinguishable from second-degree murder to warrant the substantial differential in penalty authorized by the statutory scheme. People v. Curtis, 627 P.2d 734 (Colo. 1981); People v. Gurule, 628 P.2d 99 (Colo. 1981).

Statutory prohibition of extreme indifference murder in § 18-3-102 (1)(d) violates equal protection of the laws because it cannot reasonably be distinguished from the lesser offense of second-degree murder as defined in § 18-3-103 (1)(a). People v. Marcy, 628 P.2d 69 (Colo. 1981); Crespin v. People, 721 P.2d 688 (Colo. 1986).

Statutory definition of extreme indifference murder in 1981 amendment is not violative of equal protection of the laws because it is sufficiently distinguishable from second degree murder to warrant difference in penalty. People v. Jefferson, 748 P.2d 1223 (Colo. 1988).

Section 18-3-206 (felony menancing) does not violate equal protection, despite the defendant's claim that the conduct proscribed by § 18-3-206, a class 5 felony, was indistinguishable from the conduct proscibed in § 18-9-106 (1)(f) (disorderly conduct with a deadly weapon), a class 2 misdemeanor, in which the actus reus is less specific than the actus reus in § 18-3-206. People v. Ibarra, 849 P.2d 33 (Colo. 1993).

It is only when the same conduct is proscribed in two statutes and different criminal sanctions apply, that problems arise under equal protection. People v. Ibarra, 849 P.2d 33 (Colo. 1993).

Classification of child abuse as more serious than negligent homicide constitutional. The legislative classification of child abuse as a crime more serious in penalty than the offense of criminally negligent homicide is neither arbitrary nor unreasonable and does not violate equal protection of the laws. People v. Taggart, 621 P.2d 1375 (Colo. 1981).

Classification of possession of marijuana concentrate as more serious than possession of marijuana is constitutional. The legislative classification of possession of marijuana concentrate as a crime more serious in penalty than possession of marijuana is based upon a reasonable

legislative classification and does not deny equal protection. People v. Siwierka, 683 P.2d 356 (Colo. 1984).

The distinction between marihuana and marihuana concentrate as set forth in § 12-22-303 (17) and (18) and complies with both the equal protection and due process requirements of the Colorado and United States Constitutions. People v. Rickstrew, 712 P.2d 1008 (Colo. 1986).

Classification of possession of cocaine as more serious than possession of cocaine by "practitioners" constitutional. Felony conviction for cocaine possession constitutional despite existence of statute which punishes cocaine possession by practitioners as misdemeanor since practitioners regularly deal with controlled substances. People v. Unruh, 713 P.2d 370 (Colo. 1986), cert. denied, 476 U.S. 1171, 106 S. Ct. 2894, 90 L.Ed.2d 981 (1986).

Statute prohibiting possession of controlled substances does not violate equal protection when compared with statute which punishes use of the same controlled substances less harshly, because punishing possession more harshly than use is justified to control distribution of controlled substances. People v. Cagle, 751 P.2d 614 (Colo. 1988), appeal dismissed for want of a substantial federal question, 486 U.S. 1028, 108 S. Ct. 2009, 100 L.Ed.2d 597 (1988); People v. Warren, 55 P.3d 809 (Colo. App. 2002); People v. Campbell, 58 P.3d 1080 (Colo. App. 2002), aff'd, 73 P.3d 11 (Colo. 2003).

Possession and use of a controlled substance are not identical conduct for equal protection purposes, even when the drugs possessed and used are the same. Campbell v. People, 73 P.3d 11 (Colo. 2003).

Charging a defendant with two crimes did not violate equal protection where the offenses were the unlawful use (§ 18-18-404) and the unlawful possession (§ 18-18-405) of a controlled substance; the two offenses are distinct and not identical. People v. Villapando, 984 P.2d 51 (Colo. 1999).

Similar treatment accorded prior convictions for impaired driving and driving under influence constitutional. The similarity in treatment accorded by the habitual traffic offender act to prior convictions for driving while one's ability is impaired and driving while under the influence is reasonably related to the public-safety goals of the statute and comports with equal protection of the laws. Van Gerpen v. Peterson, 620 P.2d 714 (Colo. 1980).

Driver licenses' provisions do not create statutory classification of alcoholics and problem drinkers with respect to traffic offenses. Heninger v. Charnes, 200 Colo. 194, 613 P.2d 884 (1980).

Section 18-3-405.5 eliminating consent defense in cases of sexual penetration by means other than therapeutic deception does not expose psychotherapist to unequal protection of laws since consent defense does not apply in therapeutic deception cases either. Other provisions of criminal code make specific reference to sexual penetration by means of therapeutic deception unnecessary in § 18-3-405.5. Ferguson v. People, 824 P.2d 803 (Colo. 1992).

Statute making sexual contact between patient and psychotherapist illegal even if patient consents does not violate this section. Ferguson v. People, 824 P.2d 803 (Colo. 1992).

Mitigating factors established under § 16-11-103 (5) not unconstitutionally vague. Mitigators meet the certainty and clarity requirements of due process and provide the jury with sufficiently precise guidelines to determine whether or not to impose the death penalty. People v. Davis, 794 P.2d 159 (Colo.

1990), cert. denied, 498 U.S. 1018, 111 S. Ct. 662, 112 L.Ed.2d 656 (1991).

Death penalty statute provision under § 16-11-103 (2)(b)(III) held to deprive defendants of due process of law when such statute required jury to return sentence of death for conviction of first degree murder if mitigating and aggravating factors are in equipose without the requirement that the jury make a separate deliberation to determine whether death is the appropriate penalty beyond a reasonable doubt. People v. Young, 814 P.2d 834 (Colo. 1991) (decided under law in effect prior to 1991 repeal and reenactment of § 16-11-103).

The capital sentencing scheme under § 16-11-103 which affords discretion to the prosecutor, who determines against whom to seek a death sentence, to the jury, which determines who is to receive a sentence of death, and to the governor, who determines who shall be granted clemency, does not deny a defendant due process. People v. Davis, 794 P.2d 159 (Colo. 1990), cert. denied, 498 U.S. 1018, 111 S. Ct. 662, 112 L.Ed.2d 656 (1991).

Section 16-5-402 does not violate equal protection of the laws as persons convicted of class 1 felonies are not similarly situated with those convicted of other felonies and the distinction made between these groups is reasonable and bears a rational relationship to the state's legitimate interest in preserving the finality of criminal convictions. People v. Wiedemer, 852 P.2d 424 (Colo. 1993).

Section 16-5-402 violates due process of law under amendment XIV of the U.S. Constitution and this section because it precludes collateral challenges to prior convictions solely on the basis of a time bar, without providing the defendant an opportunity to show that the failure to assert a timely constitutional challenge resulted from circumstances amounting to justifiable excuse or excusable neglect. People v. Dugger, 673 P.2d 351 (Colo. 1983); People v. Germany, 674 P.2d 345 (Colo. 1983) (decided under prior law).

Time limitations of § 16-5-402, with the exceptions contained in subsection (2) of that section, on their face are consistent with due process of law. People v. Wiedemer, 852 P.2d 424 (Colo. 1993); People v. Wiedemer, 852 P.2d 449 (Colo. 1993).

The justifiable excuse or excusable neglect exceptions to the bar of the time limits in § 16-5-402 (2)(d) give the court a sufficient means to ensure the statute is applied pursuant with due process. People v. Wiedemer, 852 P.2d 424 (Colo. 1993); People v. Wiedemer, 852 P.2d 449 (Colo. 1993).

Section 13-90-101 does not deprive the defendant of due process of law under amendment XIV to the United States Constitution and this section, in that it precludes the exercise of any judicial discretion in admitting prior felony convictions for purposes of impeachment. People v. Meyers, 617 P.2d 808 (Colo. 1980).

Prescription of inflexible sentence for habitual criminals does not deny equal protection. In prescribing a specific inflexible sentence of life imprisonment for persons found to be habitual criminals on the basis of three prior felony convictions, while allowing various degrees of flexibility in sentencing other offenders, the general assembly has not denied such habitual criminals the equal protection of the laws. People v. Gutierrez, 622 P.2d 547 (Colo. 1981); People v. Hernandez, 686 P.2d 1325 (Colo. 1984).

Due process limits resentencing only on two conditions: (1) The subsequent sentence is more severe than the prior sentence; and (2) there is a realistic likelihood that the harsher sentence was motivated by vindictiveness against the offender for

successfully appealing or collaterally attacking the prior conviction. People v. Woellhaf, 199 P.3d 27 (Colo. App. 2007).

Under a due process analysis, where the aggregate period of incarceration on resentencing is no greater than the original aggregate sentence, there is no presumption of vindictiveness. Although the trial court doubled the length of the original sentence for a single count on resentencing, the aggregate sentence for all counts was lower and, thus, did not violate due process. People v. Woellhaf, 199 P.3d 27 (Colo. App. 2007).

Reformation from alcoholism cannot exempt prior conviction from habitual offender provisions. Reformation from alcoholism, commendable though it may be, is not a constitutionally significant fact that serves to exempt prior convictions from the operation of the habitual traffic offender law. Heninger v. Charnes, 200 Colo. 194, 613 P.2d 884 (1980).

Sections 16-8-103.6, 16-8-106, and 16-8-107 are not void for vagueness. People v. Bondurant, 2012 COA 50, __ P.3d __.

VIII. NONCRIMINAL PROCEEDINGS.

Constitutional protections afforded criminal defendants not necessary in administrative proceeding. The constitutional protections afforded criminal defendants need not be provided to licenses in an administrative proceeding to revoke a driver's license. People v. McKnight, 200 Colo. 486, 617 P.2d 1178 (1980).

But due process requires that defendant be given separate samples of breath for purposes of determining blood alcohol content. Garcia v. District Court, 197 Colo. 38, 589 P.2d 924 (1979).

And hearing officer, in proceeding concerning revocation of driver's license, cannot refuse to accept into evidence the result of an independently tested breath test sample. Mameda v. Colo. Dept. of Rev., 698 P.2d 277 (Colo. App. 1985).

Due process may require similar procedural safeguards in criminal and mental health proceedings. The deprivation of liberty that may be the consequence of a mental health commitment proceedings is similar to the deprivation of liberty in criminal proceedings; constitutional due process may therefore require the imposition of similar procedural safeguards for the individual. People v. Taylor, 618 P.2d 1127 (Colo. 1980).

But privilege against self-incrimination not extended to commitment proceedings. Due process does not require that the fifth amendment privilege against self-incrimination be extended to Colorado's civil commitment proceedings. People v. Taylor, 618 P.2d 1127 (Colo. 1980).

Due process does not require clear and convincing evidence to support the award of custody to a non-parent with standing to seek custody of a child, but, rather, a showing by a preponderance of the evidence that it is in the best interests of the child. In re Custody of A.D.C., 969 P.2d 708 (Colo. App. 1998).

Findings of fact made by probate court to determine parenting time in guardianship proceeding under the preponderance of the evidence standard do not violate parent's due process rights. The preponderance standard is constitutional even though an adverse finding may be the basis for a subsequent termination of the parent-child relationship. People ex rel. A.R.D., 43 P.3d 632 (Colo. App. 2001).

Due process does not require a showing of unfitness before

custody may be awarded to a non-parent. In re Custody of A.D.C., 969 P.2d 708 (Colo. App. 1998).

Exemption from an award of costs for governmental entities in C.R.C.P. 54(d) does not violate due process of law. The classification between governmental and non-governmental entities is rationally related to the goal of protecting the public treasury. County of Broomfield v. Farmers Reservoir, 239 P.3d 1270 (Colo. 2010).

Section 26. Slavery prohibited. There shall never be in this state either slavery or involuntary servitude, except as a punishment for crime, whereof the party shall have been duly convicted.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 32.

ANNOTATION

This section was intended primarily to echo language of amendment 13, U.S. Const., and to ensure that the practice of African slavery as it existed in portions of this country until the middle of the last century would never find root in Colorado. In re Franks, 189 Colo. 499, 542 P.2d 845 (1975), cert. denied, 423 U.S. 1043, 96 S. Ct. 766, 46 L. Ed. 2d 632 (1976).

State is not foreclosed from requiring that patient perform certain chores without compensation if they are reasonably related to a therapeutic program, even though the state may incidentally receive financial benefits from the performance of such work, and such requirement does not violate the constitutional prohibition against involuntary servitude. In re Estate of Buzzelle v. Colo. State Hosp., 176 Colo. 554, 491 P.2d 1369 (1971).

Attorney fees in divorce settlement does not constitute it involuntary servitude. The assertion in a divorce that one may be forced to work for the benefit of the other spouse's attorney, despite the fact that the burdened party is without "fault", cannot be equated with slavery or involuntary servitude within the meaning of this section. In re Franks, 189 Colo. 499, 542 P.2d 845 (1975), cert. denied, 423 U.S. 1043, 96 S. Ct. 766, 46 L. Ed. 2d 632 (1976).

The prohibition against involuntary servitude does not prevent a court from ordering a former court reporter to complete transcripts. People v. McGlotten, 134 P.3d 487 (Colo. App. 2005).

Section 27. Property rights of aliens. Aliens, who are or may hereafter become bona fide residents of this state, may acquire, inherit, possess, enjoy and dispose of property, real and personal, as native born citizens.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 32.

ANNOTATION

Law reviews. For note, "Right of Cross-Examination Before Administrative Agencies in Colorado", see 29 Dicta 446 (1952).

Rights of aliens may not be abridged. The rights guaranteed by this section cannot be taken away, but other rights may be given to the same or to other persons. The general assembly may go further in the conferring of these rights upon aliens, but they cannot do less than that which the constitution requires. McConville v. Howell, 17 F. 104 (D. Colo. 1883).

Applied in McConville v. Howell, 17 F. 104 (D. Colo. 1883); Billings v. Aspen Mining & Smelting Co., 51 F. 338 (8th Cir. 1892); People v. Blue, 190 Colo. 95, 544 P.2d 385 (1975).

Section 28. Rights reserved not disparaged. The enumeration in this constitution of certain rights shall not be construed to deny, impair or disparage others retained by the people.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 32.

ANNOTATION

Individual liberty and rights are inherent, and such unenumerated rights are not derived from the constitution, but belong to the individual by natural endowment. Colo. Anti-Discrimination Comm'n v. Case, 151 Colo. 235, 380 P.2d 34 (1962).

Every one of the people of the United States owns a residue of individual rights and liberties which have never been, and which are never to be surrendered to the state, but which are still to be recognized, protected and secured from infringement or diminution by any person as well as any department of government. Colo. Anti-Discrimination Comm'n v. Case, 151 Colo. 235, 380 P.2d 34 (1962).

Government derives from surrender of individual rights. Government exists through the surrender by the individual of a portion of his naturally endowed and inherent rights. Colo. Anti-Discrimination Comm'n v. Case, 151 Colo. 235, 380 P.2d 34 (1962).

As sovereignty resides in individuals. The individual, and not the state, is the source and basis of our social compact and that sovereignty now resides and has always resided in the individual. Colo. Anti-Discrimination Comm'n v. Case, 151 Colo. 235, 380 P.2d 34 (1962).

Neither property rights nor contract rights are absolute, for government cannot exist if the citizen may at will use his property to the detriment of his fellows, or exercise his freedom of contract to work them harm. Colo. Anti-Discrimination Comm'n v. Case, 151 Colo. 235, 380 P.2d 34 (1962).

Public may regulate property under police power. Equally fundamental with the private property or contract right is that of the public to regulate property in the common interest and constitutionally - protected rights in property are subject to regulation by a proper exercise of the police power of the state. Colo. Anti-Discrimination Comm'n v. Case, 151 Colo. 235, 380 P.2d 34 (1962).

But there are certain "essential attributes of property" which cannot be unreasonably infringed upon by legislative action. Colo. Anti-Discrimination Comm'n v. Case, 151 Colo. 235, 380 P.2d 34 (1962).

And statutes unrelated to public welfare are void. If a statute purporting to have been enacted to protect the public health, morals, safety, or common welfare has no real or substantial relation to these objects, and for that reason is a clear invasion of the constitutional freedom of the people to use, enjoy or dispose of their property without unreasonable governmental interference, the courts will declare it void. Colo. Anti-Discrimination Comm'n v. Case, 151 Colo. 235, 380 P.2d 34 (1962).

Judiciary to provide remedy for violation of right not provided for by legislature. It is the responsibility of the judiciary to fashion a remedy for the violation of an

"inalienable" right in the event that no remedy has been provided by legislative enactment. An inherent human right will be upheld by the supreme court against action by any person or department of government which would destroy such a right, such as the right to fair housing, or result in discrimination in the manner in which enjoyment thereof is to be permitted as between persons of different races, creeds, or color. Colo. Anti-Discrimination Comm'n v. Case, 151 Colo. 235, 380 P.2d 34 (1962).

Right to comment on courts and judges. The growth of constitutional liberty has abolished arbitrary power of courts to inflict punishment and penalties upon persons commenting upon courts and judges or upon the character thereof, through contempt proceedings, and the right to make any such comment upon courts and judges in any respect, and as fully and freely as may be desired, is a right of every person, and is a right reserved to the people without any express reservation, as provided in this section. People ex rel. Attorney Gen. v. News-Times Publishing Co., 35 Colo. 253, 84 P. 912 (1906), appeal dismissed, 205 U.S. 454, 27 S. Ct. 556, 51 L. Ed. 879 (1907).

Right to acquire home and necessities free of discrimination. As an unenumerated inalienable right a man has the right to acquire one of the necessities of life, a home for himself and those dependent upon him, unfettered by discrimination against him on account of his race, creed or color. Colo. Anti-Discrimination Comm'n v. Case, 151 Colo. 235, 380 P.2d 34 (1962).

Applied in In re Morgan, 26 Colo. 415, 58 P. 1071 (1899); Shapter v. Pillar, 28 Colo. 209, 63 P. 302 (1900); Driverless Car Co. v. Armstrong, 91 Colo. 334, 14 P.2d 1098 (1932).

Section 29. Equality of the sexes. Equality of rights under the law shall not be denied or abridged by the state of Colorado or any of its political subdivisions on account of sex.

Source: L. 72: Entire section added, p. 647, effective upon proclamation by the Governor, January 11, 1973.

ANNOTATION

Law reviews. For comment, "Bastardizing the Legitimate Child: The Colorado Supreme Court Invalidates the Uniform Parentage Act Presumption of Legitimacy in R. McG. v. J.W.", see 59 Den. L.J. 157 (1981). For article, "The Future of Comparable Worth Theory", see 56 U. Colo. L. Rev. 99 (1984). For article, "Abortion in Colorado: If Roe v. Wade is Reversed", see 19 Colo. Law. 807 (1990).

Legislative classifications based solely on sexual status must receive closest judicial scrutiny. People v. Green, 183 Colo. 25, 514 P.2d 769 (1973).

For a differentiation based on gender to be reasonable, it must serve an important government objective and be substantially related to that objective. In re Estate of Musso, 932 P.2d 853 (Colo. App. 1997).

Common law rebuttable presumption that husband owns all household goods violates this section. To the extent that the presumption differentiates between men and women exclusively on the basis of gender, it is impermissible. In re Estate of Musso, 932 P.2d 853 (Colo. App. 1997).

Separateness of spouses is clearly established by this provision

and by the married women act, § 14-2-201 et seq. Commercial Union Ins. Co. v. State Farm Fire & Cas. Co., 546 F. Supp. 543 (D. Colo. 1982).

Court's construction of uniform parentage act violated equal protection. The juvenile court's construction of the uniform parentage act, denying a natural father not married to the natural mother statutory capacity or standing to commence a paternity action in connection with a child born to the natural mother during her marriage to another in order to establish that he was the natural father of the child, violated equal protection of the laws under the fourteenth amendment to the United States Constitution, § 25 of this article, and this section. R. McG. v. J.W., 200 Colo. 345, 615 P.2d 666 (1980).

Court not required to order child support from mother. It is not always violative of this section for a trial court to refuse to order a mother to work so that she might be required to contribute to the support of her child on a parity with a father who has legal and physical custody of the child. In re Trask, 40 Colo. App. 556, 580 P.2d 825 (1978).

Insurance policy provision excluding disability coverage for normal pregnancies where policy was provided by employer as part of total compensation package constitutes discrimination on the basis of sex. Civil Rights Comm'n v. Travelers Ins., 759 P.2d 1358 (Colo. 1988) (decided prior to enactment of §§ 10-8-122.2, 10-16-114.6, and 10-17-131.6).

Retrospective operation not intended. There is no language in the equal rights amendment from which an intention appears to make the amendment retrospective in its operation. People v. Elliott, 186 Colo. 65, 525 P.2d 457 (1974).

Although this section does not apply retroactively, a presumption in violation of this section that was recognized in Colorado as early as 1871 does not survive. All relevant factual issues in the case occurred well after the passage of this section and thus there is no improper retroactive effect. In re Estate of Musso, 932 P.2d 853 (Colo. App. 1997).

There was no violation of the right guaranteed by this section due to the murder of a woman by her husband in a county justice center. Duong v. Arapahoe County Comm'rs, 837 P.2d 226 (Colo. App. 1992).

Applied in In re Franks, 189 Colo. 499, 542 P.2d 845 (1975); Lujan v. Colo. State Bd. of Educ., 649 P.2d 1005 (Colo. 1982).

Section 30. Right to vote or petition on annexation - enclaves. (1) No unincorporated area may be annexed to a municipality unless one of the following conditions first has been met:

(a) The question of annexation has been submitted to the vote of the landowners and the registered electors in the area proposed to be annexed, and the majority of such persons voting on the question have voted for the annexation; or

(b) The annexing municipality has received a petition for the annexation of such area signed by persons comprising more than fifty percent of the landowners in the area and owning more than fifty percent of the area, excluding public streets, and alleys and any land owned by the annexing municipality; or

(c) The area is entirely surrounded by or is solely owned by the annexing municipality.

(2) The provisions of this section shall not apply to annexations to the city and county of Denver, to the extent that such annexations are governed by other provisions of the constitution.

(3) The general assembly may provide by law for procedures necessary to implement this section. This section shall take effect upon completion of the canvass of votes taken thereon.

Source: Initiated 80: Entire section added, effective upon proclamation of the Governor, **L. 81,** p. 2055, December 19, 1980.

ANNOTATION

Law reviews. For article, "Growth Management: Recent Developments in Municipal Annexation and Master Plans", see 31 Colo. Law. 61 (March 2002).

Exclusion clause in subsection (1)(b) applies to both the requirement that a petition with the appropriate number of signatures be signed by persons comprising more than 50% of the landowners in the area and to the requirement that a petition with the appropriate number of signatures be signed by persons owning more than 50% of the area. Here, there is no reason to exclude public streets from the calculation of the size of the area, but then to include public streets when determining the percentage of landowners whose signatures are required. The repetition of the word "area" in connection with both the area requirement and the number requirement reveals an intent to apply the exclusion clause to both requirements. Accordingly, the district court correctly determined that the owners of roads located within the area to be annexed did not need to sign the petition for annexation. Bd. of County Comm'rs v. City of Aurora, 62 P.3d 1049 (Colo. App. 2002).

Applied in Slack v. City of Colo. Springs, 655 P.2d 376 (Colo. 1982).

Section 30a. Official language. The English language is the official language of the State of Colorado.

This section is self executing; however, the General Assembly may enact laws to implement this section.

Source: Initiated 88: Entire section added, effective upon proclamation of the Governor, **L. 89,** p. 1663, January 3, 1989.

Editor's note: Although this section was numbered as section 30 and did not contain a headnote as it appeared on the ballot, for ease of location, it has been numbered as "Section 30a", and a headnote has been added.

Section 30b. No Protected Status Based on Homosexual, Lesbian or Bisexual Orientation. Neither the State of Colorado, through any of its branches or departments, nor any of its agencies, political subdivisions, municipalities or school districts, shall enact, adopt or enforce any statute, regulation, ordinance or policy whereby homosexual, lesbian or bisexual orientation, conduct, practices or relationships shall constitute or otherwise be the basis of or entitle any person or class of persons to have or claim any minority status, quota preferences, protected status or claim of discrimination.

This Section of the Constitution shall be in all respects self-executing.

Source: Initiated 92: Entire section added, see **L. 93,** p. 2164.

Editor's note: (1) Although this section was numbered as section 30 as it appeared on the ballot, for ease of location, it has been numbered as section 30b.

(2) In the case **Evans v. Romer,** Denver District Court found this section unconstitutional and permanently enjoined its enforcement (see **Evans v. Romer,** 854 P.2d 1270 (Colo. 1993)). The Colorado Supreme Court affirmed the district court's ruling (see **Evans v. Romer,** 882 P.2d 1335 (Colo. 1994)), and the United States Supreme Court affirmed the Colorado Supreme Court's ruling (517 U.S. 620, 116 S.Ct. 1620, 134 L.Ed.2d 855 (1996)).

ANNOTATION

Law reviews. For article, "A Tale of Three Theories: Reason and Prejudice in the Battle over Amendment 2", see 68 U. Colo. L. Rev. 287 (1997). For article, "Sometimes Better Boring and Correct: Romer v. Evans as an Exercise of Ordinary Equal Protection Analysis", see 68 U. Colo. L. Rev. 335 (1997). For article, "When Baehr Meets Romer: Family Law Issues After Amendment 2", see 68 U. Colo. L. Rev. 349 (1997). For article, "Bowers v. Hardwick Diminished", see 68 U. Colo. L. Rev. 373 (1997). For article, "The Missing Pages of the Majority Opinion in Romer v. Evans", see 68 U. Colo. L. Rev. 387 (1997). For article, "Romer v. Evans: The People Foiled Again by the Constitution", see 68 U. Colo. L. Rev. 409 (1997). For article, "Romer v. Hardwick", see 68 U. Colo. L. Rev. 429 (1997). For article, "What's So Special About Special Rights?", see 75 Den. U. L. Rev. 1265 (1998).

The right to participate equally in the political process is affected by this section because it bars gay men, lesbians, and bisexuals from having an effective voice in governmental affairs insofar as those persons deem it beneficial to seek legislation that would protect them from discrimination based on their sexual orientation; it alters the political process so that a targeted class is prohibited from obtaining legislative, executive, and judicial protection or redress from discrimination absent the consent of a majority of the electorate through the adoption of a constitutional amendment. Evans v. Romer, 854 P.2d 1270 (Colo. 1993).

In upholding preliminary injunction entered by trial court enjoining state officials from enforcing voter-initiated amendment to constitution, court determined that such amendment must be subject to strict judicial scrutiny in determining whether it is constitutionally valid under the equal protection clause. Evans v. Romer, 854 P.2d 1270 (Colo. 1993).

This section is not necessary to serve any compelling governmental interest in a narrowly tailored way. It is not narrowly tailored to serve the compelling governmental interest of ensuring the free exercise of religion or preserving associational privacy, nor are the preservation of fiscal resources, the promotion of public social and moral norms, the prevention of governmental support of political objectives of a special interest group, or the deterrence of factionalism compelling governmental interests served by this section. Evans v. Romer, 882 P.2d 1335 (Colo. 1994), aff'd, 517 U.S. 620, 116 S. Ct. 1620, 134 L. Ed. 2d 855 (1996).

This section is not severable; portions that would remain if only the provision concerning sexual

orientation were stricken are not autonomous and therefore not severable. Evans v. Romer, 882 P.2d 1335 (Colo. 1994), aff'd, 517 U.S. 620, 116 S. Ct. 1620, 134 L. Ed. 2d 855 (1996).

This section is not a constitutionally valid exercise of state power under the tenth amendment. Evans v. Romer, 882 P.2d 1335 (Colo. 1994), aff'd, 517 U.S. 620, 116 S. Ct. 1620, 134 L. Ed. 2d 855 (1996).

Section 31. Marriages - valid or recognized. Only a union of one man and one woman shall be valid or recognized as a marriage in this state.

Source: Initiated 2006: Entire section added, effective upon proclamation of the Governor, **L. 2007,** p. 2962, December 31, 2006.

ANNOTATION

Law reviews. For article, "The Colorado Constitution in the New Century", see 78 U. Colo. L. Rev. 1265 (2007).

ARTICLE III
Distribution of Powers

The powers of the government of this state are divided into three distinct departments,--the legislative, executive and judicial; and no person or collection of persons charged with the exercise of powers properly belonging to one of these departments shall exercise any power properly belonging to either of the others, except as in this constitution expressly directed or permitted.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 32.

Cross references: For power of general assembly to enact measures, and power of people to institute initiative and referendum, see § 1 of article V of this constitution; for prohibition against delegating legislative power to special commissions or private corporations, see § 35 of article V of this constitution; for exercise of legislative powers by home rule cities, see § 6 of art. XX of this constitution.

ANNOTATION

I. GENERAL CONSIDERATION.

Law reviews. For article, "By Leave of Court First Had", see 8 Dicta 9 (July 1931). For article, "Unauthorized Practice of Law", see 10 Dicta 284 (1933). For article, "One Year Review of Constitutional and Administrative Law", see 35 Dicta 7 (1958). For comment on Casey v. People, appearing below, see 36 Dicta 241 (1959). For note, "Colorado's Ombudsman Office", see 45 Den. L. J. 93 (1969). For comment on People v. Herrera, appearing below, see 46 U. Colo. L. Rev. 311 (1974). For article, "Standing to Sue in Colorado: A State of Disorder", see 60 Den. L.J. 421 (1983). For article, "The Colorado Constitution in the New Century", see 78 U. Colo. L. Rev. 1265 (2007).

Object of article. The plain object of this article is to inhibit one department of government exercising any power that by the constitution is vested in another. The constitution

defines the powers and duties of each department, and should one department venture to substitute its judgment for that of the other in any case where the constitution has vested power over the subject, it would enter upon a field where it is impossible to set limits to authority, and where discretion alone would measure the extent of the interference. Van Kleeck v. Ramer, 62 Colo. 4, 156 P. 1108 (1916); Watrous v. Golden Chamber of Commerce, 121 Colo. 521, 218 P.2d 498 (1950); People v. Davis, 186 Colo. 186, 526 P.2d 312 (1974).

The concept of separation of powers requires that the coequal branches of government, the executive, legislative, and judicial, exercise only their own powers and not usurp the powers of another coequal branch of government. People v. Hollis, 670 P.2d 441 (Colo. App. 1983).

Departments derive authority from constitution. By the constitution of the state the government is divided into three coordinate branches -- legislative, executive, and judicial. The constitution is the paramount law. Each department derives its authority from that source. Colo. State Bd. of Med. Exam'rs v. District Court, 138 Colo. 227, 331 P.2d 502 (1958).

Final authority to construe the constitution and the laws of the state lies with the judiciary. Bd. of County Comm'rs v. Indus. Comm'n, 650 P.2d 1297 (Colo. App. 1982).

But separation of powers not guaranteed by federal constitution. It is true that the doctrine of the separation of powers is extremely important and fundamental to both the federal and state governments, but the doctrine is not guaranteed to the states by § 4, art. IV, U.S. Const. In re Interrogatories Propounded by Senate Concerning House Bill 1078, 189 Colo. 1, 536 P.2d 308 (1975).

Concept of republican form of government does not embody within it doctrine of separation of powers. In re Interrogatories Propounded by Senate Concerning House Bill 1078, 189 Colo. 1, 536 P.2d 308 (1975).

Premise of tripartite system of government is an independent and separate legislative, executive, and judicial division of government. People v. Davis, 186 Colo. 186, 526 P.2d 312 (1974).

System of checks and balances. It is an ingrained principle in government that the three departments of government are coordinate and shall cooperate with and complement, while acting as checks and balances against, one another but shall not interfere with or encroach on the authority or within the province of the other. Smith v. Miller, 153 Colo. 35, 384 P.2d 738 (1963).

And department stands on equal plane. All departments of government stand on an equal plane, and are of equal constitutional dignity. The constitution defines the duties of each. Neither can call the others directly to account for actions within their province. In re Senate Resolution No. 4, 54 Colo. 262, 130 P. 333 (1913); Colo. State Bd. of Med. Exam'rs v. District Court, 138 Colo. 227, 331 P.2d 502 (1958).

With exclusive powers and functions. The legislative and executive departments have their functions and their exclusive powers, including the "purse" and the "sword". The judiciary has its exclusive powers and functions, to-wit: It has judgment and the power to enforce its judgments and orders. Smith v. Miller, 153 Colo. 35, 384 P.2d 738 (1963).

Each superior in its respective sphere. The departments are distinct from each other, and, so far as any direct control or interference is concerned, are independent of each other. More, they are superior in their respective spheres. Greenwood Cem.

Land Co. v. Routt, 17 Colo. 156, 28 P. 1125 (1892); City & County of Denver v. Lynch, 92 Colo. 102, 18 P.2d 907, 86 A.L.R. 907 (1932); Smith v. Miller, 153 Colo. 35, 384 P.2d 738 (1963).

The power of each department is limited and defined. Each is clothed with specific powers. The result of this distribution of power is that no department is superior to the other, and each acting within its proper sphere is supreme. One cannot directly interfere with the other in the performance of functions delegated by the constitution. Colo. State Bd. of Med. Exam'rs v. District Court, 138 Colo. 227, 331 P.2d 502 (1958).

Each to perform its duties but to refrain from asserting power belonging to another department. It is incumbent upon each department to assert and exercise all its powers whenever public necessity requires it to do so; otherwise, it is recreant to the trust reposed in it by the people. It is equally incumbent upon it to refrain from asserting a power that does not belong to it, for this is equally a violation of the people's confidence. Indeed, the distinction goes so far as to require each department to refrain from in any way impeding the exercise of the proper functions belonging to either of the other departments. City & County of Denver v. Lynch, 92 Colo. 102, 18 P.2d 907 (1932); Smith v. Miller, 153 Colo. 35, 384 P.2d 738 (1963).

In our scheme of government, the responsibilites thereof are presumably equally divided, and each department must perform its own tasks, and accept the responsibilities therefor. Kolkman v. People, 89 Colo. 8, 300 P. 575 (1931).

The power of the legislature is plenary with respect to appropriations, subject only to constitutional limitations. Colo. Gen. Assembly v. Lamm, 704 P.2d 1371 (Colo. 1985).

General assembly has power to enact legislation by majority vote, and to require that it summon a two-thirds majority to override an invalid veto would upset the delicate constitutional balance between the executive and legislative branches. Colo. Gen. Assembly v. Lamm, 704 P.2d 1371 (Colo. 1985).

With respect to sentencing, the general assembly has the inherent power to prescribe punishment for crimes and to limit the court's sentencing authority. The imposition of a sentence is a judicial function. Once a sentence is imposed, the executive branch is responsible for carrying out the court's mandate. People v. Barth, 981 P.2d 1102 (Colo. App. 1999); People v. Oglethorpe, 87 P.3d 129 (Colo. App. 2003).

Separation of powers not violated where court was simply interpreting the provisions of an act, determining the requirements of the act, and directing the executive agency defendant to spend moneys appropriated by the legislature in accordance with those requirements. Goebel v. Colo. Dept. of Institutions, 764 P.2d 785 (Colo. 1988).

Separation of powers not violated by juvenile deferred sentencing statute requiring prosecutor's consent prior to entry of deferral order. Such a requirement is analogous to the authority of the prosecution to enter into plea bargains and does not impermissibly interfere with the judiciary's sentencing authority. People in Interest of R.W.V., 942 P.2d 1317 (Colo. App. 1997).

Separation of powers not violated where the general assembly has enacted a statutory scheme that requires the sentencing court to impose a particular term of mandatory parole and the parole board adds a period of parole not included in the sentence imposed by the sentencing court. People v. Barth, 981 P.2d 1102 (Colo. App. 1999).

Section 17-27.5-104 does not violate the separation of powers

and nondelegation doctrines. The statute provides sufficient statutory standards and safeguards. People v. Sa'ra, 117 P.3d 51 (Colo. App. 2004).

The direct file statute does not violate separation of powers. Prosecutorial discretion balanced by the district court's sentencing discretion is not unconstitutional. Flakes v. People, 153 P.3d 427 (Colo. 2007).

No violation of separation of powers existed where secretary of state's assessment of 1% of all gross revenues for games of chance suppliers and manufacturers constituted a fee and not an illegal tax under this article. Bingo Games Supply Co., Inc. v. Meyer, 895 P.2d 1125 (Colo. App. 1995).

Section 16-8-107 (3)(b) does not violate the separation of powers doctrine. The statute is mixed in nature between substantive law and procedural rules. People v. Bondurant, 2012 COA 50, __ P.3d __.

Although affecting the procedure of the courts, § 16-8-107 (3)(b) also concerns the public policy of full disclosure in criminal cases involving a defense based on a defendant's mental condition. People v. Bondurant, 2012 COA 50, __ P.3d __.

Section 16-8-107 (3)(b) does not conflict with Crim. P. 11(e) or 16, part II, in violation of the separation of powers doctrine. People v. Bondurant, 2012 COA 50, __ P.3d __.

Unless under constitutional compulsion by people. The separation of powers concept is extremely important and fundamental to a free system of government. The supreme court is unalterably opposed to any attempt by one branch of the government to assume the power of another. But when the people speak through the amendment of their constitution and assign one branch or the other some duties which are not normally considered to be that of the branch assigned, then because of its devotion to the republican scheme of government, the supreme court is compelled to accept their decision. In re Interrogatories Propounded by Senate Concerning House Bill 1078, 189 Colo. 1, 536 P.2d 308 (1975).

And any exception to distribution of powers must appear in express terms in the constitution; implied exceptions are not sanctioned. Denver Bar Ass'n v. Pub. Utils. Comm'n, 154 Colo. 273, 391 P.2d 467, 13 A.L.R. 3d 799 (1964).

To determine what is constitutional is not committed exclusively to judicial department; the views of officials of coordinate branches of the government are entitled to consideration. Hudson v. Annear, 101 Colo. 551, 75 P.2d 587 (1938).

And this article applies not less to judicial department than to other departments. Hudson v. Annear, 101 Colo. 551, 75 P.2d 587 (1938).

Doctrine of separation of powers applies with equal force to all three branches of government. People v. Herrera, 183 Colo. 155, 516 P.2d 626 (1973).

Delineation of powers on case-by-case basis. Delineation of the powers of the legislative, judicial, and executive branches usually should be on a case-by-case basis. MacManus v. Love, 179 Colo. 218, 499 P.2d 609 (1972); C.C.C. v. District Court, 188 Colo. 437, 535 P.2d 1117 (1975).

This provision relates to state government and is not to be applied in matters of purely local concern such as the matters pertaining to license of a business within a city and county. Peterson v. McNichols, 128 Colo. 137, 260 P.2d 938 (1953).

Classification includes all public officers of the state. This article divides the powers of the state government into three distinct departments, the legislative, executive and judicial. This classification includes all public officers of the state, without regard to their rank or duties. And as the officers composing the

legislative and judicial departments are well understood not to include the warden of the penitentiary, or of the reformatory, the commissioner of mines, or of insurance and the like, these must of necessity be classed as executive officers, unless some other provision of the constitution changes or modifies the effect of the language of this article. Parks v. Comm'rs of Soldiers' & Sailors' Home, 22 Colo. 86, 43 P. 542 (1896).

Parole revocation reincarceration is not a new sentence. Since the sentencing power of the judiciary is not implicated, there is no separation of powers violation. People v. Barber, 74 P.3d 444 (Colo. App. 2003).

Applied in Gillette v. Peabody, 19 Colo. App. 356, 75 P. 18 (1904); People ex rel. Attorney Gen. v. News-Times Publ'g Co., 35 Colo. 253, 84 P. 912 (1906); People ex rel. Smith v. Crissman, 41 Colo. 450, 92 P. 949 (1907); Post Printing & Publ'g Co. v. Shafroth, 53 Colo. 129, 124 P. 176 (1912); Mulnix v. Elliot, 62 Colo. 46, 156 P. 216 (1916); Parsons v. Parsons, 70 Colo. 154, 198 P. 156 (1921); People ex rel. Setters v. Lee, 72 Colo. 598, 213 P. 583 (1923); Walton v. Walton, 86 Colo. 1, 278 P. 780 (1929); People v. Swena, 88 Colo. 337, 296 P. 271 (1931); Allen v. Bailey, 91 Colo. 260, 14 P.2d 1087 (1932); City & County of Denver v. Lynch, 92 Colo. 102, 18 P.2d 907 (1932); Titus v. Titus, 96 Colo. 191, 41 P.2d 244 (1935); In re Interrogatories of Governor, 97 Colo. 528, 51 P.2d 695 (1935); Pub. Utils. Comm'n v. Manley, 99 Colo. 153, 60 P.2d 913 (1936); People ex rel. Rogers v. Letford, 102 Colo. 284, 79 P.2d 274 (1938); Smith-Brooks Printing Co. v. Young, 103 Colo. 199, 85 P.2d 39 (1938); People ex rel. Rogers v. Barksdale, 104 Colo. 1, 87 P.2d 755 (1939); Peterson v. McNichols, 128 Colo. 137, 260 P.2d 938 (1953); People ex rel. Dunbar v. Denver Dist. Court, 129 Colo. 203, 268 P.2d 1098 (1954); In re Senate Bill No. 72, 139 Colo. 371, 339 P.2d 501 (1959); Frankel v. City & County of Denver, 147 Colo. 373, 363 P.2d 1063 (1961); Donnell v. Indus. Comm'n, 149 Colo. 228, 368 P.2d 777 (1962); Specht v. People, 156 Colo. 12, 396 P.2d 838 (1964); Times-Call Publ'g Co. v. Wingfield, 159 Colo. 172, 410 P.2d 511 (1966); Cain v. Civil Serv. Comm'n, 159 Colo. 360, 411 P.2d 778 (1966); Jackson v. Colo., 294 F. Supp. 1065 (D. Colo. 1968); Fladung v. City of Boulder, 165 Colo. 244, 438 P.2d 688 (1968); Romero v. Schauer, 386 F. Supp. 851 (D. Colo. 1974); Tihonovich v. Williams, 196 Colo. 144, 582 P.2d 1051 (1978); People v. McKenna, 196 Colo. 367, 585 P.2d 275 (1978); Cohen v. State, Dept. of Rev., 197 Colo. 385, 593 P.2d 957 (1979); Gray v. City of Manitou Springs, 43 Colo. App. 60, 598 P.2d 527 (1979); People v. Fierro, 199 Colo. 215, 606 P.2d 1291 (1980); Empire Sav., Bldg. & Loan Ass'n v. Otero Sav. & Loan Ass'n, 640 P.2d 1151 (Colo. 1982); People v. Thorpe, 641 P.2d 935 (Colo. 1982); People v. Montoya, 647 P.2d 1203 (Colo. 1982); Rathke v. MacFarlane, 648 P.2d 648 (Colo. 1982); Beacom v. Bd. of County Comm'rs, 657 P.2d 440 (Colo. 1983).

II. LEGISLATIVE POWERS.

Constitution is limitation on plenary power of general assembly. The constitution is not a grant of power to the general assembly, but the general assembly is invested with plenary power for all the purposes of civil government, and the constitution is but a limitation upon that power. People ex rel. Rhodes v. Fleming, 10 Colo. 553, 16 P. 298 (1887); Colo. State Civil Serv. Employees Ass'n v. Love, 167 Colo. 436, 448 P.2d 624 (1968).

General assembly determines its constitutional duties. The judicial cannot say to the legislative department that it has, or has not, performed its constitutional duties.

That the legislative department must determine for itself, independent of either of the other departments of government, by passing such legislation as, in its judgment, the constitution requires. In re Senate Resolution No. 4, 54 Colo. 262, 130 P. 333 (1913).

And general assembly is free to choose any method which is appropriate to reach a proper governmental end. Pillar of Fire v. Denver Urban Renewal Auth., 181 Colo. 411, 509 P.2d 1250 (1973).

Legislative power is authority to make laws and to appropriate state funds. MacManus v. Love, 179 Colo. 218, 499 P.2d 609 (1972).

And sovereign power may not be delegated to private citizen to be used for a private purpose, especially where there is no state supervision. Olin Mathieson Chem. Corp. v. Francis, 134 Colo. 160, 301 P.2d 139 (1956).

Taxation is indisputably legislative prerogative. Gates Rubber Co. v. South Sub. Metro. Recreation & Park Dist., 183 Colo. 222, 516 P.2d 436 (1973).

If a change in the state sales and use tax law is desired, it must be accomplished by the general assembly, for neither the director of revenue nor the supreme court is empowered with taxing authority. Weed v. Occhiato, 175 Colo. 509, 488 P.2d 877 (1971).

Only the general assembly has the power to amend laws and enact taxing statutes. Miller Int'l, Inc. v. State Dept. of Rev., 646 P.2d 341 (Colo. 1982).

But legislative limitation on use of executive funds violative of separation of powers. The governor's veto of footnote 5 of section 2 of the 1971 senate appropriation bill no. 436, which read "5/ Group Health Insurance - These funds shall not be allocated to individual agencies. The Controller shall make payments directly to the insurance carriers on a quarterly or less frequent basis", was proper in that the footnote constituted substantive legislation contrary to § 32 of art. V, Colo. Const., and further constituted an invasion of the separation of powers required by this article. The provision was thus void and unenforceable. MacManus v. Love, C.A. no. C-24520 (D.C. Denver, Colo., filed Nov. 24, 1971).

As is limitation in conflict with state personnel system. The governor's veto of footnote 21a of section 2 of the 1971 senate appropriation bill no. 436, which read "21a/ These moneys are to be used only for contract services and no single recipient is to receive more than $5,000", was proper inasmuch as the provisions of the footnote invaded the separation of powers required by this article in that it attempted to control the salaries of the staff of the council on arts and humanities contrary to the provisions of existing law in which salaries of persons within the classified personnel system of the state depend upon their grade as determined by the state personnel board. The footnote is thus void and unenforceable. MacManus v. Love, C.A. no. C-24520 (D.C. Denver, Colo., filed Nov. 24, 1971).

And federal contributions are not subject of appropriative power of legislature. MacManus v. Love, 179 Colo. 218, 499 P.2d 609 (1972).

A portion of a bill providing that any federal or cash funds received by any agency in excess of the appropriation shall not be expended without additional legislative appropriation violates the constitutional doctrine of separation of powers by attempting to limit the executive branch in its administration of federal funds to be received by it directly from agencies of the federal government and unconnected with any state appropriations. MacManus v. Love,

179 Colo. 218, 499 P.2d 609 (1972).

The governor's veto of the second sentence of footnote 24 of section 2 of the 1971 senate appropriation bill no. 436, which read "Prior to the establishment of additional Community Mental Health Centers the state authority shall submit to the Joint Budget Committee, for approval, any federal applications which shall require either state matching or state replacement of federal funds", was proper inasmuch as the sentence contained substantive legislation and constituted a violation of the separation of powers required by this article. The sentence was thus void and unenforceable. MacManus v. Love, C.A. no. C-24520 (D.C. Denver, Colo., filed Nov. 24, 1971).

Long bill headnotes violate the separation of powers. Headnotes defining full-time equivalent; health, life, and dental; personal services; short-term disability; lease purchase; leased space; legal services; operating expenses; vehicle lease payments; multiuse network payments; utilities; capital outlay; and purchase of services from computer center violate the separation of powers by intruding on the authority of the executive branch to administer the laws. Colo. Gen. Assembly v. Owens, 136 P.3d 262 (Colo. 2006).

Determination of legislative facts nonreviewable. During the process of the enactment of a law the general assembly is required to pass upon all questions of necessity and expediency connected therewith. The existence of such necessity is a question of fact, which the general assembly in the exercise of its legislative functions must determine; under this article that fact cannot be reviewed, called in question, nor determined by the courts. It is a question of which the general assembly alone is the judge, and, when it determines the fact to exist, its action is final. Van Kleeck v. Ramer, 62 Colo. 4, 156 P. 1108 (1916).

But legislative fact-finding delegable. The power to make a law may not be delegated, but the power to determine a state of facts upon which a law depends may be delegated. Casey v. People, 139 Colo. 89, 336 P.2d 308 (1959); Colo. Anti-Discrimination Comm'n v. Case, 151 Colo. 235, 380 P.2d 34 (1962); People v. Lepik, 629 P.2d 1080 (Colo. 1981); People v. Gallegos, 644 P.2d 920 (Colo. 1982).

A legislative body may not delegate the power to make a law or define a law, but it may delegate the power to determine some fact or state of things to effectuate the purpose of the law. People ex rel. Dunbar v. Giordano, 173 Colo. 567, 481 P.2d 415 (1971); People v. Willson, 187 Colo. 141, 528 P.2d 1315 (1974).

Power to make law vs. authority to execute. The true distinction is between the delegation of power to make the law, which necessarily involves a discretion as to what it shall be, and conferring authority or discretion as to its execution to be exercised under and in pursuance of the law; the first cannot be done, but to the latter no valid objection can be made. People ex rel. Dunbar v. Giordano, 173 Colo. 567, 481 P.2d 415 (1971); Dixon v. Zick, 179 Colo. 278, 500 P.2d 130 (1972).

Delegation of power must provide standard. Any delegation of power by the general assembly, to be valid, must provide a primary standard or general rule to be followed in discharging the delegated power. Olin Mathieson Chem. Corp. v. Francis, 134 Colo. 160, 301 P.2d 139 (1956).

The general assembly may not vest executive officers or bodies with uncontrolled discretion in making rules and regulations and must establish sufficient standards for their guidance. Casey v. People, 139 Colo. 89, 336 P.2d 308 (1959).

Indefiniteness which leaves to officer, court, or jury the

determination of standards in a case-by-case process invalidates legislation as being violative of due process, as contravening the mandate that an accused be advised of the nature and cause of the accusation, and as constituting an unlawful delegation of legislative power to courts or enforcement agencies. Dominquez v. City & County of Denver, 147 Colo. 233, 363 P.2d 661 (1961).

The general assembly must prescribe sufficient standards by which the power delegated is to be exercised; otherwise, the delegation of power is invalid as being violative of the separation of powers doctrine. People v. Lepik, 629 P.2d 1080 (Colo. 1981).

Due process of law requires that the general assembly provide sufficiently precise standards to guide a judge and jury in deciding whether a crime has been committed. Failure to do so may well constitute an unlawful delegation of legislative power. People v. Smith, 638 P.2d 1 (Colo. 1981).

When delegation of power sufficiently detailed. The general assembly does not abdicate its function of making a law by establishing a definite plan or framework for the law's operation when it describes what job must be done, who must do it, and the scope of his authority. People ex rel. Dunbar v. Giordano, 173 Colo. 567, 481 P.2d 415 (1971).

Necessity fixes a point beyond which it is unreasonable and impracticable to compel the general assembly to prescribe detailed rules for the purpose of avoiding an unconstitutional delegation of authority. Colo. Polytechnic Coll. v. State Bd. for Cmty. Colls., 173 Colo. 39, 476 P.2d 38 (1970).

Prosecutorial discretion not unlawful delegation. When a single transaction may violate more than one statutory provision, and perpetrate separate offenses, the fact that a prosecutor has the discretion to prosecute under one or both of two distinct offenses which arise from the single transaction does not constitute an unconstitutional delegation of legislative authority. People v. McKenzie, 169 Colo. 521, 458 P.2d 232 (1969).

To allow the exercise of prosecutorial discretion to be subject to judicial oversight would erode the doctrine of the separation of powers. People v. District Court, 632 P.2d 1022 (Colo. 1981).

Criminal prosecutors may exercise uniquely broad discretion in charging offenders, and this broad discretion does not exceed the permissible delegated power of the executive. People v. Gallegos, 644 P.2d 920 (Colo. 1982).

General assembly has plenary power over school districts. The general assembly has plenary powers to determine the number, nature and powers of school districts and their territory; further, that the general assembly may modify or withdraw all such powers as it pleases. Sch. Dist. No. 1 v. Sch. Planning Comm., 164 Colo. 541, 437 P.2d 787 (1968).

Only general assembly may declare act to be a crime. That precious power cannot be delegated to others not elected by or responsible to the people. Casey v. People, 139 Colo. 89, 336 P.2d 308 (1959).

It is fundamental that the general assembly has the inherent authority to define crimes and to prescribe punishment for criminal violations. People v. Arellano, 185 Colo. 280, 524 P.2d 305 (1974); People v. Lepik, 629 P.2d 1080 (Colo. 1981).

Although the general assembly may not delegate to an administrative agency the power to define criminal conduct, it may authorize the agency to adopt rules carrying criminal sanctions as long as the statutory scheme provides sufficient standards and safeguards to protect against the unreasonable exercise of discretionary power and offers

adequate notice of the penalties applicable to a violator. People v. Lowrie, 761 P. 2d 778 (Colo. 1988).

And power not delegable. The general assembly cannot constitutionally delegate the power to define crimes to any branch of another state's government, to the federal congress, or to another branch of the state government. People v. Tenorio, 197 Colo. 137, 590 P.2d 952 (1979).

Although the modern tendency may often permit liberal grants of discretion to administrative bodies, the power delegated cannot be expanded to the point where an administrative officer is possessed of unbridled authority to declare conduct criminal. People v. Lepik, 629 P.2d 1080 (Colo. 1981).

Commercial bribery statute, § 18-5-401, does not unconstitutionally delegate legislative power to private persons to define duty of fidelity. People v. Lee, 717 P.2d 493 (Colo. 1986).

Contraband statute, § 18-8-204, does not unconstitutionally delegate legislative power. The statute imposes adequate standards and procedural safeguards because it requires the administrative head of a detention facility to determine whether an item poses or may pose a risk prior to categorizing it as contraband, to find that there is a reasonable probability that an item would pose a threat, and to give notice of what is contraband. Allowing each detention facility to determine what is contraband based on the specific conditions present at each facility does not result in an unlawful delegation of legislative authority. People v. Holmes, 959 P.2d 406 (Colo. 1998).

Just as the general assembly may initially prescribe a penalty for a criminal violation, it may also, in its wisdom, from time to time change and adjust penalties as social necessities may mandate. People v. Arellano, 185 Colo. 280, 524 P.2d 305 (1974).

For the general assembly to legislate on right to jury trial is not violation of this article, since the right to a jury is substantive and not procedural. Hardamon v. Municipal Court, 178 Colo. 271, 497 P.2d 1000 (1972).

Section 17-22.5-403 (9) does not violate separation of powers. The constitution does not provide that sentencing is within the sole province of the judiciary. The general assembly has the power to prescribe punishment and limit the court's sentencing authority. In this case, the general assembly, by enacting subsection (9), simply extended Colorado's parole supervision scheme to provide additional means for successfully reintegrating offenders into the community consistent with public safety. People v. Jackson, 109 P.3d 1017 (Colo. App. 2004).

Power to make evidentiary rules. The general assembly has the power to prescribe new rules, or to revise or alter existing rules of substantive evidence, so long as they do not violate constitutional requirements or deprive any person of constitutional rights. People v. Smith, 182 Colo. 228, 512 P.2d 269 (1973).

And designation of place of confinement of those found guilty of crime is legislative function, and sentence must be pronounced in conformity with the legislative mandate. Tinsley v. Crespin, 137 Colo. 302, 324 P.2d 1033 (1958).

General assembly is powerless to confer executive powers upon judiciary. People v. Herrera, 183 Colo. 155, 516 P.2d 626 (1973).

On legislative powers. This article prohibits the general assembly from delegating a legislative power to the judiciary, and the judiciary in turn from thereafter delegating the judicial power to fix and determine a sentence to the executive department. Specht v. Tinsley, 153 Colo. 235, 385 P.2d 423

(1963).

On judicial duties on other departments. The legislative department is powerless to confer judicial duties upon the officials of other departments. City & County of Denver v. Lynch, 92 Colo. 102, 18 P.2d 907 (1932); Bd. of County Comm'rs v. Indus. Comm'n, 650 P.2d 1297 (Colo. App. 1982).

Delegation to private person. Under no circumstances is the general assembly empowered to delegate to a private person for private benefit the power to fix minimum resale prices binding upon parties with no direct contractural relationship; in some cases where the public health, safety, and welfare demands, it might lawfully delegate such power to a public administrative body, provided proper standards to guide and control the actions of such agency are provided in the law. Olin Mathieson Chem. Corp. v. Francis, 134 Colo. 160, 301 P.2d 139 (1956).

General assembly cannot delegate to any administrative agency "carte blanche" authority to impose sanctions or penalties for violation of the substantive portion of a statute. Colo. Anti-Discrimination Comm'n v. Case, 151 Colo. 235, 380 P.2d 34 (1962).

Administrative regulation must be within scope and objects of statutory delegation. A regulation issued by an administrative body, in order to be valid, must be within the scope and objects of the statutory delegation of authority which underlies the regulation. Dixon v. Zick, 179 Colo. 278, 500 P.2d 130 (1972).

General assembly may delegate power to promulgate rules and regulations. While the general assembly may not delegate the power to make or define a law, it may delegate the power to promulgate rules and regulations to executive agencies so long as sufficient standards are set forth for the proper exercise of the agency's rule-making function. Colo. Auto & Truck Wreckers Ass'n v. Dept. of Rev., 618 P.2d 646 (Colo. 1980); Americans United for Separation of Church & State Fund, Inc. v. State, 648 P.2d 1072 (Colo. 1982).

Legislative delegation of rulemaking and regulatory authority to an administrative agency must provide both sufficient standards for rational and consistent rulemaking and adequate procedural safeguards for effective judicial review of administrative action. Orsinger Outdoor Advert., Inc. v. Dept. of Hwys., 752 P.2d 55 (Colo. 1988); Partridge v. State, 895 P.2d 1183 (Colo. App. 1995).

The proper focus to determine the validity of delegation of legislative authority should be upon the totality of protection provided by standards and procedural safeguards at both the statutory and administrative levels. Douglas County Bd. of Comm'rs v. Pub. Utils. Comm'n, 829 P.2d 1303 (Colo. 1992); Partridge v. State, 895 P.2d 1183 (Colo. App. 1995).

Delegation of legislative authority to the department of excise and licenses to adopt rules and conduct hearings on applications to renew liquor licenses is not unconstitutional on the basis that the statute fails to provide sufficient standards for defining "good cause". Squire Restaurant & Lounge v. Denver, 890 P.2d 164 (Colo. App. 1994).

Power to confer upon persons named in general law for incorporation of cities and towns authority to do certain acts therein specified, not being prohibited by the constitution, is not unconstitutional by reason of the delegation of such authority. People ex rel. Rhodes v. Fleming, 10 Colo. 553, 16 P. 298 (1887).

Delegation to municipal corporation constitutional. A delegation by the state of legislative

powers to municipal corporations where it finds such to be necessary and appropriate, violates neither the constitution nor any substantive principle of law. Davis v. City & County of Denver, 140 Colo. 30, 342 P.2d 674 (1959).

Cooperation of governmental bodies in joint undertaking does not constitute improper delegation of power. Karsh v. City & County of Denver, 176 Colo. 406, 490 P.2d 936 (1971).

Delegation to commission constitutional. By authorizing a commission to establish the priority of claims for the appropriation of designated ground water, the ground water management act does not violate the doctrine of separation of powers nor constitute an unlawful delegation of judicial powers under this article and § 1 of art. VI, Colo. Const. In re Water Rights, 181 Colo. 395, 510 P.2d 323 (1973).

Permissible delegation of power to appropriate water for environmental purposes. The statutory language in §§ 37-92-102 and 37-92-103 (4) empowering the Colorado water board to appropriate such waters of natural streams and lakes as may be required to preserve the natural environment to a reasonable degree is not unconstitutionally vague and, therefore, not an impermissible delegation of authority. Colo. River Water Conservation Dist. v. Colo. Water Conservation Bd., 197 Colo. 469, 594 P.2d 570 (1979).

The transfers of funds between executive departments at issue in the case impermissibly infringed on the legislature's plenary power of appropriation. Colo. Gen. Assembly v. Lamm, 700 P.2d 508 (Colo. 1985).

Funds received from private corporation were essentially custodial, in that they were required to be used for a purpose approved ultimately by non-state authorities and to be administered in a trusteeship capacity, and were not subject to the legislative appropriation power. Colo. Gen. Assembly v. Lamm, 700 P.2d 508 (Colo. 1985).

Federal block grants are subject to appropriation when matching state funds are required, and transfers between block grants are authorized. Colo. Gen. Assembly v. Lamm, 738 P.2d 1156 (Colo. 1987).

In evaluating whether certain moneys fall under the powers of the legislative or executive branch, the primary question is whether those moneys constitute general state funds or custodial funds. The general assembly's plenary power over appropriations applies only to state moneys, while the governor retains control over those funds deemed custodial in nature. In re Interrogatories on House Bill 04-1098, 88 P.3d 1196 (Colo. 2004).

Determination of whether certain moneys constitute custodial funds involves consideration of all of the circumstances surrounding the funds, including the source of the funds, the degree of flexibility afforded to the state as to the process by which the funds should be allocated, and the degree of flexibility afforded to the state as to the funds' ultimate purposes. In re Interrogatories on House Bill 04-1098, 88 P.3d 1196 (Colo. 2004).

General assembly could constitutionally exclude funds that cannot fairly be described as custodial from the definition of "custodial moneys". In re Interrogatories on House Bill 04-1098, 88 P.3d 1196 (Colo. 2004).

Section 42-6-134 is not invalid as an improper delegation of legislative authority to the department of revenue. Colo. Auto & Truck Wreckers Ass'n v. Dept. of Rev., 618 P.2d 646 (Colo. 1980).

Legislative act based on public policy not usurpation of court's prerogatives. If a legislative

act is based on public policy rather than an attempt to regulate the day-to-day procedural operation of the court, it is not a usurpation of the court's prerogatives. People v. McKenna, 199 Colo. 452, 611 P.2d 574 (1980).

Submission of disputes to binding arbitration is valid. An existing collective bargaining agreement between a city and its employees which requires the submission of disputes to binding arbitration is valid as it does not involve the prohibited delegation of legislative authority. Denver Fire Fighters v. City of Denver, 629 P.2d 1086 (Colo. App. 1980), aff'd, 663 P.2d 1032 (Colo. 1983).

Considering both language of article XXIX (amendment 41) and voters' intent in initiating it, article XXIX is self-executing in that it does not require any further action by the legislature to be effective. A constitutional provision is self-executing when the provision appears to take immediate effect and no further action by the legislature is required to implement the right given. Here, article XXIX can take effect without any further action by the legislature. Its provisions do not merely lay out bare principles without any means of implementation; rather, the article has a built-in mechanism for operation. It provides for the creation of the independent ethics commission (commission) that, once in existence, will be independent of the general assembly and will promulgate necessary rules to implement and enforce gift bans and other ethical standards. There is no indication that voters intended to require further legislative action with respect to article XXIX. To the contrary, voters used initiative process to avoid possibility that general assembly would prevent them from establishing commission that would enforce gift bans against general assembly's members as well as other government employees. Developmental Pathways v. Ritter, 178 P.3d 524 (Colo. 2008).

III. EXECUTIVE POWERS.

Executive must function independently. It is a corollary to the proposition that the judiciary must be independent from the other branches of government that the executive must also function independently within its sphere of operation. Lawson v. Pueblo County, 36 Colo. App. 370, 540 P.2d 1136 (1975).

Duty of executive department is to carry laws into effect. Colo. State Bd. of Med. Exam'rs v. District Court, 138 Colo. 227, 331 P.2d 502 (1958).

The enforcement of statutes and administration thereunder are executive, not legislative, functions. MacManus v. Love, 179 Colo. 218, 499 P.2d 609 (1972).

The authority to promulgate rules for an executive agency resides in departments of government other than the judiciary. Travelers Ins. Co. v. Savio, 706 P.2d 1258 (Colo. 1985).

And to administer appropriated funds. In order to fulfill his duty to faithfully execute the laws, the executive has the authority to administer the funds appropriated by the general assembly for programs enacted by the general assembly, and must insure that the general assembly does not administer the appropriation once it has been made. Anderson v. Lamm, 195 Colo. 437, 579 P.2d 620 (1978).

Any inherent authority the executive may have to administer the budget may not normally be invoked to contradict major legislative budget determinations. Colo. Gen. Assembly v. Lamm, 700 P.2d 508 (Colo. 1985).

But authority to regulate, by a proper board, does not include authority to legislate. Casey v. People, 139 Colo. 89, 336 P.2d 308 (1959).

Executive officers, boards or

commissions may not be authorized by the legislature to promulgate rules and regulations of a strictly and exclusively legislative character. Casey v. People, 139 Colo. 89, 336 P.2d 308 (1959).

Power of governor over legislation by exercise of veto is legislative power. It can only be exercised when clearly authorized by a specific provision of the constitution, not only because this article so requires, but because, being a power in derogation of the general plan of the state government, the language conferring it must be strictly construed. Strong v. People ex rel. Curran, 74 Colo. 283, 220 P. 999 (1923).

The veto power is a limited legislative capability in the executive branch and is an exception to the separation of powers otherwise required by this article. Colo. Gen. Assembly v. Lamm, 704 P.2d 1371 (Colo. 1985).

But veto not necessary to invalidate unconstitutional provision. Any footnote violating either this article or § 32 of art. V, Colo. Const., in the 1971 senate appropriation bill no. 436 was void and unenforceable and the governor's act in vetoing was an appropriate act calling attention to the invalid footnote, but such veto was not necessary to invalidate any such footnote. MacManus v. Love, C.A. no. C-24520 (D.C. Denver, Colo., filed Nov. 24, 1971).

Governor could not veto long bill headnotes because the headnotes were not items subject to the governor's line-item veto power. Headnotes defining full-time equivalent; health, life, and dental; personal services; short-term disability; lease purchase; leased space; legal services; operating expenses; vehicle lease payments; multiuse network payments; utilities; capital outlay; and purchase of services from computer center are void, however, because they violate the separation of powers by intruding on the authority of the executive branch to administer the laws. Colo. Gen. Assembly v. Owens, 136 P.3d 262 (Colo. 2006).

Court cannot command governor to perform discretionary act. Under the doctrine of separation of powers, the supreme court cannot and will not command the governor to do any act which lies within his discretionary power. In re Legislative Reapportionment, 150 Colo. 380, 374 P.2d 66 (1962).

Authority of governor to call general assembly into special session is his discretionary prerogative. In re Legislative Reapportionment, 150 Colo. 380, 374 P.2d 66 (1962).

Governor's call for special session is one exception referred to in article. Section 9 of art. IV, Colo. Const., allowing for the governor's call for a special session, is one of the exceptions referred to in this article. People v. McKenna, 199 Colo. 452, 611 P.2d 574 (1980).

Transfer of prisoners proper administrative function. The transfer of convicts from one place of imprisonment to another is not such a judicial act that it cannot be performed by a governor under authority of statute. Tinsley v. Crespin, 137 Colo. 302, 324 P.2d 1033 (1958).

The authority of the governor to transfer inmates of public institutions is properly delegated to him as an administrative duty. Tinsley v. Crespin, 137 Colo. 302, 324 P.2d 1033 (1958).

Executive agency's only avenue for changing judicial rulings with which it is displeased is to obtain appropriate legislative relief. Bd. of County Comm'rs v. Indus. Comm'n, 650 P.2d 1297 (Colo. App. 1982).

Consecutive life sentences not unconstitutional. The exercise of the trial court's discretion that the defendant should serve several of his life sentences consecutively is not an unconstitutional interference with the duties of the parole board. People v.

Montgomery, 669 P.2d 1387 (Colo. 1983).

Colorado state board of parole is an arm of executive branch of government. In re Question Concerning State Judicial Review, 199 Colo. 463, 610 P.2d 1340 (1980).

Decision of board of parole to grant or deny parole is clearly discretionary since parole is a privilege, and no prisoner is entitled to it as a matter of right. In re Question Concerning State Judicial Review, 199 Colo. 463, 610 P.2d 1340 (1980).

Only when state parole board fails to exercise duties can courts review. It is only when the Colorado state board of parole has failed to exercise its statutory duties that the courts of Colorado have the power to review the board's actions. In re Question Concerning State Judicial Review, 199 Colo. 463, 610 P.2d 1340 (1980).

But § 18-1-410 (1)(f) invades governor's exclusive power to grant commutation after conviction as provided in § 7 of art. IV, Colo. Const., and therefore violates the doctrine of separation of powers embodied in this article. People v. Herrera, 183 Colo. 155, 516 P.2d 626 (1973).

Although Crim. P. 35(a), not violative of executive's power of commutation. As Crim. P. Rule 35(a) which suspends the finality of the conviction for a period of 120 days from the time sentence is imposed, or for 120 days after final disposition on appeal, to allow the filing of a motion for reduction of sentence in the trial court, suspends the concept of finality of a criminal judgment of conviction, the rule does not offend the separation of powers doctrine under this article, nor the executive power of commutation. The court retains jurisdiction during the 120-day period for filing of a motion for reduction of sentence. People v. Smith, 189 Colo. 50, 536 P.2d 820 (1975).

Interference by a court with the authority of the prosecution to dismiss charges once filed may occur only in limited circumstances: (1) When exercising its supervisory authority to dismiss on constitutional grounds (e.g., infringement of defendant's due process rights); (2) when exercising its supervisory authority to protect the integrity of the judicial process (e.g., prosecutorial misconduct that interferes with grand jury's independent function); (3) upon determination that the evidence is insufficient to support prosecution; or (4) when authorized by statute that is consistent with constitutional separation of powers. People v. Renander, 151 P.3d 657 (Colo. App. 2006).

Trial court impermissibly encroached upon the authority vested in the executive branch and violated the separation of powers where court ordered prosecution to reassemble charges filed against defendant, resulting in the dismissal of 11 of the charges. People v. Renander, 151 P.3d 657 (Colo. App. 2006).

IV. JUDICIAL POWERS.

Judicial power of state is vested in courts; the legislative and executive departments are expressly forbidden the right to exercise it. Kolkman v. People, 89 Colo. 8, 300 P. 575 (1931).

Judicial powers can only be exercised by those entrusted therewith. The exercise of judicial power comprehends more than the use of perceptive and reflective faculties by which legal conclusions are deduced from the facts. The plenary exercise of power utilizes other attributes. The deliberate assumption of responsibility; the authoritative expression of legal conclusions in declaring the sentence of the law; the pronouncing of judgment in open court in the presence of those affected thereby, so as to bind and control persons and property; the

protection, and sometimes loss, of life and liberty, as well as the character and fortunes of individuals; the establishing of precedents affecting cherished rights of persons and property -- all are involved in the exercise of judicial power, and illustrate its importance. Such powers cannot be lawfully exercised, except by those entrusted therewith by the people under the constitution. De Votie v. McGerr, 14 Colo. 577, 23 P. 980 (1890).

Judiciary is but one of three branches of government independent of other two. People v. Martinez, 185 Colo. 187, 523 P.2d 120, aff'd, 185 Colo. 187, 526 P.2d 1325 (1974).

Although dependent upon other branches for necessary expenses. The courts have the inherent power to carry on their functions so that they may operate independently and not become dependent upon or a supplicant of either of the other departments of government, and may incur necessary and reasonable expenses in the performance of their judicial duties and it is the plain ministerial duty of those who control the purse to pay such expenses except only where the amounts are so unreasonable as to affirmatively indicate arbitrary and capricious acts. Smith v. Miller, 153 Colo. 35, 384 P.2d 738 (1963); Pena v. District Court, 681 P.2d 953 (Colo. 1984).

Courts do not unnecessarily interdict actions of another branch of government. Gates Rubber Co. v. South Sub. Metro. Recreation & Park Dist., 183 Colo. 222, 516 P.2d 436 (1973).

As judiciary can no more exercise power constitutionally conferred upon general assembly than can the executive. People v. Herrera, 183 Colo. 155, 516 P.2d 626 (1973).

Court may not order general assembly to adopt, or not adopt any legislation since it would violate separation of powers doctrine. Lucchesi v. State, 807 P.2d 1185 (Colo. App. 1990).

It is improper for judiciary to tell governor how to delegate authority in extradition matters. It is no less improper for the judiciary to tell the governor, once he has delegated his authority, how the delegated authority should be exercised. Steinman v. Caldwell, 628 P.2d 110 (Colo. 1981).

Once governor has granted extradition, court considering release can only decide: (1) Whether the extradition documents on their face are in order; (2) whether the petitioner has been charged with a crime in the demanding state; (3) whether the petitioner is the person named in the request for extradition; and (4) whether the petitioner is a fugitive. Steinman v. Caldwell, 628 P.2d 110 (Colo. 1981).

Judiciary is charged with administration of justice and must be free to perform its functions without restriction or impairment by the acts or conduct of another department. Smith v. Miller, 153 Colo. 35, 384 P.2d 738 (1963).

And courts must be independent, unfettered, and free from directives, influence, or interference from any extraneous source in their responsibilities and duties. Smith v. Miller, 153 Colo. 35, 384 P.2d 738 (1963).

Impartial role. The role of the judiciary, if its integrity is to be maintained, is one of impartiality. People v. Martinez, 185 Colo. 187, 523 P.2d 120, aff'd, 186 Colo. 225, 526 P.2d 1325 (1974).

Assumption of nonjudicial power under pretense of case prohibited. Courts cannot, under the pretense of an actual case, assume powers vested in either the executive or the legislative branches of government. McCroskey v. Gustafson, 638 P.2d 51 (Colo. 1981); Conrad v. City & County of Denver, 656 P.2d 662 (Colo. 1982).

Supreme court can give its opinion upon important questions

when requested to do so. The same instrument which divides the powers of government into distinct departments has been so amended by the voice of the people as to require the supreme court to give its opinion upon important questions, upon solemn occasions, when required by the governor, the senate or the house of representatives. In re Speakership of House of Representatives, 15 Colo. 520, 25 P. 707 (1890); People ex rel. Elder v. Sours, 31 Colo. 369, 74 P. 167 (1903).

Reapportionment authority constitutionally delegated to supreme court. Amendment no. 9, a proposed constitutional amendment relating to reapportionment on the ballot at the general election held on November 5, 1975, which amendment provides for a commission to promulgate a plan of reapportionment which the supreme court either approves or, in effect, orders modified as required by the court, did not violate the doctrine of separation of powers, since this article provides that no powers belonging to one governmental department shall be exercised by either of the others "except as in this constitution expressly directed or permitted", and amendment no. 9 expressly directs and permits this action by the supreme court. In re Interrogatories Propounded by Senate Concerning House Bill 1078, 189 Colo. 1, 536 P.2d 308 (1975).

Supreme court has duty to uphold legislation unless there is no room for doubt as to its violation of constitutional provisions. Mosko v. Dunbar, 135 Colo. 172, 309 P.2d 581 (1957).

As courts may not substitute judgment for that of legislative body. It is not the court's function to approve or disapprove of the wisdom or the lack of wisdom of legislative decisions or desirability of legislative acts. Nor can it substitute judgment for that of the legislative body charged with the duty and responsibility of zoning. Frankel v. City & County of Denver, 147 Colo. 373, 363 P.2d 1063 (1961).

Courts do not substitute their judgment for that of the general assembly. People v. Summit, 183 Colo. 421, 517 P.2d 850 (1974).

When the general assembly defines a crime and sets forth the intent necessary to commit the crime, the courts cannot alter the elements or substitute a different animus or intent. People v. Kanan, 186 Colo. 255, 526 P.2d 1339 (1974).

Any judicial review of decisions by other branches of government is limited to that which is provided by the constitution or laws of this state. In re Question Concerning State Judicial Review, 199 Colo. 463, 610 P.2d 1340 (1980).

The judiciary's avoidance of deciding political questions finds its roots in the Colorado Constitution's provisions separating the powers of state government, and recognizes that certain issues are best left for resolution by the other branches of government, or to be fought out on the hustings and determined by the people at the polls. People ex rel. Tate v. Prevost, 134 P. 129 (Colo. 1913); Colo. Common Cause v. Bledsoe, 810 P.2d 201 (Colo. 1991).

And courts possess no power to nullify by judicial repeal what has been regularly enacted by legislative branch of the government. Indus. Comm'n v. Lindvay, 94 Colo. 531, 31 P.2d 495 (1934).

Determination of constitutionality of statute only when claim timely. A claim that a statute under which an administrative board or department of the executive is proceeding is unconstitutional does not clothe the judiciary with power to interfere with or control such board in advance of its taking final action; such claim may be made only after the board has performed its function. Colo. State Bd. of Med. Exam'rs v. District Court, 138 Colo. 227, 331 P.2d 502 (1958).

The issue of whether the Colorado Constitution's speech-or-debate clause grants legislators absolute immunity from lawsuits was one traditionally within the role of the judiciary to resolve for it is peculiarly the province of the judiciary to interpret the constitution and say what the law is. Colo. Common Cause v. Bledsoe, 810 P.2d 201 (Colo. 1991).

Courts have no jurisdiction to interfere with officers of state whose duties are imposed by statute. Colo. State Bd. of Med. Exam'rs v. District Court, 138 Colo. 227, 331 P.2d 502 (1958).

In deference to the tripartite structure of government, courts recognize that a trial court may not interfere with the officers of the executive branch of government whose duties are imposed by statute. Colo. Coll. v. Heckers, 33 Colo. App. 219, 517 P.2d 419 (1973).

The supreme court cannot enjoin upon officers of the state duties that they do not have under the constitution or prohibit them from exercising duties imposed upon them by the constitution. In re Legislative Reapportionment, 150 Colo. 380, 374 P.2d 66 (1962).

As judicial department cannot interfere with executive department, except where constitutionally permissible. People ex rel. Dunbar v. District Court, 180 Colo. 107, 502 P.2d 420 (1972).

The authority to promulgate rules for an executive agency resides in departments of government other than the judiciary. Travelers Ins. Co. v. Savio, 706 P.2d 1258 (Colo. 1985).

Courts do not have jurisdiction to interfere with the executive branch of the government in the performance of its statutory duties. Kort v. Hufnagel, 729 P.2d 370 (Colo. 1986).

A juvenile court, once having committed an individual to the custody of the department of institutions pursuant to statute, may not impose its own conditions on the department's treatment of that individual. McDonnell v. Juvenile Court, 864 P.2d 565 (Colo. 1993).

Prohibition in district court usurps executive authority. The sole object of the writ of prohibition in the district court is to obtain an injunction to restrain a state board from performing its duties. If this should be permitted in a direct proceeding, the result would be to directly subject executive officials to the jurisdiction of the courts when acting within their province, and strip them of their constitutional powers. This is an authority which the judicial department cannot exercise in this manner, for the obvious reason that to concede it would be an assumption that the judicial was of superior authority to the executive department. Colo. State Bd. of Med. Exam'rs v. District Court, 138 Colo. 227, 331 P.2d 502 (1958); People ex rel. Orcutt v. District Court, 167 Colo. 162, 445 P.2d 887 (1968).

Court was without jurisdiction to assess court costs against executive branch of the state, or its officers. State ex rel. Fort Logan Mental Health Center v. Harwood, 34 Colo. App. 213, 524 P.2d 614 (1974).

De novo review of nonjudicial function violates article. If the function performed by an agency is administrative or legislative, and if a court is required to do all over again what the agency has done, the system of review violates this article and the separation of powers doctrine. Pub. Utils. Comm'n v. Northwest Water Corp., 168 Colo. 154, 451 P.2d 266 (1969).

And supreme court has exclusive power to define and regulate practice of law and to determine the qualifications for admission of persons to practice law, as well as the correlative right to discipline those licensed to practice

law. Denver Bar Ass'n v. Pub. Utils. Comm'n, 154 Colo. 273, 391 P.2d 467 (1964); People v. Buckles, 167 Colo. 64, 453 P.2d 404 (1968).

There is no authority in these respects in legislative or executive departments. Legislation in any of these areas does not add to or detract from the exclusive authority of the supreme court. Denver Bar Ass'n v. Pub. Utils. Comm'n, 154 Colo. 273, 391 P.2d 467 (1964).

Supreme court regulation counsel and office of attorney regulation counsel are part of the judicial branch because they are part of a process of regulating attorneys that falls within the powers and duties of the judicial branch. Gleason v. Judicial Watch, Inc., 2012 COA 76, 292 P.3d 1044.

Disqualifying felons from practice of law consistent with power. Section 18-1-105, disqualifying a convicted felon of holding an office of trust or practicing as an attorney, nowise interferes with the exclusive right of the supreme court to determine the rules and regulations which shall govern those seeking admission to the bar. Nor does the statute impinge in any real sense the judicial right to discipline those licensed to practice law. Rather, this is an effort by the general assembly, under its police power, to bar convicted felons from practicing law in the courts. The general assembly has the power to do so, and § 18-1-105 does not violate the separation of powers doctrine. People v. Buckles, 167 Colo. 64, 453 P.2d 404 (1968).

Courts may promulgate and enforce rules of procedure. The courts, charged with the duty of exercising the judicial power, must necessarily possess the means with which to effectually and expeditiously discharge that duty; this duty can be performed and discharged in no other manner than through rules of procedure, and consequently the supreme court is charged with the power and duty of formulating, promulgating, and enforcing such rules of procedure for the trial of actions as it deems necessary and proper for performing its constitutional function. Kolkman v. People, 89 Colo. 8, 300 P. 575 (1931).

Person denied parole can seek judicial review only as provided by C.R.C.P. 106 (a)(2). In re Question Concerning State Judicial Review, 199 Colo. 463, 610 P.2d 1340 (1980).

The supreme court may promulgate procedural rules. The general assembly is free to fashion substantive rules which reflect policy judgments that may affect procedures in the judicial system. The line that separates a substantive rule from a procedural rule is amorphous; no legal test has been uniformly adopted. J.T. v. O'Rourke ex rel. Tenth Judicial Dist., 651 P.2d 407 (Colo. 1982).

Section 16-5-402 is a substantive statute, is an appropriate subject for legislative action, and does not infringe on the rule making power of the judiciary or the constitutional doctrine of separation of powers. People v. Wiedemer, 852 P.2d 424 (Colo. 1993).

Supreme court's rule-making authority is described in § 21 of art. VI of this constitution. People v. McKenna, 199 Colo. 452, 611 P.2d 574 (1980).

Constitution grants to supreme court the power to promulgate rules governing court procedure, but the question remains whether a particular rule or statute is procedural or substantive. People v. McKenna, 199 Colo. 452, 611 P.2d 574 (1980).

A statute governing procedural matters in criminal cases which conflicts with a rule promulgated by the supreme court would be a legislative invasion of the court's rule-making powers. Conversely, in substantive matters, a statutory enactment of the legislative

branch prevails over a conflicting supreme court rule. People v. Hollis, 670 P.2d 441 (Colo. App. 1983); People v. Prophet, 42 P.3d 61 (Colo. App. 2001).

The test for distinguishing procedural from substantive matters requires an examination of the purpose of the statute: If the purpose is to permit the court to function and function efficiently, the statute must yield to the rule; whereas, if the statute embodies a matter of public policy, the statute controls. People v. Hollis, 670 P.2d 441 (Colo. App. 1983); People v. Prophet, 42 P.3d 61 (Colo. App. 2001).

Section 18-3-408 does not violate the constitutional requirement of separation of powers by interfering with the rule-making power of the court established in § 21 of art. VI of this constitution. People v. Estorga, 200 Colo. 78, 612 P.2d 520 (1980).

Subsection 17-22.5-403 (9) does not violate separation of powers. The constitution does not provide that sentencing is within the sole province of the judiciary. The general assembly has the power to prescribe punishment and limit the court's sentencing authority. In this case, the general assembly, by enacting subsection (9), simply extended Colorado's parole supervision scheme to provide additional means for successfully reintegrating offenders into the community consistent with public safety. People v. Jackson, 109 P.3d 1017 (Colo. App. 2004).

Mandatory sentences for violent crimes do not violate separation of powers doctrine; the judiciary is not granted the absolute right to determine punishment in every case. People v. Childs, 199 Colo. 436, 610 P.2d 101 (1980).

And judiciary may not delegate power to sentence. This article prohibits the general assembly from delegating a legislative power to the judiciary, and the judiciary in turn from thereafter delegating the judicial power to fix and determine a sentence to the executive department. Specht v. Tinsley, 153 Colo. 235, 385 P.2d 423 (1963).

But must confine prisoners where general assembly determines. Designation of place of confinement of those found guilty of crime is a legislative rather than judicial function, and sentences must be pronounced in conformity with the legislative mandate. Tinsley v. Crespin, 137 Colo. 302, 324 P.2d 1033 (1958).

Juvenile courts cannot delegate power to detain to executive branch. The children's code gives the juvenile courts the power to detain 14- and 15-year old children in an adult detention facility, but the court cannot delegate its judicial power to the executive branch. C.C.C. v. District Court, 188 Colo. 437, 535 P.2d 1117 (1975).

Prosecutorial discretion not subject to judicial control. Whether the evidence of witnesses shall be tested by ordinary means of interrogation or by other means, such as requiring a potential witness to submit to a polygraph examination, is a matter of prosecutorial discretion and is not subject to judicial control or direction. People v. District Court, 632 P.2d 1022 (Colo. 1981).

Prosecutorial discretion flows from the doctrine of separation of powers and a prosecutor's charging decision may not be controlled or limited by judicial intervention. People v. Hughes, 946 P.2d 509 (Colo. App. 1997).

Whether constitutionally guaranteed property right can be denied for some justifiable reason is essentially judicial question, and under the doctrine of separation of powers of government it must remain a judicial question. People v. Nothaus, 147 Colo. 210, 363 P.2d 180 (1961).

Where the plaintiff alleged that mandatory arbitration violates

the separation of powers doctrine, the court held that the Colorado mandatory arbitration act does not vest judicial authority in another branch of government and therefore does not violate the provisions of this article. Firelock Inc. v. District Court, 776 P.2d 1090 (Colo. 1989).

Section 22-33-108 (7) violates the constitutional requirement of separation of powers by abrogating the judiciary's power to incarcerate juveniles for contempt of court orders in compulsory school attendance cases. In Interest of J.E.S., 817 P.2d 508 (Colo. 1991).

Probation-like supervision of a defendant by adult diversion program in a district attorney's office was not a violation of separation of powers. Probation is not a necessary function of the judiciary, and there is no constitutional requirement that defendants on deferred judgment be supervised by the judicial branch. People v. Method, 900 P.2d 1282 (Colo. App. 1994).

Because preliminary injunction issued before independent ethics commission (commission) came into existence and before it had opportunity to act in furtherance of article XXIX (amendment 41), plaintiffs failed to present a ripe as-applied constitutional challenge. Relief plaintiffs seek is only available in a successful facial challenge, not in an as-applied challenge. In order for plaintiffs to obtain a declaration that article XXIX is unconstitutional as applied, there must be an actual application or at least a reasonable possibility of enforcement or threat of enforcement. As of the time of suit, the commission was not yet in existence, and it had not yet acted to enforce the gift bans. No enforcement or threat of enforcement of the gift bans had occurred. Therefore, concerns expressed by plaintiffs were merely speculative interpretations of what might occur once commission is operative. As such, district court did not have jurisdiction to grant preliminary injunction. Developmental Pathways v. Ritter, 178 P.3d 524 (Colo. 2008).

ARTICLE IV
Executive Department

Section 1. Officers - terms of office. (1) The executive department shall include the governor, lieutenant governor, secretary of state, state treasurer, and attorney general, each of whom shall hold his office for the term of four years, commencing on the second Tuesday of January in the year 1967, and each fourth year thereafter. They shall perform such duties as are prescribed by this constitution or by law.

(2) In order to broaden the opportunities for public service and to guard against excessive concentrations of power, no governor, lieutenant governor, secretary of state, state treasurer, or attorney general shall serve more than two consecutive terms in such office. This limitation on the number of terms shall apply to terms of office beginning on or after January 1, 1991. Any person who succeeds to the office of governor or is appointed or elected to fill a vacancy in one of the other offices named in this section, and who serves at least one-half of a term of office, shall be considered to have served a term in that office for purposes of this subsection (2). Terms are considered consecutive unless they are at least four years apart.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 33. **L. 56:** Entire section amended, see **L. 57,** p. 792. **L. 64:** Entire section amended, p. 837. **Initiated 90:** Entire section amended, effective upon proclamation of the Governor, **L. 91,** p. 2035, January 3, 1991.

Cross references: For provisions concerning the office of the governor, see part 1 of article 20 of title 24; for provisions concerning the office of the secretary of state, see article 21 of title 24; for provisions concerning the office of the state treasurer, see article 22 of title 24; for the powers and duties of the attorney general, see § 24-31-101.

ANNOTATION

Law reviews. For article, "Constitutional Regulation of Legislative Procedure in Colorado", see 3 Rocky Mt. L. Rev. 38 (1930). For article, "The Constitutionality of Term Limitation", see 19 Colo. Law. 2193 (1990).

Purpose of section. The purpose of this section is to provide for such officers of the executive department as the members of the constitutional convention deemed absolutely indispensable; leaving it to the general assembly to create new offices as the growth of the state and experience might suggest, and to abolish the same, but without authority to abolish any of those enumerated. Parks v. Commissioners of Soldiers' & Sailors' Home, 22 Colo. 86, 43 P. 542 (1896); People ex rel. Foley v. Montez, 48 Colo. 436, 110 P. 639 (1910).

Section did not intend to limit executive officers. In declaring what officers should constitute the executive department of the state, it was not intended that the general assembly should not create new executive officers. Such a presumption would do violence to the intelligence of the framers of that instrument, and of the people who adopted it. Parks v. Commissioners of Soldiers' & Sailors' Home, 22 Colo. 86, 43 P. 542 (1896).

Governor derives his authority from constitution and laws enacted pursuant thereto. Colo. Polytechnic Coll. v. State Bd. for Cmty. Colls., 173 Colo. 39, 476 P.2d 38 (1970).

And action by governor in excess of authority deemed void. Where no constitutional or legislative authority, express or implied, is to be found conferring an appointive power upon the governor or authority upon the state board for community colleges and occupational education to act on behalf of the federal government, the governor's designation of the state board as the "state approving agency" for approval or nonapproval of courses offered to veterans was without lawful authority and a nullity. Colo. Polytechnic Coll. v. State Bd. for Cmty. Colls., 173 Colo. 39, 476, P.2d 38 (1970).

This section created office of attorney general, made the incumbent thereof an executive officer of the state, and required him to perform such duties as may be prescribed by the constitution or by law. People v. Gibson, 53 Colo. 231, 125 P. 531, 1914B Ann. Cas. 138 (1912).

But office has only powers given thereto by general assembly. Although the constitution recognizes the attorney general as being part of the executive branch of government, the attorney general does not have powers beyond those granted by the general assembly. People ex rel. Tooley v. District Court, 190 Colo. 486, 549 P.2d 774 (1976).

Though the attorney general and the district attorney are constitutional officers in this state, their

powers and duties are not specified in the constitution itself, but are such as the general assembly by legislative act may prescribe. Colo. State Bd. of Pharmacy v. Hallett, 88 Colo. 331, 296 P. 540 (1931).

And no constitutionally exclusive right to prosecute state's civil actions. There is no constitutional provision which confers upon the attorney general the exclusive right to prosecute and defend civil actions in behalf of the state. Colo. State Bd. of Pharmacy v. Hallett, 88 Colo. 331, 296 P. 540 (1931).

As Colorado has neither identified nor required attorney general to serve as "people's elected chief law officer", as some states have. People ex rel. Tooley v. District Court, 190 Colo. 486, 549 P.2d 774 (1976).

State board of assessors deemed executive, though not constitutionally defined. The state board of assessors is not part of the executive department as defined by the constitution, but it cannot be seriously contended that it is not part of the executive branch of the state government, in the comprehensive sense in which executive is used when government is divided into three distinct branches. People ex rel. Alexander v. District Court, 29 Colo. 182, 68 P. 242 (1901).

Applied in People ex rel. Walker v. Capp, 61 Colo. 396, 158 P. 143 (1916); Guyer v. Stutt, 68 Colo. 422, 191 P. 120 (1920); People ex rel. Brown v. District Court, 196 Colo. 359, 585 P.2d 593 (1978); Hedstrom v. Motor Vehicle Div., 662 P.2d 173 (Colo. 1983).

Section 2. Governor supreme executive. The supreme executive power of the state shall be vested in the governor, who shall take care that the laws be faithfully executed.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 33.

ANNOTATION

Law reviews. For article, "Martial Law in Colorado", see 5 Den. B. Ass'n Rec. 4 (Feb. 1928).

It is express duty of governor to see that laws be faithfully executed and to perform other duties mentioned in the constitution. People ex rel. Ammons v. Kenehan, 55 Colo. 589, 136 P. 1033 (1913).

Executive to administer appropriated funds. In order to fulfill his duty to faithfully execute the laws, the executive has the authority to administer the funds appropriated by the general assembly for programs enacted by the general assembly, and must insure that the general assembly does not administer the appropriation once it has been made. Anderson v. Lamm, 195 Colo. 437, 579 P.2d 620 (1978).

The governor retains control over those funds deemed custodial in nature. In re Interrogatories on House Bill 04-1098, 88 P.3d 1196 (Colo. 2004).

The governor's flexibility in administering appropriated funds is limited by the principle that the legislature controls the amount to be spent for particular purposes. Colo. General Assembly v. Lamm, 700 P.2d 508 (Colo. 1985).

Governor may petition for mandamus against state officer. The governor is a proper party to petition for an original writ of mandamus to compel the state auditor to process lawful appropriations. Although private interests of claimants are involved, the paramount interest is the interest of the

state. The governor is directly interested in seeing that the officers of the executive department, of which he is the supreme head, shall execute the duties imposed upon them by law, when the performance of those duties is necessary before the governor can properly discharge the duties imposed upon him. People ex rel. Ammons v. Kenehan, 55 Colo. 589, 136 P. 1033 (1913).

Supreme executive power does not include powers of land board. The discretion and power of the state board of land commissioners, being vested in the members collectively by §§ 9 and 10 of art. IX, Colo. Const., is not included in the supreme executive power which is by the constitution vested alone in the governor. Greenwood Cem. Land Co. v. Routt, 17 Colo. 156, 28 P. 1125 (1892).

In suit involving nongovernmental power governor must yield to judgment of court. The general rule is that private rights must be regarded irrespective of the parties to the controversy. When the governor has had his day in court in a suit or action with a private citizen in a matter affecting a specific vested right of the latter such as the right to have the governor sign a patent of the land board, and not involving the political, governmental, or other discretionary power of the former, and the action is finally determined in favor of the citizen, there can be no doubt that it is the duty of the governor, the same as any other party, to yield obedience to the judgment of the court. Greenwood Cem. Land Co. v. Routt, 17 Colo. 156, 28 P. 1125 (1892).

As personification of state, governor proper party defendant in suit contesting constitutionality of article XXIX (amendment 41) at time of its filing. The evaluation of whether a person or entity is a proper party in a lawsuit must be determined in light of relevant facts and circumstances. There was no alternative entity for plaintiffs to sue in order to challenge article XXIX. Colorado has long recognized the practice of naming the governor, in his role as state's chief executive, as proper defendant in cases where a party seeks to "enjoin or mandate enforcement of a statute, regulation, ordinance, or policy". The only appropriate state agent for litigation purposes was the governor. Prior to creation of the independent ethics commission, the governor was appropriate party defendant in a constitutional challenge. Developmental Pathways v. Ritter, 178 P.3d 524 (Colo. 2008).

Applied in In re Moyer, 35 Colo. 159, 85 P. 190 (1905); In re Interrogatories by Governor, 99 Colo. 591, 65 P.2d 7 (1937).

Section 3. State officers - election - returns. The officers named in section one of this article shall be chosen on the day of the general election, by the registered electors of the state. The governor and the lieutenant governor shall be chosen jointly by the casting by each voter of a single vote applicable to both offices. The returns of every election for said officers shall be sealed up and transmitted to the secretary of state, directed to the speaker of the house of representatives, who shall immediately, upon the organization of the house, and before proceeding to other business, open and publish the same in the presence of a majority of the members of both houses of the general assembly, who shall for that purpose assemble in the house of representatives. The joint candidates having the highest number of votes cast for governor and lieutenant governor, and the person having the highest number of votes for any other office, shall be

declared duly elected, but if two or more have an equal and the highest number of votes for the same office or offices, one of them, or any two for whom joint votes were cast for governor and lieutenant governor respectively, shall be chosen thereto by the two houses, on joint ballot. Contested elections for the said offices shall be determined by the two houses, on joint ballot, in such manner as may be prescribed by law.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 33. **L. 67:** Entire section amended, p. 1083. **L. 84:** Entire section amended, p. 1143, effective upon proclamation of the Governor, **L. 85,** p. 1791, January 14, 1985.

Cross references: For elections generally, see articles 1 to 13 of title 1; for state and district officers, see § 1-4-204; for the proceedings to contest the election of state officers, see § 1-11-205; for rules for conducting contests for state officers, see § 1-11-207.

ANNOTATION

Duty does not make speaker state officer. There is no substantial reason for concluding that the duty of receiving, opening, and publishing the election returns for officers of the executive department before both houses of the general assembly was devolved upon the speaker on the ground that he was a state officer; nor does the devolving of such duty upon the speaker in any way tend to make him a state officer any more than it makes state officers of all the members of the general assembly who are required to participate in the canvass of such returns. It seems far more probable that the lieutenant governor is exempted from such duty because he is a state officer. In re Speakership of House of Representatives, 15 Colo. 520, 25 P. 707 (1890).

Section 4. Qualifications of state officers. No person shall be eligible to the office of governor or lieutenant governor unless he shall have attained the age of thirty years, nor to the office of secretary of state or state treasurer unless he shall have attained the age of twenty-five years, nor to the office of attorney general unless he shall have attained the age of twenty-five years and be a licensed attorney of the supreme court of the state in good standing, and no person shall be eligible to any one of said offices unless, in addition to the qualifications above prescribed therefor, he shall be a citizen of the United States, and have resided within the limits of the state two years next preceding his election.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 33. **L. 64:** Entire section amended, p. 837.

Section 5. Governor commander-in-chief of militia. The governor shall be commander-in-chief of the military forces of the state, except when they shall be called into actual service of the United States. He shall have power to call out the militia to execute the laws, suppress insurrection or repel invasion.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 34.

Law reviews. For article, "Martial Law in Colorado", see 5 Den. B. Ass'n Rec. 4 (Feb. 1928).

Phrase, "to execute the laws" contemplates enforcement of judicial process -- that is, the enforcement of a right or remedy provided by the law and judicially determined and ordered to be enforced, not an arbitrary enforcement by the executive of what he may consider the law to be. In re Fire & Excise Comm'rs, 19 Colo. 482, 36 P. 234 (1894).

By no rule of construction can the power and duty imposed upon the governor "to execute the laws" be held to authorize the forcible induction of an appointee into office. In re Fire & Excise Comm'rs, 19 Colo. 482, 36 P. 234 (1894).

Governor's declaration that state of insurrection exists is conclusive of that fact. Moyer v. Peabody, 212 U.S. 78, 29 S. Ct. 235, 53 L. Ed. 410 (1909).

It must become the governor's duty to determine as a fact when conditions exist in a given locality which demand that in the discharge of his duties as chief executive of the state he shall employ the militia to suppress. This being true, the recitals in the proclamation to the effect that a state of insurrection existed in a certain locality cannot be controverted. Otherwise the legality of the orders of the executive would not depend upon his judgment, but upon the judgment of another coordinate branch of the state government. In re Moyer, 35 Colo. 159, 85 P. 190 (1905).

Relation to section 2 of this article. As section 2 of this article requires the governor to take care that the laws be faithfully executed, he is made commander-in-chief of the military forces of the state, and vested with authority to call out the militia to execute the laws and suppress insurrection. In re Moyer, 35 Colo. 159, 85 P. 190 (1905).

Legislative regulation of tenure of officers of National Guard does not contravene this section, providing that the governor shall be commander-in-chief of the military forces of the state. People ex rel. Boatright v. Newlon, 77 Colo. 516, 238 P. 44 (1925).

Section 6. Appointment of officers - vacancy. (1) The governor shall nominate, and, by and with the consent of the senate, appoint all officers whose offices are established by this constitution, or which may be created by law, and whose appointment or election is not otherwise provided for, and may remove any such officer for incompetency, neglect of duty, or malfeasance in office. If the vacancy occurs in any such office while the senate is not in session, the governor shall appoint some fit person to discharge the duties thereof until the next meeting of the senate when he shall nominate and, by and with the consent of the senate, appoint some fit person to fill such office.

(2) If the office of state treasurer, secretary of state, or attorney general shall be vacated by death, resignation, or otherwise, the governor shall nominate and, by and with the consent of the senate, appoint a successor. The appointee shall hold the office until his successor shall be elected and qualified in such manner as may be provided by law. If the vacancy occurs in any such office while the senate is not in session, the governor shall appoint some fit person to discharge the duties thereof until the next meeting of the senate, when he shall nominate and, by and with the consent of the senate, appoint some fit person to fill such office.

(3) The senate in deliberating upon executive nominations may sit with closed doors, but in acting upon nominations they shall sit with open doors, and the vote shall be taken by ayes and noes, which shall be entered upon the journal.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 34. **L. 64:** Entire section amended, p. 838. **L. 74:** Entire section amended, p. 445, effective January 1, 1975.

Editor's note: The Governor's proclamation date in 1974 was December 20, 1974.

Cross references: For removal of officers by impeachment or for misconduct, see article XIII of this constitution.

ANNOTATION

Law reviews. For article, "The Misuse of Judicial Flexibility in Quo Warranto Cases", see 10 Rocky Mt. L. Rev. 239 (1938).

This section recognizes and provides for appointment of officers not enumerated in section 1 of this article. People ex rel. Foley v. Montez, 48 Colo. 436, 110 P. 639, 38 L.R.A. (n.s.) 1001 (1910).

Interim appointment power of governor must be exercised exclusively by him and by his express executive order. People ex rel. Lamm v. Banta, 189 Colo. 474, 542 P.2d 377 (1975).

Expiration of incumbent's term of office creates vacancy within the meaning of this section of the constitution. Murphy v. People ex rel. Lehman, 78 Colo. 276, 242 P. 57 (1925).

The term "vacancies" does not apply to the incumbent but to the term or the office, or both, depending generally on the context. People ex rel. Bentley v. Le Fevre, 21 Colo. 218, 40 P. 882 (1895); People ex rel. Callaway v. De Guelle, 47 Colo. 13, 105 P. 1110 (1909); People ex rel. Griffith v. Scott, 52 Colo. 59, 120 P. 126 (1911).

And state officers may resign; the relinquishment of public office may be exercised at the pleasure of the holder thereof. People ex rel. Rosenberg v. Keating, 112 Colo. 26, 144 P.2d 992 (1944).

Section provides for discharge of duties of office. This section does not say that the officers shall hold their offices until their successors shall be appointed and qualified, but merely that the officer shall discharge the duties of the office, implying that he is a mere locum tenens. Walsh v. People ex rel. McClenahan, 72 Colo. 406, 211 P. 646 (1922). See People ex rel. Griffith v. Scott, 52 Colo. 59, 120 P. 126 (1911).

As ad interim appointments do not fill vacancies. This section providing for ad interim appointments, plainly refers to cases where the joint action of the governor and the senate is necessary to fill a vacancy. Its very language indicates that such appointments, by the governor, are not intended to fill vacancies. It does not say that he shall appoint some fit person to fill the vacancy or the office until the senate meets, but "to discharge the duties thereof until the next meeting of the senate, when he shall nominate some person to fill such office". "To fill such office" undoubtedly means for the unexpired term and the governor in making ad interim appointments does not fill a vacancy. People ex rel. Griffith v. Scott, 52 Colo. 59, 120 P. 126 (1911).

Appointment power where vacancy continues after senate session. Under the clear language of this section, the governor has no

interim appointive power while the senate is in session, but if, however, such a vacancy continues until a time when the senate is not in session, the interim appointive power of the governor then comes into being. People ex rel. Lamm v. Banta, 189 Colo. 474, 542 P.2d 377 (1975).

Where vacancy occurs in office of public trustee, appointment to discharge the duties may be made by the governor, as provided by this section. Walsh v. People ex rel. McClenahan, 72 Colo. 406, 211 P. 646 (1922).

This provision does not apply to offices created by statute to be filled as therein otherwise provided. People v. Osborne, 7 Colo. 605, 4 P. 1074 (1884); Brown v. People, 11 Colo. 109, 17 P. 104 (1887); Trimble v. People ex rel. Phelps, 19 Colo. 187, 34 P. 981 (1893); Monash v. Rhodes, 27 Colo. 235, 60 P. 569 (1900).

Thus, appointment of warden of state reformatory is not committed to governor, being "otherwise provided for" within the meaning of this section. The constitution not conferring upon any officer the power to appoint to this office, it rested with the general assembly to confer the power, and take it away, at its pleasure. People ex rel. Walker v. Capp, 61 Colo. 396, 158 P. 143 (1916).

Although constitutional method may apply until statutory method effective. If a method is prescribed by statute for the filling of vacancies, requiring the joint action of the governor and senate, and time must expire between its occurrence in the recess of the senate and the time that the statutory method of filling it can be employed, the constitutional regulation for the appointment ad interim must be resorted to for the intervening time. People ex rel. Griffith v. Scott, 52 Colo. 59, 120 P. 126 (1911).

Power of removal includes only officers appointed with consent of senate. The governor lacks the power to remove a state personnel board member under this section. "Such officer" in this section refers only to officers appointed by the governor with the consent of the senate. It is the method of appointment, not the place of its provision, which governs. No other conclusion can be reached save by striking the word "such" and reading it "may remove any officer". Roberts v. People ex rel. Hicks, 77 Colo. 281, 235 P. 1069 (1925).

Applied in In re Senate Bill, 12 Colo. 188, 21 P. 481 (1888); People ex rel. Smith v. Crissman, 41 Colo. 450, 92 P. 949 (1907).

Section 7. Governor may grant reprieves and pardons. The governor shall have power to grant reprieves, commutations and pardons after conviction, for all offenses except treason, and except in case of impeachment, subject to such regulations as may be prescribed by law relative to the manner of applying for pardons, but he shall in every case where he may exercise this power, send to the general assembly at its first session thereafter, a transcript of the petition, all proceedings, and the reasons for his action.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 34.

Cross references: For governor's right to commute sentence, see article 17 of title 16.

ANNOTATION

Law reviews. For comment on People v. Herrera appearing below, see 46 U. Colo. L. Rev. 311 (1974).

Due process. Nothing in the

Colorado Constitution or statutes grants any inmate a due process right to any kind of clemency proceeding. Schwartz v. Owens, 134 P.3d 455 (Colo. App. 2005).

Power of commutation is power to reduce punishment from a greater to a lesser sentence. People v. Herrera, 183 Colo. 155, 516 P.2d 626 (1973).

Governor may pardon public offense but he cannot deprive suitor of his remedy. Ex parte Browne, 2 Colo. 553 (1875).

Where governor has commuted defendant's sentence, supreme court lacks jurisdiction to reduce, or in any way alter or amend the sentence as commuted. People v. Simms, 186 Colo. 447, 528 P.2d 228 (1974).

Trial court may take "second look" at sentence before conviction final. A trial court retains jurisdiction to take a "second look" at a sentence previously imposed only before the judgment of conviction underlying such sentence has become final. People v. Lyons, 44 Colo. App. 126, 618 P.2d 673 (1980).

But executive has sole authority to modify sentence after final conviction. The executive branch of government, not the judiciary, has the sole authority to modify a legally imposed criminal sentence after the conviction upon which it is based has become final. People v. Lyons, 44 Colo. App. 126, 618 P.2d 673 (1980).

And district court cannot alter or amend commuted sentence imposed by governor, because the governor has exclusive power to grant reprieves, commutations and pardons after conviction. People ex rel. Dunbar v. District Court, 180 Colo. 107, 502 P.2d 420 (1972); Johnson v. Perko, 692 P.2d 1140, (Colo. App. 1984).

So motion filed after commutation to correct clerical errors denied. Since the courts lack jurisdiction to alter or amend a commuted sentence imposed by the executive, a motion under Rule 36, Crim. P., to correct clerical oversights in sentencing may not be granted after commutation. People v. Quintana, 42 Colo. App. 477, 601 P.2d 637 (1979).

Prisoner's remedy when conviction is final. Once the conviction has become final the court lacks further jurisdiction to modify a sentence validly imposed, as to do so would encroach upon the executive power of the governor to grant executive commutation. The prisoner's remedy when his conviction has become final is to seek relief through the executive department. McClure v. District Court, 187 Colo. 359, 532 P.2d 340 (1975).

After conviction and exhaustion of appellate remedies, relief from a criminal sentence validly imposed may not be obtained through the judiciary, but rather the remedy therefor lies in the executive department by way of commutation. People v. Arellano, 185 Colo. 280, 524 P.2d 305 (1974); People v. Chavez, 185 Colo. 310, 524 P.2d 307 (1974).

Pardon not issued in compliance with procedures required by § 16-17-102 is invalid. People ex rel. Garrison v. Lamm, 622 P.2d 87 (Colo. App. 1980).

Section 18-1-410 (1) (f) invades governor's exclusive power to grant commutation after conviction as provided in this section, and therefore violates the doctrine of separation of powers embodied in art. III, Colo. Const. People v. Herrera, 183 Colo. 155, 516 P.2d 626 (1973).

But Crim. P. 35(a) is valid procedural rule promulgated pursuant to the rule-making power of the supreme court under § 21 of art. VI, Colo. Const., and it does not encroach upon the governor's exclusive power of commutation under this section. People v. Smith, 189 Colo. 50, 536 P.2d 820 (1975).

Applied in Best v. People ex rel. Florom, 121 Colo. 100, 212 P.2d 1007 (1949); People ex rel. Metzger v. District Court, 121 Colo. 141, 215 P.2d 327 (1949); People v. Chavez, 185 Colo. 310, 524 P.2d 307 (1974); People v. Malacara, 199 Colo. 243, 606 P.2d 1300 (1980); McKnight v. People, 199 Colo. 313, 607 P.2d 1007 (1980).

Section 8. Governor may require information from officers - message. The governor may require information in writing from the officers of the executive department upon any subject relating to the duties of their respective offices, which information shall be given upon oath whenever so required; he may also require information in writing at any time, under oath, from all officers and managers of state institutions, upon any subject relating to the condition, management and expenses of their respective offices and institutions. The governor shall, at the commencement of each session, and from time to time, by message, give to the general assembly information of the condition of the state, and shall recommend such measures as he shall deem expedient. He shall also send to the general assembly a statement, with vouchers, of the expenditures of all moneys belonging to the state and paid out by him. He shall, also, at the commencement of each session, present estimates of the amount of money required to be raised by taxation for all purposes of the state.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 34.

ANNOTATION

Applied in Parsons v. People, 32 Colo. 221, 76 P. 666 (1904).

Section 9. Governor may convene legislature or senate. The governor may, on extraordinary occasions convene the general assembly, by proclamation, stating therein the purpose for which it is to assemble; but at such special session no business shall be transacted other than that specially named in the proclamation. He may by proclamation, convene the senate in extraordinary session for the transaction of executive business.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 35.

ANNOTATION

This section is one of the exceptions referred to in art. III of this constitution. People v. McKenna, 199 Colo. 452, 611 P.2d 574 (1980).

Governor's authority not to offend separation of powers. The governor's authority to prescribe the matters for legislative action must be reasonably interpreted so as not to offend the separation of powers requirement. Empire Sav., Bldg. & Loan Ass'n v. Otero Sav. & Loan Ass'n, 640 P.2d 1151 (Colo. 1982).

Executive alone determines necessity of session. The necessity for the convention of the general assembly in special session, under this section, rests entirely with the executive. In re State Census, 9 Colo. 642, 21 P. 477 (1886).

Legislation not within items of governor's call prohibited. The general assembly was prohibited from attempting to repeal aid to needy

disabled under § 26-1-109 (9)(a) and replace it with an aid to temporarily disabled program where the legislation was not within items of governor's call. (Decided under prior version of § 7 of article V.) Burciaga v. Shea, 187 Colo. 78, 530 P.2d 508 (1974).

Scope of sessions. The session in even-numbered years is a "limited one" in which only fiscal matters and bills pertaining to subjects designated by the governor in writing during the first 10 days of the session can be considered. (Decided under prior version of § 7 of article V.) In re Legislative Reapportionment, 150 Colo. 380, 374 P.2d 66 (1962).

Governor may not prescribe form of legislation. The governor may define the appropriate subject matter for legislative consideration, but he may not prescribe the specific form that the legislation will take. Empire Sav., Bldg. & Loan Ass'n v. Otero Sav. & Loan Ass'n, 640 P.2d 1151 (Colo. 1982).

He must specially name subject matter of legislation. This constitutional provision contemplates that there shall first exist in the executive's mind a definite conception of a public emergency, which demands an extraordinary session, and then he may convene the general assembly for action upon that particular subject matter, to be specially named. Denver & R. G. R. R. v. Moss, 50 Colo. 282, 115 P. 696 (1911).

By this section, the governor is invested with extraordinary powers; he alone is to determine when there is an extraordinary occasion for convening the general assembly; and he alone is to designate the business which the general assembly is to transact when thus convened. In re Governor's Proclamation, 19 Colo. 333, 35 P. 530 (1894).

Extraordinary sessions of the general assembly can only be convened by the governor, and the business transacted therein is limited to that named in the proclamation. In re Interrogatories of Senate, 94 Colo. 215, 29 P.2d 705 (1934).

Otherwise no law at all can be enacted. The executive, in convening the general assembly in special session, has, under the constitution, the sole authority to designate the particular subject matter to which legislation shall be directed. If this duty is not performed by the executive, and if the proclamation calling the special session fails to name any particular subject matter to which the general assembly is to direct its attention, it can enact no law at all. Denver & R. G. R. R. v. Moss, 50 Colo. 282, 115 P. 696 (1911).

As the general assembly cannot go beyond limits of business specially named in the proclamation; nor can it legislate upon business not named in the proclamation. In re Governor's Proclamation, 19 Colo. 333, 35 P. 530 (1894).

But within limits of such business it may act freely, in whole or in part, or not at all, as deemed expedient according to its own judgment. The general assembly must do this much, or the right of legislating by the representatives of a free people at a special session is destroyed, and all our ideas of such right are rendered obsolete. In re Governor's Proclamation, 19 Colo. 333, 35 P. 530 (1894).

The executive, in convening the general assembly in special session, has no power to direct what legislation shall be enacted. Denver & R. G. R. R. v. Moss, 50 Colo. 282, 115 P. 696 (1911).

In designating in the proclamation convening the general assembly the law in relation to elections, the whole subject matter of such laws was before the general assembly, and specific instructions as to an amendment to such laws could be regarded only as advisory. People ex rel. McGaffey v. District Court, 23

Colo. 150, 46 P. 681 (1896).

Proclamation may include proposals for amendments to constitution. There is no express provision in this section, or elsewhere in the constitution which prohibits the governor from including in his proclamation, convening a special session of the general assembly, proposals for amendments to the constitution. Pearce v. People ex rel. Tate, 53 Colo. 399, 127 P. 224 (1912).

But where purpose of proclamation too broad. A proclamation convening the general assembly in special session, naming as the purpose for which it is to assemble, "To enact any and all legislation relating to, or in any wise affecting, corporations, both foreign and domestic, of a quasi-public nature", was too broad and indefinite to comply with the intent of the constitution, because it leaves to the general assembly itself, the choice of the subject matter or matters upon which legislation shall be undertaken. Denver & R. G. R. R. v. Moss, 50 Colo. 282, 115 P. 696 (1911).

Legislation within purview of proclamation. A house bill concerning emergency relief legislation and employment on public works was within the purview of the governor's proclamation calling a second extraordinary session of the general assembly for the purpose of enacting legislation to allay public discontent and social unrest and to prevent disaster in the critical emergency. In re Senate Resolution No. 2, 94 Colo. 101, 31 P.2d 325 (1933).

Successful grounds for challenging legislation passed by general assembly. Challenges to legislation on the basis that the bill passed by the general assembly exceeded the limits of the governor's call for a special session have been successful on two grounds: (1) That the governor's call was too broad (Denver & R.G.R.R. v. Moss, 50 Colo. 282, 115 P. 696 (1911)); or (2) that the governor's call was too specific (People ex rel. McGaffey v. District Court, 23 Colo. 150, 46 P. 681 (1896); In re Governor's Proclamation, 19 Colo. 333, 35 P. 530 (1894)). People v. McKenna, 199 Colo. 452, 611 P.2d 574 (1980).

Applied in Parsons v. People, 32 Colo. 221, 76 P. 666 (1904).

Section 10. Governor may adjourn legislature. The governor, in case of a disagreement between the two houses as to the time of adjournment, may upon the same being certified to him by the house last moving adjournment, adjourn the general assembly to a day not later than the first day of the next regular session.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 35.

Section 11. Bills presented to governor - veto - return. Every bill passed by the general assembly shall, before it becomes a law, be presented to the governor. If he approve, he shall sign it, and thereupon it shall become a law; but if he do not approve, he shall return it, with his objections, to the house in which it originated, which house shall enter the objections at large upon its journal, and proceed to reconsider the bill. If then two-thirds of the members elected agree to pass the same, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two-thirds of the members elected to that house, it shall become a law, notwithstanding the objections of the governor. In all such cases the vote of each

house shall be determined by ayes and noes, to be entered upon the journal. If any bill shall not be returned by the governor within ten days after it shall have been presented to him, the same shall be a law in like manner as if he had signed it, unless the general assembly shall by their adjournment prevent its return, in which case it shall be filed with his objections in the office of the secretary of state, within thirty days after such adjournment, or else become a law.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 35.

ANNOTATION

Purpose of returning vetoed bills to house of origin. The purpose behind the provision of this section requiring the executive to return a vetoed bill to the house of origin is to insure that the legislative branch shall have suitable opportunity to consider the governor's objections to bills and on such consideration to pass them over his veto, provided there are the requisite votes to do so. In re Interrogatories of Colo. Senate, 195 Colo. 220, 578 P.2d 216 (1978).

General rule of computation of time. In the computation of time prescribed by constitutional or statutory provisions for the performance of official acts, the general rule is that fractions of a day are not to be noticed, but each fraction is to be considered in the computation as a full day. In re Senate Resolution, 9 Colo. 632, 21 P. 475 (1886).

When the law requires an act to be performed within a given number of days from a day mentioned, the rule is to include one of the two days mentioned and to exclude the other. In re Senate Resolution, 9 Colo. 632, 21 P. 475 (1886).

This constitutional provision does not exclude Sunday from 10 days allowed the governor for consideration and return of bills presented to him by the general assembly. If Sunday intervenes between the day of presentation and the return day of the bill, it would legally constitute one of the 10 days. In re Senate Resolution, 9 Colo. 632, 21 P. 475 (1886).

But when return day Sunday, return may be made Monday. Where it happened that the return day fell upon Sunday, and, the general assembly not being in session upon that day, no opportunity was afforded to the governor to communicate with that body, having, by virtue of the constitutional provision, 10 days within which to return the bill, it follows from reason and principle that the return day was continued by operation of law until Monday. In re Senate Resolution, 9 Colo. 632, 21 P. 475 (1886); Elliott Co. v. Courtright Publishing Co., 67 Colo. 449, 182 P. 882 (1919).

Veto following adjournment ineffective unless bills and objections filed. Without required filing of bills and objections with secretary of state within the 30-day period following adjournment of the general assembly, a governor's veto, and public announcement thereof, has no effect and the bills become law. In re Interrogatories of Governor Regarding Certain Bills, 195 Colo. 198, 578 P.2d 200 (1978).

Where governor's signature is necessary for bill to become law, the date of passage for the statute was the date the governor signed the bill. People v. Wu, 894 P.2d 40 (Colo. App. 1995).

Effective date provision limited to when act "becomes law" prior to effective date. The language in § 19 of art. V of this constitution to the effect that a legislative act "shall take effect on the date stated in the act",

is limited to the situation in which the act "becomes a law" pursuant to this section prior to the stated effective date. People v. Glenn, 200 Colo. 416, 615 P.2d 700 (1980).

No constitutional prohibition prevents different effective dates for different portions of same act. Because the effective date stated in an act and the date a bill becomes a law are not necessarily identical, nothing in the constitution prevents different portions of the same act from taking effect on different dates. Tacorante v. People, 624 P.2d 1324 (Colo. 1981).

Bill passed by general assembly held to violate "single subject" requirement of article V, section 21 of this constitution and to intrude on the governor's ability to exercise veto power under this section. In re House Bill No. 1353, 738 P.2d 371 (Colo. 1987).

Where governor asserted that the general assembly infringed on his power to veto a legislative act, an interest protected by the constitution, he alleged a wrong that constituted an injury in fact to the governor's legally protected interest in his constitutional power to veto provisions of an appropriations bill and, therefore, he had standing to bring action. Romer v. Colo. General Assembly, 810 P.2d 215 (Colo. 1991).

Writing the words "disapproved and vetoed" on a bill without a veto message is insufficient to comply with this section. This section requires that the governor return bills to be vetoed with his objections so that such objections may be considered by the legislative house of origin. Because the words "disapproved and vetoed" fail to set forth such objections, they are not adequate to effect a valid veto. Romer v. Colo. General Assembly, 840 P.2d 1081 (Colo. 1992).

Once the governor purported to veto the footnotes and headnotes on the appropriations bill, the legislature could respond in one of two ways: Either attempt an override by a two-thirds majority vote or bring an action in a court of competent jurisdiction contesting the validity of the governor's vetoes. Romer v. Colo. General Assembly, 810 P.2d 215 (Colo. 1991).

Since there was no proper override or challenge and because the legislature chose instead to simply ignore the vetoes and demand that the footnotes and headnotes be treated as duly enacted law, it acted outside the sphere of legitimate legislative activity, and the vetoes are presumed to be valid. Romer v. Colo. General Assembly, 810 P.2d 215 (Colo. 1991).

The plain language of this section requires that reasons setting forth the basis for the governor's objection be stated in the governor's objections filed with the secretary of state. Thus, objections filed with the secretary of state with the language, "disapproved and vetoed" were insufficient and therefore, the governor's vetoes of bills containing such language were invalid. Romer v. Colo. General Assembly, 840 P.2d 1081 (Colo. 1992).

Applied in Carstens v. Lamm, 543 F. Supp. 68 (D. Colo. 1982).

Section 12. Governor may veto items in appropriation bills - reconsideration. The governor shall have power to disapprove of any item or items of any bill making appropriations of money, embracing distinct items, and the part or parts of the bill approved shall be law, and the item or items disapproved shall be void, unless enacted in manner following: If the general assembly be in session, he shall transmit to the house in which the bill originated

a copy of the item or items thereof disapproved, together with his objections thereto, and the items objected to shall be separately reconsidered, and each item shall then take the same course as is prescribed for the passage of bills over the executive veto.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 36.

ANNOTATION

Power of governor over legislation by exercise of veto is legislative power, and being in derogation of the general plan of the state government, the language conferring it must be strictly construed. Stong v. People ex rel. Curran, 74 Colo. 283, 220 P. 999 (1923).

And section vests him with discretionary power. This section shows a clear purpose to invest the executive with discretion to save such appropriations as are necessary to defray the expenses of the government, without the danger of incumbering or defeating them by excessive or improvident expenditures. In re Appropriations by Gen. Ass'y, 13 Colo. 316, 22 P. 464 (1889).

It grants power to veto item, but no power to veto part of item unless consideration of the purpose of the section and the evils at which it was aimed make such a construction indispensable to effectuate it. Stong v. People ex rel. Curran, 74 Colo. 283, 220 P. 999 (1923).

Under the provisions of this section the governor has no power to veto a portion of a separate, distinct and indivisible item in a general appropriation bill, such as the salary of a single employee. Stong v. People ex rel. Curran, 74 Colo. 283, 220 P. 999 (1923).

The veto power is merely a negative legislative power; it vests in the governor the authority to nullify but not to create statutes. Colo. General Assembly v. Lamm, 704 P.2d 1371 (Colo. 1985).

The purposes of the item veto are to curtail abuses such as log rolling, riders, and omnibus appropriation bills and to have a balanced budget in place at the start of a fiscal year by avoiding a requirement that the governor make an all or nothing choice with respect to an appropriation bill. Colo. General Assembly v. Lamm, 704 P.2d 1371 (Colo. 1985).

The purpose of limiting item vetoes to distinct items is to prevent the governor from modifying an item by accepting part and rejecting part. Colo. General Assembly v. Lamm, 704 P.2d 1371 (Colo. 1985).

An "item" is an indivisible sum of money dedicated to a stated purpose. Colo. General Assembly v. Lamm, 704 P.2d 1371 (Colo. 1985).

Governor could not veto long bill headnotes because the headnotes were not items subject to the governor's line-item veto power. Headnotes defining full-time equivalent; health, life, and dental; personal services; short-term disability; lease purchase; leased space; legal services; operating expenses; vehicle lease payments; multiuse network payments; utilities; capital outlay; and purchase of services from computer center are void, however, because they violate the separation of powers by intruding on the authority of the executive branch to administer the laws. Colo. Gen. Assembly v. Owens, 136 P.3d 262 (Colo. 2006).

The source of funds for an appropriation is as much a part of an item of appropriation as the amount of money appropriated and the purpose to which it is to be devoted, and it cannot be removed without affecting

the legislature's intent. Colo. General Assembly v. Lamm, 704 P.2d 1371 (Colo. 1985).

General assembly has standing to challenge the veto of an appropriation bill; its remedies are not limited to overriding the veto by a two-thirds vote. Colo. General Assembly v. Lamm, 704 P.2d 1371 (Colo. 1985).

General assembly has power to enact legislation by majority vote, and to require that it summon a two-thirds majority to override an invalid veto would upset the delicate constitutional balance between the executive and legislative branches. Colo. General Assembly v. Lamm, 704 P.2d 1371 (Colo. 1985).

Inquiry into the validity of an item veto does not involve a political question, the resolution of which should be eschewed by the courts. Colo. General Assembly v. Lamm, 704 P.2d 1371 (Colo. 1985).

Ten-day limitation applicable to attempted veto of appropriations bill. This section contains no time limitations within which the governor must exercise his veto power, but since § 11 of art. IV, Colo. Const., applies to every bill passed by the general assembly, this section must be read in conjunction with it as to time limitations, so that a 10-day limitation applies to the governor's attempted veto of an appropriations bill while the general assembly is in session. In re Interrogatories of Governor Regarding Certain Bills, 195 Colo. 198, 578 P.2d 200 (1978).

Veto of unconstitutional appropriation provision unnecessary. Any footnote violating either art. III, or § 32 of art. V, Colo. Const., in the 1971 senate appropriation bill no. 436 was void and unenforceable and the governor's act in vetoing was an appropriate act calling attention to the invalid footnote but such veto was not necessary to invalidate any such footnote. MacManus v. Love, C.A. no. C-24520 (D.C. Denver, Colo., filed Nov. 24, 1971).

Veto of appropriations provisions proper. The governor may properly veto any items of an appropriations bill which provide for a reversion of unexpended funds which is already provided for by existing law, contain substantive legislation contrary to § 32 of art. V, Colo. Const., violate the concept of separation of powers required by art. III, Colo. Const., conflict with existing duties and powers of individuals or departments, appear to be the result of erroneous draftsmanship, duplicate other items passed by the same session of the general assembly or attempt to control federal moneys received by an agency of the executive branch of the government. MacManus v. Love, C.A. no. C-24520 (D.C. Denver, Colo., filed Nov. 24, 1971).

Veto of appropriations provisions improper. The governor may not properly veto any items of an appropriations bill which constitute valid limitations on an expenditure and are inseparably connected to the expenditure, which are not separate items subject to a veto, or which contain valid conditions, such as an appropriation conditioned upon the receipt of federal moneys. MacManus v. Love, C.A. no. C-24520 (D.C. Denver, Colo., filed Nov. 24, 1971).

The governor cannot veto the source of an appropriation while leaving the amount intact, since the effect of such an action would be to prescribe that the money must come from otherwise-appropriated funds. Colo. General Assembly v. Lamm, 704 P.2d 1371 (Colo. 1985).

The governor cannot veto the appropriation provision of a substantive bill without vetoing the entire bill. The presence of an appropriation in a substantive bill does not make the bill an appropriations bill subject to the item veto power. Colo.

Gen. Assembly v. Owens, 136 P.3d 262 (Colo. 2006).

The governor has no power apart from this section and § 11 of this article to veto parts of a bill deemed unconstitutional by the governor. Colo. General Assembly v. Lamm, 704 P.2d 1371 (Colo. 1985).

Where governor asserted that the general assembly infringed on his power to veto a legislative act, an interest protected by the constitution, he alleged a wrong that constituted an injury in fact to the governor's legally protected interest in his constitutional power to veto provisions of an appropriations bill and, therefore, he had standing to bring action. Romer v. Colo. General Assembly, 810 P.2d 215 (Colo. 1991).

Once the governor purported to veto the footnotes and headnotes on the appropriations bill, the legislature could respond in one of two ways: Either attempt an override by a two-thirds majority vote or bring an action in a court of competent jurisdiction contesting the validity of the governor's vetoes. Romer v. Colo. General Assembly, 810 P.2d 215 (Colo. 1991).

Since there was no proper override or challenge and because the legislature chose instead to simply ignore the vetoes and demand that the footnotes and headnotes be treated as duly enacted law, it acted outside the sphere of legitimate legislative activity, and the vetoes are presumed to be valid. Romer v. Colo. General Assembly, 810 P.2d 215 (Colo. 1991).

Applied in MacManus v. Love, 179 Colo. 218, 499 P.2d 609 (1972); Anderson v. Lamm, 195 Colo. 437, 579 P.2d 620 (1978).

Section 13. Succession to the office of governor and lieutenant governor. (1) In the case of the death, impeachment, conviction of a felony, or resignation of the governor, the office of governor shall be vacant and the lieutenant governor shall take the oath of office and shall become governor.

(2) Whenever there is a vacancy in the office of the lieutenant governor, because of death, impeachment, conviction of a felony, or resignation, the governor shall nominate a lieutenant governor who shall take office upon confirmation by a majority vote of both houses of the general assembly. If the person nominated is a member of the general assembly, he may take the oath of office of lieutenant governor, and the legislative seat to which he was elected shall be vacant and filled in the manner prescribed by law pursuant to section 2 of article V of this constitution.

(3) In the event that the governor-elect fails to assume the office of governor because of death, resignation, or conviction of a felony, or refuses to take the oath of office, the lieutenant governor-elect shall take the oath of office and shall become governor on the second Tuesday in January in accordance with the provisions of section 1 of article IV of this constitution. In the event the lieutenant governor-elect fails to assume the office of lieutenant governor because of death, resignation, or conviction of a felony, or refuses to take the oath of office, the governor-elect upon taking office shall nominate a lieutenant governor who shall take the oath of office upon confirmation by a majority vote of both houses of the general assembly. If the person nominated is a member of the general assembly, he may take the oath of office of lieutenant governor, and the legislative seat to which he was elected shall be vacant and filled in the manner prescribed by law pursuant to section 2 of article V of this constitution.

(4) In the event the lieutenant governor or lieutenant governor-elect accedes to the office of governor because of a vacancy in said office for any of the causes enumerated in subsections (1) and (3) of this section, the office of lieutenant governor shall be vacant. Upon taking office, the new governor shall nominate a lieutenant governor who shall take the oath of office upon confirmation by a majority vote of both houses of the general assembly. If the person nominated is a member of the general assembly, he may take the oath of office of lieutenant governor, and the legislative seat to which he was elected shall be vacant and filled in the manner prescribed by law pursuant to section 2 of article V of this constitution.

(5) In the event the governor or lieutenant governor, or governor-elect or lieutenant governor-elect, at the time either of the latter is to take the oath of office, is absent from the state or is suffering from a physical or mental disability, the powers and duties of the office of governor and the office of lieutenant governor shall, until the absence or disability ceases, temporarily devolve upon the lieutenant governor, in the case of the governor, and, in the case of the lieutenant governor, upon the first named member of the general assembly listed in subsection (7) of this section who is affiliated with the same political party as the lieutenant governor; except that if the lieutenant governor and none of said members of the general assembly are affiliated with the same political party, the temporary vacancy in the office of lieutenant governor shall be filled by the first named member in said subsection (7). In the event that the offices of both the governor and lieutenant governor are vacant at the same time for any of the reasons enumerated in this subsection (5), the successors to fill the vacancy in the office of governor and in the office of lieutenant governor shall be, respectively, the first and second named members of the general assembly listed in subsection (7) of this section who are affiliated with the same political party as the governor; except that if the governor and none of said members of the general assembly are affiliated with the same political party, the vacancy in the office of governor and the vacancy in the office of lieutenant governor, respectively, shall be filled by the first and second named members in said subsection (7). The pro rata salary of the governor or lieutenant governor shall be paid to his successor for as long as he serves in such capacity, during which time he shall receive no other salary from the state.

(6) The governor or governor-elect, lieutenant governor or lieutenant governor-elect, or person acting as governor or lieutenant governor may transmit to the president of the senate and the speaker of the house of representatives his written declaration that he suffers from a physical or mental disability and he is unable to properly discharge the powers and duties of the office of governor or lieutenant governor. In the event no such written declaration has been made, his physical or mental disability shall be determined by a majority of the supreme court after a hearing held pursuant to a joint request submitted by joint resolution adopted by two-thirds of all members of each house of the general assembly. Such determination shall be final and conclusive. The supreme court, upon its own initiative, shall determine if and when such disability ceases.

(7) In the event that the offices of both the governor and lieutenant

governor are vacant at the same time for any of the reasons enumerated in subsections (1), (2), and (3) of this section, the successor to fill the vacancy in the office of governor shall be the first named of the following members of the general assembly who is affiliated with the same political party as the governor: President of the senate, speaker of the house of representatives, minority leader of the senate, or minority leader of the house of representatives; except that if the governor and none of said members of the general assembly are affiliated with the same political party, the vacancy shall be filled by one such member in the order of precedence listed in this subsection (7). The member filling the vacancy pursuant to this subsection (7) shall take the oath of office of governor and shall become governor. The office of lieutenant governor shall be filled in the same manner as prescribed in subsection (3) of this section when the lieutenant governor-elect fails to assume the office of lieutenant governor.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 36. **L. 74:** Entire section R&RE, p. 446, effective January 1, 1975.

Editor's note: The Governor's proclamation date in 1974 was December 20, 1974.

ANNOTATION

Applied in People ex rel. Parks v. Cornforth, 34 Colo. 107, 81 P. 871 (1905); Leckenby v. Post Printing & Publishing Co., 65 Colo. 443, 176 P. 490 (1918); Jaques v. Bray, 645 P.2d 22 (Colo. 1982).

Section 14. Lieutenant governor president of senate. (Repealed)

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 36. **L. 74:** Entire section repealed, p. 447, effective January 1, 1975.

Editor's note: The Governor's proclamation date in 1974 was December 20, 1974.

Section 15. No lieutenant governor - who to act as governor. (Repealed)

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 36. **L. 74:** Entire section repealed, p. 447, effective January 1, 1975.

Editor's note: The Governor's proclamation date in 1974 was December 20, 1974.

Section 16. Account and report of moneys. An account shall be kept by the officers of the executive department and of all public institutions of the state, of all moneys received by them severally from all sources, and for every service performed, and of all moneys disbursed by them severally, and a semi-annual report thereof shall be made to the governor, under oath.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 36.

Section 17. Executive officers to make report. (Repealed)

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 37.
L. 74: Entire section repealed, p. 447, effective January 1, 1975.
Editor's note: The Governor's proclamation date in 1974 was December 20, 1974.

Section 18. State seal. There shall be a seal of the state, which shall be kept by the secretary of state, shall be called the "Great Seal of the State of Colorado", and shall be in the form prescribed by the general assembly.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 37. **L. 90:** Entire section amended, p. 1861, effective upon proclamation of the Governor, **L. 91,** p. 2033, January 3, 1991.
Cross references: For the state seal, see § 24-80-901.

Section 19. Salaries of officers - fees paid into treasury. The officers named in section one of this article shall receive for their services a salary to be established by law, which shall not be increased or diminished during their official terms. It shall be the duty of all such officers to collect in advance all fees prescribed by law for services rendered by them severally, and pay the same into the state treasury.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 37.
Cross references: For compensation of district attorneys, see § 20-1-301; for compensation of state officers, see article 9 of title 24.

ANNOTATION

Provision does not apply to county officers. Lancaster v. Bd. of Comm'rs, 115 Colo. 261, 171 P.2d 987, 166 A.L.R. 839 (1946).

Increase or diminution may be subject to other restrictions. This section prohibits the increasing or diminishing of the salaries of executive officers during their official terms; but it does not provide that the increase or diminution of such salaries shall not be subject to other or further constitutional restrictions. Carlile v. Henderson, 17 Colo. 532, 31 P. 117 (1892); People v. Wright, 6 Colo. 92 (1881).

Appropriation to lieutenant governor void. As this section provides that the salary of the lieutenant governor shall not be increased during his official term, an appropriation made by the general assembly to this officer, "for official or semi-official purposes", was void. Leckenby v. Post Printing & Publishing Co., 65 Colo. 443, 176 P. 490 (1918).

Statutory increase in salary of state treasurer does not affect salary of then office holder as fixed at the time of his election. Carlile v. Henderson, 17 Colo. 532, 21 P. 117 (1892).

Section 20. State librarian. (Repealed)

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 37. **L. 2004:** Entire section repealed, p. 2745, effective upon proclamation of the Governor, **L. 2005,** p. 2341, December 1, 2004.

Section 21. Elected auditor of state - powers and duties.

(Repealed)

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 37. **L. 64:** Entire section amended, p. 838. **L. 74:** Entire section repealed, p. 447, effective January 1, 1975.

Editor's note: The Governor's proclamation date in 1974 was December 20, 1974.

Section 22. Principal departments. All executive and administrative offices, agencies, and instrumentalities of the executive department of state government and their respective functions, powers, and duties, except for the office of governor and lieutenant governor, shall be allocated by law among and within not more than twenty departments. Subsequently, all new powers or functions shall be assigned to departments, divisions, sections, or units in such manner as will tend to provide an orderly arrangement in the administrative organization of state government. Temporary commissions may be established by law and need not be allocated within a principal department. Nothing in this section shall supersede the provisions of section 13, article XII, of this constitution, except that the classified civil service of the state shall not extend to heads of principal departments established pursuant to this section.

Source: L. 66: Entire section added, see **L. 67,** p. 1 of the supplement to the 1967 Session Laws. **L. 69:** Entire section amended, p. 1246, effective upon proclamation of the Governor, December 7, 1970. **L. 2004:** Entire section amended, p. 2745, effective upon proclamation of the Governor, **L. 2005,** p. 2341, December 1, 2004.

ANNOTATION

Temporary discontinuance of a state department's functions and consequent lay off of employees as part of a budget reduction plan is lawful, but abolition of a statutorily created state agency and the transfer of its functions to another principal department without prior legislative authority is unlawful. Subsequent legislative authority for such transfer of functions does not make the issue of the validity of the Governor's actions moot. Bardsley v. Dept. of Pub. Safety, 870 P.2d 641 (Colo. App. 1994).

Applied in Colorado State Civil Serv. Employees Ass'n v. Love, 167 Colo. 436, 448 P.2d 624 (1968); State Hwy. Comm'n v. Haase, 189 Colo. 69, 537 P.2d 300 (1975).

Section 23. Commissioner of insurance. The governor shall nominate and, by and with the consent of the senate, appoint the commissioner of insurance to serve at his pleasure, and the state personnel system shall not extend to the commissioner of insurance.

Source: L. 84: Entire section added, p. 1153, effective upon proclamation of the Governor, **L. 85,** p. 1783, January 14, 1985.

ARTICLE V
Legislative Department

Law reviews: For article, "The Colorado Constitution in the New Century", see 78 U. Colo. L. Rev. 1265 (2007).

Section 1. General assembly - initiative and referendum. (1) The legislative power of the state shall be vested in the general assembly consisting of a senate and house of representatives, both to be elected by the people, but the people reserve to themselves the power to propose laws and amendments to the constitution and to enact or reject the same at the polls independent of the general assembly and also reserve power at their own option to approve or reject at the polls any act or item, section, or part of any act of the general assembly.

(2) The first power hereby reserved by the people is the initiative, and signatures by registered electors in an amount equal to at least five percent of the total number of votes cast for all candidates for the office of secretary of state at the previous general election shall be required to propose any measure by petition, and every such petition shall include the full text of the measure so proposed. Initiative petitions for state legislation and amendments to the constitution, in such form as may be prescribed pursuant to law, shall be addressed to and filed with the secretary of state at least three months before the general election at which they are to be voted upon.

(3) The second power hereby reserved is the referendum, and it may be ordered, except as to laws necessary for the immediate preservation of the public peace, health, or safety, and appropriations for the support and maintenance of the departments of state and state institutions, against any act or item, section, or part of any act of the general assembly, either by a petition signed by registered electors in an amount equal to at least five percent of the total number of votes cast for all candidates for the office of the secretary of state at the previous general election or by the general assembly. Referendum petitions, in such form as may be prescribed pursuant to law, shall be addressed to and filed with the secretary of state not more than ninety days after the final adjournment of the session of the general assembly that passed the bill on which the referendum is demanded. The filing of a referendum petition against any item, section, or part of any act shall not delay the remainder of the act from becoming operative.

(4) The veto power of the governor shall not extend to measures initiated by or referred to the people. All elections on measures initiated by or referred to the people of the state shall be held at the biennial regular general election, and all such measures shall become the law or a part of the constitution, when approved by a majority of the votes cast thereon, and not otherwise, and shall take effect from and after the date of the official declaration of the vote thereon by proclamation of the governor, but not later than thirty days after the vote has been canvassed. This section shall not be construed to deprive the general assembly of the power to enact any measure.

(5) The original draft of the text of proposed initiated constitutional amendments and initiated laws shall be submitted to the legislative research and drafting offices of the general assembly for review and comment. No later than two weeks after submission of the original draft, unless withdrawn by the proponents, the legislative research and drafting offices of the general assembly shall render their comments to the proponents of the proposed measure at a

meeting open to the public, which shall be held only after full and timely notice to the public. Such meeting shall be held prior to the fixing of a ballot title. Neither the general assembly nor its committees or agencies shall have any power to require the amendment, modification, or other alteration of the text of any such proposed measure or to establish deadlines for the submission of the original draft of the text of any proposed measure.

(5.5) No measure shall be proposed by petition containing more than one subject, which shall be clearly expressed in its title; but if any subject shall be embraced in any measure which shall not be expressed in the title, such measure shall be void only as to so much thereof as shall not be so expressed. If a measure contains more than one subject, such that a ballot title cannot be fixed that clearly expresses a single subject, no title shall be set and the measure shall not be submitted to the people for adoption or rejection at the polls. In such circumstance, however, the measure may be revised and resubmitted for the fixing of a proper title without the necessity of review and comment on the revised measure in accordance with subsection (5) of this section, unless the revisions involve more than the elimination of provisions to achieve a single subject, or unless the official or officials responsible for the fixing of a title determine that the revisions are so substantial that such review and comment is in the public interest. The revision and resubmission of a measure in accordance with this subsection (5.5) shall not operate to alter or extend any filing deadline applicable to the measure.

(6) The petition shall consist of sheets having such general form printed or written at the top thereof as shall be designated or prescribed by the secretary of state; such petition shall be signed by registered electors in their own proper persons only, to which shall be attached the residence address of such person and the date of signing the same. To each of such petitions, which may consist of one or more sheets, shall be attached an affidavit of some registered elector that each signature thereon is the signature of the person whose name it purports to be and that, to the best of the knowledge and belief of the affiant, each of the persons signing said petition was, at the time of signing, a registered elector. Such petition so verified shall be prima facie evidence that the signatures thereon are genuine and true and that the persons signing the same are registered electors.

(7) The secretary of state shall submit all measures initiated by or referred to the people for adoption or rejection at the polls, in compliance with this section. In submitting the same and in all matters pertaining to the form of all petitions, the secretary of state and all other officers shall be guided by the general laws.

(7.3) Before any election at which the voters of the entire state will vote on any initiated or referred constitutional amendment or legislation, the nonpartisan research staff of the general assembly shall cause to be published the text and title of every such measure. Such publication shall be made at least one time in at least one legal publication of general circulation in each county of the state and shall be made at least fifteen days prior to the final date of voter registration for the election. The form and manner of publication shall be as

prescribed by law and shall ensure a reasonable opportunity for the voters statewide to become informed about the text and title of each measure.

(7.5) (a) Before any election at which the voters of the entire state will vote on any initiated or referred constitutional amendment or legislation, the nonpartisan research staff of the general assembly shall prepare and make available to the public the following information in the form of a ballot information booklet:

(I) The text and title of each measure to be voted on;

(II) A fair and impartial analysis of each measure, which shall include a summary and the major arguments both for and against the measure, and which may include any other information that would assist understanding the purpose and effect of the measure. Any person may file written comments for consideration by the research staff during the preparation of such analysis.

(b) At least thirty days before the election, the research staff shall cause the ballot information booklet to be distributed to active registered voters statewide.

(c) If any measure to be voted on by the voters of the entire state includes matters arising under section 20 of article X of this constitution, the ballot information booklet shall include the information and the titled notice required by section 20 (3) (b) of article X, and the mailing of such information pursuant to section 20 (3) (b) of article X is not required.

(d) The general assembly shall provide sufficient appropriations for the preparation and distribution of the ballot information booklet pursuant to this subsection (7.5) at no charge to recipients.

(8) The style of all laws adopted by the people through the initiative shall be, "Be it Enacted by the People of the State of Colorado".

(9) The initiative and referendum powers reserved to the people by this section are hereby further reserved to the registered electors of every city, town, and municipality as to all local, special, and municipal legislation of every character in or for their respective municipalities. The manner of exercising said powers shall be prescribed by general laws; except that cities, towns, and municipalities may provide for the manner of exercising the initiative and referendum powers as to their municipal legislation. Not more than ten percent of the registered electors may be required to order the referendum, nor more than fifteen percent to propose any measure by the initiative in any city, town, or municipality.

(10) This section of the constitution shall be in all respects self-executing; except that the form of the initiative or referendum petition may be prescribed pursuant to law.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 37. **L. 10, Ex. Sess.:** Entire section amended, p. 11. **L. 79:** Entire section amended, p. 1672, effective upon proclamation of the Governor, **L. 81,** p. 2051, December 19, 1980. **L. 93:** (5.5) added, p. 2152, effective upon proclamation of the Governor, **L. 95,** p. 1428, January 19, 1995. **L. 94:** (7) amended and (7.3) and (7.5) added, p. 2850, effective upon proclamation of the Governor, **L. 95,** p. 1431, January 19, 1995.

Editor's note: The "legislative research and drafting offices" referred to in this

section are the Legislative Council and Office of Legislative Legal Services, respectively.

Cross references: For statutory provisions regarding initiatives and referenda, see article 40 of title 1; for distribution of governmental powers, see article III of this constitution; for proposing constitutional amendments by convention or vote of the general assembly, see article XIX of this constitution; for the procedure and requirements for adoption of home rule charters, see § 9 of article XX of this constitution; for apportionment of members of the general assembly, see parts 1 and 2 of article 2 of title 2; for organization and operation of the general assembly, see part 3 of article 2 of title 2.

ANNOTATION

I. GENERAL CONSIDERATION.

Law reviews. For article, "Constitutional Regulation of Legislative Procedure in Colorado", see 3 Rocky Mt. L. Rev. 38 (1930). For note, "Has the Colorado IRA Met an Advisory Death?", see 8 Rocky Mt. L. Rev. 140 (1936). For article, "Has The Doctrine of Stare Decisis Been Abandoned in Colorado", see 25 Dicta 91 (1948). For comment on Yenter v. Baker appearing below, see 25 Rocky Mt. L. Rev. 106 (1952). For article, "Legislative Procedure in Colorado", see 26 Rocky Mt. L. Rev. 386 (1954). For article, "Popular Law-Making in Colorado", see 26 Rocky Mt. L. Rev. 439 (1954). For article, "One Year Review of Constitutional and Administrative Law", see 38 Dicta 154 (1961). For article, "Legal Classification of Special District Corporate Forms in Colorado", see 45 Den. L. J. 347 (1968). For note, "Referendum and Rezoning: Margolis v. District Court", see 53 U. Colo. L. Rev. 745 (1982). For article, "Structuring the Ballot Initiative: Procedures that Do and Don't Work", see 66 U. Colo. L. Rev. 47 (1995). For article, "The Voice of the Crowd--Colorado's Initiative: Ennobling Direct Democracy", see 78 U. Colo. L. Rev. 1341 (2007). For article, "The Voice of the Crowd--Colorado's Initiative: The Educative Effects of Direct Democracy: A Research Primer for Legal Scholars", see 78 U. Colo. L. Rev. 1371 (2007). For article, "The Voice of the Crowd--Colorado's Initiative: Representation and the Spatial Bias of Direct Democracy", see 78 U. Colo. L. Rev. 1395 (2007). For article, "The Voice of the Crowd--Colorado's Initiative: When Good Voters Make Bad Policies: Assessing and Improving the Deliberative Quality of Initiative Elections", see 78 U. Colo. L. Rev. 1435 (2007). For article, "The Voice of the Crowd--Colorado's Initiative: The Citizen Assembly: Alternative to the Initiative", see 78 U. Colo. L. Rev. 1489 (2007). For article, "The Voice of the Crowd--Colorado's Initiative:

Initiatives, Referenda, and the Problem of Democratic Inclusion: A Reply to John Gastril and Kevin O'Leary", see 78 U. Colo. L. Rev. 1537 (2007).

Annotator's note. For additional cases concerning the initiative and referendum power, see the annotations under article 40 of title 1.

Amendment with most votes prevails. In order to carry out the meaning and purpose of this section, if inconsistent amendments are submitted to the voters, the one which received the most votes must prevail. That, in the view of the supreme court, is what the "republican" form of government means with respect to the right of the people to amend the constitution. In re Interrogatories Propounded by Senate Concerning House Bill 1078, 189 Colo. 1, 536 P.2d 308 (1975).

Right of state or city to exercise legislative authority for common good. One who owns, or who acquires property, must be ever mindful of the right of the state or city to exercise its legislative authority for the common good. Bird v. City of Colo. Springs, 176 Colo. 32, 489 P.2d 324 (1971).

Extent of legislative powers of general assembly. The language preserving the right of the general assembly to "enact any measure" is broad and comprehensive. Schwartz v. People, 46 Colo. 239, 104 P. 92 (1909); In re Senate Resolution No. 4, 54 Colo. 262, 130 P. 333 (1913).

Power to define criminal conduct and to establish the legal components of criminal liability is vested with the general assembly. Hendershott v. People, 653 P.2d 385 (Colo. 1982), cert. denied, 459 U.S. 1225, 103 S. Ct. 1232, 75 L. Ed. 2d 466 (1983); People v. Aragon, 653 P.2d 715 (Colo. 1982); People v. Low, 732 P.2d 622 (Colo. 1987).

The legislative power over appropriations granted the general assembly by this section is absolute. Colo. General Assembly v. Lamm, 700 P.2d 508 (Colo. 1985).

County and board of county commissioners have only such powers and authority as are granted by general assembly, and they must carry out the will of the state as expressed by the general assembly. Colo. State Bd. of Soc. Servs. v. Billings, 175 Colo. 380, 487 P.2d 1110 (1971).

General assembly may delegate power to promulgate rules and regulations. While the general assembly may not delegate the power to make or define a law, it may delegate the power to promulgate rules and regulations to executive agencies so long as sufficient standards are set forth for the proper exercise of the agency's rule-making function. Colo. Auto & Truck Wreckers Ass'n v. Dept. of Rev., 618 P.2d 646 (Colo. 1980).

Section 42-6-134 is not invalid as an improper delegation of legislative authority to the department of revenue. Colo. Auto & Truck Wreckers Ass'n v. Dept. of Rev., 618 P.2d 646 (Colo. 1980).

The provisions of the Land Use Act do not unconstitutionally delegate legislative power to local governments since the act contains procedural safeguards which protect against the uncontrolled exercise of power. Denver v. Bd. of County Comm'rs, 782 P.2d 753 (Colo. 1989).

Colorado Constitution inhibits delegation of legislative power to body like railroad commission. Colo. & S. Ry. v. State Rd. Comm'n, 54 Colo. 64, 129 P. 506 (1912).

All power has been reserved by people through initiative and referendum. In re Legislative Reapportionment, 150 Colo. 380, 374 P.2d 66 (1962).

Under the Colorado Constitution, all political power is vested in the people and derives from them, and an aspect of that power is the

initiative, which is the power reserved by the people to themselves to propose laws by petition and to enact or reject them at the polls independent of the legislative assembly. Colo. Project-Common Cause v. Anderson, 178 Colo. 1, 495 P.2d 220 (1972).

People's right to legislate reserved. By this section, the people have reserved for themselves the right to legislate. McKee v. City of Louisville, 200 Colo. 525, 616 P.2d 969 (1980).

Power of initiative is a fundamental right. McKee v. City of Louisville, 200 Colo. 525, 616 P.2d 969 (1980).

Purpose of initiative and referendum embodied in the constitution is to expeditiously permit the free exercise of legislative powers by the people, and the procedural statutes enacted in connection therewith were adopted to facilitate the execution of the law. Brownlow v. Wunsch, 103 Colo. 120, 83 P.2d 775 (1938).

The power to call referendum and initiative elections is a direct check on the exercise or nonexercise of legislative power by elected officials. Margolis v. District Court, 638 P.2d 297 (Colo. 1981).

Provisions for initiative and referendum entitled to liberal construction. It has generally been held by the courts of all jurisdictions that a constitutional provision for the initiative and referendum, and statutes enacted in connection therewith, should be liberally construed. Brownlow v. Wunsch, 103 Colo. 120, 83 P.2d 775 (1938); Baker v. Bosworth, 122 Colo. 356, 222 P.2d 416 (1950).

Initiative and referendum are fundamental rights of a republican form of government which the people have reserved unto themselves and must be liberally construed in favor of the right of the people to exercise them. Conversely, limitations on the power of referendum must be strictly construed. Margolis v. District Court, 638 P.2d 297 (Colo. 1981).

But there are no constitutional initiative powers reserved to the people over countywide legislation. Bd. of County Comm'rs v. County Road Users Ass'n, 11 P.3d 432 (Colo. 2000).

Right of initiative pertains to any measure, whether constitutional or legislative, and, in the case of municipalities, it encompasses legislation of every character. McKee v. City of Louisville, 200 Colo. 525, 616 P.2d 969 (1980).

This section, as well as the statutes which implement it, must be liberally construed so as not to unduly limit or curtail the exercise of the initiative and referendum rights constitutionally reserved to the people. Colo. Project-Common Cause v. Anderson, 178 Colo. 1, 495 P.2d 220 (1972); Billings v. Buchanan, 192 Colo. 32, 555 P.2d 176 (1976).

Initiated provisions shall be liberally construed in order to effectuate their purpose, to facilitate and not to hamper the exercise by the electors of rights granted thereby. Yenter v. Baker, 126 Colo. 232, 248 P.2d 311 (1952).

The terms of this article, being a reservation to the people, are not to be narrowly construed. Burks v. City of Lafayette, 142 Colo. 61, 349 P.2d 692 (1960).

But grant of authority which would nullify referendum should be strictly construed. Burks v. City of Lafayette, 142 Colo. 61, 349 P.2d 692 (1960); City of Aurora v. Bogue, 176 Colo. 198, 489 P.2d 1295 (1971).

And restrictions not specified in constitution or home rule charter should not be implied or incorporated. Burks v. City of Lafayette, 142 Colo. 61, 349 P.2d 692 (1960).

The interpretative approach to the power of referendum gives broad effect to the reservation in the people

and refrains from implying or incorporating restrictions not specified in the constitution or a charter, for a reservation to the people should not be narrowly construed. City of Fort Collins v. Dooney, 178 Colo. 25, 496 P.2d 316 (1972).

General assembly may repeal initiated law approved by people. An act repealing an act is a measure, and, as the general assembly is not deprived of the right to enact any measure, it clearly has the power to repeal any statute law, however adopted or passed, and thus may repeal even an initiated act, approved by the people. In re Senate Resolution No. 4, 54 Colo. 262, 130 P. 333 (1913); People ex rel. Tate v. Prevost, 55 Colo. 199, 134 P. 129 (1913).

Statutory cities and towns derive their sole powers from constitutional authority which must be defined by general law. City of Aurora v. Bogue, 176 Colo. 198, 489 P.2d 1295 (1971).

Home rule city may reserve or restrict referendum. Inasmuch as a home rule city has the power to adopt its own charter and can within its sphere exercise as much legislative power as the general assembly, such a city may either restrict the power of referendum by allowing its council to declare health and safety exceptions or it may validly reserve a full measure of referendum authority by not restricting it, and by providing that it shall be exercisable with respect to any measure, even measures already effective. Burks v. City of Lafayette, 142 Colo. 61, 349 P.2d 692 (1960).

A home rule city has unlimited authority to reserve to its electors the referendum power and the manner of exercising the same. Leach & Arnold Homes, Inc. v. City of Boulder, 32 Colo. App. 16, 507 P.2d 476 (1973).

City charter provisions held complete within themselves for filing of referendum petition. Leach & Arnold Homes, Inc. v. City of Boulder, 32 Colo. App. 16, 507 P.2d 476 (1973).

Reservations of power by constitution and city charter independent of one another. The declaration that this provision does not affect or limit the referendum power reserved to the people of any city by its charter does not limit the constitutional reservation, nor enlarge powers reserved by such charter. The two reservations are independent of each other. The constitutional reservation goes to the full extent expressed by its language. If the charter differs from the constitution in any respect, it does not thereby diminish the power reserved by the constitution, but may give the people affected additional powers there described. Burks v. City of Lafayette, 142 Colo. 61, 349 P.2d 692 (1960).

While city charter provisions may not limit the referendum and initiative powers reserved in the Colorado Constitution, the powers reserved by city charter may exceed those reserved by the Colorado Constitution. Margolis v. District Court, 638 P.2d 297 (Colo. 1981); Witcher v. Canon City, 716 P.2d 445 (Colo. 1986).

This section is made self-executing. Cook v. City of Delta, 100 Colo. 7, 64 P.2d 1257 (1937); Baker v. Bosworth, 122 Colo. 356, 222 P.2d 416 (1950); Christensen v. Baker, 138 Colo. 27, 328 P.2d 951 (1958).

The initiative and referendum provision is in all respects self-executing. It is not a mere framework, but contains the necessary detailed provisions for carrying into immediate effect the enjoyment of the rights therein established without legislative action. Yenter v. Baker, 126 Colo. 232, 248 P.2d 311 (1952).

The initiative provisions are expressly declared to be self-executing, and, as such, only legislation which will further the purpose of the constitutional provision or facilitate its

operation, is permitted. Colo. Project-Common Cause v. Anderson, 178 Colo. 1, 495 P.2d 220 (1972).

And this section applies only to acts which are legislative in character. City of Aurora v. Zwerdlinger, 194 Colo. 192, 571 P.2d 1074 (1977); Vagneur v. City of Aspen, 2013 CO 13, __ P.3d __.

Legislative power is defined by the work product that it generates, laws of general applicability based on the weighing of broad competing policy considerations rather than the specific facts of individual cases. Executive acts are typically based on individualized case-specific considerations, and decisions that require specialized training and experience or intimate knowledge of the fiscal or other affairs of government to make a rational choice may be properly characterized as administrative. Vagneur v. City of Aspen, 2013 CO 13, __ P.3d __.

The constitution does not reserve to the people the right to exercise executive or administrative power through an initiative. As a result, an initiative may be subjected to pre-election judicial review to determine whether it seeks to exercise administrative power and, consequently, is not an exercise of the constitutional right to legislate by way of an initiative. City of Idaho Springs v. Blackwell, 731 P.2d 1250 (Colo. 1987); City of Colo. Springs v. Bull, 143 P.3d 1127 (Colo. App. 2006); Vagneur v. City of Aspen, 2013 CO 13, __ P.3d __.

A voter initiative must be a valid exercise of legislative power. And municipal initiatives that sought to overturn prior city, state executive agency, and federal executive agency decisions regarding the design and construction of a state highway entrance to the city of Aspen were administrative in character and outside the scope of the initiative power reserved to the people under this section. Vagneur v. City of Aspen, 2013 CO 13, __ P.3d __.

The formation of contracts by a city and amendments of contracts to which a city is a party to further its policies are administrative matters not suitable for an initiative. Vagneur v. City of Aspen, 232 P.3d 222 (Colo. App. 2009), aff'd, 2013 CO 13, ___ P.3d ___.

In determining whether a proposed ordinance should be classified as legislative or administrative, the central inquiry is whether the proposed legislation announces new public policy or is simply the implementation of a previously declared policy. City of Colo. Springs v. Bull, 143 P.3d 1127 (Colo. App. 2006).

Two tests have been developed to guide this inquiry. First, actions that relate to subjects of a permanent or general character are legislative, while those that are temporary in operation and effect are not. Second, acts that are necessary to carry out existing legislative policies and purposes or that are properly characterized as executive are deemed to be administrative, while acts constituting a declaration of public policy are deemed to be legislative. Charter provisions, ordinances, policies, and administrative practices all have some degree of permanence. City of Colo. Springs v. Bull, 143 P.3d 1127 (Colo. App. 2006).

Administrative matters may be severed from the balance of an initiative if the following conditions are met: (1) Standing alone, the remainder of the measure can be given legal effect; (2) deleting the impermissible portion would not substantially change the spirit of the measure; and (3) it is evident from the content of the measure and the circumstances surrounding its proposal that the sponsors and subscribers would prefer the measure to stand as altered, rather than to be invalidated in its

entirety. City of Colo. Springs v. Bull, 143 P.3d 1127 (Colo. App. 2006).

Object of self-execution. A constitutional provision is a higher form of statutory law, which the people may provide shall be self-executing, the object being to put it beyond the power of the general assembly to render it nugatory by refusing to pass laws to carry it into effect. An equally important object of self-execution is to put it beyond the power of the general assembly to render it nugatory by passing restrictive laws. Yenter v. Baker, 126 Colo. 232, 248 P.2d 311 (1952).

But it is clearly contemplated that legislation may be enacted to further operation of this section. Brownlow v. Wunsch, 103 Colo. 120, 83 P.2d 775 (1938); Baker v. Bosworth, 122 Colo. 356, 222 P.2d 416 (1950).

Such legislation must facilitate provision. The fact that a constitutional provision is self-executing does not necessarily preclude legislation on the same subject. Such provision may be supplemented by appropriate laws designed to make it more effective. Yenter v. Baker, 126 Colo. 232, 248 P.2d 311 (1952).

All legislation must be subordinate to this section, and only such legislation is permissible as is in furtherance of the purpose, or as will facilitate the enforcement of such provision, and legislation which will impair, limit or destroy rights granted by the provision is not permissible. Yenter v. Baker, 126 Colo. 232, 248 P.2d 311 (1952).

As general assembly may not reduce authority of voters to exercise referendum below that which is set forth in this section. Burks v. City of Lafayette, 142 Colo. 61, 349 P.2d 692 (1960).

Or initiative. But no statute can limit or curtail the constitutional provisions with regard to the initiative. Colo. Project-Common Cause v. Anderson, 178 Colo. 1, 495 P.2d 220 (1972).

General assembly may enact provisions regarding the exercise of the initiative and referendum, so long as it does not diminish those rights. Urevich v. Woodard, 667 P.2d 760 (Colo. 1983).

The general assembly may adopt measures to prevent abuse, mistake, or fraud in the initiative process, but such measures shall not unduly diminish the citizens' rights to the initiative process. Committee for Better Health Care v. Meyer, 830 P.2d 884 (Colo. 1992).

A legislative body may establish procedures relating to the proper exercise of the referendum. Although the right to refer a law enacted by a legislative body to the electorate for rejection or approval is fundamental, the legislative body may implement procedures to prevent abuse of the referendum process. Clark v. City of Aurora, 782 P.2d 771 (Colo. 1989).

Legislative adoption of statutes to prevent fraud, mistake, or abuse in the initiative process may not create an undue burden on the exercise of the initiative process. Committee For Better Health Care v. Meyer, 830 P.2d 884 (Colo. 1992).

Both legislative bills and initiated measures properly "referred to the people of the state". This section does not only refer to legislative bills referred to the people under the referendum provision. The words "referred to the people of the state" should not be given such a narrow construction. Both legislative bills and initiated measures are "referred to the people of the state" for their approval or rejection at the polls. It is in that sense that the words are used. Armstrong v. Mitten, 95 Colo. 425, 37 P.2d 757 (1934).

Under this section people have power to adopt initiated

reapportionment bill. Armstrong v. Mitten, 95 Colo. 425, 37 P.2d 757 (1934).

Although proposed bill must meet constitutional requirements. The initiative device provides a practicable political remedy to obtain relief against alleged legislative malapportionment in Colorado, but an individual's constitutionally protected right to cast an equally weighted vote cannot be denied even by a vote of a majority of a state's electorate by initiative and referendum if the apportionment scheme adopted by the voters fails to measure up to the requirements of the equal protection clause. Lucas v. Forty-Fourth Gen. Ass'y, 377 U.S. 713, 84 S. Ct. 1459, 12 L. Ed. 2d 632 (1964).

Ordinances pertaining to proprietary functions subject to referendum. Nowhere in the constitution, the charter, nor in Colorado case law is there any exception to the referendum right made for ordinances pertaining to proprietary functions. City of Aurora v. Zwerdlinger, 38 Colo. App. 106, 558 P.2d 998 (1976); rev'd on other grounds, 194 Colo. 192, 571 P.2d 1074 (1977).

Zoning and rezoning decisions, no matter what the size of the parcel of land involved, are legislative in character and subject to the referendum and initiative provisions of the Colorado Constitution. Margolis v. District Court, 638 P.2d 297 (Colo. 1981); Citizens v. City of Steamboat Springs, 807 P.2d 1197 (Colo. App. 1990).

Submission of land use ordinances does not constitute referendum. Where an amendment of the soil conservation act provides for submission of land use ordinance to qualified voters of soil erosion district and requires 75 percent vote for adoption, the submission of an ordinance does not constitute a referendum under this section. People ex rel. Cheyenne Soil Erosion Dist. v. Parker, 118 Colo. 13, 192 P.2d 417 (1948).

Soil erosion district of Cheyenne was not a city, town, or municipality under this provision of the constitution. People ex rel. Cheyenne Soil Erosion Dist. v. Parker, 118 Colo. 13, 192 P.2d 417 (1948).

The presumption of prima facie validity established by this article applies only to properly verified petitions. Committee for Better Health Care v. Meyer, 830 P.2d 884 (Colo. 1992).

There is no constitutional right of initiative for electors at the county level. This section expressly authorizes initiatives at the state and municipal level but does not do so at the county level. The general assembly has authorized county-wide initiatives only with respect to home-rule counties or as to specific, defined subjects such as the adoption of sales tax ordinances. There is no statutory authority for initiatives at the county level concerning housing growth limits. Dellinger v. Bd. of County Comm'rs for County of Teller, 20 P.3d 1234 (Colo. App. 2000).

In general, counties in Colorado are simply political subdivisions of the state government that possess only those functions that are granted to them by the constitution or by statute, along with implied powers necessary to carry those functions out. Pennobscot, Inc. v. Bd. of County Comm'rs, 642 P.2d 915 (Colo. 1982); Dellinger v. Bd. of County Comm'rs, 20 P.3d 1234 (Colo. App. 2000); Save Palisade FruitLands v. Todd, 279 F.3d 1204 (10th Cir. 2002).

The equal protection clause of the fourteenth amendment to the U.S. Constitution does not command Colorado to grant the power of initiative to the electors of statutory counties simply because it has granted

that power to the electors of home rule counties. Save Palisade FruitLands v. Todd, 279 F.3d 1204 (10th Cir. 2002).

Applied in Blitz v. Moran, 17 Colo. App. 253, 67 P. 1020 (1902); Jackson v. Colo., 294 F. Supp. 1065 (D. Colo. 1968); Cimarron Corp. v. Bd. of County Comm'rs, 193 Colo. 164, 563 P.2d 946 (1977); Mountain States Legal Found. v. Denver Sch. Dist. No. 1, 459 F. Supp. 357 (D. Colo. 1978); In re Interrogatories of Governor Regarding Sweepstakes Races Act, 196 Colo. 353, 585 P.2d 595 (1978); People v. Gallegos, 644 P.2d 920 (Colo. 1982); In re Reapportionment of Colo. Gen. Ass'y, 647 P.2d 191 (Colo. 1982); Slack v. City of Colo. Springs, 655 P.2d 376 (Colo. 1982); Matter of Election Reform Amendment, 852 P.2d 28 (Colo. 1993).

II. INITIATIVE AND REFERENDUM PROCEDURE.

Law reviews. For comment, "Montero v. Meyer: Official English, Initiative Petitions and the Voting Rights Act", see 66 Den. U. L. Rev. 619 (1989). For comment, "Another View of Montero v. Meyer and the English-Only Movement: Giving Language Prejudice the Sanction of the Law", see 66 Den. U. L. Rev. 633 (1989). For article, "Colorado's Citizen Initiative Again Scrutinized by the U.S. Supreme Court", see 28 Colo. Law. 71 (June 1999).

This section grants initiative and referendum powers to legal voters and to municipality manner of exercising it. Francis v. Rogers, 182 Colo. 430, 514 P.2d 311 (1973).

Phrase "that it shall be in all respects self-executing" merely means that the power of initiative and referendum rests with the people whether or not the general assembly implements the power. It does not prevent the general assembly from enacting legislation which will strengthen that power. In re Interrogatories Propounded by Senate Concerning House Bill 1078, 189 Colo. 1, 536 P.2d 308 (1975).

Power of initiative liberally construed. The initiative power reserved by the people is to be liberally construed to allow the greatest possible exercise of this valuable right. City of Glendale v. Buchanan, 195 Colo. 267, 578 P.2d 221 (1978); Committee For Better Health Care v. Meyer, 830 P.2d 884 (Colo. 1992).

The provisions of article X, §20, of the state constitution supersede the general provisions of article V, §1, only with respect to issues of government financing, spending, and taxation governed by article X, §20; when the provisions of article X, §20, are not applicable, article V, §1, and implementing legislation controls. Zaner v. City of Brighton, 917 P.2d 280 (Colo. 1996).

Amendment may relate back. Although under subsection (4) an initiative or referendum takes effect up to 30 days after canvassing of the vote, once effective, its terms can relate back to conduct occurring the day after the election. Bolt v. Arapahoe County Sch. Dist. No. 6, 898 P.2d 525 (Colo. 1995).

The "full and timely" notice requirement of subsection (5) is not violated despite the short time between the public posting and the time when the meeting was held where petitioners had actual notice of the meeting and could not articulate how they were cognizably prejudiced by such short notice. Matter of Ballot Title 1997-98 No. 113, 962 P.2d 970 (Colo. 1998).

Duties of initiative title setting review board set forth in statutory provisions. The people have reserved to themselves the right of initiative in this section, and the duties of the initiative title setting review board with respect to initiatives are in §§ 1-40-101 et seq. In re Second Initiated Constitutional Amendment,

200 Colo. 141, 613 P.2d 867 (1980); Spelts v. Klausing, 649 P.2d 303 (Colo. 1982).

Title board is vested with considerable discretion in setting the title, ballot title and submission clause, and summary and, therefore, court must liberally construe the single subject and title requirements for initiatives. Matter of Title, Ballot Title, 917 P.2d 292 (Colo. 1996).

Plaintiff has a liberty right to challenge the decision of the title board. As to all initiatives and referanda hearings governed by § 1-40-101 et seq. occurring after April 27, 1992, defendants are ordered to publish pre-hearing and post-hearing notices to electors at least sufficient to meet the fair notice requirements of due process of law under the fourteenth amendment to the United States Constitution. Montero v. Meyer, 790 F. Supp. 1531 (D. Colo. 1992).

Standards for reviewing actions of initiative title setting review board. (1) Court must not in any way concern itself with the merit or lack of merit of the proposed initiative since, under our system of government, that resolution rests with the electorate; (2) all legitimate presumptions must be indulged in favor of the propriety of the board's action; and (3) only in a clear case should a title prepared by the board be held invalid. In re Proposed Initiative on Parental Notification of Abortions for Minors, 794 P.2d 238 (Colo. 1990).

Neither a court nor the board may go beyond ascertaining the intent of the initiative so as to interpret the meaning of the proposed language or suggest how it would be applied if adopted. Role of reviewing court is to determine whether the title and the ballot title and submission clause correctly and fairly reflect the purpose of the proposed amendment. In re Proposed Initiative on Parental Notification of Abortions for Minors, 794 P.2d 238 (Colo. 1990).

The board has considerable discretion in exercising its judgment on whether to include a fiscal impact statement in the summary of a proposed measure; however, this discretion is not unlimited and must have some support in the record. Matter of Title, Ballot Title et al., 831 P.2d 1301 (Colo. 1992).

Failure to raise an issue before the title board in a motion for rehearing or at the rehearing itself precludes the court from considering the issue in a matter to reverse the action of the title board. In re Ballot Title 1999-2000 No. 265, 3 P.3d 1210 (Colo. 2000).

In reviewing the board's title setting process, the court does not address the merits of the proposed initiative and should not interpret the meaning of proposed language or suggest how it will be applied if adopted by the electorate; should resolve all legitimate presumptions in favor of the board; will not interfere with the board's choice of language if the language is not clearly misleading; and must ensure that the title, ballot title, submission clause, and summary fairly reflect the proposed initiative so that petition signers and voters will not be misled into support for or against a proposition by reason of the words employed by the board. In re Proposed Initiated Constitutional Amendment Concerning Limited Gaming in the Town of Burlington, 830 P.2d 1023 (Colo. 1992); Matter of Election Reform Amendment, 852 P.2d 28 (Colo. 1993).

There is no requirement that the board state the effect an initiative will have on other constitutional and statutory provisions or describe every feature of a proposed measure in the titles. In re Proposed Initiated Constitutional Amendment Concerning Limited Gaming in Manitou Springs, 826 P.2d 1241 (Colo. 1992); Initiated Constitutional Amendment Concerning Limited Gaming in the Town of

Burlington, 830 P.2d 1023 (Colo. 1992); Matter of Election Reform Amendment, 852 P.2d 28 (Colo. 1993).

However, where the title and summary fail to convey to voters the initiative's likely impact on state spending on state programs, the title and summary may not be presented to voters as currently written. Matter of Title, Ballot Title and Sub. Cl., and Summary for 1999-2000 No. 37, 977 P.2d 845 (Colo. 1999).

The board is charged with the duty to act with utmost dedication to the goal of producing documents which will enable the electorate, whether familiar or unfamiliar with the subject matter of a particular proposal, to determine intelligently whether to support or oppose such a proposal. In re Proposed Initiative Concerning "State Personnel System", 691 P.2d 1121 (Colo. 1984); Matter of Election Reform Amendment, 852 P.2d 28 (Colo. 1993).

Title board has considerable discretion in setting the titles for a ballot initiative, the supreme court will employ all legitimate presumptions in favor of the propriety of the board's actions, and the board's designation of a title will be reversed only if the title is insufficient, unfair, or misleading. In re Ballot Title 2011-2012 No. 3, 2012 CO 25, 274 P.3d 562.

Title language employed by the title board will be rejected only if it is misleading, inaccurate, or fails to reflect the central features of the proposed measure. In re Ballot Title 1999-2000 No. 215 (Prohibiting Certain Open Pit Mining), 3 P.3d 11 (Colo. 2000).

In fixing titles and summaries, the board's duty is to capture, in short form, the proposal in plain, understandable, accurate language enabling informed voter choice. In re Ballot Title 1999-2000 No. 29, 972 P.2d 257 (Colo. 1999); Matter of Title, Ballot Title and Sub. Cl., and Summary for 1999-2000 No. 37, 977 P.2d 845 (Colo. 1999); Matter of Title, Ballot Title and Sub. Cl., and Summary for 1999-2000 No. 38, 977 P.2d 849 (Colo. 1999).

Failure of title, ballot title, and submission clause to include definition of abortion which would impose a new legal standard which is likely to be controversial made title, ballot title, and submission clause deficient in that they did not fully inform signers of initiative petitions and voters and did not fairly reflect the contents of the proposed initiative. In re Proposed Initiative on Parental Notification of Abortions for Minors, 794 P.2d 238 (Colo. 1990).

Absence of definitions was distinguishable from situation in In re Proposed Initiative on Parental Notification of Abortions for Minors, 794 P.2d 238 (Colo. 1990), since although the definitions may have been broader than common usage in some respects and narrower in others, they appeared to be included for sake of brevity and they would not adopt a new or controversial legal standard which would be of significance to all concerned with the issues surrounding election reform. Matter of Election Reform Amendment, 852 P.2d 28 (Colo. 1993).

Title and summary of proposed initiative reflected central features of measure in a clear and concise manner by sufficiently indicating that conditions under which gaming could occur in Parachute might differ from conditions currently imposed for gaming in other towns. Matter of Title, Ballot Title et al., 831 P.2d 457 (Colo. 1992).

Title, ballot title and submission clause, and summary concerning a proposed tax increase on cigarettes and tobacco products correctly and fairly represented the true intent and meaning of the proposed initiative. The inclusion of rule-making authority would increase length of title

and submission clause, while providing little information to voters. Language concerning an increase in taxes was not misleading and was sufficient to apprise voters that taxes on cigarettes and tobacco products would increase under the proposed measure. The designation of teacher training programs was not a central feature of the proposed initiative and it was within the board's discretion to omit such specificity. The summary was sufficient even though it did not include every detail of the proposed measure. An indeterminate fiscal impact statement was sufficient. In re Proposed Initiative Concerning a Tobacco Tax, 830 P.2d 984 (Colo. 1992).

Titles set by the board were insufficient in that they did not state that the proposal would impose mandatory fines for willful violations of the campaign contribution and election reforms, they did not state that the proposal would prohibit certain campaign contributions from certain sources, they did not state that the proposal would make both procedural and substantive changes to the petition process, and they did not specifically list the changes to the numbers of seats in the house of representatives and the senate. Matter of Election Reform Amendment, 852 P.2d 28 (Colo. 1993).

Title set by the title board was misleading and inaccurate and would be modified where the intent of the proposed measure was to prohibit the modification of certain mining permits to allow the expansion of mining operations but the title could be construed as prohibiting the expansion of mining operations under an existing, unmodified mining permit. In re Ballot Title 1999-2000 No. 215 (Prohibiting Certain Open Pit Mining), 3 P.3d 11 (Colo. 2000).

Titles were not insufficient for failure to contain the general subject matter of the proposed constitutional amendment or because the provisions of the proposed amendment were listed chronologically rather than in order of significance. Matter of Election Reform Amendment, 852 P.2d 28 (Colo. 1993).

Title concerning a just cause requirement for discharging or suspending an employee fairly expresses the purpose of the proposed initiative. The title board is neither obligated nor authorized to construe the future legal effects of an initiative as part of the ballot title. In re Ballot Title 2007-2008 No. 62, 184 P.3d 52 (Colo. 2008).

Title setting board had proper jurisdiction to set title and summary of proposed initiative as advancing date of hearing conducted by legislative offices by one day did not defeat public purpose served by presentation of comments and review in a public meeting when notice of the date change was posted five days before new hearing date. Matter of Title, Ballot Title et al., 831 P.2d 457 (Colo. 1992).

General assembly may control procedure of submitting measures. The phrase "until legislation shall be especially provided therefor" was intended to, and does, refer merely to the submission of initiated and referendum measures and matters pertaining to the form of petitions, so the general assembly has authority to provide for these matters by statute. Yenter v. Baker, 126 Colo. 232, 248 P.2d 311 (1952).

But may not avoid constitutional minimums. Legislation enacted to facilitate the carrying out of the provisions of the constitution as to time of filing or the necessary number of petitioners and to prevent fraud may not avoid or restrict the minimum requirements set out in the constitution. Yenter v. Baker, 126 Colo. 232, 248 P.2d 311 (1952).

As certain procedures fixed by constitution. It was not the intent of the people, in making this constitutional provision self-executing,

to leave the fixing of the time within which petitions must be filed either to the general assembly or to the courts. The people reserved to themselves the power of initiative enactment. Yenter v. Baker, 126 Colo. 232, 248 P.2d 311 (1952).

This section fixes the time within which a petition must be filed with the secretary of state, and requires a certain number of signatures of legal voters to be affixed thereto before a matter can be submitted to the voters at an election. Christensen v. Baker, 138 Colo. 27, 328 P.2d 951 (1958).

And general assembly may not impose limitation other than that provided in this section. Where the general assembly is vested with power, subject to limitation, it has authority to make any restriction not less than that named in such limitation; but where, as here, the general assembly is divested of all discretionary authority and the constitution as part of a self-executing provision sets a limitation, the general assembly may not make any other limitation than that provided in the constitution. Yenter v. Baker, 126 Colo. 232, 248 P.2d 311 (1952).

The general assembly may not impose restrictions which limit in any way the right of the people to initiate proposed laws and amendments except as those limitations are provided in the constitution itself. Colo. Project-Common Cause v. Anderson, 177 Colo. 402, 495 P.2d 218 (1972).

The statutory requirement that the signing and circulating of petitions must be by registered electors rather than permitting qualified electors to carry on these functions is a limitation not authorized by the constitution and is impermissible. Colo. Project-Common Cause v. Anderson, 178 Colo. 1, 495 P.2d 220 (1972).

Governmental officials have no power to prohibit the exercise of the initiative by prematurely passing upon the substantive merits of an initiated measure. McKee v. City of Louisville, 200 Colo. 525, 616 P.2d 969 (1980).

Courts may not interfere with the exercise of the right of initiative by declaring unconstitutional or invalid a proposed measure before the process has run its course and the measure is actually adopted. McKee v. City of Louisville, 200 Colo. 525, 616 P.2d 969 (1980).

Legislation not to restrict right to vote on initiatives. Legislative acts which prescribe the procedure to be used in voting on initiatives may not restrict the free exercise of that voting right. City of Glendale v. Buchanan, 195 Colo. 267, 578 P.2d 221 (1978).

The 1989 amendments to §§ 1-40-106, 1-40-107, and 1-40-109 (now §§ 1-40-110, 1-40-111, 1-40-113, 1-40-116, 1-40-117, 1-40-118, and 1-40-120) are constitutional as tending to further the provisions of this section and are not unduly restrictive of the right of initiative. Committee for Better Health Care v. Meyer, 830 P.2d 884 (Colo. 1992).

"Read and understand" requirement of § 1-40-111 and § 1-40-113 is a formal requirement to which the court will not apply strict scrutiny in a constitutional challenge: Although requirements limit the power of initiative, the limitation is not substantive. Loonan v. Woodley, 882 P.2d 1380 (Colo. 1994).

"Read and understand" requirement of § 1-40-111 and § 1-40-113 enhances the integrity of the election process and does not unconstitutionally infringe on the right to petition. Loonan v. Woodley, 882 P.2d 1380 (Colo. 1994).

Substantial compliance is the standard the court must apply in assessing the effect of the deficiencies that caused the district court to hold petition signatures invalid. Fabec v. Beck, 922 P.2d 330 (Colo. 1996).

Discrepancies in the day or month of the circulator's date of signing and the date of notary

acknowledgment render the relevant petitions invalid absent evidence that explains the differences in question. Petitions containing such discrepancies do not provide the necessary safeguards against abuse and fraud in the initiative process. Fabec v. Beck, 922 P.2d 330 (Colo. 1996).

Absent evidence that the change in signing was the product of the signing party, changes to a circulator's signing date do not represent substantial compliance with § 1-40-111 (2) and serve to invalidate the signatures within the affected petitions. The district court properly held invalid signatures that were tainted by a change in the circulator's date of signing, where the date of signing was not accompanied by the initials of the circulator or other evidence in the record establishing that the circulator made the change. Fabec v. Beck, 922 P.2d 330 (Colo. 1996).

The district court erred in invalidating petitions that did not contain a notary seal. The purpose of the notarized affidavit provision in § 1-40-111 (2) was substantially achieved despite the proponents' failure to secure a notary seal on petitions affecting 92 signatures. The record contains evidence that the affidavits with omitted seals were notarized by individuals with the same signature and commission expiration found on other affidavits with proper seals. Fabec v. Beck, 922 P.2d 330 (Colo. 1996).

The initiative proponents substantially complied with the requirements for a circulator's affidavit even though the circulator did not include a date of signing. When the circulator simply omits the date of signing, there is no reason to believe that the affidavit was not both subscribed and sworn to before the notary public on the date indicated in the jurat. Fabec v. Beck, 922 P.2d 330 (Colo. 1996).

People in exercise of their referendum powers, are bound by same rules as general assembly, and, as such, the power of referendum in approving lotteries is limited by § 2 of art. XVIII, Colo. Const. In re Interrogatories of Governor Regarding Sweepstakes Races Act, 196 Colo. 353, 585 P.2d 595 (1978).

Stages of procedure are separate and consecutive. In the process of getting matters before the people for their action there are several consecutive stages. The preparation of petitions and securing the required signatures is one step, the publishing is one, and the subsequent submission to the vote of electors is another separate step in the full procedure. In re House Resolution No. 10, 50 Colo. 71, 114 P. 293 (1911).

Exception from rule proscribing premature judicial interference. A judicial declaration that an initiated or referred ordinance is administrative in character is an exception to such rule and does not infringe the fundamental right of the people to legislate. City of Idaho Springs v. Blackwell, 731 P.2d 1250 (Colo. 1987).

Determination of legislative or administrative character of initiated ordinance. The central inquiry is whether the proposed legislation announces new public policy or is the implementation of a previously declared policy. City of Idaho Springs v. Blackwell, 731 P.2d 1250 (Colo. 1987).

Two tests for determining character of initiated ordinance. First, actions that relate to subjects of a permanent or general character are legislative, while those that are temporary in operation and effect are not; second, acts that are necessary to carry out existing legislative policies and purposes or which are properly characterized as executive are deemed to be administrative, while acts constituting a declaration of public policy are deemed to be legislative. City of Idaho Springs v. Blackwell, 731

P.2d 1250 (Colo. 1987).

No geographical distribution of petition signers is required. A constitutional amendment may be initiated by petition of eight percent of the legal voters. Lisco v. Love, 219 F. Supp. 922 (D. Colo. 1963), rev'd on other grounds sub nom. Lucas v. Forty-Fourth Gen. Ass'y, 377 U.S. 713, 84 S. Ct. 1459, 12 L. Ed. 2d 632 (1964).

No requirement that affidavit as to signatures should appear on each sheet of petition. There is no constitutional or statutory requirement that the affidavit as to signatures on a petition to initiate a measure should appear on each of the sheets making up the petition. Brownlow v. Wunsch, 103 Colo. 120, 83 P.2d 775 (1938).

Qualified electors rather than registered voters required. It is constitutionally impermissible under this section to require that persons signing and circulating petitions for a statewide initiative be registered voters, rather than qualified electors. Francis v. Rogers, 182 Colo. 430, 514 P.2d 311 (1973).

This section permits a city to require only that signer of a recall petition be a qualified elector, and a city charter provision requiring that person who signs a recall petition be a registered voter is unconstitutional. Valdez v. Election Comm'n, 184 Colo. 384, 521 P.2d 165 (1974).

All circulators of initiative petitions must be registered electors, as required in both this section and § 1-40-112. Although the secretary of state was at one time enjoined by federal action from enforcing this requirement, after the injunction was lifted, she properly disallowed petitions circulated by nonregistered voters. McClellan v. Meyer, 900 P.2d 24 (Colo. 1995).

Required signatures must be timely filed with petition. A petition timely filed but lacking the required number of signatures and supplemented by additional signatures filed too late, is not filed in compliance with this provision, and this section mandatorily forecloses the acceptance of tardy supplements to a petition for an initiated amendment to the constitution to supply the required signatures. Christensen v. Baker, 138 Colo. 27, 328 P.2d 951 (1958).

Deadline set forth in subsection (2) for filing original petition is not applicable to a petition cured and refiled in accordance with § 1-40-109 (2). Montero v. Meyer, 795 P.2d 242 (Colo. 1990) (decided under law in effect prior to 1989 amendment to § 1-40-109 (2)).

Court refused to allow certification of ballot measure to the ballot without a showing that the valid signature requirement specified in this section has been met. Allowing the certification would require voters to decide on an initiative that has not met a basic constitutional requirement for placement on the ballot and would fail to protect the integrity of the right of initiative contemplated by the constitution. Thus, the court would not allow certification of the measure prior to completion of the line-by-line verification, even though the date for certification of ballot issues for the next general election had passed. Buckley v. Chilcutt, 968 P.2d 112 (Colo. 1998).

Effect of failure of signers to insert streets and numbers of their residences in petition. There is nothing in the constitution, statutes, or decisions justifying the rejection of signatures solely by reason of the failure of signers, under the circumstances prevailing, to insert in the petition streets and numbers of their residences. Case v. Morrison, 118 Colo. 517, 197 P.2d 621 (1948).

And of newspaper pages cut and reassembled for inclusion in petition. Where newspaper pages, on which were printed petition forms in

three parts which were used to secure signatures in support of a petition to place a proposed constitutional amendment on the ballot, were cut into the separate parts and then reassembled and bound together for inclusion in the petition presented to the secretary of state, this procedure did not invalidate the signatures since there was no showing or intimation that the separation of the forms involved any alteration, irregularity, or fraud. Billings v. Buchanan, 192 Colo. 32, 555 P.2d 176 (1976).

Minority language provisions of the federal Voting Rights Act not applicable to initiative petitions. With respect to initiative petitions, electoral process to which the minority language provisions of the Voting Rights Act would apply did not commerce under state law until the measure was certified as qualified for placement on the ballot. Furthermore, the signing of petitions did not constitute "voting" under the act. Montero v. Meyer, 861 F.2d 603 (10th Cir. 1988), cert. denied, 492 U.S. 921, 109 S. Ct. 3249, 106 L. Ed. 2d 595 (1989) (decided prior to 1989 enactment of 1-40-107.5).

Heavy burden when challenging ballot title after election. The burden for invalidating an amendment, because of its title, after adoption by the people in a general election, is heavy because the general assembly has provided procedures for challenging a ballot title prior to elections. The expense and inconvenience of holding an election on a proposal is sufficiently burdensome to justify requiring that objections to ballot titles be made before the election--unless the challengers to the amendment can prove that so many voters were actually misled by the title that the result of the election might have been different. City of Glendale v. Buchanan, 195 Colo. 267, 578 P.2d 221 (1978).

Public officers are guided by "general laws" in submitting new measures. This section makes it the duty of public officers, in submitting new measures, to be guided by the "general laws", that is, the "general statutes", under which questions generally are submitted, until the general assembly itself may provide special legislation for forms of petitions, and for submitting initiative and referendum measures only. In re House Resolution No. 10, 50 Colo. 71, 114 P. 293 (1911).

III. POWER TO INITIATE CONSTITUTIONAL AMENDMENTS.

This section reserves power to propose constitutional amendments to people independent of the general assembly, and there is nothing in the section that modifies this independence in any way, except that the section shall not be construed so as to deprive the general assembly of the right to enact any measure. People ex rel. Tate v. Prevost, 55 Colo. 199, 134 P. 129 (1913).

The rights reserved by the people include that to enact constitutional amendments "independent of the general assembly". Yenter v. Baker, 126 Colo. 232, 248 P.2d 311 (1952).

But this reservation does not interfere with general assembly's right to propose constitutional amendments. This section does not affect what the general assembly may do, save that, with certain exceptions, any act or part of any act of the general assembly may be referred to the people and by them adopted or rejected at the polls. It was not intended that the general assembly should be interfered with in its right to propose constitutional amendments. People ex rel. Tate v. Prevost, 55 Colo. 199, 134 P. 129 (1913).

The power of the general assembly to propose constitutional

amendments is not subject to provisions of this article regulating the introduction and passage of ordinary legislative enactments. Nesbit v. People, 19 Colo. 441, 36 P. 221 (1894).

Bill that eliminated appropriations for health-related purposes in effect on January 1, 2005 did not conflict with this section despite plaintiffs' contention that it thwarted citizens' right to pass as intended by its proponents and understood by the voters an initiated amendment providing that revenues to be generated by new cigarette and tobacco taxes would be used to supplement and not to supplant such appropriations. Colo. Cmty. Health Network v. Colo. Gen. Assembly, 166 P.3d 280 (Colo. App. 2007).

There is no limitation as to number of amendments which may be proposed. This section does not, on its face, place upon the required percentage of voters any limitation as to the number of amendments that may be so proposed. It affirmatively appears that no limit was intended on the number that may be proposed from language that, "The secretary of state shall submit all measures initiated by the people". People ex rel. Tate v. Prevost, 55 Colo. 199, 134 P. 129 (1913).

And section, in positive terms, requires submission of all proposed. When the secretary of state was directed in positive terms to submit all amendments it cannot be said that he shall submit only a certain number, and if all must be submitted it cannot be said that those above a certain number that are submitted are on that account void. No one has any right to say that the people intended that all that are proposed shall be submitted to them, but that only a certain number of those that are submitted and perhaps adopted should be valid. People ex rel. Tate v. Prevost, 55 Colo. 199, 134 P. 129 (1913).

Where conflicting amendments on same ballot. Amendment nos. 6 and 9, proposed constitutional amendments relating to reapportionment on the ballot at the general election held on November 5, 1975, are in conflict where the former, a housekeeping amendment, among many other things, provides that the general assembly is to establish district boundaries and that there is to be no more than a five percent population deviation from the mean in each district while the latter, dealing exclusively with reapportionment, provides for a commission to promulgate a plan of reapportionment which the supreme court either approves or, in effect, orders modified as required by the court and for a maximum five percent deviation between the most populous and the least populous district in each house. In re Interrogatories Propounded by Senate Concerning House Bill 1078, 189 Colo. 1, 536 P.2d 308 (1975).

Amendment with most votes prevails. In order to carry out the meaning and purpose of this section, the one of two inconsistent amendments which received the most votes must prevail. That, in the view of the supreme court, is what the "republican" form of government means with respect to the right of the people to amend the constitution. In re Interrogatories Propounded by Senate Concerning House Bill 1078, 189 Colo. 1, 536 P.2d 308 (1975).

Passage of initiated amendment does not determine validity. An amendment is not valid just because the people voted for it. The initiative gives the people of a state no power to adopt a constitutional amendment which violates the federal constitution. Lisco v. Love, 219 F. Supp. 922 (D. Colo. 1963), rev'd on grounds sub nom. Lucas v. Forty-Fourth Gen. Ass'y, 377 U.S. 713, 84 S. Ct. 1459, 12 L. Ed. 2d 632 (1964).

The fact that an apportionment plan is adopted in a

popular referendum is insufficient to sustain its constitutionality or to induce a court of equity to refuse to act. Lucas v. Forty-Fourth Gen. Ass'y, 377 U.S. 713, 84 S. Ct. 1459, 12 L. Ed. 2d 632 (1964).

IV. LEGISLATION NOT SUBJECT TO REFERENDUM.

Referendum not granted to mere resolution. By the precise words of this section by which the referendum is extended to any act, or part of an act, the referendum is not granted to a mere resolution. Prior v. Noland, 68 Colo. 263, 188 P. 729 (1920).

So no referendum on resolution ratifying amendment to federal constitution. The people, having no power to ratify amendments to the federal constitution, cannot exercise the referendum upon such a resolution which ratifies such, adopted by the general assembly. Prior v. Noland, 68 Colo. 263, 188 P. 729 (1920).

Referendum power applies only to acts which are legislative in character. Wright v. City of Lakewood, 43 Colo. App. 480, 608 P.2d 361 (1979); Margolis v. District Court, 638 P.2d 297 (Colo. 1981).

For criteria used in determining whether actions of a municipal governing body are administrative, legislative, or quasi-judicial in nature, see Margolis v. District Court, 638 P.2d 297 (Colo. 1981).

Neither adoption of rezoning ordinance nor approval of amendment to master plan constitutes legislative act which is subject to the referendum power contained in the Colorado Constitution. Wright v. City of Lakewood, 43 Colo. App. 480, 608 P.2d 361 (1979).

Utility rate ordinances are administrative in character and are not subject to referendum powers of this section. City of Aurora v. Zwerdlinger, 194 Colo. 192, 571 P.2d 1074 (1977); City of Colo. Springs v. Bull, 143 P.3d 1127 (Colo. App. 2006).

Three-part test employed to determine whether a specific municipal act is legislative or administrative. The court looks at whether the act is of a permanent or temporary character, whether the act is necessary to carry out existing policies, and whether the act is an amendment to an original legislative act. Finding that the lease amendment is of a temporary nature, that no new legislative policy is declared, and that the amendment of the lease agreement is the amendment of an administrative act, the court holds that the amendment is not subject to the referendum power in this section. Witcher v. Canon City, 716 P.2d 445 (Colo. 1986).

Statute containing "safety clause" cannot be referred to the people. An act declaring that every sentence and clause thereof is "necessary for the immediate preservation of the public peace, health, and safety", cannot be referred to the people. The clause in question, commonly called the "safety clause", is part of the act and may be enacted by a mere majority vote. In re Senate Resolution No. 4, 54 Colo. 262, 130 P. 333 (1913); People ex rel. Keifer v. Ramer, 61 Colo. 422, 158 P. 146 (1916).

This section is specific in excepting from the referendum reservation laws necessary for the immediate preservation of the public peace, health, and safety. This provision is applicable to the general assembly and to state laws. Shields v. City of Loveland, 74 Colo. 27, 218 P. 913 (1923); Burks v. City of Lafayette, 142 Colo. 61, 349 P.2d 692 (1960).

Declaration of safety clause conclusive and nonreviewable. A declaration by the general assembly that an enactment is "necessary for the immediate preservation of the public peace, health, and safety", is

conclusive, and not subject to review by the courts. Van Kleeck v. Ramer, 62 Colo. 4, 156 P. 1108 (1916); Cavanaugh v. State, Dept. of Soc. Servs., 644 P.2d 1 (Colo.), appeal dismissed for want of substantial federal question, 459 U.S. 1011, 103 S. Ct. 367, 74 L. Ed. 2d 504 (1982), reh'g denied, 460 U.S. 1104, 103 S. Ct. 1806, 76 L. Ed. 2d 369 (1983).

A legislative declaration in a statute that it is necessary for the immediate preservation of the public peace, health, and safety is conclusive upon all departments of government and all parties, so far as it abridges the right to invoke the referendum. In re Senate Resolution No. 4, 54 Colo. 262, 130 P. 333 (1913); Van Kleeck v. Ramer, 62 Colo. 4, 156 P. 1108 (1916); In re Interrogatories by Governor, 66 Colo. 319, 181 P. 197 (1919).

In absence of safety clause, all laws subject to reference. In the absence of the so-called "safety clause", all acts of the general assembly, although they carry the emergency clause declaring that they shall take effect from and after their passage, are still subject to reference. In re Interrogatories by Governor, 66 Colo. 319, 181 P. 197, 7 A.L.R. 526 (1919).

If the general assembly were to decide that a measure should be subject to referendum it can omit the safety clause and by so doing subject the measure to referendum regardless of whether it in fact affects the health and safety. The discretionary authority to dispense with the safety clause, except from appropriation measures, supports the view that the power of referendum is not completely circumscribed by the authority of the general assembly or council to declare that a statute or ordinance is one governed by considerations of public health and safety. Burks v. City of Lafayette, 142 Colo. 61, 349 P.2d 692 (1960).

Right of initiative always available. There is nothing to deter those citizens who oppose an enacted law from pursuing the constitutional right of initiative. Thus, although invoking the emergency language in the enactment precludes citizen referendum on the law, the initiative power is available to redress the concerns of the citizens of the state. Cavanaugh v. State, Dept. of Soc. Servs., 644 P.2d 1 (Colo.), appeal dismissed for want of substantial federal question, 459 U.S. 1011, 103 S. Ct. 367, 74 L. Ed. 2d 504 (1982), reh'g denied, 460 U.S. 1104, 103 S. Ct. 1806, 76 L. Ed. 2d 369 (1983).

Safety exception may not be implied in home rule charter. A home rule city may adopt a charter which reserves to the voters authority to refer all measures, and which does withhold from the council power to thwart referendum by the expedient of declaring health and safety. Such a charter provision is valid and there is no reason for implied incorporation within it of the safety exception. Burks v. City of Lafayette, 142 Colo. 61, 349 P.2d 692 (1960).

V. SINGLE-SUBJECT REQUIREMENT.

A. In General.

Law reviews. For article, "The Single-Subject Requirement For Initiatives", see 29 Colo. Law. 65 (May 2000).

The single subject rule prevents two dangers associated with omnibus initiatives. First, combining subjects with no necessary or proper connection for the purposes of garnering support for an initiative from various factions that may have different or even conflicting interests could lead to the enactment of measures that would fail on their own merits. Second, the single subject rule helps avoid voter surprise and fraud occasioned by the inadvertent passage of a surreptitious

provision coiled up in the folds of a complex initiative. In re Ballot Title 2011-2012 No. 45, 2012 CO 26, 274 P.3d 576.

Flexible level of scrutiny applies to challenge of subsection (5.5) and the statutory title-setting procedures implementing it. Under this standard, courts must weigh the "character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that the plaintiff seeks to vindicate" against the "precise interests put forward by the State as justifications for the burden imposed by its rule", taking into consideration "the extent to which those interests make it necessary to burden the plaintiff's rights". Anderson v. Celebrezze, 460 U.S. 780, 103 S. Ct. 1564, 75 L. Ed. 2d 547 (1983); Campbell v. Buckley, 11 F. Supp. 2d 1260 (D. Colo. 1998).

Single-subject requirement in subsection (5.5) and the statutory title-setting procedures implementing it do not violate initiative proponents' free speech or associational rights under the first amendment nor do they discriminate against proponents in violation of the fourteenth amendment's equal protection clause. Campbell v. Buckley, 11 F. Supp. 2d 1260 (D. Colo. 1998), aff'd, 203 F.3d 738 (10th Cir. 2000); In re Ballot Title 2011-2012 No. 3, 2012 CO 25, 274 P.3d 562.

The summary, single subject and title requirements serve to prevent voter confusion and promote informed decisions by narrowing the initiative to a single matter and providing information on that single subject. Campbell v. Buckley, 203 F.3d 738 (10th Cir. 2000).

The requirements serve to prevent a provision that would not otherwise pass from becoming law by "piggybacking" it on a more popular proposal or concealing it in a long and complex initiative. Campbell v. Buckley, 203 F.3d 738 (10th Cir. 2000).

In determining whether a proposed measure contains more than one subject, the court may not interpret the language of the measure or predict its application if it is adopted. In re Ballot Title 1999-2000 No. 255, 4 P.3d 485 (Colo. 2000).

In conducting a single-subject review, the court may not address a proposed measure's merits or the possible manner of its application if enacted. In re Ballot Title 2001-02 No. 43, 46 P.3d 438 (Colo. 2002); In re Ballot Title 2011-2012 No. 3, 2012 CO 25, 274 P.3d 562; In re Ballot Title 2011-2012 No. 45, 2012 CO 26, 274 P.3d 576.

The court may not address the merit of a proposed initiative or construe its future legal effects. In re Ballot Title 2005-06 No. 55, 138 P.3d 273 (Colo. 2006).

In order to violate the single-subject requirement, the text of the measure must relate to more than one subject and have at least two distinct and separate purposes which are not dependent upon or connected with each other. The single-subject requirement is not violated if the matters included are necessarily or properly connected to each other. In re Proposed Ballot Initiative on Parental Rights, 913 P.2d 1127 (Colo. 1996).

An initiative violates the single subject requirement if it relates to more than one subject and has at least two distinct and separate purposes that are not dependent upon or connected with each other. While the inquiry into single subject compliance is case-specific, an initiative may not hide purposes unrelated to its central theme or group distinct purposes under a broad theme. An initiative may contain several purposes, but those purposes must be interrelated. In re Ballot Title 2005-06 No. 55, 138 P.3d 273 (Colo. 2006); In

re Ballot Title 2011-2012 No. 45, 2012 CO 26, 274 P.3d 576.

Single-subject requirement in subsection (5.5) eliminates the practice of combining several unrelated subjects in a single measure for the purpose of enlisting support from advocates of each subject and thus securing the enactment of measures that might not otherwise be approved by voters on the basis of the merits of those discrete measures. In re Petitions, 907 P.2d 586 (Colo. 1995); In re Proposed Initiative 1996-4, 916 P.2d 528 (Colo. 1996).

The single-subject requirement is not violated if a measure intends to have more than one beneficial effect. That does not mean that it embraces more than one subject. Matter of Ballot Title 1997-98 No. 113, 962 P.2d 970 (Colo. 1998).

A proposed measure impermissibly includes more than one subject if its text relates to more than one subject and if the measure has at least two distinct and separate purposes that are not dependent upon or connected with each other. In re Proposed Initiative 1996-4, 916 P.2d 528 (Colo. 1996).

A proposal that has at least two distinct and separate purposes which are not dependent upon or connected with each other violates the single-subject requirement of the state constitution. In re "Public Rights in Waters II", 898 P.2d 1076 (Colo. 1995); Matter of Title, Ballot Title and Sub. Cl., and Summary for 1999-2000 No. 104, 987 P.2d 249 (Colo. 1999); In re Ballot Title 1999-2000 No. 235(a), 3 P.3d 1219 (Colo. 2000).

Grouping the provisions of a proposed initiative under a broad concept that potentially misleads voters will not satisfy the single-subject requirement. In re Proposed Initiative 1996-4, 916 P.2d 528 (Colo. 1996); In re Ballot Title 1999-2000 Nos. 245(b), 245(c), 245(d), and 245(e), 1 P.3d 720 (Colo. 2000); In re Ballot Title 1999-2000 Nos. 245(f) and 245(g), 1 P.3d 739 (Colo. 2000).

In order to pass constitutional muster, a proposed initiative must concern only one subject. In other words, it must effect or carry out only one general object or purpose. In re Ballot Title 2005-2006 No. 73, 135 P.3d 736 (Colo. 2006); In re Ballot Title 2005-2006 No. 74, 136 P.3d 237 (Colo. 2006).

An initiative that has separate and unconnected purposes will not be saved by a proponent's attempt to characterize the initiative under an overarching theme. In re Ballot Title 2001-02 No. 43, 46 P.3d 438 (Colo. 2002); In re Ballot Title 2005-06 No. 55, 138 P.3d 273 (Colo. 2006); In re Ballot Title 2011-2012 No. 3, 2012 CO 25, 274 P.3d 562 ; In re Ballot Title 2011-2012 No. 45, 2012 CO 26, 274 P.3d 576.

Where multiple provisions are directly connected and related to, and are intended to achieve, the initiative's central purpose, the provisions do not constitute separate subjects. In re Title, Ballot Title, Sub. Cl. for 2009-2010 No. 45, 234 P.3d 642 (Colo. 2010).

The intent of the single-subject requirement is to prevent voters from being confused or misled and to ensure that each proposal is considered on its own merits. Matter of Ballot Title 1997-98 No. 74, 962 P.2d 927 (Colo. 1998).

City's ordinance requiring a single subject to be expressed in ballot initiatives does not offend the Colorado constitution. Bruce v. City of Colo. Springs, 252 P.3d 30 (Colo. App. 2010).

The single-subject requirement must be liberally construed so as not to impose undue restrictions on the initiative process. Matter of Ballot Title 1997-98 No. 74, 962 P.2d 927 (Colo. 1998).

The single-subject requirement is not violated simply

because an initiative with a single, distinct purpose spells out details relating to its implementation. As long as the procedures specified have a necessary and proper relationship to the substance of the initiative, they are not a separate subject. Matter of Ballot Title 1997-98 No. 74, 962 P.2d 927 (Colo. 1998); In re Ballot Title 1999-2000 No. 255, 4 P.3d 485 (Colo. 2000).

A proposed measure that tends to effect or to carry out one general purpose presents only one subject. Consequently, minor provisions necessary to effectuate the purpose of the measure are properly included within its text. In re Ballot Title 1999-2000 No. 256, 12 P.3d 246 (Colo. 2000).

Just because a proposal may have different effects or makes policy choices that are not invariably interconnected does not mean that it necessarily violates the single-subject requirement. It is enough that the provisions of a proposal are connected. Here, the initiative addresses numerous issues in a detailed manner. However, all of these issues relate to the management of development. In re Ballot Title 1999-2000 No. 256, 12 P.3d 246 (Colo. 2000).

To evaluate whether or not an initiative effectuates or carries out only one general object or purpose, supreme court looks to the text of the proposed initiative. The single subject requirement is not violated if the "matters encompassed are necessarily or properly connected to each other rather than disconnected or incongruous". Stated another way, the single-subject requirement is not violated unless the text of the measure "relates to more than one subject and has at least two distinct and separate purposes that are not dependent upon or connected with each other". Mere implementation or enforcement details directly tied to the initiative's single subject will not, in and of themselves, constitute a separate subject. Finally, in order to pass the single-subject test, subject of the initiative should also be capable of being expressed in the initiative's title. In re Ballot Title 2005-2006 No. 73, 135 P.3d 736 (Colo. 2006); In re Ballot Title 2005-2006 No. 74, 136 P.3d 237 (Colo. 2006).

The fact that provisions of measure may affect more than one statutory provision does not itself mean that measure contains multiple subjects. Where initiative requiring background checks at gun shows also authorizes licensed gun dealers who conduct such background checks to charge a fee, the initiative contains a single subject. In re Ballot Title 1999-2000 No. 255, 4 P.3d 485 (Colo. 2000).

Neither subsection (5.5) of this section nor §1-40-106.5 creates any exemptions for initiatives that attempt to repeal constitutional provisions. Also, no special permission exists for initiatives that seek to address constitutional provisions adopted prior to the enactment of the single-subject requirement. In re Proposed Initiative 1996-4, 916 P.2d 528 (Colo. 1996).

The term "measure" includes initiatives that either enact or repeal. In re Proposed Initiative 1996-4, 916 P.2d 528 (Colo. 1996).

In cases of repeal, the underlying constitutional provision to be repealed must be examined in order to determine whether the repealing and reenacting initiative contains a single subject. If a provision contains multiple subjects and an initiative proposes to repeal the entire underlying provision, then the initiative contains multiple subjects. On the other hand, if an initiative proposes anything less than a total repeal, it may satisfy the single-subject requirement. In re Proposed Initiative 1996-4, 916 P.2d 528 (Colo. 1996).

A proposed initiative contains multiple subjects not only when it proposes new provisions

constituting multiple subjects, but also when it proposes to repeal multiple subjects. In re Proposed Initiative 1996-4, 916 P.2d 528 (Colo. 1996); In re Proposed Initiative 1997-1998 No. 64, 960 P.2d 1192 (Colo. 1998); Matter of Title, Ballot Title and Sub. Cl., and Summary for 1999-2000 No. 104, 987 P.2d 249 (Colo. 1999).

The board may not set the title of a proposed initiative or submit it to the voters if it contains multiple subjects. In re Ballot Title 1999-2000 Nos. 245(b), 245(c), 245(d), and 245(e), 1 P.3d 720 (Colo. 2000); In re Ballot Title 1999-2000 Nos. 245(f) and 245(g), 1 P.3d 739 (Colo. 2000).

Title-setting board has no duty to advise proponents concerning possible solutions to a single-subject violation. Comment by the board is within its sound discretion; requiring comment would unconstitutionally expand the board's authority and shift initiative-drafting responsibility from proponents to the board. In re Proposed Initiative 1996-4, 916 P.2d 528 (Colo. 1996).

If the title-setting board rejects an initiative for violating the single-subject requirement, then proponents may pursue one of two courses of action. They may either (1) commence a new review and comment process, or (2) present a revised title to the board. In re Proposed Initiative 1996-4, 916 P.2d 528 (Colo. 1996).

The title board is not required to spell out every detail of a proposed initiative in order to convey its meaning accurately and fairly. Only where the language chosen is clearly misleading will the court revise the title board's formulation. Matter of Ballot Title 1997-98 No. 74, 962 P.2d 927 (Colo. 1998).

Title and summary failed to clearly express the meaning of the initiative, perhaps because the original text of the proposed initiative is difficult to comprehend. In re Title, Ballot Title and Sub. Cl., and Summary for 1999-2000 No. 44, 977 P.2d 856 (Colo. 1999).

Single-subject requirement for ballot initiatives met where provisions in initiative make reference to the initiative's subject and the provisions are sufficiently connected to the subject. Matter of Title, Ballot Title, 917 P.2d 292 (Colo. 1996).

An election provision in a measure does not constitute a separate subject if there is a sufficient connection between the provision and the subject of the initiative. In re Ballot Title 1999-2000 No. 235(a), 3 P.3d 1219 (Colo. 2000).

The single-subject requirement does not apply to municipal initiatives. Bruce v. City of Colo. Springs, 200 P.3d 1140 (Colo. App. 2008).

B. Initiatives Found to Contain a Single Subject.

Proposed initiative does not contain more than one subject. Proposed initiative that establishes as inalienable the rights of parents to direct and control the upbringing, education, values, and discipline of their children relates to a single subject and does not encompass multiple, unrelated matters. In re Proposed Ballot Initiative on Parental Rights, 913 P.2d 1127 (Colo. 1996).

Proposed initiatives that concern an employee's right to a secret ballot in employee representation elections do not violate the single subject requirement. The first sentence of the initiative states a principle that is broad in scope, but the second sentence confines its reach by discussing the application of the first sentence, therefore the initiative does not violate the single-subject rule. In re Ballot Title 2009-2010 No. 24, 218 P.3d 350 (Colo. 2009).

Proposed initiative concerning the qualification of Colorado judicial officers which also

addresses the qualifications of senior judges does not present a separate subject unrelated to the qualification of state judicial officers because senior judges are judicial officers, and provisions governing the qualifications of senior judges is within the single subject of the qualifications of state judicial personnel. Matter of Title, Ballot Title and Sub. Cl., and Summary for 1999-2000 No. 104, 987 P.2d 249 (Colo. 1999).

Proposed initiative concerning the qualifications, appointment, and retention of judges which also addresses the dissemination of information about judges standing for removal or retention elections does not violate the constitutional prohibition against single subjects. Matter of Title, Ballot Title and Sub. Cl., and Summary for 1999-2000 No. 104, 987 P.2d 249 (Colo. 1999).

The recall of judges is within the single subject of an initiative proposing to alter the manner in which judges are qualified, appointed, and retained. The recall of judges is necessarily connected with the purpose of altering how judges are retained. Matter of Title, Ballot Title and Sub. Cl., and Summary for 1999-2000 No. 104, 987 P.2d 249 (Colo. 1999).

Proposed initiative that requires a woman to provide written certification that she has received certain information and to give her informed consent before a physician may perform an abortion, and that requires referring physicians or physicians who perform abortions to report certain statistics regarding women who have abortions to the health department on an annual basis does not violate the single-subject requirement. Matter of Title, Ballot Title and Sub. Cl., and Summary for 1999-2000 No. 200A, 992 P.2d 27 (Colo. 2000).

Proposed initiative that employs a growth formula limiting the rate of future development, delineates a system of measurement to determine the "base developed" area of each jurisdiction, allows for alternative treatment of commenced but not completed projects, excludes low-income housing, public parks and open space, and historic landmarks, and establishes a procedure for exemptions does not violate the constitutional prohibition against single subjects. In re Ballot Title No. 235(a), 3 P.3d 1219 (Colo. 2000).

Proposed initiative that prohibits school districts from requiring schools to provide bilingual education programs while allowing parents to transfer children from an English immersion program to a bilingual program does not contain more than one subject. In re Ballot Title 1999-2000 No. 258(A), 4 P.3d 1094 (Colo. 2000).

Enforcement provision under which election will be declared void and revenues that are collected pursuant to election will be refunded is directly tied to initiative's purpose of eliminating pay-to-play contributions and, therefore, is not a separate subject. Clause in question should be interpreted as nothing more than an enforcement or implementation clause that does nothing more than incorporate inherent right of taxpayers to challenge tax, spending, or bond measures when they have standing to do so. Thus, enforcement provision is not a separate subject but rather is tied directly to initiative's single subject. In re Ballot Title 2005-2006 No. 73, 135 P.3d 736 (Colo. 2006).

A proposed initiative that extends existing criminal liability of business entities to include its agents or high managerial agents that also contains a civil penalty and the enforcement of the penalty through a private right of action contains a single subject. Civil remedies are often attached to criminal statutes and enforced through private actions, and therefore do not create voter surprise.

In re Ballot Title 2007-2008 No. 57, 185 P.3d 142 (Colo. 2008).

Proposed initiative that creates a new legal regime, the Colorado public trust doctrine, to govern the public's rights in waters of natural streams contains a single subject. The proposed initiative does not contain an array of disconnected subjects joined together to garner support from various factions and does not contain surreptitious provisions that will surprise voters. In re Ballot Title 2011-2012 No. 3, 2012 CO 25, 274 P.3d 562.

Proposed initiative that modifies only the existing rights and interests in water between private individuals and the public is a cohesive proposal to create a new water regime and contains a single subject of public control of waters. Its provisions are necessarily and properly connected to each other because they define the purpose of the initiative, describe the broadened scope of the public's control over the state's water resources, and outline how to implement and enforce a new dominant public water estate. In re Ballot Title 2011-2012 No. 45, 2012 CO 26, 274 P.3d 576.

Measure to recognize marriage between a man and a woman as valid does not contravene the single subject requirement of § 1(5.5). In re Ballot Title 1999-2000 No. 227 and No. 228, 3 P.3d 1 (Colo. 2000).

Proposed initiative that establishes a just cause requirement for discharging or suspending an employee does not contain more than one subject. Because the petitioner's argument is comprised of speculation about the potential effects of the initiative and because the initiative relates in its entirety to the establishment of a just cause requirement, the court affirms the decision of the title board that it contains only one subject. In re Ballot Title 2007-2008 No. 62, 184 P.3d 52 (Colo. 2008).

Subjecting proposed initiative to a limitation imposed by the U.S. constitution, as interpreted by the U.S. supreme court, does not violate single subject requirement. All state statutory and constitutional measures are subject to implicit limitation that the U.S. constitution, as interpreted by the U.S. supreme court, may require otherwise; a finding that such limitation violates the single subject requirement would result in no measure satisfying the single subject requirement. In re Ballot Title 2007-2008 No. 61, 184 P.3d 747 (Colo. 2008).

Likewise, provision allowing state to act in accordance with the U.S. constitution, as interpreted by U.S. supreme court, does not violate single subject requirement. In re Ballot Title 2007-2008 No. 61, 184 P.3d 747 (Colo. 2008).

Measure is not deceptive or surreptitious merely because its content depends on the U.S. constitution, as interpreted by the U.S. supreme court. In re Ballot Title 2007-2008 No. 61, 184 P.3d 747 (Colo. 2008).

C. Initiatives Found to Contain More Than One Subject.

Proposed initiative contains more than one subject. Citizen initiative that retroactively creates "fundamental rights" in charter and constitutional amendments approved after 1990, requires the word "shall" in such amendments be mandatory regardless of the context, establishes standards for judicial review of filed petitions, provides that challenges to petitions can be upheld only if beyond a reasonable doubt by a unanimous supreme court, and contains other substantive and procedural provisions relating to recall, referendum, and initiative petitions. Amendment to Const. Sect. 2 to Art. VII, 900 P.2d 104 (Colo. 1995).

Proposed initiatives contained at least four separate and unrelated purposes in violation of the single-subject requirement. There was no necessary connection between the initiatives' central purpose of modifying the process by which initiative and referendum petitions are placed on the ballot and the additional purposes of modifying the content of initiative and referendum petitions that are placed on the ballot, preventing the repeal of the TABOR amendment in a single initiative, and protecting private property rights from the referendum process. In re Ballot Title 2001-02 No. 43, 46 P.3d 438 (Colo. 2002).

Proposed initiative contains at least two subjects in violation of subsection (5.5) by: (1) Creating and administering a beverage container tax, and (2) prohibiting the general assembly from exercising its legislative authority over the basin roundtables and interbasin compact committee until the year 2015, while embedding these entities within the water sections of the constitution and vesting them with significant new authority. Submission Clause for 2009-2010 No. 91, 235 P.3d 1071 (Colo. 2010).

There is no necessary and proper connection between the establishment and administration of a beverage container tax and a prolonged prohibition on the exercise of the general assembly's authority over the basin roundtables and the interbasin compact committee. Submission Clause for 2009-2010 No. 91, 235 P.3d 1071 (Colo. 2010).

Proposed initiative that creates a tax cut, imposes new criteria for voter approval of tax, spending, and debt increases, and imposes likely reductions in state spending on state programs contains at least three subjects. Matter of Title, Ballot Title and Sub. Cl., and Summary for 1999-2000 No. 37, 977 P.2d 845 (Colo. 1999).

Proposed initiative that establishes a tax credit and sets forth procedural requirements for future ballot titles contains more than one subject. Matter of Title, Ballot Title & Sub. Cl., 900 P.2d 121 (Colo. 1995).

Proposed initiative that makes tax cuts and imposes new criteria for voter approval of revenue and spending increases under article X, section 20, of the constitution contains more than one subject. Matter of Title, Ballot Title, & Sub. Cl. for 1997-98 No. 45, 960 P.2d 648 (Colo. 1998).

Initiative that contains both tax cuts and mandatory reductions in state spending on state programs violates the single-subject requirement. Matter of Title, Ballot Title for 1997-98 No. 88, 961 P.2d 1106 (Colo. 1998).

Proposed initiative violates the single-subject requirement because it (1) provides for tax cuts and (2) imposes mandatory reductions in state spending on state programs. Matter of Proposed Initiative 1997-98 No. 86, 962 P.2d 245 (Colo. 1998).

Initiatives that provide for tax cuts and impose mandatory reductions in state spending on state programs include two subjects that are distinct and have separate purposes. Matter of Title, Ballot Title for 1997-98 No. 84, 961 P.2d 345 (Colo. 1998).

Proposed initiative that creates a tax cut and imposes new criteria for voter approval of tax, spending, and debt increases contains at least two subjects. Matter of Title, Ballot Title and Sub. Cl., and Summary for 1999-2000 No. 38, 977 P.2d 849 (Colo. 1999).

Initiative contains multiple subjects where it creates a tax cut and, in addition, imposes new criteria for voter approval of tax, spending, and debt increases. In re Title, Ballot Title and Sub. Cl., and Summary for 1999-2000 No. 44, 977 P.2d 856 (Colo. 1999).

There is no difference legally between a reduction and a restriction in state spending. Both limit state

spending, which is not necessarily and properly related to the subject of local tax cuts. In re Title, Ballot Title and Sub. Cl., and Summary for 1999-2000 No. 172, No. 173, No. 174, and No. 175, 987 P.2d 243 (Colo. 1999).

Provision requiring the state to enforce and audit each tax and spending limit for each political subdivision of the state is unrelated to the tax cuts proposed by initiatives. In re Title, Ballot Title and Sub. Cl., and Summary for 1999-2000 No. 172, No. 173, No. 174, and No. 175, 987 P.2d 243 (Colo. 1999).

Proposed initiative that would change the qualifications to serve as a state judge or justice, change the qualifications to serve as a member of the judicial discipline commission, and change the jurisdiction of county judges of the city and county of Denver contains three subjects that serve distinct and separate purposes and therefore, violates the single-subject requirement. In re Ballot Title 1990-2000 No. 29, 972 P.2d 257 (Colo. 1999); In re Ballot Title 1999-2000 No. 41, 975 P.2d 180 (Colo. 1999).

Proposed initiative that modifies provisions concerning the qualifications, removal, and retention of judges and reallocates the city and county of Denver's governmental authority and control over its county judges to the state contains more than one subject. The alteration of the city and county of Denver's constitutional power over its county court constitutes a discrete and independent subject from that of the qualifications, removal, and retention of judges. Matter of Title, Ballot Title and Sub. Cl., and Summary for 1999-2000 No. 104, 987 P.2d 249 (Colo. 1999).

Proposed initiative concerning Colorado judicial officers and the powers of the judicial discipline commission includes two subjects because the commission is an independent constitutional body whose members are not judicial officers. Matter of Title, Ballot Title and Sub. Cl., and Summary for 1999-2000 No. 104, 987 P.2d 249 (Colo. 1999).

Proposed initiative has more than single subject and, therefore, is unconstitutional. Initiative presents multiple subjects: (1) Time limits for tax measures; (2) time limits for public debt authorizations; and (3) time limits for voter-authorized relief from spending limits. While voters may well be receptive to a broadly applicable 10-year limitation upon the duration of any tax increases, they may not realize that they will be simultaneously limiting their ability to incur multiple-fiscal year district debt obligation to fund public projects. Voters would also be limiting prospectively the duration of all future ballot issues designed to provide relief from TABOR's wholly independent spending caps. Voters are entitled to have each of these separate subjects considered upon its own merits. In re Ballot Title 2005-2006 No. 74, 136 P.3d 237 (Colo. 2006).

Initiative contains multiple subjects when its broad theme of prohibiting the provision of non-emergency government services to people not lawfully present in the United States includes two unrelated purposes: Decreasing taxpayer expenditures that benefit the welfare of those not lawfully present in the United States and denying them access to other unrelated administrative services. The theme of restricting non-emergency government services is too broad and general to make the purposes part of the same subject. In re Ballot Title 2005-06 No. 55, 138 P.3d 273 (Colo. 2006).

A tax cut and provisions impacting voter-approved revenue and spending increases resulted in there being two subject matters in voter initiative. Matter of Title, Ballot Title for 1997-98 No. 30, 959 P.2d 822 (Colo. 1998).

Proposed initiative

contained multiple subjects because it proposed both the creation of a new Colorado department of environmental conservation and the creation of a mandatory public trust standard that would have required the department to resolve conflicts between economic interest and public ownership and public conservation values in lands, waters, public resources, and wildlife in favor of public ownerships and public values. In re Ballot Title 2007-2008 No. 17, 172 P.3d 871 (Colo. 2007).

Multiple subject matters were combined in a manner that could result in voter surprise or fraud. Voters could be enticed to vote for the tax cut while not realizing passage of the measure would achieve a purpose not necessarily related to a tax cut. Matter of Title, Ballot Title for 1997-98 No. 30, 959 P.2d 822 (Colo. 1998).

Title board erred by fixing the titles and summary of an initiative that proposed substantial changes to the judicial branch where those parts of the initiative constituted separate and discrete subjects that: repealed the constitutional requirement that each judicial district have a minimum of one district court judge; deprived the city and county of Denver of control over Denver county court judgeships; immunized from liability persons who criticize a judicial officer regarding his or her qualifications; and altered the composition and powers of the commission on judicial discipline. Matter of Title, Ballot Title for 1997-98 No. 64, 960 P.2d 1192 (Colo. 1998); Matter of Title, Ballot Title for 1997-98 No. 95, 960 P.2d 1204 (Colo. 1998).

Title board also erred where the initiative proposed to make all municipal court judges subject to its term of office and retention provisions; and expanded the jurisdiction of the commission on judicial discipline to include municipal court judges. Matter of Title, Ballot Title for 1997-98 No. 95, 960 P.2d 1204 (Colo. 1998).

A proposed initiative to liberalize the procedure for initiative and referendum petitions contained multiple subjects because it also included a substantive provision prohibiting attorneys from setting ballot titles. In re Title for 2003-2004 Nos. 32 and 33, 76 P.3d 460 (Colo. 2003); In re Title for 2003-2004 Nos. 53 and 54, 77 P.3d 747 (Colo. 2003).

Section 2. Election of members - oath - vacancies. (1) A general election for members of the general assembly shall be held on the first Tuesday after the first Monday in November in each even-numbered year, at such places in each county as now are or hereafter may be provided by law.

(2) Each member of the general assembly, before he enters upon his official duties, shall take an oath or affirmation to support the constitution of the United States and of the state of Colorado and to faithfully perform the duties of his office according to the best of his ability. This oath or affirmation shall be administered in the chamber of the house to which the member has been elected.

(3) Any vacancy occurring in either house by death, resignation, or otherwise shall be filled in the manner prescribed by law. The person appointed to fill the vacancy shall be a member of the same political party, if any, as the person whose termination of membership in the general assembly created the vacancy.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 37. **L. 50:** Entire section amended, see **L. 51,** p. 553. **L. 74:** Entire section amended, p. 447, effective January 1, 1975.

Editor's note: The Governor's proclamation date in 1974 was December 20, 1974.

ANNOTATION

Law reviews. For article, "The Desirability of Change in Colorado's Legislative Organization and Procedure", see 23 Dicta 119 (1946).

Section 3. Terms of senators and representatives. (1) Senators shall be elected for the term of four years and representatives for the term of two years.

(2) In order to broaden the opportunities for public service and to assure that the general assembly is representative of Colorado citizens, no senator shall serve more than two consecutive terms in the senate, and no representative shall serve more than four consecutive terms in the house of representatives. This limitation on the number of terms shall apply to terms of office beginning on or after January 1, 1991. Any person appointed or elected to fill a vacancy in the general assembly and who serves at least one-half of a term of office shall be considered to have served a term in that office for purposes of this subsection (2). Terms are considered consecutive unless they are at least four years apart.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 38. **L. 74:** Entire section amended, p. 448, effective January 1, 1975. **Initiated 90:** Entire section amended, effective upon proclamation of the Governor, **L. 91,** p. 2035, January 3, 1991.

Editor's note: The Governor's proclamation date in 1974 was December 20, 1974.

ANNOTATION

Law reviews. For article, "Colorado Constitutional Amendments: An Analysis", see 3 Den. B. Ass'n Rec. 4 (Nov. 1926). For article, "The Desirability of Change in Colorado's Legislative Organization and Procedure", see 23 Dicta 119 (1946). For article, "The Constitutionality of Term Limitation", see 19 Colo. Law. 2193 (1990).

Applied in Armstrong v. Mitten, 95 Colo. 425, 37 P.2d 757 (1934); Lucas v. Forty-Fourth Gen. Ass'y, 377 U.S. 713, 84 S. Ct. 1459, 12 L. Ed. 2d 632 (1964); Kallenberger v. Buchanan, 649 P.2d 314 (Colo. 1982).

Section 4. Qualifications of members. No person shall be a representative or senator who shall not have attained the age of twenty-five years, who shall not be a citizen of the United States, and who shall not for at least twelve months next preceding his election, have resided within the territory included in the limits of the district in which he shall be chosen.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 38. **L. 2000:** Entire section amended, p. 2775, effective upon proclamation of the Governor, **L. 2001,** p. 2391, December 28, 2000.

ANNOTATION

Residence for 12 months within legislative district deemed requisite qualification. A requisite qualification of a person for election to the Colorado general assembly is residence for 12 months within the legislative district wherein he seeks to be elected. Anderson v. Gonzales, 155 Colo. 381, 395 P.2d 9 (1964).

Limitation on conditions of election to state office. The conditions of state employment, or election to state office, are to be limited to those either prescribed in the constitution, enumerated in applicable statutes, or implemented, where applicable, by the state civil service commission. Hamilton v. City & County of Denver, 176 Colo. 6, 490 P.2d 1289 (1971).

Imposition of tax upon state employees does not interfere with or add additional qualifications for state employment for payment of the tax is not a prerequisite to being appointed or elected, nor does continuation to the state position depend on payment of the tax. Hamilton v. City & County of Denver, 176 Colo. 6, 490 P.2d 1289 (1971).

Applied in Kallenberger v. Buchanan, 649 P.2d 314 (Colo. 1982).

Section 5. Classification of senators. The senate shall be divided so that one-half of the senators, as nearly as practicable, may be chosen biennially.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 38. **L. 74:** Entire section R&RE, p. 448, effective January 1, 1975.

Editor's note: The Governor's proclamation date in 1974 was December 20, 1974.

ANNOTATION

Law reviews. For article, "The Desirability of Change in Colorado's Legislative Organization and Procedure", see 23 Dicta 119 (1946).

This section and section 47 of this article contemplate districting by general assembly. In re Legislative Reapportionment, 150 Colo. 380, 374 P.2d 66 (1962).

Applied in Armstrong v. Mitten, 95 Colo. 425, 37 P.2d 757 (1934); Kallenberger v. Buchanan, 649 P.2d 314 (Colo. 1982).

Section 6. Salary and expenses of members. Each member of the general assembly shall receive such salary and expenses as are prescribed by law. No general assembly shall fix its own salary. Members of the general assembly shall receive the same mileage rate permitted for travel as other state employees.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 38. **L. 1883:** Entire section amended, p. 21. **L. 09:** Entire section amended, p. 314. **L. 74:** Entire section R&RE, p. 448, effective January 1, 1975.

Editor's note: The Governor's proclamation date in 1974 was December 20, 1974.

Cross references: For compensation of members of the general assembly, see § 2-2-307.

General assembly may determine traveling expenses. The general assembly has the right and the power to declare what constitutes necessary traveling expenses for its members. In re Interrogatories by Governor, 163 Colo. 113, 429 P.2d 304 (1967).

And compensate members for lodging. No provision in the constitution prevents lodging from being considered by the general assembly in determining what the compensation of each member shall include. It is within the province of the general assembly to compensate its members for expenses incurred for lodging. In re Interrogatories by Governor, 163 Colo. 113, 429 P.2d 304 (1967).

Statute under which general assembly would fix its own compensation invalid. A bill providing for payment of 10 dollars a day expenses to each member of the general assembly (for each day he is in attendance or for each day he is excused on account of sickness) violates this section insofar as it applies to members of the assembly which passed the bill, or to holdover senators who, by virtue of their former election, will also be members of the next assembly. In re Interrogatories by Governor, 116 Colo. 318, 180 P.2d 1018 (1947).

Insofar as a bill authorizing travel expenses attempts to apply its provisions to the general assembly which passed the bill, it is invalid. It is limited in application to those members of the next and subsequent general assemblies whose new terms begin upon the convening of the next or subsequent general assemblies. In re Interrogatories by Governor, 163 Colo. 113, 429 P.2d 304 (1967).

Provision for immediate effectiveness is severable. The emergency clause in a bill authorizing travel expenses which would require it to become effective immediately upon signing is severable from the remainder of the act. In re Interrogatories by Governor, 163 Colo. 113, 429 P.2d 304 (1967).

Applied in Nesbit v. People, 19 Colo. 441, 36 P. 221 (1894); In re Interrogatories by Colo. State Senate, 168 Colo. 558, 452 P.2d 391 (1969).

Section 7. General assembly - shall meet when - term of members - committees. The general assembly shall meet in regular session at 10 a.m. no later than the second Wednesday of January of each year. The general assembly shall meet at other times when convened in special session by the governor pursuant to section 9 of article IV of this constitution or by written request by two-thirds of the members of each house to the presiding officer of each house to consider only those subjects specified in such request. The term of service of the members of the general assembly shall begin on the convening of the first regular session of the general assembly next after their election. The committees of the general assembly, unless otherwise provided by the general assembly, shall expire on the convening of the first regular session after a general election. Regular sessions of the general assembly shall not exceed one hundred twenty calendar days.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 38. **L. 50:** Entire section amended, see **L. 51,** p. 554. **L. 74:** Entire section amended, p. 448, effective January 1, 1975. **L. 82:** Entire section amended, p. 683, effective upon proclamation of the Governor, **L. 83,** p. 1669, December 30, 1982. **L. 88:** Entire section

amended, p. 1451, effective upon proclamation of the Governor, **L. 89,** p. 1655, January 3, 1989.

Editor's note: The Governor's proclamation date in 1974 was December 20, 1974.

ANNOTATION

Law reviews. For article, "The Desirability of Change in Colorado's Legislative Organization and Procedure", see 23 Dicta 119 (1946). For note, "Colorado's Ombudsman Office", see 45 Den. L.J. 93 (1969).

Revision and alteration of districts excepted from section. Where an amendment to a constitution is in conflict, or in any manner inconsistent, with a prior provision of the constitution, the amendment controls. Thus, section 48 of this article, providing for the mandatory revision and alteration of legislative districts, creates an exception to the provisions of this section. In re Interrogatories Concerning House Joint Resolution No. 1008, 171 Colo. 200, 467 P.2d 56 (1970).

Consideration of reapportionment prior to adoption of section 48 of this article. As it was not mandatory by any law or constitutional provision that the governor designate reapportionment legislation as one of the subjects which the general assembly might consider in an even-numbered session, if he failed or refused to designate it, the general assembly could not even discuss the subject, and the constitutional mandate to reapportion was not mandatory until an odd-numbered session convened. In re Legislative Reapportionment, 150 Colo. 380, 374 P.2d 66 (1962).

Without independent enabling act. The general assembly could not constitutionally repeal the aid to needy disabled program under § 26-1-109 (9)(a), and institute an aid to temporarily disabled program, without an independent enabling act, since the governor had not included the subject in his call. Burciaga v. Shea, 187 Colo. 78, 530 P.2d 508 (1974).

Section 8. Members precluded from holding office. No senator or representative shall, while serving as such, be appointed to any civil office under this state; and no member of congress, or other person holding any office (except of attorney-at-law, notary public, or in the militia) under the United States or this state, shall be a member of either house during his continuance in office.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 38. **L. 74:** Entire section amended, p. 449, effective January 1, 1975.

Editor's note: The Governor's proclamation date in 1974 was December 20, 1974.

ANNOTATION

Section does not prohibit election to civil office. The provision of the first clause of this section only prohibits a senator from being appointed to a civil office, not his election thereto. Carpenter v. People ex rel. Tilford, 8 Colo. 116, 5 P. 828 (1884).

Appointment as employee does not violate section. Legislators, while serving as such, may, during the term of their office, hold other positions as state employees, e.g., field deputies of the income tax department

of the state treasurer's office, and their appointment and service as such employees is not in violation of this section. Hudson v. Annear, 101 Colo. 551, 75 P.2d 587 (1938).

Because although office is "employment", not every employment is "office". Hudson v. Annear, 101 Colo. 551, 75 P.2d 587 (1938).

Applied in Mulnix v. Elliott, 62 Colo. 46, 156 P. 216 (1916).

Section 9. Increase of salary - when forbidden. (Repealed)

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 39. **L. 74:** Entire section repealed p. 449, effective January 1, 1975.

Editor's note: The Governor's proclamation date in 1974 was December 20, 1974.

Section 10. Each house to choose its officers. At the beginning of the first regular session after a general election, and at such other times as may be necessary, the senate shall elect one of its members president, and the house of representatives shall elect one of its members as speaker. The president and speaker shall serve as such until the election and installation of their respective successors. Each house shall choose its other officers and shall judge the election and qualification of its members.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 39. **L. 50:** Entire section amended, see **L. 51,** p. 554. **L. 74:** Entire section amended, p. 449, effective January 1, 1975.

Editor's note: The Governor's proclamation date in 1974 was December 20, 1974.

ANNOTATION

Law reviews. For article, "Legislative Procedure in Colorado", see 26 Rocky Mt. L. Rev. 386 (1954).

Mode of electing speaker of house is not provided by constitution. This provision leaves the manner of election to the will of the body from which the speaker derives his office, according to common parliamentary law. In re Speakership of House of Representatives, 15 Colo. 520, 25 P. 707 (1890).

He is officer of house rather than state officer. The words, "its other officers", in this section are quite significant; they show clearly that the speaker is classed as an officer of the house, rather than as a state officer. In re Speakership of House of Representatives, 15 Colo. 520, 25 P. 707 (1890).

And may be removed by vote of majority of house members. The house of representatives has the power, by a vote of the majority of the whole number of members elected, to remove its speaker from office and to elect another in his stead. In re Speakership of House of Representatives, 15 Colo. 520, 25 P. 707 (1890).

Power vested and conferred in house to judge election and qualifications of members is exclusive. The courts cannot interfere with its exercise, or review the decision of either house, acting under and in pursuance of said power. Such decision is conclusive. Hughes v. Felton, 11 Colo. 489, 19 P. 444 (1888).

This section does not limit authority of courts to determine election controversies when no candidate declared duly elected. State constitutional provisions and statutes permitting general assembly to judge election of members does not limit subject matter jurisdiction of district court to hear controversies related to elections where no candidate is yet declared duly elected by secretary of state. Meyer v. Lamm, 846 P.2d 862 (Colo. 1993).

Applied in People ex rel. Parks v. Cornforth, 34 Colo. 107, 81 P. 871 (1905); In re Lieutenant Governorship, 54 Colo. 166, 129 P. 811 (1913).

Section 11. Quorum. A majority of each house shall constitute a quorum, but a smaller number may adjourn from day to day, and compel the attendance of absent members.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 39.

Section 12. Each house makes and enforces rules. Each house shall have power to determine the rules of its proceedings and adopt rules providing punishment of its members or other persons for contempt or disorderly behavior in its presence; to enforce obedience to its process; to protect its members against violence, or offers of bribes or private solicitation, and, with the concurrence of two-thirds, to expel a member, but not a second time for the same cause, and shall have all other powers necessary for the legislature of a free state. A member expelled for corruption shall not thereafter be eligible to either house of the same general assembly, and punishment for contempt or disorderly behavior shall not bar a prosecution for the same offense.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 39. **L. 74:** Entire section amended, p. 449, effective January 1, 1975.

Editor's note: The Governor's proclamation date in 1974 was December 20, 1974.

ANNOTATION

Law reviews. For article, "Legislative Procedure in Colorado", see 26 Rocky Mt. L. Rev. 386 (1954).

This grant of power is plenary, and, except as otherwise provided in the constitution itself, is exclusive, and, when exercised within legitimate limits, is conclusive upon every department of the government. In re Speakership of House of Representatives, 15 Colo. 520, 25 P. 707 (1890).

Court will not inquire into motive or cause which influenced action of legislative body and the court will not in any way interfere with the procedure or mode of trial by which the general assembly reaches its conclusions in expelling a member. The house must judge for itself in such matters, and its jurisdiction to so judge and decide is exclusive. In re Speakership of House of Representatives, 15 Colo. 520, 25 P. 707 (1890).

Power is granted to house, not to officers of house, and is to be exercised by majority of members. The exclusive nature of this power is in no way affected by the fact that the other departments of the government, the executive and judicial, are equally free and independent within their respective spheres of jurisdiction, nor

by the further fact that the contingency may arise which will cast upon the executive or the judicial branch of the government the responsibility of determining which of two conflicting organizations of the legislative body is the legal one, for there can be but one such legitimate body. In re Speakership of House of Representatives, 15 Colo. 520, 25 P. 707 (1890).

Open meetings law does not conflict with this section, which provides in pertinent part: "Each house shall have power to determine the rules of its proceedings . . .". Cole v. State, 673 P.2d 345 (Colo. 1983).

Applied in Watrous v. Golden Chamber of Commerce, 121 Colo. 521, 218 P.2d 498 (1950).

Section 13. Journal - ayes and noes to be entered - when. Each house shall keep a journal of its proceedings and publish the same, except such parts as require secrecy, and the ayes and noes on any question shall, at the desire of any two members, be entered on the journal.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 39. **L. 74:** Entire section amended, p. 449, effective January 1, 1975.

Editor's note: The Governor's proclamation date in 1974 was December 20, 1974.

Cross references: For the publication of senate and house journals, see § 2-2-310.

ANNOTATION

Law reviews. For article, "Legislative Procedure in Colorado", see 26 Rocky Mt. L. Rev. 386 (1954). For article, "Can American State Legislatures Keep Pace?", see 26 Rocky Mt. L. Rev. 468 (1954).

"Journal" consists of what is done and passed in legislative assembly. The word "journal" was used by the framers of the constitution as if, by common knowledge, it was known what was meant. Its meaning is equally certain now. As applied to legislation, it is the official record of what is done and passed in a legislative assembly. It is called the journal because the proceedings are entered therein in chronological order as they occur from day to day, the business of each day forming the matter of a complete record by itself. Those acts and things which the senate transcribed as a record of its daily proceedings, constitute its journal. People ex rel. Manville v. Leddy, 53 Colo. 109, 123 P. 824 (1912).

Its function is to record proceedings of body and authenticate and preserve same. Rio Grande Sampling Co. v. Catlin, 40 Colo. 450, 94 P. 323 (1907).

It is proper evidence of action of body upon all matters before it. Rio Grande Sampling Co. v. Catlin, 40 Colo. 450, 94 P. 323 (1907).

And recordings not sufficient to impeach legislative journal entries. Because magnetic tape recordings are not certified, and there are no provisions providing for any certification, there is not sufficient basis for use of the tapes in attempted impeachment of legislative journal entries. In re Interrogatories of Governor Regarding Certain Bills, 195 Colo. 198, 578 P.2d 200 (1978).

Form and manner of keeping journal left wholly to legislative body. While the keeping of a journal or record of proceedings is an imperative constitutional requirement, nevertheless, as the form and manner of keeping it is left wholly

to the legislative body, that which it makes and treats as its journal is essentially the journal of the constitution. People ex rel. Manville v. Leddy, 53 Colo. 109, 123 P. 824 (1912).

Applied in Anderson v. Grand Valley Irrigation Dist., 35 Colo. 525, 85 P. 313 (1906); In re Reapportionment of Colo. Gen. Ass'y, 647 P.2d 191 (Colo. 1982); Glennon Heights, Inc. v. Central Bank & Trust, 658 P.2d 872 (Colo. 1983).

Section 14. Open sessions. The sessions of each house, and of the committees of the whole, shall be open, unless when the business is such as ought to be kept secret.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 39.

ANNOTATION

Open meetings law not in conflict. Although this section, expressly authorizes the general assembly to conduct certain business in secret, both the senate and the house of representatives have determined that the business of legislative caucuses is not such as ought to be kept secret. Therefore, the open meetings law does not conflict with this section. Cole v. State, 673 P.2d 345 (Colo. 1983).

Applied in Glennon Heights, Inc. v. Central Bank & Trust, 658 P.2d 872 (Colo. 1983).

Section 15. Adjournment for more than three days. Neither house shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 39.

Section 16. Privileges of members. The members of the general assembly shall, in all cases except treason or felony, be privileged from arrest during their attendance at the sessions of their respective houses, or any committees thereof, and in going to and returning from the same; and for any speech or debate in either house, or any committees thereof, they shall not be questioned in any other place.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 39. **L. 74:** Entire section amended, p. 449, effective January 1, 1975.

Editor's note: The Governor's proclamation date in 1974 was December 20, 1974.

ANNOTATION

General assembly's members and officers have absolute immunity from suit which alleges violation of their oath of office. Lucchesi v. State, 807 P.2d 1185 (Colo. App. 1990).

The issue of whether the Colorado constitution's speech-or-debate clause grants legislators absolute immunity from lawsuit was one traditionally within the role of the judiciary to resolve for it is peculiarly the province of the judiciary to interpret the constitution and say what the law is. Colo. Common Cause v. Bledsoe, 810 P.2d 201 (Colo. 1991).

The Colorado constitution's speech-or-debate clause should be construed liberally to prevent judicial and executive interference with legislators in the conduct of their official duties. Colo. Common Cause v. Bledsoe, 810 P.2d 201 (Colo. 1991).

The intent of the members of the constitutional convention and voters who adopted the clause by ratifying the constitution was to ensure that legislators could conduct the business of lawmaking without undue hindrance or fear caused by threatened or pending lawsuits related to their legislative duties. Colo. Common Cause v. Bledsoe, 810 P.2d 201 (Colo. 1991).

The speech-or-debate clause does not automatically require the dismissal of legislators from a lawsuit that does not impose upon the legislators the burden of defending themselves or that does not challenge legislative acts performed in the sphere of legitimate legislative activity. Colo. Common Cause v. Bledsoe, 810 P.2d 201 (Colo. 1991).

The speech-or-debate clause did not afford a ground to dismiss the plaintiff's complaint for declaratory relief from alleged violations of section 22a of article V of the state constitution since declaratory-judgment actions do not present the same kind or degree of affirmative interference with legislative activities, nor do such actions impose upon legislators the same burden to defend themselves. Colo. Common Cause v. Bledsoe, 810 P.2d 201 (Colo. 1991).

The conduct of a member of the legislature may not be the basis for a civil or criminal judgment against that member unless the challenged acts fall outside the sphere of legitimate legislative activity, in which case the clause does not apply, and member may be questioned or even convicted of violations of criminal statutes. Romer v. Colo. General Assembly, 810 P.2d 215 (Colo. 1991).

Because the act of passing legislation falls squarely within the ambit of legitimate legislative activity, legislators and the general assembly must be dismissed as defendants from that portion of the governor's action seeking a declaration that the headnotes and footnotes to the appropriations bill were unconstitutional. Romer v. Colo. General Assembly, 810 P.2d 215 (Colo. 1991).

Acts performed by legislators in their official capacity are not necessarily legislative in nature and an opinion letter to the governor, stating that the general assembly believed the governor's veto was not valid, does not fall within the sphere of legislative activity that is protected by the speech-or-debate clause. Romer v. Colo. General Assembly, 810 P.2d 215 (Colo. 1991).

When the general assembly is engaged in legitimate legislative activity, the speech-or-debate clause protects individual legislators and the legislature as a whole from being named defendants in an action challenging the constitutionality of legislation; however, when an action challenges the constitutionality of the procedure employed to enact the legislation, it is incumbent on the judiciary to resolve whether the challenged actions fall within the sphere of legitimate legislative activity and, if not, the speech-or-debate clause does not apply. Romer v. Colo. General Assembly, 810 P.2d 215 (Colo. 1991).

Section 17. No law passed but by bill - amendments. No law shall be passed except by bill, and no bill shall be so altered or amended on its passage through either house as to change its original purpose.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 40.

ANNOTATION

Law reviews. For note, "What Is the Status of Colorado's Money Lenders Legislation?", see 7 Rocky Mt. L. Rev. 69 (1934). For article, "Legislative Procedure in Colorado", see 26 Rocky Mt. L. Rev. 386 (1954). For article, "The Lawyer and Legislation", see 26 Rocky Mt. L. Rev. 359 (1954).

Purpose of section. The controlling reason for the limitation imposed by this section on amendments during passage is to prevent bills from being introduced dealing with a certain subject and afterwards being so amended as to relate to an entirely different subject. People v. Brown, 174 Colo. 513, 485 P.2d 500 (1971), appeal dismissed, 404 U.S. 1007, 92 S. Ct. 671, 30 L. Ed. 2d 656 (1972).

Sections 17-22 of this article mandatory. This section and sections 18 to 22 of this article of the constitution set forth mandatory provisions with which the legislative department must strictly comply in the enactment of bills. Watrous v. Golden Chamber of Commerce, 121 Colo. 521, 218 P.2d 498 (1950).

This section necessary for practical working of section 19 of this article. Section 19 of this article would be of little practical benefit if bills may be introduced dealing with a certain subject and afterwards amended so as to relate to an entirely different subject. This furnishes the controlling reason for the existence of this section. In re Amendments of Legislative Bills, 19 Colo. 356, 35 P. 917 (1894).

But this section is not applicable to amendments to constitution. Nesbit v. People, 19 Colo. 441, 36 P. 221 (1894); People ex rel. Moore, 56 Colo. 17, 137 P. 55, 1914D Ann. Cas. 1154 (1913).

Origin of bill does not determine or limit right of amendment. The right of amendment of a bill may be exercised with equal freedom by either house irrespective of the question as to the particular body in which the bill originated. In re Amendments of Legislative Bills, 19 Colo. 356, 35 P. 917 (1894).

This section does not prohibit amendment which is merely extension of original purpose of bill. In re Amendments of Legislative Bills, 19 Colo. 356, 35 P. 917 (1894).

A bill does not violate this prohibition against altering or amending a bill on its passage through either house so as to change its original purpose if the change amounted to a change in the means of accomplishing the bill's original purpose. Parrish v. Lamm, 758 P.2d 1356 (Colo. 1988).

But bill to create new county cannot be amended to create a different new county. A bill which was introduced for the purpose of creating the new county of Logan, from territory embraced within the present county of Weld, cannot, under this section, be so amended so as to establish the new county of Montezuma from territory carved out of the present county of La Plata. In re House Bill No. 231, 9 Colo. 624, 21 P. 472 (1886).

Title of bill may be so amended as to cover original purpose of bill as extended by amendments. In re Amendments of Legislative Bills, 19 Colo. 356, 35 P. 917 (1894).

Mere joint resolution is in no sense a law within requirement of this section, and cannot empower the secretary of state to create a debt against the state for a contract of printing made thereunder. Henderson v. Collier & Cleveland Lithographing Co., 2 Colo. App. 251, 30 P. 40 (1892), aff'd, 18 Colo. 259, 32 P. 417 (1893).

And contract made under such joint resolution not authorized by law. A contract for printing made under a concurrent resolution adopted

by the senate and the house, but not passed by "bill" under the style, "Be it enacted by the general assembly of the state of Colorado", and not approved by the governor, nor passed, notwithstanding his disapproval, by a two-thirds vote, as required by the constitution, is not authorized by law. Collier & Cleveland Lithographing Co. v. Henderson, 18 Colo. 259, 32 P. 417 (1893).

Applied in Massachusetts Mut. Life Ins. Co. v. Colo. Loan & Trust Co., 20 Colo. 1, 36 P. 793 (1894); Airy v. People, 21 Colo. 144, 40 P. 362 (1895); People ex rel. Moore v. Perkins, 56 Colo. 17, 137 P. 55, (1913); Prior v. Noland, 68 Colo. 263, 188 P. 729 (1920); People v. UMW, Dist. 15, 70 Colo. 269, 201 P. 54 (1921); People ex rel. Boatright v. Newlon, 77 Colo. 516, 238 P. 44 (1925); People v. Brown, 174 Colo. 513, 485 P.2d 500 (1971); Glennon Heights, Inc. v. Central Bank & Trust, 658 P.2d 872 (Colo. 1983).

Section 18. Enacting clause. The style of the laws of this state shall be: "Be it enacted by the General Assembly of the State of Colorado".

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 40.

ANNOTATION

Sections 17-22 of this article mandatory. Watrous v. Golden Chamber of Commerce; 121 Colo. 521, 218 P.2d 498 (1950).

Contract made under joint authorization not authorized by law. A contract for printing made under a concurrent resolution adopted by the senate and the house, but not passed by "bill" under the style, "Be it enacted by the general assembly of the state of Colorado", and not approved by the governor, nor passed, notwithstanding his disapproval, by a two-thirds vote, as required by the constitution, is not authorized by law. Collier & Cleveland Lithographing Co. v. Henderson, 18 Colo. 259, 32 P. 417 (1893); Henderson v. Collier & Cleveland Lithographing Co., 2 Colo. App. 251, 30 P. 40 (1892).

Enacting clause as published in session laws of Colorado satisfies requirements and policy of this section and omission of enacting clause from the Colorado revised statutes does not render statutes unconstitutional nor result in a constitutional deficiency in defendant's conviction. People v. Washington, 969 P.2d 788 (Colo. App. 1998).

Applied in Prior v. Noland, 68 Colo. 263, 188 P. 729 (1920).

Section 19. When laws take effect - introduction of bills. An act of the general assembly shall take effect on the date stated in the act, or, if no date is stated in the act, then on its passage. A bill may be introduced at any time during the session unless limited by action of the general assembly. No bill shall be introduced by title only.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 40. **L. 1883:** Entire section amended, p. 21. **L. 18:** Entire section amended, see **L. 19,** p. 344. **L. 50:** Entire section amended, see **L. 51,** p. 554.

ANNOTATION

Law reviews. For article, "The Desirability of Change in Colorado's Legislative Organization and Procedure", see 23 Dicta 119

(1946). For article, "Legislative Bill Drafting", see 26 Rocky Mt. L. Rev. 368 (1954). For article, "Legislative Procedure in Colorado", see 26 Rocky Mt. L. Rev. 386 (1954).

Section limited to situation in which act "becomes law" prior to effective date. The language in this section to the effect that a legislative act "shall take effect on the date stated in the act" is limited to the situation in which the act "becomes a law" pursuant to § 11 of art. IV, Colo. Const., prior to the stated effective date. People v. Glenn, 200 Colo. 416, 615 P.2d 700 (1980).

And when executive approval necessary, approval date deemed passage date. When approval by the executive is necessary, his signature is the last act, and the date of passage is the date of his approval. Tacorante v. People, 624 P.2d 1324 (Colo. 1981).

No constitutional prohibition prevents different effective dates for different portions of same act. Because the effective date stated in an act and the date a bill becomes a law are not necessarily identical, nothing in the constitution prevents different portions of the same act from taking effect on different dates. Tacorante v. People, 624 P.2d 1324 (Colo. 1981).

Sections 17-22 of this article mandatory. Watrous v. Golden Chamber of Commerce; 121 Colo. 521, 218 P.2d 498 (1950).

Applied in In re Appropriations by Gen. Ass'y, 13 Colo. 316, 22 P. 464 (1889); In re Medley, 134 U.S. 160, 10 S. Ct. 384, 33 L. Ed. 835 (1890); Nesbit v. People, 19 Colo. 441, 36 P. 221 (1894); Edelstein v. Carlile, 33 Colo. 54, 78 P. 680 (1904); Denver & R. G. R. R. v. Brennaman, 45 Colo. 264, 100 P. 414 (1909); Thirteenth St. Corp. v. A-1 Plumbing & Heating Co., 640 P.2d 1130 (Colo. 1982); United Bank of Denver Nat'l Ass'n v. Wright, 660 P.2d 510 (Colo. App. 1983).

Section 20. Bills referred to committee - printed. No bill shall be considered or become a law unless referred to a committee, returned therefrom, and printed for the use of the members. Every measure referred to a committee of reference of either house shall be considered by the committee upon its merits, and no rule of either house shall deny the opportunity for consideration and vote by a committee of reference upon such a measure within appropriate deadlines. A motion that the committee report the measure favorably to the committee of the whole, with or without amendments, shall always be in order within appropriate deadlines. Each measure reported to the committee of the whole shall appear on the appropriate house calendar in the order in which it was reported out of the committee of reference and within appropriate deadlines.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 40. **Initiated 88:** Entire section amended, effective upon proclamation of the Governor, **L. 89,** p. 1664, January 3, 1989.

ANNOTATION

Law reviews. For article, "The Lawyer and Legislation", see 26 Rocky Mt. L. Rev. 359 (1954). For article, "Legislative Procedure in Colorado", see 26 Rocky Mt. L. Rev. 386 (1954). For article, "Can American State Legislatures Keep Pace?", see 26 Rocky Mt. L. Rev. 468 (1954).

Sections 17-22 of this article mandatory. Watrous v. Golden

Chamber of Commerce; 121 Colo. 521, 218 P.2d 498 (1950).

Requirement that each bill referred to a committee "be considered by the committee on its merits" requires, at a minimum, some interactive consideration, which normally includes some level of discussion, debate, or testimony by members of the committee, and further requires that each bill be so considered before being voted on by the committee on its merits. Therefore, the use of a supermotion to kill a bill without any discussion of the substance of the bill at all violates this section. However, no specific form of committee consideration is mandated in every situation, and the general assembly may determine, on a case-by-case basis, the level of discussion, debate or testimony that is required. Grossman v. Dean, 80 P.3d 952 (Colo. App. 2003).

This section creates a legally protected right for each legislator to have a committee of reference consider and vote on a bill on its merits. A plaintiff who was a legislator when he filed a complaint alleging deprivation of his right to have a bill he sponsored considered on its merits therefore had standing to seek a declaratory judgment that this section was violated. However, the mere status of the plaintiff as house minority leader did not confer standing to claim violations of this section with respect to the killing of bills sponsored by other house members of the minority party. Grossman v. Dean, 80 P.3d 952 (Colo. App. 2003).

Claim for a declaratory judgment based upon a legislator's claim of deprivation of his right to have a bill he sponsored considered on its merits did not constitute a political question and could be addressed by a court. Grossman v. Dean, 80 P.3d 952 (Colo. App. 2003).

Claim that use of supermotion to kill a bill violated this section was not moot. The claim fell within both exceptions to the mootness doctrine. It was capable of repetition, yet evading review, and it involved an issue of great importance or recurring constitutional violations. Grossman v. Dean, 80 P.3d 952 (Colo. App. 2003).

Bill to be printed before deliberation or debate. This provision is sufficiently complied with by printing the bill before it is taken up as a subject of deliberation for debate or amendment. Massachusetts Mut. Life Ins. Co. v. Colo. Loan & Trust Co., 20 Colo. 1, 36 P. 793 (1894).

This section only requires the printing to be done before the bill shall be considered or become a law. The consideration here contemplated means something more than the giving of attention to the reading of a bill. The primary meaning of the word "consider" is: "To fix the mind on with a view to a careful examination; to think on with care; to ponder; to study; to meditate on." It is in this sense that the word is used in the constitution. Massachusetts Mut. Life Ins. Co. v. Colo. Loan & Trust Co., 20 Colo. 1, 36 P. 793 (1894).

But bill need not be printed before it is read. A contention that, under this section, a bill cannot become a law unless it is printed before it is read is unsound and has no foundation in the terms of the constitutional provision. Massachusetts Mut. Life Ins. Co. v. Colo. Loan & Trust Co., 20 Colo. 1, 36 P. 793 (1894).

Sole purpose of printing, as the term is used in the consideration of a bill, is for the use and information of the individual legislator. In re Interrogatories of House of Representatives, 127 Colo. 160, 254 P.2d 853 (1953).

Constitution does not place limitation upon general revision of statutes, or a codification thereof. In re Interrogatories of House of Representatives, 127 Colo. 160, 254 P.2d 853 (1953).

Enactment of official code

within discretion of commission. The usual constitutional limitation on the enactment of new laws, and the repeal or amendment of existing laws is not applicable to legislation enacting an official code, or compilation or revision of existing laws. The introduction and passage of legislation enacting a codification and revision of the general law is a distinct field. The constitution does not spell out a prohibition as to any expedient method adopted by the commission under legislative direction including collating, compiling, editing, correction of obvious errors, eliminating duplications, and clarification of existing laws, when such, in the opinion of the commission, is essential to carry out the intent of the act for the revision or codification of the laws of the state of Colorado. In re Interrogatories of House of Representatives, 127 Colo. 160, 254 P.2d 853 (1953).

Applied in Glennon Heights, Inc. v. Central Bank & Trust, 658 P.2d 872 (Colo. 1983).

Section 21. Bill to contain but one subject - expressed in title. No bill, except general appropriation bills, shall be passed containing more than one subject, which shall be clearly expressed in its title; but if any subject shall be embraced in any act which shall not be expressed in the title, such act shall be void only as to so much thereof as shall not be so expressed.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 40.

Cross references: For amendments to the state constitution, see article XIX of this constitution; for general appropriation bills, see § 32 of this article.

ANNOTATION

I. GENERAL CONSIDERATION.

Law reviews. For comment on Armstrong v. Crissey & Fowler Lumber Co. appearing below, see 1 Rocky Mt. L. Rev. 63 (1928). For article, "Adoption by Reference in Municipal Ordinances", see 22 Rocky Mt. L. Rev. 69 (1949). For comment on Sullivan v. Siegal appearing below, see 29 Dicta 268 (1952). For article, "Legislative Procedure in Colorado", see 26 Rocky Mt. L. Rev. 386 (1954).

Purpose of this provision is to prevent surprise and deception through legislation pertaining to one subject under a title relating to another. But it would be unreasonable as well as dangerous to require that each and every specific branch or subdivision of the general subject of an act be enumerated by its title. Edwards v. Denver R. G. R. R., 13 Colo. 59, 21 P. 1011 (1889); In re Breene, 14 Colo. 401, 24 P. 3 (1890); California Co. v. State, 141 Colo. 288, 348 P.2d 382 (1959), appeal dismissed, 364 U.S. 285, 81 S. Ct. 42, 5 L. Ed. 2d 37, reh'g denied, 364 U.S. 897, 81 S. Ct. 219, 5 L. Ed. 2d 191 (1960); People ex rel. Dunbar v. Gilpin Inv. Co., 177 Colo. 132, 493 P.2d 359 (1972).

The object of this constitutional provision is twofold. It is to prevent surreptitious legislation, the insertion of enactments in bills which

were not indicated by their titles, and to forbid the treatment of incongruous subjects in the same act. It never was intended to prevent the general assembly from treating all the various branches of the same general subject in one law, or from inserting in a single act all the legislation germane to its principal subject. People ex rel. Kellogg v. Fleming, 7 Colo. 230, 3 P. 70 (1883); Geer v. Bd. of Comm'rs, 97 F. 435 (8th Cir. 1899).

It is important to bear in mind the evils sought to be corrected by this provision, including the practice of putting together in one bill subjects having no necessary or proper connection, for the purpose of enlisting in support of such bill the advocates of each measure, and thus securing the enactment of measures that could not be carried upon their merits. Catron v. Bd. of Comm'rs, 18 Colo. 553, 33 P. 513 (1893).

One object is to prevent surprise and fraud from being practiced upon legislators, and to apprise the people of the subjects of legislation by the titles of the bills, so that they might have an opportunity to be heard by petition or otherwise. When each proposed act is confined to a single subject and that subject is clearly expressed in the title, those interested are put upon inquiry when legislation is proposed affecting such subject, without its being necessary for them to examine every bill for the purpose of seeing that nothing objectionable is coiled up within the folds of the measure. Catron v. Bd. of Comm'rs, 18 Colo. 553, 33 P. 513 (1893).

The requirement that a bill be limited to a single subject makes each legislative proposal depend upon its own merits for passage. It also enables the governor to consider each single subject of legislation separately in determining whether to exercise veto power. In re House Bill No. 1353, 738 P.2d 371 (Colo. 1987).

This section is mandatory. People ex rel. Kellogg v. Fleming, 7 Colo. 230, 3 P. 70 (1883); In re Breene, 14 Colo. 401, 24 P. 3 (1890); Bd. of Comm'rs v. Trowbridge, 42 Colo. 449, 95 P. 554 (1908); Watrous v. Golden Chamber of Commerce, 121 Colo. 521, 218 P.2d 498 (1950).

But section should be liberally construed, so as to avert the evils against which it is aimed, and at the same time avoid unnecessarily obstructing legislation. In re Breene, 14 Colo. 401, 24 P. 3 (1890).

This provision was not designed to hinder or obstruct legislation, but to prevent its having this effect it must have a reasonable and liberal construction. When so construed, it is neither unreasonable nor difficult to comply with it. Catron v. Bd. of Comm'rs, 18 Colo. 553, 33 P. 513 (1893); Colo. Crim. Justice Reform Coalition v. Ortiz, 121 P.3d 288 (Colo. App. 2005).

Section is not applicable to amendments to constitution. People ex rel. Moore v. Perkins, 56 Colo. 17, 137 P. 55, 1914D Ann. Cas. 1154 (1913).

Or charter amendments. This section has no application to charter amendments made by municipalities pursuant to art. XX, Colo. Const. Hoper v. City & County of Denver, 173 Colo. 390, 479 P.2d 967 (1971).

Or city ordinances. This provision of the constitution does not apply to city ordinances. Scanlon v. City of Denver, 38 Colo. 401, 88 P. 156 (1906).

This section does not apply to codification of statutes. The usual constitutional limitation on the enactment of new laws, and the repeal or amendment of existing laws, is not applicable and does not generally prevail in the matter of legislation enacting an official code or compilation or revision of the existing general law. The constitution does not place a limitation upon the matter of the

general revision of statutes or a codification thereof. In re Interrogatories of House of Representatives, 127 Colo. 160, 254 P.2d 853 (1953).

"Clearly" advisedly used in this section. The word "clearly" was not incorporated into this provision by mistake. That this word was advisedly used, and was intended to affect the manner of expressing the subject, cannot be doubted. The matter covered by legislation is to be "clearly", not dubiously or obscurely, indicated by the title. Its relation to the subject must not rest upon a merely possible or doubtful inference. The connection must be so obvious as that ingenious reasoning aided by superior rhetoric will not be necessary to reveal it. Such connection should be within the comprehension of the ordinary intellect as well as the trained legal mind. In re Breene, 14 Colo. 401, 24 P. 3 (1890).

Headnote in code not "title". This section refers to the title of a bill as it is presented to the general assembly and a code headnote has no relation to that title. Specht v. People, 156 Colo. 12, 396 P.2d 838 (1964).

A bill did not violate this single subject requirement since it encompassed the regular business practice of waiving patient obligations to pay health insurance deductibles and copayments and the health care providers' advertising of such practices and these matters were properly connected and the title was clearly germane to the subject of criminalizing the regular business practice of waiving patient obligations to pay health insurance deductibles and copayments. Parrish v. Lamm, 758 P.2d 1356 (Colo. 1988).

Bill had a single subject when it authorized the state to enter into lease-purchase agreements to finance both a correctional facility and a separate academic facility. The single subject was the use of lease-purchase agreements to fund capital construction of certain state facilities. Colo. Crim. Justice Reform Coalition v. Ortiz, 121 P.3d 288 (Colo. App. 2005).

The Colorado Clean Indoor Air Act, part 2 of article 14 of title 25, does not consist of more than one subject. On its face, the act addresses the health risks of indoor secondhand smoke. Even assuming the act's exemptions are based in part on economic concerns, it does not violate this section. Coal. for Equal Rights v. Owens, 458 F. Supp. 2d 1251 (D. Colo. 2006), aff'd sub nom. Coal. for Equal Rights, Inc. v. Ritter, 517 F.3d 1195 (10th Cir. 2008).

Act amending void section by bringing it within general title validates same. Where an act of the general assembly containing a section obnoxious to this provision is amended by an act entitled an act to amend the act, repeating the title thereof, which amendatory act amends the void section by adding thereto a clause that brings it within the meaning of the subject matter of the title, the rule that a void section of a statute cannot be amended has no application since the title of the amendatory act makes it an amendment of the act and not an amendment of the section. Rice v. Colo. Smelting Co., 28 Colo. 519, 66 P. 894 (1901).

Reenactment of statute cures defective title. Even though the title to a bill is defective, the adoption and passage of the official report of the committee on statute revision by the general assembly creating the codification, Colorado revised statutes, and reenactment of such statute as a part of such revision, cures the defect. Tinsley v. Crespin, 137 Colo. 302, 324 P.2d 1033 (1958); Specht v. People, 156 Colo. 12, 396 P.2d 838 (1964).

And becomes the law itself. A statute as reenacted is thereafter not only evidence of the law, but in fact, the law itself, as a reenactment thereof. Tinsley v. Crespin, 137 Colo. 302, 324 P.2d 1033 (1958).

Applied in Wall v. Garrison, 11 Colo. 515, 19 P. 469 (1888); Geer v. Bd. of Comm'rs, 97 F. 435 (8th Cir. 1889); In re Appropriations by Gen Ass'y, 13 Colo. 316, 22 P. 464 (1889); Brooks v. People, 14 Colo. 413, 24 P. 553 (1890); Wyatt v. People, 17 Colo. 252, 28 P. 961 (1892); Heller v. People, 2 Colo. App. 459, 31 P. 773 (1892); In re Pratt, 19 Colo. 138, 34 P. 680 (1893); Tabor v. Commercial Nat'l Bank, 62 F. 383 (8th Cir. 1894); City of Denver v. Coulehan, 20 Colo. 471, 39 P. 425 (1894); Mollie Gibson Consol. Mining & Milling Co. v. Sharp, 5 Colo. App. 321, 38 P. 850 (1894); Airy v. People, 21 Colo. 144, 40 P. 362 (1895); Van Houton v. People, 22 Colo. 53, 43 P. 137 (1895); Colo. Milling & Elevator Co. v. Mitchell, 26 Colo. 284, 58 P. 28 (1899); Frost v. Pfeiffer, 26 Colo. 338, 58 P. 147 (1899); Cardillo v. People, 26 Colo. 355, 58 P. 678 (1899); Lamar Canal Co. v. Amity Land & Irrigation Co., 26 Colo. 370, 58 P. 600 (1899); Bd. of Comm'rs v. Whelen, 28 Colo. 435, 65 P. 38 (1901); People ex rel. Funk v. Wright, 30 Colo. 439, 71 P. 365 (1902); Gothard v. People, 32 Colo. 11, 74 P. 890 (1903); Chicago Lumber Co. v. Newcomb, 19 Colo. App. 265, 74 P. 786 (1903); Graves v. People, 32 Colo. 127, 75 P. 412 (1904); In re Magnes' Estate, 32 Colo. 527, 77 P. 853 (1904); People ex rel. Attorney Gen. v. News-Times Publishing Co., 35 Colo. 253, 84 P. 912 (1906); Patterson v. Watson, 35 Colo. 502, 83 P. 958 (1906); Anderson v. Grand Valley Irrigation Dist., 35 Colo. 525, 85 P. 313 (1906); People ex rel. Smith v. Crissman, 41 Colo. 450, 92 P. 949 (1907); People ex rel. Johnson v. Earl, 42 Colo. 238, 94 P. 294 (1908); People ex rel. Colo. Bar Ass'n v. Erbaugh, 42 Colo. 480, 94 P. 349 (1908); People ex rel. Foley v. Montez, 48 Colo. 436, 110 P. 639 (1910); People ex rel. Griffith v. Scott, 52 Colo. 59, 120 P. 126 (1911); Sch. Dist. No. 16 v. Union High Sch. Dist. No. 1, 25 Colo. App. 510, 139 P. 1039 (1914); Rhinehart v. Denver R. G. R. R., 61 Colo. 369, 158 P. 149 (1916); Pearman v. People, 64 Colo. 26, 170 P. 192 (1917); Martin v. People, 69 Colo. 60, 168 P. 1171 (1917); People v. Friederich, 67 Colo. 69, 185 P. 657 (1919); Gallovich v. People, 68 Colo. 299, 189 P. 34 (1920); People v. Max, 70 Colo. 100, 198 P. 150 (1921); Altitude Oil Co. v. People, 70 Colo. 452, 202 P. 180 (1921); Lowdermilk v. People, 70 Colo. 459, 202 P. 118 (1921); Milliken v. O'Meara, 74 Colo. 475, 222 P. 1116 (1924); Erisman v. McCarty, 77 Colo. 289, 236 P. 777 (1925); Pub. Serv. Co. v. City of Loveland, 79 Colo. 216, 245 P. 493 (1926); Johnson v. People, 79 Colo. 439, 246 P. 202 (1926); Broadbent v. McFerson, 80 Colo. 264, 250 P. 852 (1926); Armstrong v. Crissey & Fowler Lumber Co., 83 Colo. 105, 262 P. 926 (1927); Maryland Cas. Co. v. Indus. Comm'n, 86 Colo. 553, 283 P. 548 (1929); Driverless Car Co. v. Armstrong, 91 Colo. 334, 14 P.2d 1098 (1932); Cole v. People, 92 Colo. 145, 18 P.2d 470 (1933); People v. Montgomery, 92 Colo. 201, 19 P.2d 205 (1933); In re McManis' Estate, 94 Colo. 546, 31 P.2d 912 (1934); Titus v. Titus, 96 Colo. 191, 41 P.2d 244 (1935); Stevens v. People, 97 Colo. 559, 51 P.2d 1022 (1935); State v. Tolbert, 98 Colo. 433, 56 P.2d 45 (1936); Pub. Utils. Comm'n v. Manley, 99 Colo. 153, 60 P.2d 913 (1936); H.L. Shaffer & Co. v. Prosser, 99 Colo. 335, 62 P.2d 1161 (1936); Rinn v. Bedford, 102 Colo. 475, 84 P.2d 827 (1938); Home Owners' Loan Corp. v. Pub. Water Works Dist., 104 Colo. 466, 92 P.2d 745 (1939); Millikin v. People, 106 Colo. 6, 102 P.2d 901 (1940); People v. Rapini, 107 Colo. 363, 112 P.2d 551 (1941); Bills v. People, 113 Colo. 326, 157 P.2d (1945); Redmon v. Davis, 115 Colo. 415, 174 P.2d 945 (1946); In re Interrogatories by Governor, 116 Colo. 318, 180 P.2d 1018 (1947); Sullivan v. Siegal, 125 Colo. 544, 245 P.2d 860 (1952); Colo. Crim. Justice Reform Coalition v.

Ortiz, 121 P.3d 288 (Colo. App. 2005).

II. TITLE NEED NOT EXPRESS DETAILS.

Only requirement as to "title" is that it clearly expresses subject of act. The inhibition goes to "acts" containing more than one subject. Harding v. People, 10 Colo. 387, 15 P. 727 (1887).

This section provides that only the "subject" need be expressed in the title to a bill. Hoper v. City & County of Denver, 173 Colo. 390, 479 P.2d 967 (1971).

Hence, details of provisions need not be expressed. This provision does not require the title to express the details of the provisions of the act, and the fact that the title does express some of the details which were not required to be expressed does not limit the act to such provisions and exclude all other provisions not so expressed when it does not appear from the title that it was intended to be so limited. Bd. of Comm'rs v. Bd. of Comm'rs, 32 Colo. 310, 76 P. 368 (1904); Roark v. People, 79 Colo. 181, 244 P. 909 (1926); Gordon v. Wheatridge Water Dist., 107 Colo. 128, 109 P.2d 899 (1941).

Appropriate general title, without enumeration, deemed best. In reciting several subordinate matters in the title, the hazard of violating that part of the provision which prohibits the treatment of more than one subject in an act and reciting that one subject in the title is incurred; as a rule, it is wiser and safer not to attempt such enumeration, but to select an appropriate general title, broad enough to include all the subordinate matters considered. Golden Canal Co. v. Bright, 8 Colo. 144, 6 P. 142 (1884); Edwards v. Denver & R. G. R. R., 13 Colo. 59, 21 P. 1011 (1889).

From the constitutional standpoint, a broad and general title is better than a title attempting to catalogue the constituent parts of an act. The act entitled "an act concerning dependent and neglected children" is ideal in that respect. Metzger v. People, 98 Colo. 133, 53 P.2d 1189 (1936).

It is evident that a title cannot include all of the details of a bill. The general assembly may, within reason, make the title of an act as comprehensive as it chooses and thus cover legislation relating to many minor but associated matters. Zeigler v. People, 109 Colo. 252, 124 P.2d 593 (1942); Goldberg v. Musim, 162 Colo. 461, 427 P.2d 698 (1967).

Thus generality commendable in title. If an act treats of but one general subject, and that subject is expressed in the title, the requirement of this section is met. Particularity is not essential and generality is commendable in the title. Roark v. People, 79 Colo. 181, 244 P. 909 (1926).

In the manner of legislative titles particularity is neither necessary nor desirable; generality is commendable. Corder v. Pond, 117 Colo. 463, 190 P.2d 582 (1948); Tinsley v. Crespin, 137 Colo. 302, 324 P.2d 1033 (1958); California Co. v. State, 141 Colo. 288, 348 P.2d 382 (1959), appeal dismissed, 364 U.S. 285, 81 S. Ct. 42, 5 L. Ed. 2d 37, reh'g denied, 364 U.S. 897, 81 S. Ct. 219, 5 L. Ed. 2d 191 (1960).

Since limiting title of necessity limits contents of legislation. The general assembly may within reason make the title of a bill as comprehensive as it chooses; but, when it elects to limit the title to a particular subdivision of some general subject, the right to embody in the bill matters pertaining to other subdivisions of such subject is relinquished. In re Breene, 14 Colo. 401, 24 P. 3 (1890); Gordon v. Wheatridge Water Dist., 107 Colo. 128, 109 P.2d 899 (1941).

Addition of subdivisions in title does not render statute void. Where the title of a statute contains but one general subject, the addition in the

title of subdivisions under that subject does not render the act obnoxious to objection under this section. Clair v. People, 9 Colo. 122, 10 P. 799 (1886). See Hecht v. Wright, 31 Colo. 117, 72 P. 48 (1903).

Title of amendatory act may specify section, without more. It is sufficient for the title of an act to amend a code or revision to specify the section to be amended, without giving the title of the chapter or division to which it belongs, or in any way indicating the subject matter of the section. California Co. v. State, 141 Colo. 288, 348 P.2d 382 (1959), appeal dismissed, 364 U.S. 285, 81 S. Ct. 42, 5 L. Ed. 2d 37, reh'g denied, 364 U.S. 897, 81 S. Ct. 219, 5 L. Ed. 191 (1960).

Title referring to crime may include or omit penalties. The penalties prescribed for the violation of a statute are germane to so much of it as defines and denounces the crime, and need not be referred to in the title; but a title which by general words refers to the crime, and then to the punishment thereof, as by the phrase "and providing punishment", is not within the prohibition of this section. Trozzo v. People, 51 Colo. 323, 117 P. 150 (1911).

III. LEGISLATION MUST BE GERMANE TO SUBJECT EXPRESSED IN TITLE.

A. In General.

If act deals with one subject and subject is expressed in title, constitutional requirement is met. California Co. v. State, 141 Colo. 288, 348 P.2d 382 (1959), appeal dismissed, 364 U.S. 285, 81 S. Ct. 42, 5 L. Ed. 2d 37, reh'g denied, 364 U.S. 897, 81 S. Ct. 219, 5 L. Ed. 2d 191 (1960).

Where an act deals with a subject at large and the title clearly expresses the purpose of the enactment, it must be upheld. Anderson v. Bd. of Comm'rs, 67 Colo. 403, 186 P. 284 (1919).

Test being whether legislation relevant to subject. The mandate of the constitution is observed if the legislation in the body of a statute is germane to the general subject expressed in the title of the act, and the test in this respect is whether such legislation is relevant or appropriate to such subject. Bd. of Comm'rs v. Bd. of Comm'rs, 32 Colo. 310, 76 P. 368 (1904); Corder v. Pond, 117 Colo. 463, 190 P.2d 582 (1948); Tinsley v. Crespin, 137 Colo. 302, 324 P.2d 1033 (1958).

And this to be determined by contents of statute. Whether the subject matter of a statute is clearly expressed in its title, in compliance with the mandatory provisions of this section, must be determined by the contents of the statute, without regard to the source of the power of which the act itself is an expression. Burcher v. People, 41 Colo. 495, 93 P. 14 (1907).

With section to receive reasonable interpretation. This section prescribing that a bill shall contain but one subject, which shall be clearly expressed in the title, must receive a reasonable interpretation, and whenever a matter contained in the statute may fairly be considered germane to the subject expressed by the title it is sufficient. Dallas v. Redman, 10 Colo. 297, 15 P. 397 (1887); People ex rel. Thomas v. Goddard, 8 Colo. 432, 7 P. 301 (1885).

Matter is clearly indicated by title when provisions are clearly germane to subject mentioned in title. In re Breene, 14 Colo. 401, 24 P. 3 (1890).

It is a sufficient compliance if the provisions are germane to the general subject expressed in the title. Hecht v. Wright, 31 Colo. 117, 72 P. 48 (1903); People ex rel. Thomas v. Goddard, 8 Colo. 432, 7 P. 301 (1885).

No violation of the mandates of the constitution occurs if the subject matter of the bill is germane to the

general subject expressed in the title, as where the title is a general statement of but one topic, i.e., that of promoting the public morals by the abolition and regulation of certain actions affecting domestic relations. Goldberg v. Musim, 162 Colo. 461, 427 P.2d 698 (1967).

Definition of "germane". The word "germane" means closely allied; appropriate; relevant. Roark v. People, 79 Colo. 181, 244 P. 909 (1926); Dahlin v. City & County of Denver, 97 Colo. 239, 48 P.2d 1013 (1935).

It is germane to title of act to define terms as used in act. Indus. Comm'n v. Cont'l Inv. Co., 78 Colo. 399, 242 P. 49 (1925); Metzger v. People, 98 Colo. 133, 53 P.2d 1189 (1936).

Statute is valid although penalty provided therein is not mentioned in its title, if the punishment or penalty is connected with, and germane to, the subject expressed in the title, and is a means of enforcing the statute or carrying out or giving effect to it, and is essential to the accomplishment of the object indicated in the title. People v. Agnew, 107 Colo. 399, 113 P.2d 424 (1941).

Amendment is valid if it is germane to title of original act. Colo. Farm & Live Stock Co. v. Beerbohm, 43 Colo. 464, 96 P. 443 (1908).

And subjects of amendatory act must be in title of original statute. It is elementary that the title to the act must include every subject covered in the statute, and every subject covered in an amendatory act must have been included within the title to the original statute. City & County of Denver v. McNichols, 129 Colo. 251, 268 P.2d 1026 (1954).

Or germane to section amended. The subject matter of an act specifically amendatory of a designated section must be germane to the section amended. Bd. of Comm'rs v. Aspen Mining & Smelting Co., 3 Colo. App. 223, 32 P. 717 (1893).

Under a title of an amendatory act which specifies the section to be amended, any legislation is proper which is germane to the section specified. California Co. v. State, 141 Colo. 288, 348 P.2d 382 (1959), appeal dismissed, 364 U.S. 285, 81 S. Ct. 42, 5 L. Ed. 2d 37, reh'g denied, 364 U.S. 897, 81 S. Ct. 219, 5 L. Ed. 2d 191 (1960).

So title limited to amendment of one section cannot include new sections. New and different sections cannot be interpolated into a statute by an act the title of which is specifically limited to an amendment of one section and a repeal of others. Bd. of Comm'rs v. Aspen Mining & Smelting Co., 3 Colo. App. 223, 32 P. 717 (1893).

What could be done directly by enactment of original law may be done by amendment, even to the extent of enlarging the definition of terms employed in the title, providing there is nothing inherently unreasonable in the amendment. Metzger v. People, 98 Colo. 133, 53 P.2d 1189 (1936).

Provisions in a bill to increase moneys available to the state by increasing income or reducing expenditures held to contain diverse and incongruous subjects which impermissibly impede achievement of the goal that each legislative proposal be considered on its own merits and to intrude on the governor's veto power. In re House Bill No. 1353, 738 P.2d 371 (Colo. 1987).

Section 17-27.5-104 does not violate the clear expression requirement. The subject of that section is clearly expressed in the title, and failure to remain within the extended limits of confinement is essential to the accomplishment of the title. People v. Sa'ra, 117 P.3d 51 (Colo. App. 2004).

B. Severability of Germane Provisions.

That part of act, not directly germane to subject expressed in title is without force. People ex rel. Kellogg v. Fleming, 7 Colo. 230, 3 P. 70 (1883); People ex rel. Thomas v. Goddard, 8 Colo. 432, 7 P. 301 (1885); Bd. of Comm'rs v. Trowbridge, 42 Colo. 449, 95 P. 554 (1908).

But complete, germane sections severable. So much of a legislative act as is not referred to in the title or germane to the subject therein mentioned is void. But if the part of the statute remaining, which is covered by the title, is complete in and of itself, and does not depend on the void portion, it may stand. People ex rel. Seeley v. Hull, 8 Colo. 485, 9 P. 34 (1885).

As unconstitutionality of part of act does not necessarily invalidate other portions thereof. Catron v. Bd. of Comm'rs, 18 Colo. 553, 33 P. 513 (1893).

IV. APPROPRIATION BILLS.

General appropriation bill may contain many subjects. So far as the limitations of this section are concerned, the general appropriation bill may contain as many subjects as are properly within the power of the general assembly to make provision for. In re House Bill No. 168, 21 Colo. 46, 39 P. 1096 (1895).

But others subject to limitation. Not only are all bills of a general character within the purview of this section, but also all appropriation bills other than the general appropriation bill. In re House Bill No. 168, 21 Colo. 46, 39 P. 1096 (1895).

Purpose of appropriation act is to take money out of state treasury. People ex rel. Colo. State Hosp. v. Armstrong, 104 Colo. 238, 90 P.2d 522 (1939).

Thus allocation to reserve fund not appropriation. A statute which allocated a percentage of proceeds of state income tax to reserve for general fund is not an appropriation act within the meaning of the constitution. People ex rel. Colo. State Hosp. v. Armstrong, 104 Colo. 238, 90 P.2d 522 (1939).

Action in appropriation bill unrelated to appropriation void. Attempted action of the general assembly to create a new office in an appropriation bill and to legislate one out of office, would be void under section 32 of this article relating to appropriation bills, the state personnel system amendment, and this section regarding titles of acts. People ex rel. Fulton v. O'Ryan, 71 Colo. 69, 204 P. 86 (1922).

Section 22. Reading and passage of bills. Every bill shall be read by title when introduced, and at length on two different days in each house; provided, however, any reading at length may be dispensed with upon unanimous consent of the members present. All substantial amendments made thereto shall be printed for the use of the members before the final vote is taken on the bill, and no bill shall become a law except by a vote of the majority of all members elected to each house taken on two separate days in each house, nor unless upon its final passage the vote be taken by ayes and noes and the names of those voting be entered on the journal.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 40. **L. 1883:** Entire section amended, p. 22. **L. 50:** Entire section amended, see **L. 51,** p. 554.

Cross references: For publication of senate and house journals, see § 2-2-310.

I. GENERAL CONSIDERATION.

Law reviews. For article, "Can American State Legislatures Keep Pace?", see 26 Rocky Mt. L. Rev. 468 (1954). For article, "Legislative Procedure in Colorado", see 26 Rocky Mt. L. Rev. 386 (1954).

This section is mandatory on the general assembly. In re House Bill No. 250, 26 Colo. 234, 57 P. 49 (1889); Watrous v. Golden Chamber of Commerce, 121 Colo. 521, 218 P.2d 498 (1950).

General assembly has power to enact legislation by majority vote, and to require that it summon a two-thirds majority to override an invalid veto would upset the delicate constitutional balance between the executive and legislative branches. Colo. General Assembly v. Lamm, 704 P.2d 1371 (Colo. 1985).

The "ayes and noes" requirement is inherently ambiguous. This section does not specify in what manner the ayes and noes are to be taken. When the constitutional requirement can be complied with in a number of ways, the court's task is to determine whether the method actually chosen is in conformity. In re Interrogatories of Governor Regarding Certain Bills, 195 Colo. 198, 578 P.2d 200 (1978).

Opportunity to approve or disapprove pending bill critical. The critical inquiry pertinent to this section and § 23 of art. V, Colo. Const., is whether, during final passage of a bill, the members of the legislative body were afforded the opportunity to approve or disapprove the pending bill and whether this individual approval or disapproval was recorded in the official journal as mandated. In re Interrogatories of Governor Regarding Certain Bills, 195 Colo. 198, 578 P.2d 200 (1978).

The method of voting -- by use of the "present roll call" and "previous roll call" -- in adopting bills under consideration afforded members the opportunity of approval or disapproval. In re Interrogatories of Governor Regarding Certain Bills, 195 Colo. 198, 578 P.2d 200 (1978).

Reading of bill in committee of whole is one reading. The reading of a bill at length in committee of the whole, together with the reporting and recording of the fact upon the journal, may be treated as one reading of the bill. In re Senate Rule, 9 Colo. 641, 21 P. 477 (1886).

Section does not apply to amendments by committee of both houses. This section, providing that all substantial amendments to bills shall be printed for the use of members before the final vote is taken on the bill, does not apply to amendments recommended by a conference committee of the two houses. Bd. of Comm'rs v. Strait, 36 Colo. 137, 85 P. 178 (1906).

Nor to revision of general statutes. The usual constitutional limitation on the enactment of new laws, and the repeal or amendment of existing laws is not applicable, and does not generally prevail in the matter of legislation enacting an official code, or compilation or revision of existing general laws. In re Interrogatories of House of Representatives, 127 Colo. 160, 254 P.2d 853 (1953).

Compliance deemed question of fact. Whether in the enactment of a statute the requirements of the constitution as to legislation have been observed is one of fact, and can only be litigated upon appropriate pleadings. Colo. & S. Ry. v. Davis, 21 Colo. App. 1, 120 P. 1048 (1912).

While status of amendment

question of law. Whether or not an amendment to a bill is a substantial one, within the meaning of this section such as is required to be printed before final vote on the bill, is a judicial question to be determined by the courts, and not a legislative one to be determined by the general assembly. In re House Bill No. 250, 26 Colo. 234, 57 P. 49 (1899).

Where amendment held substantial. Where the house passed a bill to create a state board of assessors to consist of all the county assessors of the state, and the senate amended the bill, dividing the counties into five classes and providing that all the assessors should choose from their number one assessor from each class who, with certain state officers who compose the state board of equalization, should constitute the state board of assessors, it was held that the amendment was a substantial one within the meaning of this section requiring all substantial amendments to be printed before final vote on the bill. In re House Bill No. 250, 26 Colo. 234, 57 P. 49 (1899).

Requirement that vote must be taken by ayes and nays, does not apply to motion to reconsider action taken on passage of bill. Andrews v. People, 33 Colo. 193, 79 P. 1031, 108 Am. St. R. 76 (1905).

So procedures used in passage of Colorado Revised Statutes 1953 did not contravene the provision of this section. In re Interrogatories from House of Representatives, 127 Colo. 160, 254 P.2d 853 (1953).

Applied in Nesbit v. People, 19 Colo. 441, 36 P. 221 (1894); Adams v. Clark, 36 Colo. 65, 85 P. 642 (1906); People ex rel. Cheyenne Soil Erosion Dist. v. Parker, 118 Colo. 13, 192 P.2d 417 (1948); Glennon Heights, Inc. v. Central Bank & Trust, 658 P.2d 872 (Colo. 1983).

II. JOURNALS AS EVIDENCE OF CONFORMITY WITH REQUIREMENTS.

Conformity with constitutional requirements in legislation may be determined by reference to journals. Andrews v. People, 33 Colo. 193, 79 P. 1031 (1905); City of Denver v. Rubidge, 51 Colo. 224, 116 P. 1130 (1911).

If from journals it appears that requirements of constitution were not observed, attempted enactment is without effect. But where the complaint is that in one house the provisions of this section were not complied with, mere excerpts from the journal of that house, not assuming to state in what manner the bill passed on final reading, will not suffice. City of Denver v. Rubidge, 51 Colo. 224, 116 P. 1130 (1911).

If it affirmatively appears from the legislative journals, either expressly or be necessary implication, that the provisions of the constitution were not observed, then a bill is not valid. Andrews v. People, 33 Colo. 193, 79 P. 1031 (1905). See In re Roberts, 5 Colo. 525 (1881); Mass. Mut. Life Ins. Co. v. Colo. Loan & Trust Co., 20 Colo. 1, 36 P. 793 (1894).

Where question of constitutional requirement being observed in passage of bill is at issue in cause, the introduction of the journal, printed in accordance with § 2-2-310, which fails to show the entry of such votes, makes a prima facie case, and raises the presumption that there was no final passage of the bill and entry on the journal of the names of those voting aye and no. Rio Grande Sampling Co. v. Catlin, 40 Colo. 450, 94 P. 323 (1907).

Court will not examine journals to determine validity of statute. The court will not on the mere assertion of counsel that a statute is invalid because of noncompliance with some constitutional requirement in its passage, proceed to make an examination of the journals of the

respective houses to ascertain how that fact may be. Counsel may, if the journals are not published, present as evidence of their contents bearing on the point in issue, a proper certificate of the secretary of state, in whose legal custody they are, or, if published by proper authority, such portions of the published journals themselves may be brought directly, and in that form, to the attention of the court. The court, however, will not make such investigation for itself. Anderson v. Grand Valley Irrigation Dist., 35 Colo. 525, 85 P. 313 (1906).

Nor consider admissions of parties or stipulations of counsel as to contents of journals. One who questions the constitutionality of a statute on the ground that the general assembly did not observe the constitutional requirements in its passage must, by competent evidence, prove the fact or facts relied upon to defeat the law. The court will not consider admissions of parties or stipulations of counsel as to the contents of legislative journals, for the purpose of impeaching the validity of a statute. Anderson v. Grand Valley Irrigation Dist., 35 Colo. 525, 85 P. 313 (1906).

Nor report of special investigating committee of general assembly. In attacking a law on the ground that the requirements of this section were not complied with, as shown by the journal introduced in evidence for that purpose, the report of a special committee contained in the journal of a subsequent general assembly appointed to investigate the cause of such missing roll call is not competent evidence to rebut the prima facie case made by the introduction of the former journal, since to so hold would be referring the question in issue to some other tribunal than the trial court, i.e., an investigating committee of the general assembly. Rio Grande Sampling Co. v. Catlin, 40 Colo. 450, 94 P. 323 (1907).

Effect of failure of journal to show compliance. Where the journal does not show affirmatively that the bill was read at length upon three different days in the senate but does show that it was read a first and third time, it was held that it could not have been read a third time unless there had been a second reading. Merely negative evidence is not sufficient to impeach the enrolled act duly signed and authenticated by the proper officers and lodged in the office of the secretary of state. Mass. Mut. Life Ins. Co. v. Colo. Loan & Trust Co., 20 Colo. 1, 36 P. 793 (1894).

Where journals are merely silent on question whether requirements have been met, it is presumed that the fundamental law was properly followed. Andrews v. People, 33 Colo. 193, 79 P. 1031 (1905).

Section 22a. Caucus positions prohibited - penalties. (1) No member or members of the general assembly shall require or commit themselves or any other member or members, through a vote in a party caucus or any other similar procedure, to vote in favor of or against any bill, appointment, veto, or other measure or issue pending or proposed to be introduced in the general assembly.

(2) Notwithstanding the provisions of subsection (1) of this section, a member or members of the general assembly may vote in party caucus on matters directly relating to the selection of officers of a party caucus and the selection of the leadership of the general assembly.

Source: Initiated 88: Entire section added, effective upon proclamation of the Governor. **L. 89,** p. 1664, January 3, 1989.

Section 22b. Effect of sections 20 and 22a. Any action taken in violation of section 20 or 22a of this constitution shall be null and void.

Source: Initiated 88: Entire section added, effective upon proclamation of the Governor, **L. 89,** p. 1665, January 3, 1989.

Section 23. Vote on amendments and report of committee. No amendment to any bill by one house shall be concurred in by the other nor shall the report of any committee of conference be adopted in either house except by a vote of a majority of the members elected thereto, taken by ayes and noes, and the names of those voting recorded upon the journal thereof.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 40.
Cross references: For the provision that amendments be printed before final vote, see § 22 of this article.

ANNOTATION

Law reviews. For article, "The Lawyer and Legislation", see 26 Rocky Mt. L. Rev. 359 (1954). For article, "Can American State Legislatures Keep Pace?", see 26 Rocky Mt. L. Rev. 468 (1954).

This section mandatory. This section is mandatory insofar as it requires the vote to be taken by the ayes and noes. There is an express prohibition of the enactment of a law in any other mode, and hence compliance is a condition precedent to the validity of a legislative act coming within the provisions of the section. In re Roberts, 5 Colo. 525 (1881).

The "ayes and noes" requirement is inherently ambiguous. This section does not specify in what manner the ayes and noes are to be taken. When the constitutional requirement can be complied with in a number of ways, the court's task is to determine whether the method actually chosen is in conformity. In re Interrogatories of Governor Regarding Certain Bills, 195 Colo. 198, 578 P.2d 200 (1978).

Opportunity to approve or disapprove pending bill. The critical inquiry pertinent to § 22 of art. V, Colo. Const., and this section is whether, during final passage of a bill, the members of the legislative body were afforded the opportunity to approve or disapprove the pending bill and whether this individual approval or disapproval was recorded in the official journal as mandated. In re Interrogatories of Governor Regarding Certain Bills, 195 Colo. 198, 578 P.2d 200 (1978).

The method of voting -- by use of the "present roll call" and "previous roll call" -- in adopting bills under consideration afforded members the opportunity of approval or disapproval. In re Interrogatories of Governor Regarding Certain Bills, 195 Colo. 198, 578 P.2d 200 (1978).

This section applies to any amendment made to bills and to committee reports thereon. People ex rel. Rogers v. Barksdale, 104 Colo. 1, 87 P.2d 755 (1939).

Adoption of report of committee refers to final vote. The provision relating to "the report of any conference committee" undoubtedly refers to the final vote upon bills

reported from conference committees, because all the solemnity attendant upon the passage of bills is required to be observed in the vote upon such report. Bd. of Comm'rs v. Strait, 36 Colo. 137, 85 P. 178 (1906).

Adoption by house of report sufficient concurrence in senate amendments. Where a bill was passed by the house and then amended and passed by the senate, in which amendments the house refused to concur, the subsequent adoption by the house of a report of the conference committee, including some of the amendments adopted by the senate, was a sufficient concurrence in such amendments. Bd. of Comm'rs v. Strait, 36 Colo. 137, 85 P. 178 (1906).

Section 24. Revival, amendment or extension of laws. No law shall be revived, or amended, or the provisions thereof extended or conferred by reference to its title only, but so much thereof as is revived, amended, extended or conferred, shall be re-enacted and published at length.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 40.
Cross references: For the repeal of a repealing statute, see § 2-4-302.

ANNOTATION

Law reviews. For article, "Adoption by Reference in Municipal Ordinances", see 22 Rocky Mt. L. Rev. 69 (1949). For article, "Legislative Bill Drafting", see 23 Rocky Mt. L. Rev. 127 (1950). For article, "Legislative Bill Drafting", see 26 Rocky Mt. L. Rev. 368 (1954). For article, "Legislative Procedure in Colorado", see 26 Rocky Mt. L. Rev. 386 (1954).

Purpose of section. This section was framed for the purpose of avoiding confusion, ambiguity and uncertainty in the statutory law through the existence of separate and disconnected legislative provisions, original and amendatory, scattered through different volumes or different portions of the same volume. Callahan v. Jennings, 16 Colo. 471, 27 P. 1055 (1891); City & County of Denver v. People, 103 Colo. 565, 88 P.2d 89, appeal dismissed, 307 U.S. 615, 59 S. Ct. 1044, 83 L. Ed. 1496, reh'g denied, 308 U.S. 633, 60 S. Ct. 69, 84 L. Ed. 527 (1939).

This section was designed to defeat attempted impositions in the enactment of laws. It forbids, among other things, amending a statute simply and solely by striking out or inserting certain words, phrases or clauses; a proceeding formerly common, through which laws became complicated, and their real meaning often difficult of ascertainment even by the legal profession. Edwards v. Denver & R. G. R. R., 13 Colo. 59, 21 P. 1011 (1889).

This section was designed to remedy and prevent well-known abuses of legislation existing at the time of the framing of this instrument. These were the evils of special legislation, and the vicious practice of amending statutes by referring to the title, and then declaring that certain words and phrases appearing in certain lines and sections be stricken out, and certain other words and phrases inserted therein. Denver Circle R. R. v. Nestor, 10 Colo. 403, 15 P. 714 (1887).

The purpose of provisions that ordinances must be published and shall not be revised or amended by title only, is to prevent the confusion which results from amending ordinances by reference to the title, or by interpolating words without restating the part amended. Thiele v. City & County of Denver, 135 Colo. 442, 312 P.2d 786 (1957).

Provisions of this section are mandatory, not directory, and are to be classed among limitations of legislative power, rather than among those regulations of legislative conduct, a disobedience of which is held not necessarily fatal. Edwards v. Denver & R. G. R. R., 13 Colo. 59, 21 P. 1011 (1889).

Hence, statute can only be amended by reenacting and publishing at length portions affected by amendment. Callahan v. Jennings, 16 Colo. 471, 27 P. 1055 (1891).

This section does not apply to acts which are only remedial or precedural. Terminal Drilling Co. v. Jones, 84 Colo. 279, 269 P. 894 (1928).

Nor does this section apply to enactments wherein reference to general laws becomes necessary for the means of enforcing and carrying their provisions into effect. Such an unrestricted interpretation is not admissible, because it would be an unreasonable construction, and one that would impose upon the people more serious evils than those sought to be cured or avoided. Denver Circle R. R. v. Nestor, 10 Colo. 403, 15 P. 714 (1887).

It was not the purpose or effect of this provision to require a reenactment or republication of the provisions of the general laws of the state when reference is made to them in later statutes for a definition of rights, or for a specification of the lawful method of procedure under the subsequent laws. Geer v. Bd. of Comm'rs, 97 F. 435 (8th Cir. 1899).

Nor to revision of general laws. The usual constitutional limitation on the enactment of new laws, and the repeal or amendment of existing laws is not applicable, and does not generally prevail in the matter of legislation enacting an official code, or compilation or revision of existing laws. In re Interrogatories of House of Representatives, 127 Colo. 160, 254 P.2d 853 (1953).

Statute need not be reenacted where new section complete in itself. An additional section introducing a wholly new but germane requirement, complete in itself, and changing no existing provision of the act to which it is added, is not void on the ground that such act is not reenacted and published at length. Edwards v. Denver & R. G. R. R., 13 Colo. 59, 21 P. 1011 (1889).

And amendment by implication not abolished. This section was not intended to abolish the power of the general assembly to enact measures which amend preexisting legislation by implication only. City & County of Denver v. People, 103 Colo. 565, 88 P.2d 89, appeal dismissed, 307 U.S. 615, 59 S. Ct. 1044, 83 L. Ed. 1496, reh'g denied, 308 U.S. 633, 60 S. Ct. 69, 84 L. Ed. 527 (1939).

But amendment does not necessarily effect repeal. When an act amends a law with the introductory phrase, "so as to read as follows", or any other language showing clearly the intent only to amend, a repeal does not take place. Such a repeal was not contemplated by the framers of the constitution. Callahan v. Jennings, 16 Colo. 471, 27 P. 1055 (1891); Kendall v. People ex rel. Hoag, 53 Colo. 100, 125 P. 586 (1912).

When only amendment is intended, no repeal of the portions retained takes place. The original provisions appearing in the amended act are regarded as having been the law since they were first enacted, and the new provisions are understood as enacted at the time the amended act took effect. Callahan v. Jennings, 16 Colo. 471, 27 P. 1055 (1891).

Application of similar charter provision to city ordinance. The amendment of one section of an ordinance under a charter provision similar to that contained in this section was held not to require that the residue of the ordinance shall be reprinted. Post Printing & Publishing Co. v. City &

County of Denver, 68 Colo. 50, 189 P. 39 (1920).

Under a charter provision similar to this section, where the ordinance is complete in itself, the fact that new sections have been added to the code does not require the city to reenact the entire measure referred to in the new ordinance. Thiele v. City & County of Denver, 135 Colo. 442, 312 P.2d 786 (1957).

Applied in Bd. of Comm'rs v. Aspen Mining & Smelting Co., 3 Colo. App. 223, 32 P. 717 (1893); Long v. Sullivan, 21 Colo. 109, 40 P. 359 (1895); Lamb v. Powder River Live Stock Co., 132 F. 434 (8th Cir. 1904); In re Opinions of Justices, 55 Colo. 17, 123 P. 660 (1912); People v. Friederich, 67 Colo. 69, 185 P. 657 (1919); Gallovich v. People, 68 Colo. 299, 189 P. 34 (1920); Gavin v. People, 79 Colo. 189, 244 P. 912 (1926); Johnson v. People, 79 Colo. 439, 246 P. 202 (1926); Armstrong v. Johnson Storage & Moving Co., 84 Colo. 142, 268 P. 978 (1928); In re Hunter's Estate, 97 Colo. 279, 49 P.2d 1009 (1935); District Landowners Trust v. Adams County, 104 Colo. 146, 89 P.2d 251 (1939); Brannaman v. Richlow Mfg. Co., 106 Colo. 317, 104 P.2d 897 (1940).

Section 25. Special legislation prohibited. The general assembly shall not pass local or special laws in any of the following enumerated cases, that is to say; for granting divorces; laying out, opening, altering or working roads or highways; vacating roads, town plats, streets, alleys and public grounds; locating or changing county seats; regulating county or township affairs; regulating the practice in courts of justice; regulating the jurisdiction and duties of police magistrates; changing the rules of evidence in any trial or inquiry; providing for changes of venue in civil or criminal cases; declaring any person of age; for limitation of civil actions or giving effect to informal or invalid deeds; summoning or impaneling grand or petit juries; providing for the management of common schools; regulating the rate of interest on money; the opening or conducting of any election, or designating the place of voting; the sale or mortgage of real estate belonging to minors or others under disability; the protection of game or fish; chartering or licensing ferries or toll bridges; remitting fines, penalties or forfeitures; creating, increasing or decreasing fees, percentage or allowances of public officers; changing the law of descent; granting to any corporation, association or individual the right to lay down railroad tracks; granting to any corporation, association or individual any special or exclusive privilege, immunity or franchise whatever. In all other cases, where a general law can be made applicable no special law shall be enacted.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 41. **L. 2000:** Entire section amended, p. 2775, effective upon proclamation of the Governor, **L. 2001,** p. 2391, December 28, 2000.

ANNOTATION

Law reviews. For note, "Are Colorado Game Preserve Laws Local Legislation?", see 1 Rocky Mt. L. Rev. 136 (1929). For article, "The Moffat Tunnel", see 8 Dicta 3 (Feb. 1931). For article, "Has The Doctrine of Stare Decisis Been Abandoned in Colorado?", see 25 Dicta 91 (1948). For article, "Legislative Procedure in Colorado", see 26 Rocky Mt. L. Rev.

386 (1954). For article, "One Year Review of Constitutional and Administrative Law", see 34 Dicta 79 (1957). For comment on Mosko v. Dunbar, 135 Colo. 172, 309 P.2d 581 (1957), appearing below, see 34 Dicta 182 (1957). For article, "One Year Review of Real Property", see 36 Dicta 57 (1959). For article, "Medical Malpractice in Colorado", see 36 Dicta 339 (1959). For article, "The Case for Billboard Control: Precedent and Prediction", see 36 Dicta 461 (1959). For article, "One Year Review of Civil Procedure and Appeals", see 37 Dicta 21 (1960). For article, "A Review of the 1959 Constitutional and Administrative Law Decisions", see 37 Dicta 81 (1960). For article, "Annexation in Colorado", see 37 Dicta 259 (1960). For note, "Ownership of Streets and Rights of Abutting Landowners in Colorado", see 40 Den. L. Ctr. J. 26 (1963). For note, "One Year Review of Constitutional Law", see 41 Den. L. Ctr. J. 77 (1964). For note, "Purged Voter Lists", see 44 Den. L. J. 279 (1967). For note, "Referendum and Rezoning. Margolis v. District Court", see 53 U. Colo. L. Rev. 745 (1982).

Equal treatment under law is right constitutionally afforded citizens. Vanderhoof v. People, 152 Colo. 147, 380 P.2d 903 (1963).

The provision against special legislation was intended to curb favoritism on the part of the general assembly, prevent state government from interfering with local affairs, and preclude the legislature from passing unnecessary laws to fit limited circumstances. People v. Canister, 110 P.3d 380 (Colo. 2005); People v. Hagos, 110 P. 3d 1290 (Colo. 2005).

Purpose of section to prevent class legislation. It was for the purpose of preventing class legislation that the people of this state, by this section, declared that the general assembly shall not pass local or special laws in particular enumerated cases and in no case where a general law can be made applicable. City of Denver v. Bach, 26 Colo. 530, 58 P. 1089 (1899).

But not to prohibit all special legislation. While the prevailing spirit of the constitution is opposed to special legislation, it is not, however, prohibitory of all special legislation, but only such as relates to certain specified subjects, and to such other cases where general laws are applicable. Brown v. City of Denver, 7 Colo. 305, 3 P. 455 (1884).

Constitutional prohibition against special legislation does not require that the legislature include within a law every item that could be made the subject of legislation, but, rather, prohibits the legislature from exempting classes or members of a class from coverage of a particular statute without a reasonable basis. City of Montrose v. Pub. Utils. Comm'n, 732 P.2d 1181 (Colo. 1987); Bloomer v. Boulder County Bd. of Comm'rs, 799 P.2d 942 (Colo. 1990).

General assembly cannot grant power to pass special legislation to any other body. The charter of the city and the powers which it may exercise thereunder are derived from the general assembly; and as the latter cannot pass a special or local law, where a general one may be made applicable, it cannot grant such power to any other body. City of Denver v. Bach, 26 Colo. 530, 58 P. 1089 (1899).

Need for special act legislative question. The question whether a general law can be made applicable, or whether a special law is authorized for a purpose not falling within the enumerated or prohibited cases, is peculiarly a legislative question. Carpenter v. People ex rel. Tilford, 8 Colo. 116, 5 P. 828 (1884); Coulter v. Bd. of County Comm'rs, 9 Colo. 258, 11 P. 199 (1886); McClain v. People, 111 Colo. 271, 141 P.2d 685 (1943); Morgan County Junior Coll.

Dist. v. Jolly, 168 Colo. 466, 452 P.2d 34, appeal dismissed, 396 U.S. 24, 90 S. Ct. 198, 24 L. Ed. 2d 144 (1969).

This section imposes upon the general assembly the duty of looking into the facts of every case for which a special act is proposed; and it is only when the legislative mind becomes convinced, from a due investigation, and mature consideration of the facts and circumstances that a necessity exists for a special law, that such a law is authorized. Brown v. City of Denver, 7 Colo. 305, 3 P. 455 (1884); Carpenter v. People ex rel. Tilford, 8 Colo. 116, 5 P. 828 (1884).

If the new conditions affect the members of a class, the correcting statute must apply to all alike. If the new conditions affect one only or a few, the correcting statute may be as narrow as the mischief. The problem is one of legislative policy, with a wide margin of discretion conceded to the lawmakers. Morgan County Junior Coll. Dist. v. Jolly, 168 Colo. 466, 452 P.2d 34, appeal dismissed, 396 U.S. 24, 90 S. Ct. 198, 24 L. Ed. 2d 144 (1969).

And if general law applicable, special legislation prohibited. Where the general assembly has determined that a general law can be made applicable to the organization and classification of cities and towns, special legislation upon the subject is prohibited. In re Constitutionality of Senate Bill No. 293, 21 Colo. 38, 39 P. 522 (1895).

General assembly may reasonably classify, but there must be some distinguishing peculiarity which makes reasonable the exception of the designated class from the general law. The reason for such exception existing, the classification adopted is a matter to be determined by the general assembly. People v. Maxwell, 162 Colo. 495, 427 P.2d 310 (1967).

Equal protection in its guaranty of like treatment to all similarly situated permits classification which is reasonable and not arbitrary and which is based upon substantial differences having a reasonable relation to the objects or persons dealt with and to the public purpose sought to be achieved by the legislation involved. McCarty v. Goldstein, 151 Colo. 154, 376 P.2d 691 (1962); Hale v. City & County of Denver, 159 Colo. 341, 411 P.2d 332 (1966); People v. Sprengel, 176 Colo. 277, 490 P.2d 65 (1971); People v. Trujillo, 178 Colo. 147, 497 P.2d 1 (1972).

The general rule is that, although the general assembly may classify and enact statutes, there must be a reasonable basis to support the classification. If there is a distinguishing factor, then the general assembly may properly adopt the classification, even if some inequality may result. Yarbro v. Hilton Hotels Corp., 655 P.2d 822 (Colo. 1982); Norsby v. Jensen, 916 P.2d 555 (Colo. App. 1995).

But mathematical precision not required. A classification having some reasonable basis does not offend against the constitutional provisions supra merely because it is not made with mathematical nicety or because in practice it may result in some inequality. Vogts v. Guerrette, 142 Colo. 527, 351 P.2d 851 (1960).

The prohibition in this section against special legislation is more than a redundant equal protection clause. In re House Bill 91S-1005, 814 P.2d 875 (Colo. 1991).

Test of special legislation when an enumerated prohibition is implicated is: (1) Is the legislative classification a real or potential class or is it logically or factually limited to a "class of one" and therefore special legislation per se; and (2)(a) is the class based on some distinguishing peculiarity and (b) does the classification reasonably relate to the purposes of the statute? In re House Bill 91S-1005, 814 P.2d 875 (Colo. 1991); People v. Canister, 110 P.3d 380 (Colo. 2005); People v. Hagos, 110 P.

3d 1290 (Colo. 2005).

Test of special legislation when law is challenged on basis that general law could be made applicable is: Was the general assembly arbitrary and capricious in its decision that a special law was required? In re House Bill 91S-1005, 814 P.2d 875 (Colo. 1991).

Under "general law" test, size of class is irrelevant if legislature has not abused discretion. In re House Bill 91S-1005, 814 P.2d 875 (Colo. 1991).

The special legislation provision prohibits an illusionary class. The general assembly creates an illusionary class when it defines the class so that it will never have any other members other than those targeted by the legislation. The provision in § 18-1.4-102 (1) (e) was "conceived, cut, and tailored" to apply to only two defendants, and the time limitation in the provision ensured it would only apply to two defendants. The legislation, therefore, is unconstitutional special legislation. People v. Canister, 110 P.3d 380 (Colo. 2005); People v. Hagos, 110 P. 3d 1290 (Colo. 2005).

Statute, on its face, does not violate this section when statute created several classes of potential beneficiaries and more than one entity could be so classified over an extended period of time; when statute made reasonable distinctions on the basis of size of the economic impact of a business and on the basis of the source of funds when the constitution required that funds be used for distinct purpose; and when classifications were reasonably related to continued expansion of private sector employment in the state. In re House Bill 91S-1005, 814 P.2d 875 (Colo. 1991).

Sections 31-12-118.5 and 31-12-118 (2)(b), which provide for abeyance of annexation proceedings upon the filing of a petition for incorporation when specified criteria are met, do not violate this section. While act enacting § 31-12-118.5 and amending § 31-12-118 (2)(b) was intended to address a specific pending dispute, it also has general applicability and is likely to be applied again in the future. Greenwood Vill. v. Petitioners for Proposed City of Centennial, 3 P.3d 427 (Colo. 2000).

The fact that impetus for statute was to provide incentives for airline to locate facility in Colorado does not vitiate statute as special legislation; instead, question is whether statute creates true classes and whether classifications are rationally related to a legitimate public purpose. In re House Bill 91S-1005, 814 P.2d 875 (Colo. 1991).

Legislation is not prohibited as special legislation if there is a genuine class and if the classification is reasonable. The public highway authority law was not special legislation because it applied to all highway authorities, whether existing or to be created, and the provisions of the act were reasonably related to its stated purpose of ensuring adequate transportation for the state's citizens. Bd. of County Comm'rs v. E-470 Pub. Hwy., 881 P.2d 412 (Colo. App. 1994), aff'd in part and rev'd in part sub nom. Nicholl v. E-470 Pub. Hwy. Auth., 896 P.2d 859 (Colo. 1995).

Court ordinarily determines whether statutory classification bears rational relationship to legitimate state purpose. Where no suspect classification or fundamental right is involved, the court's role is to determine whether a statutory classification bears a rational relationship to a legitimate state purpose. McClanahan v. Am. Gilsonite Co., 494 F. Supp. 1334 (D. Colo. 1980).

When class legislation prohibited. The inhibition against class legislation contained in this section

arises when the effect of the law is to prohibit the carrying on of a legitimate business or occupation while allowing other businesses or occupations, not reasonably distinguished from those prohibited, to be carried on freely. Mosko v. Dunbar, 135 Colo. 172, 309 P.2d 581 (1957); Dunbar v. Hoffman, 171 Colo. 481, 468 P.2d 742 (1970).

Burden of showing arbitrariness of classification. One who assails the classification in a law must carry the burden of showing that it does not rest upon any reasonable basis but is essentially arbitrary. Vogts v. Guerrette, 142 Colo. 527, 351 P.2d 851 (1960); Snook v. Joyce Homes, Inc., 215 P.3d 1210 (Colo. App. 2009).

One who attacks the constitutionality of a legislative enactment has the burden of showing beyond a reasonable doubt that the law is unconstitutional. Kinterknecht v. Indus. Comm'n, 175 Colo. 60, 485 P.2d 721 (1971); People v. Sprengel, 176 Colo. 277, 490 P.2d 65 (1971); Snook v. Joyce Homes, Inc., 215 P.3d 1210 (Colo. App. 2009).

As special legislation presumed valid. It is to be presumed, upon the passage of a special statute, that, in the judgment of the lawmakers, after full and fair investigation, a general law would not effect the purpose designed to be accomplished. Brown v. City of Denver, 7 Colo. 305, 3 P. 455 (1884); Carpenter v. People ex rel. Tilford, 8 Colo. 116, 5 P. 828 (1884); Coulter v. Bd. of County Comm'rs, 9 Colo. 258, 11 P. 199 (1886).

But courts to interfere where improper legislation passed. It is not to be presumed that the general assembly would act in bad faith, or without due investigation and the exercise of sound judgment, in the passage of special acts; yet, in the event of such wrongful action clearly appearing, it would become the duty of the courts to interfere. Every question of doubt would, however, be resolved in favor of the validity of the act challenged. Carpenter v. People ex rel. Tilford, 8 Colo. 116, 5 P. 828 (1884).

Courts may not interfere with legislative classifications, provided there is the required equality and uniformity between the persons in the separate classes, and provided further, that the classification is not unreasonable or arbitrary and in fact has sanction in reason and logic. People ex rel. Dunbar v. Schaefer, 129 Colo. 215, 268 P.2d 420 (1954); Vogts v. Guerrette, 142 Colo. 527, 351 P.2d 851 (1960); McCarty v. Goldstein, 151 Colo. 154, 376 P.2d 691 (1962); People v. Sprengel, 176 Colo. 277, 490 P.2d 65 (1971).

All reasonable intendments must be indulged to support the constitutionality of legislative acts, including classifications adopted by lawmakers, and their groupings will not be disturbed unless the classification is clearly arbitrary and without any reasonable basis. People v. Trujillo, 178 Colo. 147, 497 P.2d 1 (1972).

Whether a general law can be made applicable is a question of legislative discretion, and courts can interfere only when there is a clear abuse of that discretion. McClain v. People, 111 Colo. 271, 141 P.2d 685 (1943); Morgan County Junior Coll. Dist. v. Jolly, 168 Colo. 466, 452 P.2d 34, appeal dismissed, 396 U.S. 24, 90 S. Ct. 198, 24 L. Ed. 2d 144 (1969).

Courts have jurisdiction to review acts of the general assembly passed under the assumption of discretionary powers. While the presumptions of good faith and sound judgment attach to the acts of legislative assemblies, to hold that the enactment of a provision involving a palpable abuse of discretion, or that the assumption of discretionary power, in a case clearly inapplicable to the rule, cannot be judicially reviewed and annulled, would subject the courts to criticism for inefficiency in the

performance of their judicial functions. Coulter v. Bd. of County Comm'rs, 9 Colo. 258, 11 P. 199 (1886).

If a Sunday closing ordinance promulgated by a city is discriminatory or amounts to class or special legislation, irrespective of the purpose for which it is passed, it is the duty of a court to relieve from its illegal effect. Allen v. City of Colo. Springs, 101 Colo. 498, 75 P.2d 141 (1937).

In general, a legislative amendment of a city charter would not be reviewed by the supreme court for the purpose of determining whether, under the concluding sentence of this constitutional provision, the changes incorporated could have been made by general law. Brown v. City of Denver, 7 Colo. 305, 3 P. 455 (1884); Carpenter v. People ex rel. Tilford, 8 Colo. 116, 5 P. 828 (1884); Darrow v. People ex rel. Norris, 8 Colo. 426, 8 P. 924 (1885); Rogers v. People, 9 Colo. 450, 12 P. 843, 59 Am. R. 146 (1886).

Administrative agency cannot pass on constitutionality of statute. Where the constitutionality of a statute, under which an administrative agency acts, is challenged, the administrative agency cannot pass upon its constitutionality. That function may be exercised only by the judicial branch of government. Kinterknecht v. Indus. Comm'n, 175 Colo. 60, 485 P.2d 721 (1971).

Law is not local nor special when it is general and uniform in its operation upon all in like situation. People ex rel. Johnson v. Earl, 42 Colo. 238, 94 P. 294 (1908); Cavanaugh v. People, 61 Colo. 292, 157 P. 200 (1916); Rifle Potato Growers Coop. Ass'n v. Smith, 78 Colo. 171, 240 P. 937 (1925); Allen v. Bailey, 91 Colo. 260, 14 P.2d 1087 (1932); Driverless Car Co. v. Armstrong, 91 Colo. 334, 14 P.2d 1098 (1932); McCarty v. Goldstein, 151 Colo. 154, 376 P.2d 691 (1962); People v. Maxwell, 162 Colo. 495, 427 P.2d 310 (1967); People ex rel. Dunbar v. Gilpin Inv. Co., 177 Colo. 132, 493 P.2d 359 (1972); O'Quinn v. Walt Disney Prods., Inc., 177 Colo. 190, 493 P.2d 344 (1972); City of Montrose v. Pub. Utils. Comm'n, 732 P.2d 1181 (Colo. 1987); Estate of Stevenson v. Hollywood Bar, 832 P.2d 718 (Colo. 1992).

A law does not violate the constitutional prohibition against special legislation if it is general and uniform in its operation upon all in like situation. Am. Water Dev., Inc. v. City of Alamosa, 874 P.2d 352 (Colo. 1994).

A legislative act which makes a reasonable classification of counties and is equally applicable to all of a common class is general legislation, and not special within the prohibition of this section. Young v. Bd. of County Comm'rs, 102 Colo. 342, 79 P.2d 654 (1938).

The statutory employer provisions of the Worker's Compensation Act do not violate the special legislative prohibition when it is "general and uniform in its operation upon all in like situation". Curtiss v. GSX Corp. of Colo., 774 P.2d 873 (Colo. 1989).

Section 8-41-401 (3), limiting damages available to one who waives workers' compensation insurance, is not unconstitutional under this section. It is not special legislation nor does it deprive claimants of property without due process. Snook v. Joyce Homes, Inc., 215 P.3d 1210 (Colo. App. 2009).

Although general law may have limited application. A general law unlimited as to time in its operation is not obnoxious to a constitutional inhibition against local legislation because it happens that but one city in the state has the population necessary to come within its purview. Darrow v. People ex rel. Norris, 8 Colo. 417, 8 P. 661, reh'g denied, 8 Colo. 426, 8 P. 919 (1885).

The number of class members known to be affected by the

statutory criteria at the time of enactment is not determinative in deciding whether the legislation amounts to unconstitutional special legislation. Am. Water Dev., Inc. v. City of Alamosa, 874 P.2d 352 (Colo. 1994).

As classification by population is not inhibited by this section, where it appears that such legislation is not an attempt to circumvent the constitution. People ex rel. Johnson v. Earl, 42 Colo. 238, 94 P. 294 (1908).

Special, nonprospective application is void. In re Senate Bill No. 95 of Forty-Third Gen. Ass'y, 146 Colo. 233, 361 P.2d 350 (1961).

Police regulation need not benefit entire public. Otherwise valid police power legislation is not invalid because it benefits only a special class, for example, the purchasers and lessees of subdivided real estate, and not the whole public; the police power may be, and usually is, exercised for the purpose of protecting particular classes of the public in need of such protection, and it is rare indeed that a single law includes everyone in the scope of its regulations. People v. Maxwell, 162 Colo. 495, 427 P.2d 310 (1967).

Ordinance allowing exceptions for nonconforming uses is constitutional. Republican form of government allows legislature to evaluate competing interests and determine best course of action. Landmark Land v. City & County of Denver, 728 P.2d 1281 (Colo. 1986), appeal dismissed for want of a substantial federal question, 482 U.S. 1001, 107 S. Ct. 3222, 97 L. Ed. 2d 729 (1987).

Amendatory or revisory provision in charter not special legislation. A provision in a city charter which is merely revisory or amendatory of the original charter does not violate the inhibition of the constitution against special legislation. Cunningham v. City of Denver, 23 Colo. 18, 45 P. 356 (1896); In re Extension of Boundaries, 18 Colo. 288, 32 P. 615 (1893).

Nor special charter adopted prior to constitution. Where, before the adoption of the state constitution, a city was incorporated under a special charter, and no abandonment of this charter and reincorporation under the general laws relating to towns and cities has taken place, the original charter, and amendments thereto, are not unconstitutional on the ground of special or local legislation; and, unless inconsistent with the constitution, they may stand. Huer v. City of Central, 14 Colo. 71, 23 P. 323 (1890).

Special legislation not forbidden in respect to incorporated towns or cities. The term township refers to an involuntary corporation, or quasi-corporation, and not to a voluntary municipal corporation such as an incorporated town. Special legislation is not forbidden in respect to incorporated towns or cities, except in cases where a general law can be made applicable. Mayor of Valverde v. Shattuck, 19 Colo. 104, 34 P. 947 (1893).

As general assembly has plenary power in respect to municipal corporations. Reichelt v. Town of Julesburg, 90 Colo. 258, 8 P.2d 708 (1932).

Laying out and vacating streets and highways. There is nothing in the Colorado constitution prohibiting the exercise of powers to lay out and vacate streets except by special legislation. Whitsett v. Union Depot & R. R., 10 Colo. 243, 15 P. 339 (1887).

Such power may be delegated to municipal corporations. This section contains no prohibition against the delegation of power to vacate roads, etc. to municipal corporations. On the contrary, the restriction against the vacating of streets and highways by local or special legislative acts is an implication of the power of the general assembly to

authorize such acts to be done. Whitsett v. Union Depot & R. R., 10 Colo. 243, 15 P. 339 (1887).

But cannot be exercised arbitrarily. Although the constitution inhibits the general assembly from passing laws vacating streets, the power to vacate streets may be delegated to municipal corporations, but this power cannot be exercised arbitrarily, and without regard to the rights and necessities of the public. City of Goldfield v. Golden Cycle Mining Co., 60 Colo. 220, 152 P. 896 (1915); Landmark Land v. City & County of Denver, 728 P.2d 1281 (Colo. 1986), appeal dismissed for want of a substantial federal question, 482 U.S. 1001, 107 S. Ct. 3222, 97 L. Ed. 2d 729 (1987).

Regulating county affairs. One of the most important constitutional guaranties secured to each and all counties of the state is freedom from the evils of special legislation, whereby county affairs and county government are likely to be continually disturbed by useless and unwholesome enactments. Bills for legislation of this character are often introduced to satisfy individual interests, and when they pass, it is by reason of a lack of interest of members whose constituents are not affected by the proposed measures. Coulter v. Bd. of County Comm'rs, 9 Colo. 258, 11 P. 199 (1886).

Regulating practice in courts. Under the constitution, criminal courts may be created by "local or special" acts, but their organization, jurisdiction and practice must be provided for by general laws, of uniform operation throughout the state. Ex parte Stout, 5 Colo. 509 (1881); Ex parte White, 5 Colo. 521 (1881).

Providing for management of common schools. "Management" is defined as the act or art of managing; the manner of treating, directing, carrying on or using for a purpose; conduct; administration; guidance; control; as in the management of a farm or the management of state affairs. The word is one of comprehensive meaning, and when the general assembly undertakes to provide by special law the manner in which supplies shall be furnished, the compensation and place of education of teachers to be employed, it is certainly legislating by a special act with reference to the management of certain of the common schools of the state, which legislation is inhibited by the express language of the constitution. In re Senate Bill No. 23, 23 Colo. 499, 48 P. 647 (1897).

Statutes granting to certain types of corporations right to exercise powers of eminent domain, and charter provisions of such corporations to enable them to take advantage of this privilege, grant no power in addition to that accorded by the specific provisions of the general law covering that subject are designed only to give to those particular corporations the same rights under the eminent domain provisions as might be exercised by an individual under the same circumstances, and such statutes are not unconstitutional class legislation. Miller v. Pub. Serv. Co., 129 Colo. 513, 272 P.2d 283 (1954), appeal dismissed, 348 U.S. 923, 75 S. Ct. 338, 99 L. Ed. 724 (1955).

Statutes which prescribe different punishments for same violations committed under the same circumstances by persons in like situations are void as violative of the equal protection of the laws. Vanderhoof v. People, 152 Colo. 147, 380 P.2d 903 (1963).

To sanction two sets of penalties in a traffic ordinance, one applying to those who plead guilty and waive their right to appear and defend in court, the other in the nature of punitive action applicable to those who refuse to plead guilty, amounts to a double standard where a citizen is assured of a definite penalty if he admits his guilt and pays promptly, but

faces an uncertain fate if he dares invoke his right to trial. This is an unconstitutional deprivation of equal protection of law. Berger v. City & County of Denver, 142 Colo. 72, 350 P.2d 192 (1960).

Five-year residency requirement in city charter for eligibility for offices of mayor or councilman is unconstitutional as a denial of equal protection. Bird v. City of Colo. Springs, 181 Colo. 141, 507 P.2d 1099 (1973).

Section granting immunity from suit to certain defendants without reasonable basis unconstitutional. Section 13-80-127, which deals with limitations of actions, is unconstitutional because it grants immunity from suit to certain classes of defendants without any reasonable basis for the classification. McClanahan v. Am. Gilsonite Co., 494 F. Supp. 1334 (D. Colo. 1980).

Dram shop liability statute is not special legislation since it is applied uniformly to all alcohol consumers and vendors. Sigman v. Seafood Ltd. P'ship I, 817 P.2d 527 (Colo. 1991); Estate of Stevenson v. Hollywood Bar, 832 P.2d 718 (Colo. 1992).

General assembly's identification and treatment of liquor licensees as a group or class is rationally related to a legitimate state interest since such licensees constitute a readily identifiable group or class because of the nature of the product with which they deal and because members of such class voluntarily join and pay fees to retain the authority commensurate with membership in the class. Estate of Stevenson v. Hollywood Bar, 832 P.2d 718 (Colo. 1992).

Statute that permits relocation of district courts in Arapahoe county outside of county seat is not unconstitutional special legislation. City of Littleton v. County Comm'rs, 787 P.2d 158 (Colo. 1990).

Failure to include county roads in waiver of sovereign immunity under § 24-10-106 (1)(d) does not violate this section. Bloomer v. Boulder County Bd. of Comm'rs, 799 P.2d 942 (Colo. 1990).

Three-year statute of limitations in § 33-44-111 of the Ski Safety Act based on reasonable grounds and therefore does not violate this section. Schafer v. Aspen Skiing Corp., 742 F.2d 580 (10th Cir. 1984).

One year statute of limitations in §§ 12-46-112.5 and 12-47-128.5 for claims arising against liquor licensees from the improper sale, service, or provision of fermented malt and alcoholic beverages to minors or intoxicated persons would not create special or local legislation in violation of this section unless basic classification of liquor license itself is itself constitutionally impermissible. Estate of Stevenson v. Hollywood Bar, 832 P.2d 718 (Colo. 1992).

Urban renewal law not local or special legislation. The urban renewal law, §§ 31-25-101 et seq., is a general law uniform in its operation and applies to all similarly situated and therefore is not local or special legislation. Denver Urban Renewal Auth. v. Byrne, 618 P.2d 1374 (Colo. 1980).

The Colorado Clean Indoor Air Act, part 2 of article 14 of title 25, exemptions for licensed casinos, bars and restaurants within licensed casinos, and cigar-tobacco bars do not violate this section. Coal. for Equal Rights v. Owens, 458 F. Supp. 2d 1251 (D. Colo. 2006), aff'd sub nom. Coal. for Equal Rights, Inc. v. Ritter, 517 F.3d 1195 (10th Cir. 2008).

Section 40-3-106 (4) does not violate the provisions of this section prohibiting special legislation even though the statute exempts municipally-owned fixed public utilities and privately-owned nonfixed public utilities from its coverage. City of Montrose v. Pub. Utils. Comm'n,

732 P.2d 1181 (Colo. 1987).

Application of §§ 40-9.5-201 to 40-9.5-207 which set forth a statutory scheme for compensating a cooperative electric association whose service territory is taken by a municipality does not violate this section. Such sections do not violate this section even though the statutes include a scheme for compensating a publicly-owned utility annexed by a municipality but does not provide a method for compensating an investor-owned utility so annexed. Municipality challenging the constitutionality of such sections failed to show that the classification has no rational basis. In addition, § 40-9.5-204 applies uniformly to any cooperative annexed by a municipality. Poudre Valley Rural Elec. v. Loveland, 807 P.2d 547 (Colo. 1991).

Natural surface stream legislation statutes are of general and uniform applicability and do not constitute special legislation. Am. Water Dev., Inc. v. City of Alamosa, 874 P.2d 352 (Colo. 1994).

Act requiring sand and gravel pit owners and operators who excavate pits after 1980 to obtain well permits and augmentation plans while exempting other owners and operators of sand and gravel pits does not constitute special legislation. The classes established by the general assembly are reasonable, are rationally related to a legitimate governmental interest, and reflect appropriate accommodation of various interests in the administration of the state's appropriation system. Central Colo. Water v. Simpson, 877 P.2d 335 (Colo. 1994).

This provision was taken from constitutions of other states, where it had previously received a settled and uniform interpretation. The presumption obtains that this interpretation was known and adopted by the convention at the time this provision was engrafted upon our fundamental law. People v. Bd. of County Comm'rs, 6 Colo. 202 (1882).

Applied in People v. Curley, 5 Colo. 412 (1880); Denver Circle R. R. v. Nestor, 10 Colo. 403, 15 P. 714 (1887); In re Constitutionality of Senate Bill No. 69, 15 Colo. 601, 26 P. 157 (1891); McInerney v. City of Denver, 17 Colo. 302, 29 P. 516 (1892); Robertson v. People, 20 Colo. 279, 38 P. 326 (1894); In re Substitute for Senate Bill No. 83, 21 Colo. 69, 39 P. 1088 (1895); In re Senate Bill No. 23, 23 Colo. 499, 48 P. 647 (1897); In re Senate Bill No. 9, 26 Colo. 136, 56 P. 173 (1899); Cardillo v. People, 26 Colo. 355, 58 P. 678 (1899); Gothard v. People, 32 Colo. 11, 74 P. 890 (1903); In re Magnes' Estate, 32 Colo. 527, 77 P. 853 (1904); City of Denver v. Iliff, 38 Colo. 357, 89 P. 823 (1906); Town of Sugar City v. Bd. of Comm'rs, 57 Colo. 432, 140 P. 809 (1914); Ard v. People, 66 Colo. 480, 182 P. 892 (1919); Parsons v. Parsons, 70 Colo. 154, 198 P. 156 (1921); Milheim v. Moffat Tunnel Imp. Dist., 72 Colo. 268, 211 P. 649 (1922); Milliken v. O'Meara, 74 Colo. 475, 222 P. 1116 (1924); Town of Holyoke v. Smith, 75 Colo. 286, 226 P. 158 (1924); Averch v. City & County of Denver, 78 Colo. 246, 242 P. 47 (1925); Metzger v. People, 98 Colo. 133, 53 P.2d 1189 (1936); Pub. Utils. Comm'n v. Manley, 99 Colo. 153, 60 P.2d 913 (1936); Rosenbaum v. City & County of Denver, 102 Colo. 530, 81 P.2d 760 (1938); Smith-Brooks Printing Co. v. Young, 103 Colo. 199, 85 P.2d 39 (1938); People ex rel. Cheyenne Soil Erosion Dist. v. Parker, 118 Colo. 13, 192 P.2d 417 (1948); Bd. of Trustees of Firemen's Pension Fund v. People ex rel. Behrman, 119 Colo. 301, 203 P.2d 490 (1949); Town of Greenwood Vill. v. District Court, 138 Colo. 283, 332 P.2d 210 (1958); Police Pension & Relief Bd. v. McPhail, 139 Colo. 344, 338 P.2d 694 (1959); Lucas v. District Court, 140 Colo. 510, 345 P.2d 1064 (1959); People ex rel. Dunbar v. People

ex rel. City & County of Denver, 141 Colo. 459, 349 P.2d 142 (1960); In re Interrogatories Propounded by McNichols, 142 Colo. 188, 350 P.2d 811 (1960); Mardi, Inc. v. City & County of Denver, 151 Colo. 28, 375 P.2d 682 (1962); Mountain States Tel. & Tel. Co. v. Animas Mosquito Control Dist., 152 Colo. 73, 380 P.2d 560 (1963); Colo. Interstate Gas Co. v. Sable Water Dist., 152 Colo. 89, 380 P.2d 569 (1963); City of Englewood v. Crabtree, 157 Colo. 593, 404 P.2d 525 (1965); Sanders v. District Court, 166 Colo. 455, 444 P.2d 645 (1968); Nunez v. People, 173 Colo. 236, 477 P.2d 366 (1970); Miller v. Indus. Comm'n, 173 Colo. 476, 480 P.2d 565 (1971); Wigington v. State Home & Training Sch., 175 Colo. 159, 486 P.2d 417 (1971); Lancaster v. C.F. & I. Steel Corp., 190 Colo. 463, 548 P.2d 914 (1976); Winkler v. Colo. Dept. of Health, 193 Colo. 170, 564 P.2d 107 (1977).

Section 25a. Eight-hour employment. (1) The general assembly shall provide by law, and shall prescribe suitable penalties for the violation thereof, for a period of employment not to exceed eight (8) hours within any twenty-four (24) hours (except in cases of emergency where life or property is in imminent danger) for persons employed in underground mines or other underground workings, blast furnaces, smelters; and any ore reduction works or other branch of industry or labor that the general assembly may consider injurious or dangerous to health, life or limb.

(2) The provisions of subsection (1) of this section to the contrary notwithstanding, the general assembly may establish whatever exceptions it deems appropriate to the eight-hour workday.

Source: L. 01: Entire section added, p. 108. **L. 88:** Entire section amended, p. 1453, effective upon proclamation of the Governor, **L. 89,** p. 1657, January 3, 1989.

Cross references: For provisions regulating hours of labor, see also article 13 of title 8.

ANNOTATION

Law reviews. For note, "Colorado Wage and Hour Law: Analysis and Some Suggestions", see 36 U. Colo. L. Rev. 223 (1964).

Power to regulate hours of labor nondelegable. Under this provision, as well as under the police power, the general assembly itself must regulate the hours of labor, and cannot delegate such power to either of the other great coordinate departments of government. Burcher v. People, 41 Colo. 495, 93 P. 14 (1907).

Occupation must be declared injurious. In attempting to regulate any of the unnamed branches of industry or labor, the general assembly must first declare that the same is injurious to health; a mere general prohibition of employment in a harmless occupation beyond specified hours is not the equivalent of a declaration that such occupation is injurious. Burcher v. People, 41 Colo. 495, 93 P. 14 (1907).

Section 26. Signing of bills. The presiding officer of each house shall sign all bills and joint resolutions passed by the general assembly, and the fact of signing shall be entered on or appended to the journal thereof.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 41. **L. 74:** Entire section amended, p. 450, effective January 1, 1975.

Editor's note: The Governor's proclamation date in 1974 was December 20, 1974.

ANNOTATION

Law reviews. For article, "The Lawyer and Legislation", see 26 Rocky Mt. L. Rev. 359 (1954).

This section is directory merely, insofar as it relates to the requirement that the fact of signing shall be entered upon the journal. In re Roberts, 5 Colo. 525 (1881).

Applied in Adams v. Clark, 36 Colo. 65, 85 P. 642 (1906).

Section 27. Officers and employees - compensation. The general assembly shall prescribe by law or by joint resolution the number, duties, and compensation of the appointed officers and employees of each house and of the two houses, and no payment shall be made from the state treasury, or be in any way authorized to any person except to an officer or employee appointed and acting pursuant to law or joint resolution.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 41. **L. 50:** Entire section amended, see **L. 51,** p. 555. **L. 74:** Entire section amended, p. 450, effective January 1, 1975.

Editor's note: The Governor's proclamation date in 1974 was December 20, 1974.

Cross references: For legislative employees and the compensation thereof, see §§ 2-2-305, 2-2-307 to 2-2-309, and 2-2-317 to 2-2-319.

ANNOTATION

This section, affecting public rights and essential to public's due protection, is mandatory. People ex rel. Clement v. Spruance, 8 Colo. 307, 6 P. 831 (1885).

And subsequent general assemblies cannot ignore conforming statute. When a law has been duly enacted by one legislative assembly, in conformity with a mandate of the constitution fixing the number and compensation of legislative employees, a subsequent general assembly may not legally ignore such law without modifying or repealing it. People ex rel. Clement v. Spruance, 8 Colo. 307, 6 P. 831 (1885).

Construction of this and following section. This section requires the passage of a law which shall prescribe the "number, duties and compensation of the officers and employees of each house". This provision having been complied with, § 28 of this article, referring to the same classes of employees, prohibits further legislation which will interfere with that enacted under this section. People ex rel. Clement v. Spruance, 8 Colo. 307, 6 P. 831 (1885).

Applied in Leckenby v. Post Printing & Publishing Co., 65 Colo. 443, 176 P. 490 (1918).

Section 28. Extra compensation to officers, employees, or contractors forbidden. No bill shall be passed giving any extra compensation to any public officer or employee, agent, or contractor after services have been rendered or contract made nor providing for the payment of any claim made

against the state without previous authority of law.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 41. **L. 74:** Entire section amended, p. 450, effective January 1, 1975.

Editor's note: The Governor's proclamation date in 1974 was December 20, 1974.

Cross references: For provision that salaries of executive officers shall not be increased during their term, see § 19 of article IV of this constitution.

ANNOTATION

Appropriation of allowance to official void. The inclusion in the general appropriation bill of a provision for an allowance to the lieutenant-governor for "official or semi-official purposes" is not provided for by law. The effect of it is to increase the allowance, salary or compensation of the lieutenant-governor in violation of law, and the appropriation is void. Leckenby v. Post Printing & Publishing Co., 65 Colo. 443, 176 P. 490 (1918).

This section does not apply to one who has ceased to be public official. Bedford v. White, 106 Colo. 439, 106 P.2d 469 (1940).

This section is comprehensive and includes all claims against state, whether the rate of compensation has been prescribed by law or whether in obedience to law it has been fixed by contract. In either case a subsequent promise or agreement to pay a higher rate is void. People ex rel. Clement v. Spruance, 8 Colo. 307, 6 P. 831 (1885); Bedford v. White, 106 Colo. 439, 106 P.2d 469 (1940).

Construction of this and preceding section. People ex rel. Clement v. Spruance, 8 Colo. 307, 6 P. 831 (1885).

Applied in In re Substitute for Senate Bill No. 83, 21 Colo. 69, 39 P. 1088 (1895); In re Senate Bill No. 196, 23 Colo. 508, 48 P. 540 (1897).

Section 29. Contracts for facilities and supplies. All stationery, printing, paper, and fuel used in the legislative and other departments of government shall be furnished; and the printing and binding and distributing of the laws, journals, department reports, and other printing and binding; and the repairing and furnishing the halls and rooms used for the meeting of the general assembly and its committees, shall be performed under contract, to be given to the lowest responsible bidder, below such maximum price and under such regulations as may be prescribed by law. No member or officer of any department of the government shall be in any way interested in any such contract; and all such contracts shall be subject to the approval of the governor or his designee.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 41. **L. 74:** Entire section amended, p. 450, effective July 1, 1975.

Editor's note: The Governor's proclamation date in 1974 was December 20, 1974.

Cross references: For the publication of senate and house journals, see also § 2-2-310; for provisions concerning contracts for public printing, see also part 2 of article 70 of title 24; for the publication of the opinions of the supreme court, see § 13-2-122.

ANNOTATION

This section not merely directory. The provisions of the constitution manifestly intended as salutary checks upon improvident conduct of governmental affairs should not be held as merely directory. Mulnix v. Mutual Benefit Life Ins. Co., 23 Colo. 71, 46 P. 123 (1896).

Opinions of supreme court not included in "department reports". The publication of the opinions of the supreme court and court of appeals is not the publication of "department reports", within the meaning of this section. Gillette v. Peabody, 19 Colo. App. 356, 75 P. 18 (1904).

And not "other printing and binding". The phrase "and other printing and binding", which follows the provision for the printing of department reports, must be construed to mean other printing and binding of the same kind and character as that enumerated in the section and would not include the reports of the opinions of the appellate courts. Gillette v. Peabody, 19 Colo. App. 356, 75 P. 18 (1904).

Applied in Smith-Brooks Printing Co. v. Young, 103 Colo. 199, 85 P.2d 39 (1938).

Section 30. Salary of governor and judges to be fixed by the legislature - term not to be extended or salaries increased or decreased. (Repealed)

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 42. **L. 1881:** Entire section amended, p. 63. **L. 28:** Entire section amended, see **L. 29,** p. 286. **L. 74:** Entire section repealed, p. 450, effective January 1, 1975.

Editor's note: The Governor's proclamation date in 1974 was December 20, 1974.

Section 31. Revenue bills. All bills for raising revenue shall originate in the house of representatives; but the senate may propose amendments, as in the case of other bills.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 42.

ANNOTATION

Prohibition does not extend to nonrevenue-raising bills. A bill designed to accomplish some well-defined purpose other than raising revenue is not within the prohibition of this section, even though, as incident to its main purpose, it contains provisions, the enforcement of which may produce revenue. Colorado Nat'l Life Assurance Co. v. Clayton, 54 Colo. 256, 130 P. 330 (1913).

Art. XXIV, Colo. Const., providing for old age pensions, does not conflict with this section. In re Interrogatories by Governor, 99 Colo. 591, 65 P.2d 7 (1937).

Applied in Geer v. Bd. of Comm'rs, 97 F. 435 (8th Cir. 1899); Colorado Nat'l Life Assurance Co. v. Clayton, 54 Colo. 256, 130 P. 330 (1913); Chicago, B. & Q. R. R. v. Sch. Dist. No. l, 63 Colo. 159, 165 P. 260 (1917); Weed v. Occhiato, 175 Colo. 509, 488 P.2d 877 (1971); Cohen v. State, Dept. of Rev., 197 Colo. 385, 593 P.2d 957 (1979); Miller Int'l, Inc. v. State, Dept. of Rev., 646 P.2d 341 (Colo. 1982); Meyer v. Charnes, 705 P.2d 979 (Colo. App. 1985).

Section 32. Appropriation bills. The general appropriation bill shall embrace nothing but appropriations for the expense of the executive, legislative and judicial departments of the state, state institutions, interest on the public debt and for public schools. All other appropriations shall be made by separate bills, each embracing but one subject.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 42. **L. 50:** Entire section amended, see **L. 51,** p. 555.

Cross references: For subjects and titles of appropriation bills, see § 21 of this article.

ANNOTATION

Purpose of section to guard against improper appropriations of public revenue. This section was adopted not merely to make emphatic the exception found in section 21 of this article. Its special office is to guard against improper appropriations of the public revenue and to impose restrictions upon the manner of making the same, in addition to those found in section 21 of this article. In re House Bill No. 168, 21 Colo. 46, 39 P. 1096 (1895).

"Subject", as employed in this section, is substantially equivalent to "purpose". In re House Bill No. 168, 21 Colo. 46, 39 P. 1096 (1895).

Purpose of appropriation bills is to take money out of state treasury. People ex rel. Colo. State Hosp. v. Armstrong, 104 Colo. 238, 90 P.2d 522 (1939).

Sole purpose of the general appropriations bill is to meet charges already created against the public funds by affirmative acts of the general assembly. Dodge v. Dept. of Soc. Servs., 657 P.2d 969 (Colo. App. 1982).

Scope of general appropriation bill is to provide appropriations such as can be constitutionally included therein for the period of two years only. In re House Bill No. 168, 21 Colo. 46, 39 P. 1096 (1895).

The general appropriation bill can only provide for meeting charges already created against the public funds by affirmative acts of the general assembly. The compensation of lieutenant-governor should first be prescribed by affirmative legislation before it can be included in the general appropriation bill, and there must be a law permitting expenses to be incurred before they can lawfully be paid out from the state treasury. A law must be enacted providing for its allowance before the compensation or expenses of state officials can be included in the general appropriation bill. Leckenby v. Post Printing & Publishing Co., 65 Colo. 443, 176 P. 490 (1918).

And not within province of general appropriation bill to enact affirmative laws. The framers of the constitution never contemplated that this bill would be used for the twofold purpose of creating laws and then appropriating money to carry them into effect. Affirmative legislation, as well as special appropriations, are otherwise provided for in the constitution. People ex rel. Clement v. Spruance, 8 Colo. 307, 6 P. 831 (1885); In re House Bill No. 168, 21 Colo. 46, 39 P. 1096 (1895); Anderson v. Lamm, 195 Colo. 437, 579 P.2d 620 (1978).

Hence substantive legislation in appropriation bill is properly vetoed. MacManus v. Love, C.A. no. C-24520 (D.C. Denver, Colo., filed Nov. 24, 1971).

Appropriation is the legislative designation of a certain amount of money as being set apart,

allotted, or assigned for a specific purpose. Colo. General Assembly v. Lamm, 704 P.2d 1371 (Colo. 1985).

Legislature has appropriative authority over federal block grants when matching state funds are required and when federal legislation authorizes transfers between block grants. Colo. General Assembly v. Lamm, 738 P.2d 1156 (Colo. 1987).

Federal funds for which the state has broad flexibility in determining how they should be used are subject to the general assembly's plenary power of appropriation. In re Interrogatories on House Bill 04-1098, 88 P.3d 1196 (Colo. 2004).

It is essential to the legislative power to raise revenue and appropriate funds that it be able to designate the source of funds to satisfy an appropriation. Colo. General Assembly v. Lamm, 704 P.2d 1371 (Colo. 1985).

Designation of the source of cash fund appropriation does not constitute prohibited substantive legislation in the general appropriation bill. Colo. General Assembly v. Lamm, 704 P.2d 1371 (Colo. 1985).

Long bill headnotes are unconstitutional substantive legislation when they define full-time equivalent; health, life, and dental; personal services; short-term disability; lease purchase; leased space; legal services; operating expenses; vehicle lease payments; multiuse network payments; utilities; capital outlay; and purchase of services from computer center in a manner that supervises the executive's allocation and administration of resources appropriated to it and thereby intrudes on the authority of the executive branch to administer the laws. Colo. Gen. Assembly v. Owens, 136 P.3d 262 (Colo. 2006).

An attempt to create a new office in an appropriation bill, would be void under this section relating to appropriation bills, and section 21 of this article, regarding titles of acts. People ex rel. Fulton v. O'Ryan, 71 Colo. 69, 204 P. 86 (1922).

The general assembly could not constitutionally repeal the aid to needy disabled program under section 26-1-109 (9) (a), and institute an aid to temporarily disabled program, by an appropriations bill and without an independent enabling act. Burciaga v. Shea, 187 Colo. 78, 530 P.2d 508 (1974).

And veto of provisions in appropriations bill which violate separation of powers is proper. MacManus v. Love, C.A. no. C-24520 (D.C. Denver, Colo., filed Nov. 24, 1971).

And veto of appropriation provisions purporting to control expenditure of federal funds is proper where the federal funds were received by an executive department agency for distribution to local governments. MacManus v. Love, C.A. no. C-24520 (D.C. Denver, Colo., filed Nov. 24, 1971).

And veto of appropriation provisions impaired by drafting errors is proper. MacManus v. Love, C.A. no. C-24520 (D.C. Denver, Colo., filed Nov. 24, 1971).

But veto of valid limitations on appropriations is improper. MacManus v. Love, C.A. no. C-24520 (D.C. Denver, Colo., filed Nov. 24, 1971).

Effect of veto of unconstitutional appropriation provisions. Any footnote violating either art. III, Colo. Const., or this section in the 1971 senate appropriation bill no. 436 was void and unenforceable and the governor's act in vetoing was an appropriate act calling attention to the invalid footnote, but such veto was not necessary to invalidate any such footnote. MacManus v. Love, C.A. no. C-24520 (D.C. Denver, Colo., filed Nov. 24, 1971).

Appropriation improperly

included in general bill. An appropriation for printing, other that than necessary for the ordinary use of the state government, cannot properly be included in the general appropriation bill. Collier & Cleveland Lithographing Co. v. Henderson, 18 Colo. 259, 32 P. 417 (1893).

Section recognizes power of general assembly to make appropriation for public schools. In the sentence structure of this article "for public schools" is a prepositional phrase joined by the correlative conjunction "and" to other similar phrases that set forth various independent purposes for which appropriations may be made. This clearly is a constitutional recognition of power in the general assembly to make an appropriation for the public schools of the state. Wilmore v. Annear, 100 Colo. 106, 65 P.2d 1433 (1937).

Appropriation bill in relation to vocational education, is not vulnerable to objection that more than one subject is included within its title; neither does it transgress the constitutional direction that appropriation bills shall embrace but one subject. Bedford v. People ex rel. Tiemann, 105 Colo. 312, 98 P.2d 474 (1939).

Trial court's order to controller to issue warrant directing treasurer to pay judgment against state for attorney fees under 42 U.S.C. § 1988 after general assembly had not appropriated funds was "otherwise authorized by law" for purposes of this section. Duran v. Lamm, 701 P.2d 609 (Colo. App. 1984).

Statute providing for special levy is limited to one subject. In re House Bill 168, 21 Colo. 46, 39 P. 1096 (1895).

Appropriation of other than state money was not contemplated by framers of constitution. In re House, 23 Colo. 87, 46 P. 117 (1896).

Applied in People ex rel. Richardson v. Spruance, 8 Colo. 530, 9 P. 628 (1885); In re Appropriations by Gen. Ass'y, 13 Colo. 316, 22 P. 464 (1889); Parks v. Commissioners of Soldiers' & Sailors' Home, 22 Colo. 86, 43 P. 542 (1896); MacManus v. Love, 179 Colo. 218, 499 P.2d 609 (1972).

Section 33. Disbursement of public money. No moneys in the state treasury shall be disbursed therefrom by the treasurer except upon appropriations made by law, or otherwise authorized by law, and any amount disbursed shall be substantiated by vouchers signed and approved in the manner prescribed by law.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 42. **L. 74:** Entire section R&RE, p. 450, effective January 1, 1975.

Editor's note: The Governor's proclamation date in 1974 was December 20, 1974.

ANNOTATION

The object of this provision is to prohibit the expenditure of public funds at the mere will or caprice of the crown or those having the funds in custody, without direct legislative sanction. People ex rel. Hegwer v. Goodykoontz, 22 Colo. 507, 45 P. 414 (1896).

Purpose of this section is protection of public funds. This section is to prevent the extravagant and improvident payment of moneys belonging to the state and to furnish a ready check on the state treasurer. Institute for Educ. of Mute & Blind v. Henderson, 18 Colo. 98, 31 P. 714

(1892).

Payment other than by appropriation and warrant void. Under this section, a statute providing for the payment of money out of the state treasury other than by appropriation and warrant is void, and the inhibition applies as well to statutes providing for the disposition and disbursement of state funds before they are covered into the treasury. Institute for Educ. of Mute & Blind v. Henderson, 18 Colo. 98, 31 P. 714 (1892).

No duty devolves on auditor to issue warrant until appropriation made. No matter how just or equitable a claim against the state may be, no duty devolves upon the auditor to issue his warrant for the payment thereof, until an appropriation be made by law for that purpose. Collier & Cleveland Lithographing Co. v. Henderson, 18 Colo. 259, 32 P. 417 (1893).

Standing to sue for violation of section. Where the complaint alleged that the plaintiffs were taxpayers and citizens of the state of Colorado, that public funds were being used to finance nontherapeutic abortions, and that such expenditures were in contravention of this section, plaintiffs had standing to sue. Dodge v. Dept. of Soc. Servs., 198 Colo. 379, 600 P.2d 70 (1979).

The plenary power of the legislature over appropriations is the power to set aside a certain sum of money for a specified object. Colo. General Assembly v. Lamm, 700 P.2d 508 (Colo. 1985).

"Or otherwise authorized by law" in this section does not accomplish a delegation of fiscal authority to the executive branch that encompasses the power to transfer moneys between appropriations. Colo. General Assembly v. Lamm, 700 P.2d 508 (Colo. 1985).

Where the salary of an officer is fixed by statute, together with the time and method of payment, a continuous appropriation has been made, and no further legislative action is necessary to authorize payment. People ex rel. Hegwer v. Goodykoontz, 22 Colo. 507, 45 P. 414 (1896).

Funds received from private corporation were essentially custodial, in that they were required to be used for a purpose approved ultimately by non-state authorities and to be administered in a trusteeship capacity, and were not subject to the legislative appropriation power. Colo. General Assembly v. Lamm, 700 P.2d 508 (Colo. 1985).

Federal funds for which the state has broad flexibility in determining how they should be used are subject to the general assembly's plenary power of appropriation. In re Interrogatories on House Bill 04-1098, 88 P.3d 1196 (Colo. 2004).

Budget describing each particular expenditure not required. Colorado's constitution requires neither the general assembly nor the department of social services to prepare or adopt a budget describing each or any particular medical procedure eligible for reimbursement under the Colorado Medical Assistance Act (article 4 of title 26). Dodge v. Dept. of Soc. Servs., 657 P.2d 969 (Colo. App. 1982).

Applied in Leckenby v. Post Printing & Publishing Co., 65 Colo. 443, 176 P. 490 (1918); Mulnix v. City & County of Denver, 65 Colo. 462, 176 P. 475 (1918); Stong v. Indus. Comm'n, 71 Colo. 133, 204 P. 892 (1922); Johnson v. McDonald, 97 Colo. 324, 49 P.2d 1017 (1935); Watrous v. Golden Chamber of Commerce, 121 Colo. 521, 218 P.2d (1950).

Section 34. Appropriations to private institutions forbidden. No

appropriation shall be made for charitable, industrial, educational or benevolent purposes to any person, corporation or community not under the absolute control of the state, nor to any denominational or sectarian institution or association.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 42.

ANNOTATION

Purpose of phrase "not under the absolute control of the state". The phrase "not under the absolute control of the state" was added specifically to ensure that public entities would not be covered by the provision. In re Colorado State Senate, 193 Colo. 298, 566 P.2d 350 (1977).

"Not under the absolute control of the state", refers only to "corporation or community", for the reason that under the ordinary and usual rule of construction the qualifying words should be held to refer to the first preceding subject to which they can be consistently applied and no sufficient reason appears for requiring the appropriation to be under the absolute control of the state, while there are strong arguments in favor of limiting the beneficiaries to those institutions and associations under state control. In re Relief Bills, 21 Colo. 62, 39 P. 1089 (1895).

This section concerned only with state money. That this article in defining and limiting the powers of the general assembly in the matter of appropriations, had in contemplation the disbursement of state funds only, and their disposition by the state in its corporate capacity, is apparent from an examination of other provisions herein contained, which relate to the subject of revenue. They are concerned strictly with state matters, and the payment of money out of the state treasury. The manner prescribed by section 32 of this article in which appropriations must be made in itself precludes the idea that the appropriation of other than state money was contemplated by the framers of the constitution. In re House, 23 Colo. 87, 46 P. 117 (1896).

And aid extended to institutions only if under absolute control of state. The state cannot, in its sovereign capacity, extend aid for charitable, industrial, educational or benevolent purposes to any person, corporation or community, unless such person, corporation or community is under the absolute control of the state. Hence the appropriation attempted to be authorized by a bill for the agricultural development and relief of settlers in certain counties is forbidden by this section. In re Relief Bills, 21 Colo. 62, 39 P. 1089 (1895).

Although it does not prevent appropriation to pay for property taken by state without compensation. Where private property has been taken by the state without compensation, it is competent for the general assembly to agree with the owner upon the amount which the state shall pay and to make an appropriation for that purpose. The mere fact that the association or institution, for whose benefit the appropriation is made, is or may be sectarian does not make an appropriation for the payment of property, which belonged to the association and which was taken by the state for a public use, one which the constitution inhibits. In re Substitute for Senate Bill No. 83, 21 Colo. 69, 39 P. 1088 (1895).

As payment for public purposes not prohibited. Payments to private persons for a charitable or benevolent purpose are not violative of this section if such payments are for public purpose. Bedford v. White, 106 Colo. 439, 106 P.2d 469 (1940).

This section is subject to a "public purpose" exception which is

in some respects similar to the "public purpose" exception to section 2 of article XI, but will not be presumed from the mere passage of a legislative enactment. In re House Bill 91S-1005, 814 P.2d 875 (Colo. 1991).

Legislation must evince a discrete and particularized public purpose which, when measured against the proscription in this section, preponderates over any individual interests incidentally served by the statutory program. Americans United for Separation of Church & State Fund, Inc. v. State, 648 P.2d 1072 (Colo. 1982); In re House Bill 91S-1005, 814 P.2d 875 (Colo. 1991).

Development of new businesses and expansion of existing businesses resulting in substantial and long-term expansion of new employment and provision of direct and indirect benefits to the state aviation system are public purposes which are no less legitimate or particularized than public purposes approved in prior cases. In re House Bill 91S-1005, 814 P.2d 875 (Colo. 1991).

Statute, on its face, does not violate this section when general assembly's determination of predominantly public purpose is not in bad faith or erroneous. In re House Bill 91S-1005, 814 P.2d 875 (Colo. 1991).

Proposed appropriation did not violate section. A proposed house bill appropriation to be deposited in a capital reserve fund which secures obligations of the housing finance authority did not violate this section. In re Colorado State Senate, 193 Colo. 298, 566 P.2d 350 (1977).

Educational grant program not appropriation to institution not under state control. An educational grant program, available to students at both public and private institutions, is not an appropriation to an institution not under the absolute control of the state. Americans United for Separation of Church & State Fund, Inc. v. State, 648 P.2d 1072 (Colo. 1982).

Nor to person not under state control. An educational grant program, available to students at both public and private institutions, is not unconstitutional as being aid to a person not under the absolute control of the state. Americans United for Separation of Church & State Fund, Inc. v. State, 648 P.2d 1072 (Colo. 1982).

Applied in People ex rel. Richardson v. Spruance, 8 Colo. 530, 9 P. 628 (1885); Leckenby v. Post Printing & Publishing Co., 65 Colo. 443, 176 P. 490 (1918); Johnson v. McDonald, 97 Colo. 324, 49 P.2d 1017 (1935); Bedford v. White, 106 Colo. 439, 106 P.2d 469 (1940).

Section 35. Delegation of power. The general assembly shall not delegate to any special commission, private corporation or association, any power to make, supervise or interfere with any municipal improvement, money, property or effects, whether held in trust or otherwise, or to levy taxes or perform any municipal function whatever.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 42.

Cross references: For distribution of governmental powers, see article III of this constitution.

ANNOTATION

Law reviews. For article, "Extraterritorial Service of Municipally Owned Water Works in Colorado", see 21 Rocky Mt. L. Rev. 56 (1948). For comment, "Water: Statewide or Local Concern? City of Thornton v. Farmers

Reservoir & Irrigation Co., 194 Colo. 526, 575 P.2d 382 (1978)", see 56 Den. L.J. 625 (1979).

Design and purpose of this section is to prohibit the delegation to private corporations of the exercise of powers strictly governmental. In re House, 23 Colo. 87, 46 P. 117, 33 L.R.A. 832 (1896).

The purpose of this provision was to prevent any organization being authorized by law to control or interfere with municipal matters. Town of Holyoke v. Smith, 75 Colo. 286, 226 P. 158 (1924).

The purpose of this constitutional provision is to prevent the intrusion upon a municipality's domain of local self-government. Denver Urban Renewal Auth. v. Byrne, 618 P.2d 1374 (Colo. 1980); Reg'l Transp. Dist. v. Dept. of Labor, 830 P.2d 942 (Colo. 1992).

And section to be given broad meaning. In applying this provision, it should be given a broad and reasonable, rather than a technical meaning, so as to accomplish its evident purpose. Town of Holyoke v. Smith, 75 Colo. 286, 226 P. 158 (1924).

"Municipal", for purposes of this section, refers to counties and therefore the PUC may not regulate counties which are performing the "municipal function" of providing mass transit within county boundaries. City of Durango v. Durango Transp., 807 P.2d 1152 (Colo. 1991).

"Municipal", for purposes of this section, is not limited to cities and towns. Reg'l Transp. v. Dept. of Labor, 830 P.2d 942 (Colo. 1992).

Section protects local self-government functions. The subjects to which the protection of this section extends are such as properly fall within the domain of local self-government. If they are entitled to protection from an agency of the state exercising delegated powers of the kind enumerated, the right thus proposed to be protected would be violated as much by a general commission's doing the mentioned acts as by a special commission's doing the same things. Town of Holyoke v. Smith, 75 Colo. 286, 226 P. 158 (1924).

The purpose of this provision is to protect the right to local self-government over local services. City of Durango v. Durango Transp., 807 P.2d 1152 (Colo. 1991); Reg'l Transp. v. Dept. of Labor, 830 P.2d 942 (Colo. 1992).

"Functional approach" is used to determine whether a unit of government is a municipality and a particular service is a municipal service. City of Durango v. Durango Transp., 807 P.2d 1152 (Colo. 1991); Reg'l Transp. v. Dept. of Labor, 830 P.2d 942 (Colo. 1992).

Functional approach to nondelegation issues examines whether the function in question is truly local in the sense that, principally if not exclusively, it affects only those persons residing within the boundaries of the governmental unit in question and whether the political processes make those who perform the function responsive to the electorate within the affected area. Reg'l Transp. v. Dept. of Labor, 830 P.2d 942 (Colo. 1992).

The distinction between functions implicating the right to local self-goverment over local services and functions affecting matters of concern to citizens beyond the boundaries of the government engaged in the function cannot be made by any bright line rule, it is a matter of degree. Reg'l Transp. v. Dept. of Labor, 830 P.2d 942 (Colo. 1992).

Arbitration provisions in Labor Peace Act, as applied to the Regional Transportation District, do not violate this section. The RTD, though similar to a municipality in structure, was created pursuant to special enabling legislation to solve a single problem transcending the concerns of persons residing within its

boundaries. Therefore it does not perform a "municipal function" within the meaning of this section and an exercise of control by officials of state government is appropriate. Reg'l Transp. Dist. v. Dept. of Labor, 830 P.2d 942 (Colo. 1992).

Section 40-3-106 (4) limits only the discretion of the public utilities commission in determining how a privately-owned fixed public utility will be allowed to recover the cost of franchise fees, which is a matter not within the domain of local self-government, and therefore does not fall within the scope of this section. City of Montrose v. Pub. Utils. Comm'n, 732 P.2d 1181 (Colo. 1987).

Where municipal utility refuses to provide a necessary service, private utility may be certificated to provide service within municipal boundaries. This section and article XXV grant the public utilities commission authority to regulate public utilities throughout Colorado, including those that are located within home rule cities, but not municipally owned utilities operating within municipal boundaries. City of Fort Morgan v. Pub. Utils. Comm'n, 159 P.3d 87 (Colo. 2007).

Delegable vs. nondelegable powers. The general assembly may not delegate the power to make a law, but may delegate power to determine some fact or state of things upon which the law as prescribed depends. Olinger v. People, 140 Colo. 397, 344 P.2d 689 (1959).

The general assembly cannot delegate to any other person or body authority to declare what acts shall constitute crimes. Olinger v. People, 140 Colo. 397, 344 P.2d 689 (1959).

The delegations which are proscribed by this section are only those which can be properly classified as the performance of "any municipal function whatever". Allardice v. Adams County, 173 Colo. 133, 476 P.2d 982 (1970).

The true distinction is between the delegation of power to make the law, which necessarily involves a discretion as to what it shall be, and conferring authority or discretion as to its execution, to be exercised under and in pursuance of the law. The first cannot be done; to the latter no valid objection can be made. Olinger v. People, 140 Colo. 397, 344 P.2d 689 (1959); Bettcher v. State ex rel. Colo. Gen. Hosp., 140 Colo. 428, 344 P.2d 969 (1959).

Power delegated to city cannot be relinquished to private person or corporation. Where the power to license ticket brokers has been conferred by the general assembly upon the city council of a city, that body may not relinquish the delegated power, or any essential part of it, to a private person or corporation or a purely voluntary private association or confer upon any such association power to perform any municipal function whatever. Munson v. City of Colo. Springs, 35 Colo. 506, 84 P. 683 (1906).

Power to set and collect development fees delegated by the general assembly to a special district may not be assigned by the special district to a private party. Such an assignment is an unconstitutional delegation of a legislative function. SDI, Inc. v. Pivotal Parker Commercial, LLC, 2012 COA 168, 292 P.3d 1165.

Public purpose does not render function "municipal". The fact that project financed by revenue bonds is for a "public purpose" does not necessarily make its existence, or its function, municipal in nature. It is the effect of, or the benefits flowing from, the completed project and its operation by private enterprise that fulfills the "public purpose" requirement and not, per se, a county's participation therein. Allardice v. Adams County, 173 Colo. 133, 476 P.2d 982 (1970).

RTD is not a municipality and is not performing a municipal function within the meaning of this section and therefore, the nondelegation requirement does not prevent the general assembly from requiring binding interest arbitration. Reg'l Transp. v. Dept. of Labor, 830 P.2d 942 (Colo. 1992).

Section does not prohibit creation of commissions. This section does not deprive the general assembly of power to create special commissions for any purpose deemed necessary, and to delegate to them powers other than those mentioned in this section. The prohibition is not upon the creation of a special commission, private corporation, or association, but upon the delegation thereto of certain enumerated powers. Town of Holyoke v. Smith, 75 Colo. 286, 226 P. 158 (1924).

"Special commission" refers to some body or association of individuals separate and distinct from the city government; that is, created for different purposes, or else created for some individual or limited object not connected with the general administration of municipal affairs. In re Senate Bill Providing for Bd. of Pub. Works, 12 Colo. 188, 21 P. 481 (1888); Town of Holyoke v. Smith, 75 Colo. 286, 226 P. 158 (1924); City & County of Denver v. Eggert, 647 P.2d 216 (Colo. 1982).

Moffat tunnel commission is not "special commission" within the meaning of the prohibition contained in this section. Milheim v. Moffat Tunnel Imp. Dist., 72 Colo. 268, 211 P. 649 (1922), aff'd, 262 U.S. 710, 43 S. Ct. 694, 67 L. Ed. 1194 (1923).

Nor board of directors of water conservancy district. The board of directors of a water conservancy district is not a "special commission" within the meaning of the appellation of this provision. People ex rel. Setters v. Lee, 72 Colo. 598, 213 P. 583 (1923); People ex rel. Rogers v. Letford, 102 Colo. 284, 79 P.2d 274 (1938).

Nor sanitary district entirely within city. Sanitation district entirely within city for purpose of sewage disposal only and given power to collect ad valorem taxes on property is not a "special commission". City of Aurora v. Aurora San. Dist., 112 Colo. 406, 149 P.2d 662 (1944).

Board of county commissioners is not a "special commission" under this section. City & County of Denver v. Eggert, 647 P.2d 216 (Colo. 1982).

And special commission may regulate activities outside municipal boundaries. This section does not prohibit a special commission from regulating municipal activities outside the territorial boundaries of the municipality. City & County of Denver v. Eggert, 647 P.2d 216 (Colo. 1982).

Statutory tax-allocation scheme in urban renewal law not improper delegation of power. The statutory tax-allocation financing scheme provided in the urban renewal law is not an improper delegation of power to the Denver urban renewal authority to supervise or interfere with the levying and collection of taxes. Denver Urban Renewal Auth. v. Byrne, 618 P.2d 1374 (Colo. 1980).

Public utilities commission's exercise of powers under § 40-4-106 not prohibited. The construction of and apportionment of costs for viaducts is not such a subject as was intended to fall within the domain of local self-government, and therefore this section (delegation of powers) does not prohibit the public utilities commission's exercise of powers granted it under § 40-4-106. Denver & R. G. W. R. R. v. City & County of Denver, 673 P.2d 354 (Colo. 1983).

Public utilities commission is "special commission" as that term is used in this section. City of Lamar v.

Town of Wiley, 80 Colo. 18, 248 P. 1009 (1926).

The public utilities commission is a body separate and distinct from the "city government", created for an object "not connected with the general administration of municipal affairs". The framers of the constitution had in mind the possibility that the general assembly might attempt to create some special body to interfere with the management of municipal affairs, and wisely made provision to prevent such action. Town of Holyoke v. Smith, 75 Colo. 286, 226 P. 158 (1924).

And so lacks jurisdiction over municipal utility. The public utilities commission is without jurisdiction to interfere with the erection and operation of a light and power plant by a municipal corporation. People ex rel. Pub. Utils. Comm'n v. City of Loveland, 76 Colo. 188, 230 P. 399 (1924).

The public utilities commission does not have the right to fix rates of a municipally owned utility, and an act conferring such right would be to that extent invalid, as violating this section. Town of Holyoke v. Smith, 75 Colo. 286, 226 P. 158 (1924); City of Loveland v. Pub. Utils. Comm'n, 195 Colo. 298, 580 P.2d 381 (1978).

This section expressly forbids control of municipally owned utility rates by a public utility commission. Dalby v. City of Longmont, 81 Colo. 271, 256 P. 310 (1927); City of Loveland v. Pub. Utils. Comm'n, 195 Colo. 298, 580 P.2d 381 (1978).

By force of this article the general assembly could not, by any law, vest in the public utilities commission or any agency with like powers and duties jurisdiction to interfere with the municipal improvements such as water and sewage facilities acquired by a city. The general assembly, in enacting laws authorizing cities to acquire water works and pertinent facilities, effectively avoided conferring upon the commission any jurisdiction over such acquisition. City of Thornton v. Pub. Utils. Comm'n, 157 Colo. 188, 402 P.2d 194 (1965); City of Loveland v. Pub. Utils. Comm'n, 195 Colo. 298, 580 P.2d 381 (1978).

The acquisition by the city of the utility's facilities could not be prevented or interfered with by any agency once the people of the city determined by their vote that the system was to be acquired. City of Thornton v. Pub. Utils. Comm'n, 157 Colo. 188, 402 P.2d 194 (1965).

But may regulate service outside city boundaries. The public utilities commission's regulation of municipally-owned facilities, in its service to customers outside the city boundaries, is not prohibited by this section. City of Loveland v. Pub. Utils. Comm'n, 195 Colo. 298, 580 P.2d 381 (1978).

When a municipality in the operation of its own public utility acts in its municipal or governmental, or in its proprietary or quasi-public capacity, or partly in one and partly in the other, and as such furnishes public service to its own citizens and in connection supplies its products to consumers outside of its territorial boundaries, the function it thereby performs in supplying outside consumers is and should be attended with the same conditions and be subject to the same control and supervision that apply to a private public utility owner who furnishes like service. City of Lamar v. Town of Wiley, 80 Colo. 18, 248 P. 1009 (1926).

While this section prohibits state regulation or interference with municipal property of home-rule cities, it does not restrict regulation of facilities outside the home-rule city's territory. City & County of Denver v. Bergland, 517 F. Supp. 155 (D. Colo. 1981), aff'd in part, rev'd on other grounds, 695 F. 2d 465 (10th Cir.

1982); Bd. of County Comm'rs v. Denver Bd. of Water Comm'rs, 718 P.2d 235 (Colo. 1986).

Municipality's extension of electric service to new customers within annexed area does not constitute a taking without due process of law of a public utility's preexisting right to service a certificated area. Union Rural Elec. Ass'n v. Town of Frederick, 670 P.2d 4 (Colo. 1983).

Municipally owned utilities, not within the jurisdiction of the public utilities commission, are not precluded from providing electric service to new customers within their municipal limits. Union Rural Elec. Ass'n v. Town of Frederick, 670 P.2d 4 (Colo. 1983).

Statutory scheme set forth in §§ 40-9.5-201 to 40-9.5-207 does not violate this section since such sections do not mandate that a public utility transfer all its customers and facilities to a municipality upon a notice of annexation by the municipality. Thus, there may not be a taking under the statutory scheme which would otherwise preclude regulation by the P.U.C. in such area. Section 40-9.5-204, which provides for situations where the municipality can compete with the public utility, does not conflict with this section. Poudre Valley Rural Elec. v. Loveland, 807 P.2d 547 (Colo. 1991).

Authority of public utilities commission over home rule cities. The public utilities commission does not have the authority to direct a home rule city to purchase its wholesale electric power requirements from one rather than another public utility company. K. C. Elec. Ass'n v. Pub. Utils. Comm'n, 191 Colo. 96, 550 P.2d 871 (1976).

Denver public works. Charter provisions creating the board of public works of the city and county of Denver did not violate this section. City of Denver v. Iliff, 38 Colo. 357, 89 P. 823 (1906).

For earlier cases holding board of public works created by the general assembly was not a "special commission", but a department of the city government, see In re Senate Bill Providing for Bd. of Pub. Works, 12 Colo. 188, 21 P. 481 (1888); City of Denver v. Londoner, 33 Colo. 104, 80 P. 117 (1905), rev'd on other grounds, 210 U.S. 373, 28 S. Ct. 708, 52 L. Ed. 1103 (1908).

Denver water system. Where the city of Denver acquired a water system for the purpose of supplying its inhabitants with water, the city held such water as was not needed by it for immediate use in its proprietary capacity, and had in it a well-defined property right, and this section withholds from the general assembly all power to dedicate to any commission any supervision of this property right, thus precluding any jurisdiction of the public utilities commission, notwithstanding that the city of Denver supplied its surplus water to the citizens of the city of Englewood. City of Englewood v. City & County of Denver, 123 Colo. 290, 229 P.2d 667 (1951).

Cooperation of governmental bodies in joint undertaking does not constitute an improper delegation of power. Karsh v. City & County of Denver, 176 Colo. 406, 490 P.2d 936 (1971).

Provision of city charter amendment providing for compulsory, binding arbitration of all unresolved municipal-police union labor disputes arising from collective bargaining agreement was unlawful as removing governmental decision-making from aegis of elected representatives, and placing it in the hands of an outside person who had no accountability to the public. Greeley Police Union v. City Council, 191 Colo. 419, 553 P.2d 790 (1976).

Decision to operate a public school is not a "municipal function" that the general assembly may not delegate to the charter school institute.

The functioning of the public schools does not primarily affect only those within the geographic boundaries of a school district. Boulder Valley Sch. Dist. RE-2 v. Colo. State Bd. of Educ., 217 P.3d 918 (Colo. App. 2009).

Applied in Donahue v. Morgan, 24 Colo. 389, 50 P. 1038 (1897); Tallon v. Vindicator Consol. Gold Mining Co., 59 Colo. 316, 149 P. 108 (1915); Olinger v. People, 140 Colo. 397, 344 P.2d 689 (1959); Nordstrom v. Hansford, 164 Colo. 398, 435 P.2d 397 (1967).

Section 36. Laws on investment of trust funds. The general assembly shall, from time to time, enact laws prescribing types or classes of investments for the investment of funds held by executors, administrators, guardians, conservators and other trustees, whose power of investment is not set out in the instrument creating the trust.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 42. **L. 50:** Entire section amended, see **L. 51,** p. 555.

ANNOTATION

Law reviews. For article, "Express Trusts in Colorado", see 10 Rocky Mt. L. Rev. 9 (1937). For article, "The Desirability of Change in Colorado's Legislative Organization and Procedure", see 23 Dicta 119 (1946). For article, "The 'Prudent Man Rule' Now Applies to Investments by Fiduciaries", see 28 Dicta 213 (1951).

Section 37. Change of venue. (Repealed)

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 42. **L. 74:** Entire section repealed, p. 451, effective January 1, 1975.

Editor's note: The Governor's proclamation date in 1974 was December 20, 1974.

Section 38. No liability exchanged or released. No obligation or liability of any person, association, or corporation, held or owned by the state, or any municipal corporation therein, shall ever be exchanged, transferred, remitted, released, or postponed or in any way diminished by the general assembly, nor shall such liability or obligation be extinguished except by payment thereof into the proper treasury. This section shall not prohibit the write-off or release of uncollectible accounts as provided by general law.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 43. **L. 74:** Entire section amended, p. 451, effective January 1, 1975.

Editor's note: The Governor's proclamation date in 1974 was December 20, 1974.

ANNOTATION

Law reviews. For comment on Burton v. City & County of Denver appearing below, see 9 Rocky Mt. L. Rev. 289 (1937).

Purpose of provision. It is the purpose of this constitutional provision to protect obligations and liabilities owned by municipal corporations against diminution by the general assembly. Authority to create

indebtedness is not proscribed. Allardice v. Adams County, 173 Colo. 133, 476 P.2d 982 (1970).

General assembly can regulate municipal power to contract. The general assembly can regulate the manner in which a municipal corporation shall exercise its power to contract. Dalby v. City of Longmont, 81 Colo. 271, 256 P. 310 (1927).

No mention is made of taxes in this section, therefore, it is possible the subject is not included. Burton v. City & County of Denver, 99 Colo. 207, 61 P.2d 856, 107 A.L.R. 564 (1936).

But lien for taxes is included. Where the state has acquired a lien for gift taxes upon donor's property, the donor's obligations or liabilities become vested in the state, and cannot be relinquished or released except upon payment of the tax. People ex rel. Hinkley v. Maytag, 121 Colo. 446, 218 P.2d 512 (1950); People ex rel. Dunbar v. Maytag, 129 Colo. 316, 270 P.2d 782 (1954).

The provisions of this section are not violated by § 40-3-106 (4) as this statute does not alter a public utility's obligation to pay franchise fees to a municipality which has granted the public utility a franchise. City of Montrose v. Pub. Utils. Comm'n, 732 P.2d 1181 (Colo. 1987).

The public highway authority law does not violate this section, because it does not affect any monetary obligations owed by a county involved with a public highway authority. Bd. of County Comm'rs v. E-470 Pub. Hwy., 881 P.2d 412 (Colo. App. 1994), aff'd in part and rev'd in part sub nom. Nicholl v. E-470 Pub. Hwy. Auth., 896 P.2d 859 (Colo. 1995).

Government is not included in general statute of limitation unless it is expressly or by necessary implication included. As a matter of public policy it is necessary to preserve public rights, revenues, and property from injury and loss by the negligence of public officers. Hinshaw v. Dept. of Welfare, 157 Colo. 447, 403 P.2d 206 (1965).

Applied in People ex rel. Seeley v. Hull, 8 Colo. 485, 9 P. 34 (1885); City & County of Denver v. Tax Research Bureau, 101 Colo. 140, 71 P.2d 809 (1937); City & County of Denver v. Armstrong, 105 Colo. 290, 97 P.2d 448 (1939).

Section 39. Orders and resolutions presented to governor. Every order, resolution or vote to which the concurrence of both houses may be necessary, except on the question of adjournment, or relating solely to the transaction of business of the two houses, shall be presented to the governor, and before it shall take effect, be approved by him, or being disapproved, shall be re-passed by two-thirds of both houses, according to the rules and limitations prescribed in case of a bill.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 43.

ANNOTATION

This section and § 1 of art. XIX, Colo. Const., are not in pari materia. The first relates to ordinary legislation, and the last to the calling of a convention for the amendment of the constitution. They are of equal dignity, and neither can be invoked to interfere with the operation of the other. People ex rel. Stewart v. Ramer, 62 Colo. 128, 160 P. 1032 (1916).

Unapproved resolution void. A joint resolution purporting to authorize the publication of the state engineer's report for distribution at the

state's expense, not having been presented to the governor for his approval, is not included within any of the exceptions contained in this section, dispensing with the concurrence of the executive, and is inoperative. Henderson v. Collier & Cleveland Lithographing Co., 2 Colo. App. 251, 30 P. 40 (1892), aff'd, 18 Colo. 259, 32 P. 417 (1893).

A legislative resolution authorizing litigation by the general assembly need not be presented to the governor, since it is neither legislation nor legislative in nature. Colo. General Assembly v. Lamm, 700 P.2d 508 (Colo. 1985); Colo. General Assembly v. Lamm, 704 P.2d 1371 (Colo. 1985).

Applied in Watrous v. Golden Chamber of Commerce, 121 Colo. 521, 218 P.2d 498 (1950).

Section 40. Bribery and influence in general assembly. If any person elected to either house of the general assembly shall offer or promise to give his vote or influence in favor of or against any measure or proposition pending or proposed to be introduced in the general assembly in consideration or upon condition that any other person elected to the same general assembly will give or will promise or assent to give his vote or influence in favor of or against any other measure or proposition pending or proposed to be introduced in such general assembly, the person making such offer or promise, shall be deemed guilty of solicitation of bribery. If any member of the general assembly shall give his vote or influence for or against any measure or proposition pending in such general assembly, or offer, promise or assent so to do, upon condition that any other member will give or will promise or assent to give his vote or influence in favor of or against any other measure or proposition pending or proposed to be introduced in such general assembly, or in consideration that any other member hath given his vote or influence for or against any other measure or proposition in such general assembly, he shall be deemed guilty of bribery; and any member of the general assembly, or person elected thereto, who shall be guilty of either of such offenses shall be expelled, and shall not be thereafter eligible to the same general assembly; and, on conviction thereof in the civil courts, shall be liable to such further penalty as may be prescribed by law.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 43.
Cross references: For the crime of bribery, see part 3 of article 8 of title 18.

ANNOTATION

Law reviews. For article, "Log-Rolling and Judicial Review", see 52 U. Colo. L. Rev. 33 (1980).

Section 41. Offering, giving, promising money or other consideration. (Repealed)

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 43. **L. 74:** Entire section repealed, p. 451, effective January 1, 1975.
Editor's note: The Governor's proclamation date in 1974 was December 20, 1974.

Section 42. Corrupt solicitation of members and officers. (Repealed)

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 44. **L. 74:** Entire section repealed, p. 451, effective January 1, 1975.

Editor's note: The Governor's proclamation date in 1974 was December 20, 1974.

Section 43. Member interested shall not vote. A member who has a personal or private interest in any measure or bill proposed or pending before the general assembly, shall disclose the fact to the house of which he is a member, and shall not vote thereon.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 44.

Congressional and Legislative Apportionments

Section 44. Representatives in congress. The general assembly shall divide the state into as many congressional districts as there are representatives in congress apportioned to this state by the congress of the United States for the election of one representative to congress from each district. When a new apportionment shall be made by congress, the general assembly shall divide the state into congressional districts accordingly.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 44. **L. 74:** Entire section amended, p. 451, effective January 1, 1975.

Editor's note: The Governor's proclamation date in 1974 was December 20, 1974.

Cross references: For congressional apportionment, see also § 2-1-101.

ANNOTATION

Law reviews. For article, "Reapportionment, The Courts, and the Voting Rights Act: A Resegregation of the Political Process?", see 56 U. Colo. L. Rev. 1 (1984).

General assembly determines congressional districts. The general assembly retains the power to change congressional districts merely by changing the basis of division. Bd. of County Comm'rs v. City & County of Denver, 150 Colo. 198, 372 P.2d 152 (1962), appeal dismissed, 372 U.S. 226, 83 S. Ct. 679, 9 L. Ed. 2d 714 (1963).

Goal of redistricting is fair and effective representation. The primary goal of an acceptable congressional redistricting plan should be fair and effective representation of all citizens. Carstens v. Lamm, 543 F. Supp. 68 (D. Colo. 1982); Hall v. Moreno, 2012 CO 14, 270 P.3d 961.

Population equality standard is the pre-eminent, if not the sole, criterion on which to adjudge the constitutionality of congressional redistricting plans. Carstens v. Lamm, 543 F. Supp. 68 (D. Colo. 1982).

Absence of racial discrimination. The second constitutional criterion used in analyzing redistricting plans is the absence of racial discrimination. Carstens v. Lamm, 543 F. Supp. 68 (D. Colo. 1982).

Nonconstitutional criteria for evaluating redistricting plans.

Additional nonconstitutional criteria may be used in evaluating congressional redistricting plans. These criteria can be grouped into three categories: (1) Compactness and contiguity; (2) preservation of county and municipal boundaries; and (3) preservation of communities of interest. Carstens v. Lamm, 543 F. Supp. 68 (D. Colo. 1982).

Compactness and contiguity, as criteria for redistricting, were originally designed to represent a restraint on partisan gerrymandering. Carstens v. Lamm, 543 F. Supp. 68 (D. Colo. 1982).

County and municipal boundaries should remain undivided whenever possible, because the sense of community derived from established governmental units tends to foster effective representation. Carstens v. Lamm, 543 F. Supp. 68 (D. Colo. 1982).

Concept of "community of interest" applies to congressional redistricting, since formulating a plan without any such consideration would constitute a wholly arbitrary and capricious exercise. Carstens v. Lamm, 543 F. Supp. 68 (D. Colo. 1982).

"Communities of interest" represent distinctive units which share common concerns with respect to one or more identifiable features such as geography, demography, ethnicity, culture, socio-economic status, or trade. Carstens v. Lamm, 543 F. Supp. 68 (D. Colo. 1982).

And community of interest requirements must yield to equality of population. In re Colorado General Assembly, 828 P.2d 185 (Colo. 1992).

Redistricting plan unconstitutional. The congressional redistricting plan set forth in § 2-1-101 is unconstitutional. Carstens v. Lamm, 543 F. Supp. 68 (D. Colo. 1982).

Section 2-1-101 is unconstitutional because it provides for only five congressional districts instead of the six districts mandated by the 1980 apportionment of the House of Representatives. Carstens v. Lamm, 543 F. Supp. 68 (D. Colo. 1982).

For judicially-fashioned redistricting plan, see Carstens v. Lamm, 543 F. Supp. 68 (D. Colo. 1982).

District court properly exercised jurisdiction over congressional redistricting. Because the general assembly and governor were unable to enact a plan for congressional redistricting, the district court was forced to adopt a plan. Beauprez v. Avalos, 42 P.3d 642 (Colo. 2002).

In an action to adopt a congressional redistricting plan, the secretary of state was the proper defendant because she was required to implement the court-ordered redistricting plan. Beauprez v. Avalos, 42 P.3d 642 (Colo. 2002).

A redistricting controversy is ripe when a court lacks assurance that a redistricting plan will be enacted in time for an upcoming election. District court waited to announce its decision until after the general assembly had another chance to enact its own plan. Beauprez v. Avalos, 42 P.3d 642 (Colo. 2002); Hall v. Moreno, 2012 CO 14, 270 P.3d 961.

Objection to court-adopted congressional redistricting plan must be denied when objector cannot establish first prong of the Thornburg v. Gingles test that the minority group is sufficiently large and geographically compact to constitute a numerical majority in the district. Beauprez v. Avalos, 42 P.3d 642 (Colo. 2002).

The satisfaction of the factors enumerated in article V, § 47, is not required in the adoption of a congressional redistricting plan. Beauprez v. Avalos, 42 P.3d 642 (Colo. 2002).

Court was not required to adopt a plan that the governor would have approved. When no redistricting plan is enacted through the legislative

process, the district court may accord the testimony of the governor whatever evidentiary weight it saw fit. Beauprez v. Avalos, 42 P.3d 642 (Colo. 2002).

Once a general election to elect representatives to congress has already been conducted pursuant to a valid redistricting plan, the general assembly has no authority to enact a congressional redistricting bill, because the plain language of the constitution must be construed to require the general assembly to act, if at all, after the federal census but before the ensuing general election, and a valid judicially adopted redistricting plan is not an interim measure but rather the fulfillment of Colorado's federal redistricting obligations. If the second sentence in this section did not place a time constraint upon the general assembly's authority to redistrict, then all that would remain of this sentence would be a directive for the general assembly to divide the state into single-member districts, exactly what the first sentence already requires. Hence, Senate Bill 03-352 is unconstitutional, and subsequent congressional elections must be held pursuant to the judicial plan whose adoption was affirmed in Beauprez v. Avalos, 42 P.3d 642 (Colo. 2002). People ex rel. Salazar v. Davidson, 79 P.3d 1221 (Colo. 2003), cert. denied, 541 U.S. 1093, 124 S. Ct. 2228, 159 L. Ed. 2d 260 (2004).

Section 45. General assembly. The general assembly shall consist of not more than thirty-five members of the senate and of not more than sixty-five members of the house of representatives, one to be elected from each senatorial and each representative district, respectively.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 44. **Initiated 62:** Entire section R&RE, see **L. 63,** p. 1045. **Initiated 66:** Entire section R&RE, see **L. 67,** p. 11 of the supplement to the 1967 Session Laws.

Cross references: For membership of general assembly, see also § 2-2-101.

Historical background of and cases construing "Amendment No. 7"

"Amendment No. 7" consists of the constitutional provisions of sections 45 to 48 of article V, as amended, November 6, 1962. Prior to this date sections 45 to 47 of article V read as follows:

> **Section 45. Census.** The general assembly shall provide by law for an enumeration of the inhabitants of the state, in the year of our Lord 1885, and every tenth year thereafter; and at the session next following such enumeration, and also at the session next following an enumeration made by the authority of the United States, shall revise and adjust the apportionment for senators and representatives, on the basis of such enumeration according to ratios to be fixed by law.

Section 46. Number of members of general assembly. The senate shall consist of not more than thirty-five and the house of not more than sixty-five members. (As amended November 7, 1950).

Section 47. Senatorial and representative districts. Senatorial and

representative districts may be altered from time to time, as public convenience may require. When a senatorial or representative district shall be composed of two or more counties, they shall be contiguous, and the district as compact as may be. No county shall be divided in the formation of a senatorial or representative district.

Cases construing "Amendment No. 7"

The case of Lisco v. McNichols, 208 F. Supp. 471 (D. Colo. 1962) was the forerunner of apportionment cases. While "Amendment No. 7" was not involved, the constitutionality of apportionment statutes (sections 63-1-2, 63-1-3 and 63-1-6, CRS 53, since repealed), providing for the number of senators and representatives and fixing for their apportionment, was questioned on the basis such apportionment was disproportionate and give unequal voting rights. The court decided that because of the imminence of the 1962 elections and because two proposed constitutional amendments (no. 7 and no. 8) concerning apportionment were on the ballot to be voted on in the 1962 election they would refrain from acting and the case was continued.

The question next arose in the case of **Lisco v. Love, 219 F. Supp. 922 (D. Colo. 1963).** In the 1962 election "Amendment No. 8" was rejected and "Amendment No. 7", amending sections 45, 46, 47 and 48 of article V of the constitution was approved. The question before the court under this case was whether apportionment of the senate under "Amendment No. 7" was valid. The court held the apportionment comported with the equal protection clause of the U.S. Constitution and dismissed the case.

This decision was appealed in **Lucas v. Forty-fourth Gen. Ass'y, 377 U.S. 713, 84 S. Ct. 1459, 13 L. Ed. 2d 632 (1964),** wherein the U.S. supreme court reversed the district court and held such apportionment did not comport to the equal protection clause and remanded the case for further proceedings.

Further proceedings were had in the case of Lucas v. Forty-fourth Gen. Ass'y, 232 F. Supp. 797 (D. Colo. 1964). At this hearing the district court held that "Amendment No. 7" was not severable and therefore failed in toto and subdistricting was not prohibited by section 47 of article V. Furthermore, the imminence of the 1964 election did not require utilization of the apportionment provisions of the invalid "Amendment No. 7" as there was sufficient time for the state to take action to effectuate the U.S. supreme court decision. The matter was set over pending such state action.

Following this hearing the Governor called a special session and as a result an apportionment bill (Senate Bill No. 1, L. 64, 2nd Ex. Sess., pp. 27-37) was enacted. This Senate Bill No. 1 was submitted to the district court which approved it but retained jurisdiction.

The decision was appealed to the U.S. supreme court in the case of Forty-fourth Gen. Ass'y v. Lucas, 379 U.S. 693, 85 S. Ct. 715, 13 L. Ed. 2d 699 (1964). The supreme court affirmed all decisions of the federal court relating to federal questions but vacated the decision as to all other questions and remanded the case, leaving open to the district court the question of severability of "Amendment No. 7".

Before the decision on this appeal was handed down there was a supervening

case in the state court, White v. Anderson, 155 Colo. 291, 394 P.2d 333 (1964), wherein the constitutionality of that portion of section 47 of article V dealing with subdistricting was questioned. The supreme court held the subdistricting provision was a state question in spite of retained jurisdiction of the federal district court and determined the subdistricting provision was invalid but in view of the imminence of the 1964 election, stayed effect of its judgment until the convening of the 1965 session of the legislature.

The Forty-fifth General Assembly introduced an apportionment bill (House Bill No. 1438, later postponed). During its progress through the House interrogatories were submitted to the state supreme court requesting an opinion on the severability of "Amendment No. 7". The court held in In re Interrogatories, 157 Colo. 76, 400 P.2d 931 (1965), that such amendment was not severable and the whole "Amendment No. 7" was invalid and void.

ANNOTATION

Law reviews. For article, "The Desirability of Change in Colorado's Legislative Organization and Procedure", see 23 Dicta 119 (1946). For article, "One Year Review of Constitutional Law", see 40 Den. L. Ctr. J. 134 (1963). For article, "The Lucas Case and the Reapportionment of State Legislatures", see 37 U. Colo. L. Rev. 433 (1965).

Both houses of general assembly must be apportioned by population. The equal protection clause requires that seats in both houses of the Colorado general assembly must be apportioned substantially on a population basis in order to comport with federal constitutional requisites. Lucas v. Forty-Fourth Gen. Ass'y, 377 U.S. 713, 84 S. Ct. 1459, 12 L. Ed. 2d 632 (1964).

For history of reapportionment in Colorado, see Lisco v. Love, 219 F. Supp. 922 (D. Colo. 1963), rev'd sub nom. Lucas v. Forty-Fourth Gen. Ass'y, 377 U.S. 713, 84 S. Ct. 1472, 12 L. Ed. 2d 632 (1964).

Statutes passed by unconstitutionally apportioned general assembly are constitutional. Ryan v. Tinsley, 316 F.2d 430 (10th Cir.), appeal dismissed and cert. denied, 375 U.S. 17, 84 S. Ct. 139, 11 L. Ed. 2d 46 (1963).

There is nothing to intimate that a general assembly elected from districts that are invidiously discriminatory in violation of the fourteenth amendment is without power to act. Ryan v. Tinsley, 316 F.2d 430 (10th Cir.), appeal dismissed and cert. denied, 375 U.S. 17, 84 S. Ct. 139, 11 L. Ed. 2d 46 (1963).

Former section provided for census and apportionment by ratios. See Armstrong v. Mitten, 95 Colo. 425, 37 P.2d 757 (1934); Lisco v. McNichols, 208 F. Supp. 471 (D. Colo. 1962); Bd. of County Comm'rs v. City & County of Denver, 150 Colo. 198, 372 P.2d 152 (1962), appeal dismissed, 372 U.S. 226, 83 S. Ct. 679, 9 L. Ed. 2d 714 (1963); Lucas v. Forty-Fourth Gen. Ass'y, 377 U.S. 713, 84 S. Ct. 1459, 12 L. Ed. 2d 632 (1964); In re Reapportionment of Colo. Gen. Ass'y, 647 P.2d 191 (Colo. 1982).

Section 46. Senatorial and representative districts. The state shall be divided into as many senatorial and representative districts as there are members of the senate and house of representatives respectively, each district in each house having a population as nearly equal as may be, as required by the constitution of the United States, but in no event shall there be more than five percent deviation between the most populous and the least populous district in

each house.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 44. **L. 50:** Entire section amended, see **L. 51,** p. 555. **Initiated 62:** Entire section R&RE, see **L. 63,** p. 1045. **Initiated 66:** Entire section R&RE, see **L. 67,** p. 11 of the supplement to the 1967 Session Laws. **L. 74:** Entire section amended, p. 451, effective January 1, 1975. **Initiated 74:** Entire section was amended, effective upon proclamation of the Governor, December 20, 1974, but does not appear in the session laws.

Editor's note: The Governor's proclamation date for the 1974 referred measure was December 20, 1974.

Cross references: For historical background of and cases construing "Amendment No. 7" in 1962, sections 45 to 48 of this article, see section 45 of this article.

ANNOTATION

Law reviews. For article, "The Lucas Case and the Reapportionment of State Legislatures", see 37 U. Colo. L. Rev. 433 (1965).

This section is constitutional mandate on general assembly to divide state into senatorial and representative districts. In re Interrogatory of House of Representatives, 177 Colo. 215, 493 P.2d 346 (1972).

Both legislative houses must be apportioned by population. The equal protection clause requires that seats in both houses of the Colorado general assembly must be apportioned substantially on a population basis in order to comport with federal constitutional requisites. Lucas v. Forty-Fourth Gen. Ass'y, 377 U.S. 713, 84 S. Ct. 1459, 12 L. Ed. 2d 632 (1964).

Paramount criterion is equality of population. The paramount criterion for testing the constitutional sufficiency of a reapportionment plan is substantial equality of population among the senate districts and among the house districts as required by this section. In re Reapportionment of Colo. Gen. Ass'y, 647 P.2d 191 (Colo. 1982).

Five percent deviation test means that the sum of (a) the percent by which the largest district's population exceeds that of the ideal district and (b) the percent by which the smallest district's population falls short of the population of the ideal district, must be less than five percent. In re Reapportionment of Colo. Gen. Ass'y, 647 P.2d 191 (Colo. 1982).

But some discretion must be allowed general assembly in carrying out its constitutional duty of reapportionment. In re Interrogatories by Gen. Ass'y, 178 Colo. 311, 497 P.2d 1024 (1972).

And addition to or deletion from particular district is legislative decision to be upheld provided a constitutional violation is not shown. In re Interrogatories by Gen. Ass'y, 178 Colo. 311, 497 P.2d 1024 (1972).

Even apportionment plan approved by referendum subject to constitutional requirements. The fact that an apportionment plan was approved by the electorate by a popular referendum is without federal constitutional significance, if the scheme adopted fails to statisfy the basic requirements of the equal protection clause, and passage by popular referendum is insufficient to sustain its constitutionality or to induce a court of equity to refuse to act. Lucas v. Forty-Fourth Gen. Ass'y, 377 U.S. 713, 84 S. Ct. 1459, 12 L. Ed. 2d 632 (1964).

Cumulative population disparities suspect. Deviations from a

strict population basis, so long as rationally justifiable, may be utilized to balance a slight overrepresentation of a particular area in one house with a minor underrepresentation of that area in the other house. But, on the other hand, disparities from population-based representation, though minor, may be cumulative instead of offsetting where the same areas are disadvantaged in both houses of a state general assembly, and may therefore render the apportionment scheme at least constitutionally suspect. Lucas v. Forty-Fourth Gen. Ass'y, 377 U.S. 713, 84 S. Ct. 1459, 12 L. Ed. 2d 632 (1964).

Prima facie discrimination rebuts presumption of constitutionality of apportionment statute. Where unchallenged population statistics presented by plaintiffs showed disparities in representation of sufficient magnitude to make out a prima facie case of invidious discrimination, which rebuts the presumption of statutory constitutionality, the defendants were obliged to show that there exists some rational basis for these disparities. Lisco v. McNichols, 208 F. Supp. 471 (D. Colo. 1962).

County annexation prohibited except when necessary to meet equal population requirement. The constitution expressly prohibits a part of one county being added to all or part of another county except when necessary to meet the equal population requirements of this section. In re Interrogatories by Gen. Ass'y, 178 Colo. 311, 497 P.2d 1024 (1972). See Bd. of County Comm'rs v. City & County of Denver, 150 Colo. 198, 372 P.2d 152 (1962), appeal dismissed, 372 U.S. 226, 83 S. Ct. 679, 9 L. Ed. 2d 714 (1963).

Amendment with most votes prevails. In order to carry out the meaning and purpose of section 1 of this article, if inconsistent amendments are submitted to the voters, the one which received the most votes must prevail. That, in the view of the supreme court, is what the "republican" form of government means with respect to the right of the people to amend the constitution. In re Interrogatories Propounded by Senate Concerning House Bill 1078, 189 Colo. 1, 536 P.2d 308 (1975).

For history of reapportionment in Colorado, see Lisco v. Love, 219 F. Supp. 922 (D. Colo. 1963), rev'd sub nom. Lucas v. Forty-Fourth Gen. Ass'y, 377 U.S. 713, 84 S. Ct. 1472, 12 L. Ed. 2d 632 (1964).

Applied in In re Interrogatories Propounded by Senate Concerning House Bill 1078, 189 Colo. 1, 536 P.2d 308 (1975); In re Colo. General Assembly, 828 P.2d 185 (Colo. 1992); In re Colo. General Assembly, 828 P.2d 213 (Colo. 1992).

Section 47. Composition of districts. (1) Each district shall be as compact in area as possible and the aggregate linear distance of all district boundaries shall be as short as possible. Each district shall consist of contiguous whole general election precincts. Districts of the same house shall not overlap.

(2) Except when necessary to meet the equal population requirements of section 46, no part of one county shall be added to all or part of another county in forming districts. Within counties whose territory is contained in more than one district of the same house, the number of cities and towns whose territory is contained in more than one district of the same house shall be as small as possible. When county, city, or town boundaries are changed, adjustments, if any, in legislative districts shall be as prescribed by law.

(3) Consistent with the provisions of this section and section 46 of this article, communities of interest, including ethnic, cultural, economic, trade area, geographic, and demographic factors, shall be preserved within a single district wherever possible.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 44. **Initiated 62:** Entire section R&RE, see **L. 63,** p. 1045. **Initiated 66:** Entire section R&RE, see **L. 67,** p. 11 of the supplement to the 1967 Session Laws. **Initiated 74:** Entire section was amended, effective upon proclamation of the Governor, December 20, 1974, but does not appear in the session laws.

Editor's note: The Governor's proclamation date in 1974 was December 20, 1974.

Cross references: (1) For historical background of and cases construing "Amendment No. 7" in 1962, sections 45 to 48 of this article, see section 45 of this article.

(2) For composition of congressional districts, see § 2-1-101; for composition of senatorial districts, see § 2-2-102; for composition of representative districts, see § 2-2-202.

ANNOTATION

Law reviews. For article, "The Desirability of Change in Colorado's Legislative Organization and Procedure", see 23 Dicta 119 (1946). For article, "The Lucas Case and the Reapportionment of State Legislatures", see 37 U. Colo. L. Rev. 433 (1965).

This section is constitutional mandate on general assembly requiring that periodic reapportionment be accomplished in accordance with definite, clear cut, and fully understandable standards. In re Interrogatory of House of Representatives, 177 Colo. 215, 493 P.2d 346 (1972).

This section provides means by which general assembly may achieve equal population requirements of section 46 of this article. In re Interrogatory of House of Representatives, 177 Colo. 215, 493 P.2d 346 (1972).

Prime requisites in establishing district boundaries are compactness and contiguity. In re Interrogatory of House of Representatives, 177 Colo. 215, 493 P.2d 346 (1972).

"Compactness", as used in the constitutional sense relating to reapportionment, concerns a geographic area whose boundaries are as nearly equidistant as possible from the geographic center of the area being considered, allowing for variances caused by population density and distribution, census enumeration districts, and reasonable variations necessitated by natural boundaries and by county lines. Acker v. Love, 178 Colo. 175, 496 P.2d 75 (1972); In re Interrogatories by Gen. Ass'y, 178 Colo. 311, 497 P.2d 1024 (1972); In re Reapportionment of Colo. Gen. Ass'y, 647 P.2d 191 (Colo. 1982); In re Reapportionment of Colo. Gen. Ass'y, 647 P.2d 209 (Colo. 1982).

Compactness concerns a geographic area whose boundaries are as nearly equidistant as possible from the geographic center. Allen v. Bd. of County Comm'rs, 178 Colo. 354, 497 P.2d 1026 (1972).

Plan not meeting compactness requirement unconstitutional. Where a reapportionment plan's districts are not as compact as possible, nor does the plan preserve communities of interest wherever possible, it violates the clear

constitutional criteria of subsections (1) and (3). In re Reapportionment of Colo. Gen. Ass'y, 647 P.2d 209 (Colo. 1982).

Purpose of compactness and contiguity. Compactness and contiguity, as criteria for redistricting, were originally designed to represent a restraint on gerrymandering. Carstens v. Lamm, 543 F. Supp. 68 (D. Colo. 1982).

Term "compact" in section not distinguished from same term in § 30-10-306. There is no reason to distinguish between "compact" in this section and the same term in § 30-10-306, concerning commissioner districts. Allen v. Bd. of County Comm'rs, 178 Colo. 354, 497 P.2d 1026 (1972).

No constitutional requirement of compactness for precincts for selecting delegates to party conventions. Although the constitution mandates that senatorial and representative districts be as compact in area as possible, there is no similar constitutional requirement which prevents precincts recently completed by the county commissioners and election commissioners from being used for the purpose of selecting delegates to the party convention processes, for neither the delegates nor the time of their selection for such conventions need be the same as in the assembly processes for the selection of senators and representatives. Acker v. Love, 178 Colo. 175, 496 P.2d 75 (1972).

However, restrictions against the splitting of cities take precedence over the "compactness" concerns of paragraph (1) of this section. In re Colo. General Assembly, 828 P.2d 185 (Colo. 1992).

And community of interest requirements set forth in paragraph (3) are subordinate to the compactness requirements of paragraph (1) of this section. In re Colo. General Assembly, 828 P.2d 185 (Colo. 1992).

And community of interest requirements must yield to equality of population. In re Colo. General Assembly, 828 P.2d 185 (Colo. 1992).

One method of measurement of compactness involves comparing each district's perimeter to its area. A smaller perimeter/area ratio indicates compactness. In re Reapportionment of Colo. Gen. Ass'y, 647 P.2d 209 (Colo. 1982).

Political considerations not to outweigh constitutional criteria. Although reapportionment is not without political considerations, these considerations are not among the constitutional criteria, and the commission may not allow them to outweigh the constitutional criteria. In re Reapportionment of Colo. Gen. Ass'y, 647 P.2d 209 (Colo. 1982).

While it is not improper for the reapportionment commission to attempt to resolve political conflicts engendered by the supreme court's disapproval of the original plan, problems created by partisan politics cannot justify an apportionment which does not otherwise pass constitutional muster. In re Reapportionment of Colo. Gen. Ass'y, 647 P.2d 209 (Colo. 1982).

Function of supreme court to test constitutionality of reapportionment acts. Although the constitution of Colorado delegates to the general assembly the power and authority to create legislative districts, subject only to state and federal constitutional limitations, the supreme court's function is to test the constitutionality of proposed reapportionment acts before it by the applicable provisions of the constitution. Acker v. Love, 178 Colo. 175, 496 P.2d 75 (1972).

But some discretion must be allowed general assembly in carrying out its constitutional duty of reapportionment. In re Interrogatories by Gen. Ass'y, 178 Colo. 311, 497 P.2d 1024 (1972).

And addition to or deletion from particular district is legislative decision to be upheld provided a constitutional violation is not shown. In re Interrogatories by Gen. Ass'y, 178 Colo. 311, 497 P.2d 1024 (1972).

Preservation of county lines is necessary consideration in the determination of variations from the ideal in compactness. In re Interrogatories by Gen. Ass'y, 178 Colo. 311, 497 P.2d 1024 (1972).

Subsection (2) criteria of preserving county lines and avoiding splitting of municipalities takes precedence over criteria of compactness and preservation of communities of interest. In re Reapportionment of Gen. Assembly, __ P.3d __ (Colo. 2011).

In redistricting the general assembly, the reapportionment commission's actions include: (1) Determining the ideal population for senate and house districts; (2) identifying those counties that qualify for whole senate or house districts based upon their population; and (3) preserving to those counties their number of whole districts throughout the process unless this is not possible. In re Reapportionment of Colo. Gen. Ass'y, 45 P.3d 1237 (Colo. 2002).

Plan adopted by the reapportionment commission does not comply with constitutional criteria because: (1) The plan denies whole senate districts to Boulder, Douglas, Jefferson, and Pueblo counties to which they qualify based upon the 2000 census population data and the population of an ideal district; and (2) the commission has not advanced an adequate explanation for the division of Adams, Arapahoe, and Mesa counties and the cities of Boulder and Pueblo between senate districts. In re Reapportionment of Colo. Gen. Ass'y, 45 P.3d 1237 (Colo. 2002).

The readopted plan satisfies the six constitutional criteria. The commission has provided an adequate factual showing that less drastic alternatives could not have satisfied the equal population requirement. In re Reapportionment of Colo. Gen. Ass'y, 46 P.3d 1083 (Colo. 2002).

When county annexation allowed. The constitution expressly prohibits a part of one county being added to all or part of another county except when necessary to meet the equal population requirements of section 46 of this article. In re Interrogatories by Gen. Ass'y, 178 Colo. 311, 497 P.2d 1024 (1972). See Bd. of County Comm'rs v. City & County of Denver, 150 Colo. 198, 372 P.2d 152 (1962), appeal dismissed, 372 U.S. 226, 83 S. Ct. 679, 9 L. Ed. 2d 714 (1963).

To include enclaves in district gives the appearance of defiance to the requirement of compactness, and more important is in direct violation of the constitutional requirement that the districts shall be contiguous whole precincts. In re Interrogatory of House of Representatives, 177 Colo. 215, 493 P.2d 346 (1972).

Senate redistricting plan held constitutionally compact. In re Interrogatories by Gen. Ass'y, 178 Colo. 311, 497 P.2d 1024 (1972).

Reapportionment bills held unconstitutional for failure to meet constitutional conciseness mandate. Acker v. Love, 178 Colo. 175, 496 P.2d 75 (1972).

Amendment to this section providing that apportionment of senators be same as provided by statute held inseparable and invalid. In re Interrogatories from House of Representatives, 157 Colo. 76, 400 P.2d 931 (1965).

For history of section, see White v. Anderson, 155 Colo. 291, 394 P.2d 333 (1964).

For history of reapportionment in Colorado, see Lisco v. Love, 219 F. Supp. 922 (D. Colo. 1963), rev'd sub nom. Lucas v.

Forty-Fourth Gen. Ass'y, 377 U.S. 713, 84 S. Ct. 1472, 12 L. Ed. 2d 632 (1964).

Applied in Armstrong v. Mitten, 95 Colo. 425, 37 P.2d 757 (1934); In re Interrogatories Propounded by Senate Concerning House Bill 1078, 189 Colo. 1, 536 P.2d 308 (1975); In re Colo. General Assembly, 828 P.2d 185 (Colo. 1992); In re Colo. General Assembly, 828 P.2d 213 (Colo. 1992).

Section 48. Revision and alteration of districts - reapportionment commission. (1) (a) After each federal census of the United States, the senatorial districts and representative districts shall be established, revised, or altered, and the members of the senate and the house of representatives apportioned among them, by a Colorado reapportionment commission consisting of eleven members, to be appointed and having the qualifications as prescribed in this section. Of such members, four shall be appointed by the legislative department, three by the executive department, and four by the judicial department of the state.

(b) The four legislative members shall be the speaker of the house of representatives, the minority leader of the house of representatives, and the majority and minority leaders of the senate, or the designee of any such officer to serve in his or her stead, which acceptance of service or designation shall be made no later than April 15 of the year following that in which the federal census is taken. The three executive members shall be appointed by the governor between April 15 and April 25 of such year, and the four judicial members shall be appointed by the chief justice of the Colorado supreme court between April 25 and May 5 of such year.

(c) Commission members shall be qualified electors of the state of Colorado. No more than four commission members shall be members of the general assembly. No more than six commission members shall be affiliated with the same political party. No more than four commission members shall be residents of the same congressional district, and each congressional district shall have at least one resident as a commission member. At least one commission member shall reside west of the continental divide.

(d) Any vacancy created by the death or resignation of a member, or otherwise, shall be filled by the respective appointing authority. Members of the commission shall hold office until their reapportionment and redistricting plan is implemented. No later than May 15 of the year of their appointment, the governor shall convene the commission and appoint a temporary chairman who shall preside until the commission elects its own officers.

(e) Within one hundred thirteen days after the commission has been convened or the necessary census data are available, whichever is later, the commission shall publish a preliminary plan for reapportionment of the members of the general assembly and shall hold public hearings thereon in several places throughout the state within forty-five days after the date of such publication. No later than one hundred twenty-three days prior to the date established in statute for precinct caucuses in the second year following the year in which the census was taken or, if the election laws do not provide for precinct caucuses, no later than one hundred twenty-three days prior to the date

established in statute for the event commencing the candidate selection process in such year, the commission shall finalize its plan and submit the same to the Colorado supreme court for review and determination as to compliance with sections 46 and 47 of this article. Such review and determination shall take precedence over other matters before the court. The supreme court shall adopt rules for such proceedings and for the production and presentation of supportive evidence for such plan. Any legal arguments or evidence concerning such plan shall be submitted to the supreme court pursuant to the schedule established by the court; except that the final submission must be made no later than ninety days prior to the date established in statute for precinct caucuses in the second year following the year in which the census was taken or, if the election laws do not provide for precinct caucuses, no later than ninety days prior to the date established in statute for the event commencing the candidate selection process in such year. The supreme court shall either approve the plan or return the plan and the court's reasons for disapproval to the commission. If the plan is returned, the commission shall revise and modify it to conform to the court's requirements and resubmit the plan to the court within the time period specified by the court. The supreme court shall approve a plan for the redrawing of the districts of the members of the general assembly by a date that will allow sufficient time for such plan to be filed with the secretary of state no later than fifty-five days prior to the date established in statute for precinct caucuses in the second year following the year in which the census was taken or, if the election laws do not provide for precinct caucuses, no later than fifty-five days prior to the date established in statute for the event commencing the candidate selection process in such year. The court shall order that such plan be filed with the secretary of state no later than such date. The commission shall keep a public record of all the proceedings of the commission and shall be responsible for the publication and distribution of copies of each plan.

(f) The general assembly shall appropriate sufficient funds for the compensation and payment of the expenses of the commission members and any staff employed by it. The commission shall have access to statistical information compiled by the state or its political subdivisions and necessary for its reapportionment duties.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 45. **L. 50:** Entire section repealed, see **L. 51,** p. 555. **Initiated 62:** Entire section R&RE, see **L. 63,** p. 1046. **Initiated 66:** Entire section R&RE, see **L. 67,** p. 11 of the supplement to the 1967 Session Laws. **L. 74:** Entire section amended, p. 451, effective January 1, 1975; **Initiated 74:** Entire section was amended, effective upon proclamation of the Governor, December 20, 1974, but does not appear in the session laws. **L. 2000:** (1)(b), (1)(d), and (1)(e) amended, p. 2773, effective upon proclamation of the Governor, **L. 2001,** p. 2390, December 28, 2000.

Editor's note: The Governor's proclamation date for the 1974 referred measure was December 20, 1974.

Cross references: (1) For historical background of and cases construing "Amendment No. 7" in 1962, sections 45 to 48 of this article, see section 45 of this article.

(2) For provisions concerning the reapportionment process, see sections 6

through 11 of chapter 46, Session Laws of Colorado 1990, sections 6 through 11 of chapter 286, Session Laws of Colorado 2000, and part 5 of article 2 of title 2; for requirement that senate and representative districts be apportioned on the basis of population, see § 46 of this article.

ANNOTATION

This section is mandatory. Lisco v. Love, 219 F. Supp. 922 (D. Colo. 1963), rev'd on other grounds sub nom. Lucas v. Forty-Fourth Gen. Ass'y, 377 U.S. 713, 84 S. Ct. 1472, 12 L. Ed. 2d 632 (1964).

And deemed exception to section 7 of this article. Where an amendment to a constitution is anywise in conflict or in any manner inconsistent with a prior provision of the constitution, the amendment controls. Hence, this section is deemed to create an exception to the provisions of section 7 of this article, providing for limited sessions of the general assembly in even-numbered years. In re Interrogatories Concerning House Joint Resolution No. 1008, 171 Colo. 200, 467 P.2d 56 (1970).

So subject of reapportionment need not be designated in writing by governor during the first 10 days of the session pursuant to section 7 of this article. In re Interrogatories Concerning House Joint Resolution No. 1008, 171 Colo. 200, 467 P.2d 56 (1970).

Supreme court's review rule limited. The role of the supreme court in the review proceeding is a narrow one: To measure the proposed reapportionment plan against the constitutional standards. In re Reapportionment of Colo. Gen. Ass'y, 647 P.2d 191 (Colo. 1982); In re Reapportionment of Colo. Gen. Ass'y, 647 P.2d 209 (Colo. 1982); In re Colo. General Assembly, 828 P.2d 185 (Colo. 1992).

Accordingly, request for technical changes in boundaries contained in the final plan fall outside the scope of court's review. In re Colo. General Assembly, 828 P.2d 185 (Colo. 1992).

And choice among plans is for commission. The choice among alternative plans, each consistent with constitutional requirements, is for the reapportionment commission and not the supreme court. In re Reapportionment of Colo. Gen. Ass'y, 647 P.2d 191 (Colo. 1982); In re Reapportionment of Colo. Gen. Ass'y, 647 P.2d 209 (Colo. 1982); In re Colo. General Assembly, 828 P.2d 185 (Colo. 1992).

In redistricting the general assembly, the reapportionment commission's actions include: (1) Determining the ideal population for senate and house districts; (2) identifying those counties that qualify for whole senate or house districts based upon their population; and (3) preserving to those counties their number of whole districts throughout the process unless this is not possible. In re Reapportionment of Colo. Gen. Ass'y, 45 P.3d 1237 (Colo. 2002).

Plan adopted by the reapportionment commission does not comply with constitutional criteria because: (1) It is not sufficiently attentive to county boundaries to meet the requirement of section 47 (2); and (2) it is not accompanied by an adequate factual showing that less drastic alternatives could not have satisfied the equal population requirement of the Colorado Constitution. In re Reapportionment of Colo. Gen. Ass'y, 45 P.3d 1237 (Colo. 2002); In re Reapportionment of Gen. Assembly, __ P.3d __ (Colo. 2011).

Division of counties on claimed basis of need to comply with section 2 of the Voting Rights Act was not justified where the reapportionment commission lacked information from which its expert

could opine on any potential section 2 violation in the counties. In re Reapportionment of Gen. Assembly, __ P.3d __ (Colo. 2011).

Voting Rights Act applicable to state reapportionment and redistricting plans. Accordingly, review of final plan for conformity with section 2 of the Voting Rights Act proper under this section. Such review is strictly circumscribed by the narrow scope of the proceedings, the presumption of good faith and validity accorded to the reapportionment commission, the nature of the evidentiary record, and the restricted ability of the court to act as a fact finder when material facts are genuinely disputed. In re Colo. General Assembly, 828 P.2d 185 (Colo. 1992).

Final plan for reapportionment must be consistent with six parameters in the following hierarchy from most to least important: (1) The fourteenth amendment equal protection clause and the fifteenth amendment; (2) section 2 of the Voting Rights Act; (3) article V, section 46 of the Colorado Constitution (equality of population of districts in each house); (4) article V, section 47 (2) of the Colorado Constitution (districts not to cross county lines except to meet section 46 requirements and the number of cities and towns contained in more than one district minimized); (5) article V, section 47 (1) of the Colorado Constitution (each district to be as compact as possible and to consist of contiguous whole general election precincts); and (6) article V, section 47 (3) of the Colorado Constitution (preservation of communities of interest within a district). In re Colo. General Assembly, 828 P.2d 185 (Colo. 1992); In re Reapportionment of Colo. Gen. Ass'y, 45 P.3d 1237 (Colo. 2002); In re Reapportionment of Gen. Assembly, __ P.3d __ (Colo. 2011).

The commission may not apply the lesser criteria over the greater criteria, but it may use the lesser criteria after satisfying the greater criteria. In re Reapportionment of Colo. Gen. Ass'y, 45 P.3d 1237 (Colo. 2002).

The readopted plan satisfies the six constitutional criteria. The commission has provided an adequate factual showing that less drastic alternatives could not have satisfied the equal population requirement. In re Reapportionment of Colo. Gen. Ass'y, 46 P.3d 1083 (Colo. 2002).

Final reapportionment plan would not be rejected based on claim that plan is in violation of section 2 of the Voting Rights Act where facts material to such claim are in genuine dispute, where it appears from the record that reapportionment commission made a good faith effort to resolve the disputed facts, and where the correct legal standard has been applied by the commission. In re Colo. General Assembly, 828 P.2d 185 (Colo. 1992).

Reapportionment leaving district without resident senator until 1985 unconstitutional. Drawing boundaries of two senatorial districts so that one district encompasses the residences of two incumbent state senators while no state senator resides in the other, and setting the senatorial election for the first district for 1982 and for the other district for 1984, with the result that no senator will reside in the latter district until 1985, is a violation of constitutional guarantees of legislative representation. In re Reapportionment of Colo. Gen. Ass'y, 647 P.2d 191 (Colo. 1982).

And reapportionment nullifying recall power unconstitutional. A reapportionment plan which virtually nullifies the power of recall cannot be constitutionally sanctioned. In re Reapportionment of Colo. Gen. Ass'y, 647 P.2d 209 (Colo. 1982).

But six-year delay in senatorial election not unconstitutional. Although

reapportionment and election scheduling should preserve wherever possible the opportunity of all citizens to vote for a state senator every four years, the complexities of the reapportionment process may result occasionally in a six-year delay of the opportunity of some persons to vote for a senator. In re Reapportionment of Colo. Gen. Ass'y, 647 P.2d 191 (Colo. 1982).

Procedure upon disapproval of revised plan. Subsection (1)(e) does not provide the supreme court with direction if the court disapproves the commission's revised plan. Because the constitution does not require the court to return the plan at this stage in the proceedings for the commission to consider various remedies, and because the constitution requires that the reapportionment plan be filed with the secretary of state for implementation no later than March 15, 1982, the court now mandates what it had earlier described as the preferable solution. In re Reapportionment of Colo. Gen. Ass'y, 647 P.2d 209 (Colo. 1982).

Original jurisdiction of supreme court. Failure of the general assembly to reapportion following the 1960 federal census, allegedly to the injury of petitioners and other citizens, are matters which the parties are entitled to call to the attention of the supreme court and of which the supreme court has original jurisdiction. In re Legislative Reapportionment, 150 Colo. 380, 374 P.2d 66 (1962) (decided under §45 of this article as it stood prior to the 1966 amendment).

Purpose of publication of the preliminary plan is to make the public aware of the plan and to encourage comment to the reapportionment commission about it. In re Reapportionment of Colo. Gen. Ass'y, 647 P.2d 191 (Colo. 1982).

No method of publication specified. Subsection (1)(e) does not specify any particular method of publication of the preliminary plan. In re Reapportionment of Colo. Gen. Ass'y, 647 P.2d 191 (Colo. 1982).

"Publish" construed. The word "publish" in subsection (1)(e) has its commonly understood meaning, i.e., "to declare", "to make generally known", "to make public announcement of", "to place before the public", "to make public; to circulate; to make known to people in general". In re Reapportionment of Colo. Gen. Ass'y, 647 P.2d 191 (Colo. 1982).

For history of reapportionment in Colorado, see Armstrong v. Mitten, 95 Colo. 425, 37 P.2d 757 (1934); Lisco v. Love, 219 F. Supp. 922 (D. Colo. 1963), rev'd sub nom. Lucas v. Forty-Fourth Gen. Ass'y, 377 U.S. 713, 84 S. Ct. 1472, 12 L. Ed. 2d 632 (1964).

Applied in White v. Anderson, 155 Colo. 291, 394 P.2d 333 (1964); Acker v. Love, 178 Colo. 175, 496 P.2d 75 (1972); In re Interrogatories Propounded by Senate Concerning House Bill 1078, 189 Colo. 1, 536 P.2d 308 (1975); Baldrige v. Shapiro, 455 U.S. 345, 102 S. Ct. 1103, 71 L. Ed. 2d 199 (1982).

Section 49. Appointment of state auditor - term - qualifications - duties. (1) The general assembly, by a majority vote of the members elected to and serving in each house, shall appoint, without regard to political affiliation, a state auditor, who shall be a certified public accountant licensed to practice in this state, to serve for a term of five years and until his successor is appointed and qualified. Except as provided by law, he shall be ineligible for appointment to any other public office in this state from which compensation is derived while serving as state auditor. He may be removed for cause at any time by a two-thirds vote of the members elected to and serving in each house.

(2) It shall be the duty of the state auditor to conduct post audits of all financial transactions and accounts kept by or for all departments, offices, agencies, and institutions of the state government, including educational institutions notwithstanding the provisions of section 14 of article IX of this constitution, and to perform similar or related duties with respect to such political subdivisions of the state as shall from time to time be required of him by law.

(3) Not more than three members of the staff of the state auditor shall be exempt from the personnel system of this state.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p.46. **L. 50:** Entire section repealed, see **L. 51,** p. 555. **L. 64:** Entire section added, p. 839. **L. 74:** Entire section amended, p. 452, effective January 1, 1975.

Editor's note: (1) In 1964 the provisions of this section significantly changed from its original enactment.

(2) The Governor's proclamation date in 1974 was December 20, 1974.

(3) Section 14 of article IX, referenced in subsection (2), was repealed, effective January 11, 1973.

Section 50. Public funding of abortion forbidden. No public funds shall be used by the State of Colorado, its agencies or political subdivisions to pay or otherwise reimburse, either directly or indirectly, any person, agency or facility for the performance of any induced abortion, PROVIDED HOWEVER, that the General Assembly, by specific bill, may authorize and appropriate funds to be used for those medical services necessary to prevent the death of either a pregnant woman or her unborn child under circumstances where every reasonable effort is made to preserve the life of each.

Source: Initiated 84: Entire section added, effective upon proclamation of the Governor, **L. 85,** p. 1792, January 1, 1985.

Editor's note: Although this section was not numbered and did not contain a headnote as it appeared on the ballot, for ease of location it has been numbered as "Section 50", and the headnote which appeared in the original submission by the proponents has been added.

Cross references: For statutory provisions concerning the public funding of abortion under certain circumstances, see § 25.5-4-415.

ANNOTATION

Law reviews. For article, "Abortion in Colorado: If Roe v. Wade is Reversed", see 19 Colo. Law. 807 (1990). For a discussion of Tenth Circuit decisions dealing with questions of health law, see 73 Den. U. L. Rev. 767 (1996).

Scope of the prohibition of the use of public funds to pay for abortions. This section expresses the intention of the people that no induced abortion shall be paid for by public funds unless necessary to prevent the death of the pregnant woman and unless every reasonable effort also has been made to preserve the life of the unborn child. This section also makes clear, however, that medical services other than abortions may be publicly funded when necessary to prevent the death of either the pregnant woman or the unborn child under circumstances

where every reasonable effort is made to preserve the life of each. Urbish v. Lamm, 761 P.2d 756 (Colo. 1988).

Rule promulgated by department of social services which provided that when a pregnant woman's life is endangered, public funds may be used for an abortion of a viable unborn child before term only in circumstances where every reasonable effort has been made to preserve the lives of both the mother and the unborn child is within the scope of the exception to the prohibition on the use of public funds to pay for abortions. In contrast, a rule which allowed the public funding of abortions of unborn children who would die of natural causes at or before birth even if the mother's life was not threatened by carrying the unborn child for a longer period was beyond the scope of the exception. Urbish v. Lamm, 761 P.2d 756 (Colo. 1988).

Where the only evidence presented was that which indicated that an ectopic pregnancy inherently involved life-endangering risks to the mother, a rule which provided that "treatment for" an ectopic pregnancy was not included within definition of abortion is not inconsistent with the provisions of this section. Urbish v. Lamm, 761 P.2d 756 (Colo. 1988).

Statutory authority for rules interpreting the exception to the expenditure of public funds for abortions exists where legislation, found at § 26-4-104.5 (2) and § 26-15-104.5 (2) specifically states that "if every reasonable effort has been made to preserve the lives of a pregnant woman and her unborn child, then public funds may be used pursuant to this section to pay or reimburse for necessary medical services, not otherwise provided by law". Urbish v. Lamm, 761 P.2d 756 (Colo. 1988).

Colorado's limit on medicaid abortion funding to those instances when the expectant mother's life is at stake violates the requirements of federal law - requirements that Colorado is compelled to follow as a condition of its participation in medicaid. Hern v. Beye, 57 F.3d 906 (10th Cir. 1995).

Colorado's medicaid program as amended by the abortion funding restriction to those instances when the expectant mother's life is at stake impermissibly discriminates in its coverage of abortions on the basis of a patient's diagnosis and condition. Hern v. Beye, 57 F.3d 906 (10th Cir. 1995).

Colorado's restriction on medicaid funding for abortions to those instances when the expectant mother's life is at stake violates title XIX of the Social Security Act of 1965, 42 U.S.C. § 1396a(a)(17) because it is inconsistent with the basic objective of title XIX, that is, to provide qualified individuals with medically necessary care. A state law that categorically denies coverage for a specific, medically necessary procedure except in those rare instances when the patient's life is at stake is not a "reasonable standard[] . . . consistent with the objectives of [the Act]", 42 U.S.C. § 1396a(a)(17), but instead contravenes the purposes of title XIX. Hern v. Beye, 57 F.3d 906 (10th Cir. 1995).

Colorado's abortion funding restriction violates federal medicaid law insofar as it denies funding to medicaid-eligible women seeking abortions to end pregnancies that are the result of rape or incest. So long as Colorado continues to participate in medicaid, the state is enjoined from denying medicaid funding for abortions to qualified women whose pregnancies are the result of rape or incest. Hern v. Beye, 57 F.3d 906 (10th Cir. 1995).

Plaintiff lacked taxpayer standing to sue to enforce this section when it was undisputed that the only funds at issue were federal funds that the state held as custodial funds. There was no nexus between a plaintiff's

status as a state taxpayer and the challenged government action when the action involved the expenditure of federal funds only. Hotaling v. Hickenlooper, __ P.3d __ (Colo. App. 2011).

ARTICLE VI
Judicial Department

Editor's note: (1) This article was added in 1876. This article was repealed and reenacted in 1961, resulting in the addition, relocation, or elimination of sections as well as subject matter. For amendments to this article prior to 1961, see the editor's notes following the relocated sections.

(2) For the explanation of the effective dates of this article, see L. 63, p. 313.

Section 1. Vestment of judicial power. The judicial power of the state shall be vested in a supreme court, district courts, a probate court in the city and county of Denver, a juvenile court in the city and county of Denver, county courts, and such other courts or judicial officers with jurisdiction inferior to the supreme court, as the general assembly may, from time to time establish; provided, however, that nothing herein contained shall be construed to restrict or diminish the powers of home rule cities and towns granted under article XX, section 6 of this constitution to create municipal and police courts.

Source: L. 61: Entire article R&RE, effective January 12, 1965, see **L. 63,** p. 1048.

Editor's note: (1) For amendments prior to 1961, see L. 1877, p. 46, L. 1885, p. 145, and L. 13, p. 678.

(2) This section is similar to § 1 as it existed prior to 1961.

Cross references: For the supreme court, see article 2 of title 13; for judicial departments, see article 3 of title 13; for the court of appeals, see article 4 of 13; for district courts, see article 5 of title 13; for county courts, see article 6 of title 13; for the juvenile court of Denver, see article 8 of title 13; for the probate court of Denver, see article 9 of title 13; for municipal courts, see article 10 of title 13; for distribution of governmental powers, see article III of this constitution.

ANNOTATION

I. GENERAL CONSIDERATION.

Law reviews. For article, "The District Court", see 4 Den. B. Ass'n Rec. 5 (April 1927). For article, "Colorado and Minimum Judicial Standards", see 18 Dicta 1 (1941). For article, "Progress of the Judiciary Committee's Plan", see 25 Dicta 75 (1948). For article on the Colorado judicial system, see 22 Rocky Mt. L. Rev. 142 (1950). For article, "Commitment of Misdemeanants to the Colorado State Reformatory", see 29 Dicta 294 (1952). For article, "The System for Administration of Justice in Colorado", see 28 Rocky Mt. L. Rev. 299 (1956). For article, "Juvenile Delinquency in Colorado: The Law's Response to Society's Need", see 31 Rocky Mt. L. Rev. 1 (1958). For

article, "Colorado's Program to Improve Court Administration", see 38 Dicta 1 (1961). For article, "Qualifications, Selection and Tenure of Judges", see 33 Rocky Mt. L. Rev. 449 (1961). For article, "Children in Need: Observations of Practice of the Denver Juvenile Court", see 51 Den. L.J. 337 (1974). For article, "Standing to Sue in Colorado: A State of Disorder", see 60 Den. L.J. 421 (1983). For article, "State Constitutions and Individual Rights: The Case for Judicial Restraint", see 63 Den. U. L. Rev. 85 (1986).

This article establishes judicial department of state, designates sundry courts in which the judicial power shall be vested, and gives to them certain jurisdiction and diverse powers. Union Pac. Ry. v. Bowler, 4 Colo. App. 25, 34 P. 940 (1893).

And fixes territorial limits in which courts shall transact business. Dixon v. People ex rel. Elliott, 53 Colo. 527, 127 P. 930 (1912).

The supremacy of supreme court "is to be found, not in the extent of its jurisdiction, or the amount of its business, but in the paramount force and authority of its adjudications,--a force acting directly in controlling, without being controlled by, other tribunals,--an authority operating indirectly, from the respect and deference due to the highest tribunal known to the constitution and the laws". People ex rel. Attorney Gen. v. Richmond, 16 Colo. 274, 26 P. 929 (1891).

"Courts", in the constitutional sense, are the tribunals established for the purpose of administering justice. Dixon v. People ex rel. Elliott, 53 Colo. 527, 127 P. 930 (1912).

This section clearly recognizes two kinds of courts, viz.: First, those established by and expressly enumerated in the constitution itself; and second, such other courts as the general assembly may at its pleasure from time to time create. People ex rel. Attorney Gen. v. Richmond, 16 Colo. 274, 26 P. 929 (1891).

This section does not interfere with statutes prescribing mode and manner for performing judicial acts. This section is a usual provision of state constitutions, and has not been held to interfere with statutory regulations prescribing the mode, manner and time for the performance of judicial acts, and the entry of judgments. Terpening v. Holton, 9 Colo. 306, 12 P. 189 (1886).

A citizen has no natural or inalienable right to hearing in supreme court. If the right to such a hearing exists, it must be deduced from some constitutional guaranty. People ex rel. Attorney Gen. v. Richmond, 16 Colo. 274, 26 P. 929 (1891).

Control of practice of law is judicial function. Questions as to issuing and revoking of licenses to practice law and the terms and conditions thereof, determining what acts do or do not constitute the practice of law, punishments for unlicensed practices, methods to prevent the unlawful practices of law and all other matters pertaining thereto are judicial functions and fall within the powers and duties of the judicial branch of the government made up of our constitutionally created courts, the supreme court, district courts and county courts. Conway-Bogue Realty Inv. Co. v. Denver Bar Ass'n, 135 Colo. 398, 312 P.2d 998 (1957).

This article grants the Colorado supreme court jurisdiction to regulate and control the practice of law in Colorado. Unauthorized Practice of Law Comm. v. Grimes, 654 P.2d 822 (Colo. 1982).

Nothing in this article signifies that officers therein named, or for which provision is therein made, are county officers. The article

covers the subject of the judicial power of the state, creates its courts, or makes provision therefor, and does not purport to relate to either counties or county officers. Dixon v. People ex rel. Elliott, 53 Colo. 527, 127 P. 930 (1912).

Although judiciary has exclusive authority to impose sentences, such sentences must be within the limits determined by the General Assembly which has the exclusive authority to define crimes and impose punishment. People v. Schwartz, 823 P.2d 1386 (Colo. App. 1991).

Section as basis for jurisdiction. People ex rel. Cruz v. Morley, 77 Colo. 25, 234 P. 178 (1925).

Applied in Ross v. Ross, 89 Colo. 536, 5 P.2d 246 (1931); United States Bldg. & Loan Ass'n v. McClelland, 95 Colo. 292, 36 P.2d 164 (1934); State v. La Plata River & Cherry Creek Ditch Co., 101 Colo. 368, 73 P.2d 997 (1937); People v. Buckles, 167 Colo. 64, 453 P.2d 404 (1968); People v. McKnight, 41 Colo. App. 372, 588 P.2d 886 (1978).

II. ESTABLISHMENT OF OTHER COURTS.

General assembly is specifically empowered to establish other courts. The general assembly is specifically empowered by the constitution to establish other courts or judicial officers, as long as such other courts or judicial officers are jurisdictionally inferior to the supreme court. Sanders v. District Court, 166 Colo. 455, 444 P.2d 645 (1968).

Subject to certain constitutional limitations. The constitutionally granted power to the general assembly to establish other courts or judicial officers is subject to certain limitations which are themselves embedded in the Colorado constitution. Sanders v. District Court, 166 Colo. 455, 444 P.2d 645 (1968).

An intermediate court, having appellate and final jurisdiction, can be legally created. Such a court may, by legislative enactment, be clothed with appellate jurisdiction in cases remaining within the appellate jurisdiction of the supreme court, provided its judgments in such cases are made subject to review by the latter court. In re Constitutionality of Court of Appeals, 15 Colo. 578, 26 P. 214 (1890).

The supreme court is not at liberty to transpose the adverb "only" in section 2 of this article and make the constitution read: "The supreme court only shall have appellate jurisdiction"; while the language as it is written, "shall have appellate jurisdiction only", falls far short of declaring that it shall have such jurisdiction in all cases. This expression operates both as a grant and a limitation; it confers appellate authority, and at the same time forbids the exercise of original jurisdiction, save in the excepted cases; it specifies the kind, not the quantum, of jurisdiction, and is not inconsistent with the lodgment of power in some other court to review finally enumerated classes of cases. People ex rel. Attorney Gen. v. Richmond, 16 Colo. 274, 26 P. 929 (1891).

Thus general assembly had power to create court of appeals. By this section, the general assembly is authorized to create a court of review, and as there is no express constitutional limitation of the jurisdiction that may be conferred upon such a court thus created, if the act is unconstitutional it must be because the jurisdiction sought to be conferred is by implication prohibited in some degree by other constitutional provisions. People ex rel. Griffith v. Scott, 52 Colo. 59, 120 P. 126 (1911).

And to confer upon such court power to try controversies. Since the constitution authorizes the general assembly to create "other courts", such power necessarily carries

with it authority to give the courts created a share in the trial of controversies that would otherwise be disposed of by the tribunals expressly named; moreover, the very words of this section lodge "the judicial power of the state" in the courts that may afterwards be provided by law, as well as in those enumerated by name. People ex rel. Attorney Gen. v. Richmond, 16 Colo. 274, 26 P. 929 (1891).

However, any court established must be inferior to supreme court. Every tribunal established by statute, whether clothed with original or appellate powers, must, like the trial courts expressly named in the constitution, be inferior to the supreme court, subject to its "superintending control", and guided by its decisions upon questions determined in the exercise of its appellate authority. People ex rel. Attorney Gen. v. Richmond, 16 Colo. 274, 26 P. 929 (1891).

No other court can, under the constitution, be given final appellate jurisdiction in cases left by law within the appellate jurisdiction of the supreme court. In re Constitutionality of Court of Appeals, 15 Colo. 578, 26 P. 214 (1890).

The judicial power, both appellate and original, lodged by the constitution in the supreme court, cannot be transferred to another court created by the general assembly in any manner so as to make its decisions and opinions final. This jurisdiction is lodged in "a supreme court". Two such courts with like jurisdiction and powers are not contemplated by the constitution. In re Constitutionality of House Bill No. 8, 9 Colo. 623, 21 P. 471 (1886).

If it were within the legislative power to create another court with equal appellate and original power as the supreme court, the bill would still be obnoxious to section 19 of this article, which provides that all laws relating to courts shall be general and uniform. In re Constitutionality of House Bill No. 8, 9 Colo. 623, 21 P. 471 (1886).

General assembly cannot interfere with existence or supremacy of supreme court; nor can that body alter the nature of its jurisdiction and duties. And it follows of course that, without change in the fundamental law, the general assembly cannot create a court of coordinate final jurisdiction. People ex rel. Attorney Gen. v. Richmond, 16 Colo. 274, 26 P. 929 (1891).

This section of constitution authorizes creation of superior court of Denver. Darrow v. People ex rel. Norris, 8 Colo. 417, 8 P. 661 (1885).

Statute creating superior court not repealed by enactment of new section. The statute which established the superior court was never inconsistent with the constitutional provisions that judicial power shall be vested in a supreme court, district courts, and others. Therefore, the statute was not automatically repealed by enactment of new constitutional provision. People ex rel. Union Trust Co. v. Superior Court, 175 Colo. 391, 488 P.2d 66 (1971).

Office of police judge, with jurisdiction to enforce town ordinances, is authorized by this section. People v. Curley, 5 Colo. 412 (1880); People v. Jobs, 7 Colo. 475, 4 P. 798, reh'g denied, 7 Colo. 589, 4 P. 1124 (1884).

County court judges as judges of municipal and police courts created by home rule cities. The 1962 judicial amendments envisioned that the county court judges could serve not only as judges of the county court but also as judges of municipal and police courts created under powers of home rule cities. Blackman v. County Court, 169 Colo. 345, 455 P.2d 885 (1969).

Justice courts are not constitutional courts and exist under authority and by permission of the

legislative branch of the government. United Sec. Corp. v. Pantex Pressing Mach., Inc., 98 Colo. 79, 53 P.2d 653 (1935).

Elimination of words "justices of the peace" did not repeal statute establishing justices of the peace. The elimination of the words "justices of the peace" from the 1912 amendment to this section can in no sense be construed as a repeal, a limitation or restriction of the early statute establishing justices of the peace. Indeed, the amendment may well be said to have had the prior statute in view, as it specifically provides for "such other courts as may be provided by law", after enumerating certain judicial tribunals as constitutional courts. W.H. Courtright Publishing Co. v. Bray, 67 Colo. 588, 189 P. 30 (1920).

Public utilities commission is not a court. It is charged with the performance of certain executive and administrative duties in the performance of which it acts in a quasi-judicial capacity but has no judicial powers within the meaning of that term as used in the constitution. People v. Swena, 88 Colo. 337, 296 P. 271 (1931).

Applied in People ex rel. Heyer v. Juvenile Court, 75 Colo. 493, 226 P. 866 (1924); Abbott v. People, 91 Colo. 510, 16 P.2d 435 (1932).

III. JURISDICTION OF COURTS.

Allocation of jurisdiction is matter for legislative determination. The jurisdiction allocated to the courts created by the general assembly pursuant to constitutional authority is a matter for the general assembly to determine. Denver County Court v. Lee, 165 Colo. 455, 439 P.2d 737 (1968); Bill Dreiling Motor Co. v. Court of Appeals, 171 Colo. 448, 468 P.2d 37 (1970); South Washington Associates v. Flanagan, 859 P.2d 217 (Colo. 1992).

The constitutional policy seems to have been, not to specify absolutely the extent and boundaries of the jurisdiction of all the courts, but to allow a large legislative discretion, so that the varying demands and the ever-changing necessities of the people may from time to time be adequately provided for. People ex rel. Attorney Gen. v. Richmond, 16 Colo. 274, 26 P. 929 (1891).

General assembly's authority under this section is exclusive. Where parties to an arbitration agreement purported to allow the court of appeals or the supreme court to conduct a substantive review of the arbitration panel's award, contrary to the controlling statutes, clause was void and unenforceable. South Washington Associates v. Flanagan, 859 P.2d 217 (Colo. 1992).

Trial courts have jurisdiction to determine federal constitutional questions, and it is their duty to do so by virtue of par. 2 of art. VI, U.S. Const., which provides that the constitution of the United States and all laws made in pursuance thereof shall be the supreme law of the land and the judges of every state shall be bound thereby and by § 8 of art. XII, Colo. Const., requiring officers to take an oath to support the constitution of the United States and of the state of Colorado, notwithstanding the provisions of the 1913 amendment to this section which provided that the supreme court should have exclusive jurisdiction to determine such matters. People v. Western Union Tel. Co., 70 Colo. 90, 198 P. 146 (1921).

And any attempt to take away this jurisdiction is null and void. When a federal constitutional question is raised in any of the trial courts of Colorado the right is given, and the duty is imposed upon those courts, by that instrument itself, to adjudicate and determine it. That right so given can neither be taken away nor that duty abrogated by the state of

Colorado, by constitutional provision or otherwise, and any attempt to do so is null and void. Such pretended constitutional inhibition is no part of the constitution of the state of Colorado, and the judge's oath binding him to the support and enforcement of that instrument has no relation to such void provisions. People v. Western Union Tel. Co., 70 Colo. 90, 198 P. 146 (1921).

A state constitutional provision prohibiting trial courts from passing on constitutional questions takes from a defendant the right of interposing the defense that the act under which he is prosecuted is unconstitutional, and is invalid as violating the "due process of law" clause. People v. Max, 70 Colo. 100, 198 P. 150 (1921).

Provisions providing for review of decisions of supreme court by people are null and void. Decisions of the supreme court upon constitutional questions cannot be reviewed by popular vote of the citizens of Colorado or one of its municipalities, and any pretended constitutional provision of this state assuming to provide such method of review is null and void. Hence, that part of a 1913 amendment to this section providing for the review of decisions of the supreme court by the people is null and void. People v. Western Union Tel. Co., 70 Colo. 90, 198 P. 146 (1921); People v. Max, 70 Colo. 100, 198 P. 150 (1921).

District courts deprived of plenary power by creation of juvenile courts. By constitutional authority conferred upon the general assembly by this section, district courts were permitted to be deprived of their otherwise plenary power to determine causes of the constitutionally specified character by the creation of juvenile courts in certain counties and the vesting of that jurisdiction in them. People ex rel. Lucke v. County Court, 109 Colo. 447, 126 P.2d 334 (1942).

Exercise of jurisdiction not precluded by absence of statutory or constitutional provision. The absence of a statutory or constitutional provision which specifically designates a forum or spells out standards for decision will not preclude exercise of a court's jurisdiction, even where the subject matter would not have been subject to judicial authority at common law. In re A.W., 637 P.2d 366 (Colo. 1981).

Actual controversy between adverse parties must exist if a court is to sua sponte address the constitutionality of a statute. Juvenile court's ruling that statute was unconstitutional was impermissible exercise of judicial authority since the issue was raised on behalf of unidentified parties that were not before the court on court's own motion in order to create a controversy that it then proceeded to decide. In re Tomlinson, 851 P.2d 170 (Colo. 1993).

IV. DELEGATION OF JUDICIAL POWER.

Judicial power cannot be conferred by consent upon one not clothed therewith in manner designated by law; nor can suitors by consent legalize the effort of such a person to act in place of a judge and perform his official duties. Haverly Invincible Mining Co. v. Howcutt, 6 Colo. 574 (1883).

No authority is given in the constitution, and none could be given by statute, for parties litigant to choose whom they will for the purpose of sitting as a court in the trial of a given cause, and the judge himself cannot cast his "judicial robe upon the shoulders of any man" who might be acceptable to the parties in a particular suit. Haverly Invincible Mining Co. v. Howcutt, 6 Colo. 574 (1883).

And proceedings are not rendered judicial because duties imposed require exercise of

discretion. The mere fact that duties are imposed upon officers which require the exercise of judgment and discretion, does not, of itself, render their proceedings conducted in pursuance of their authority, judicial in the sense in which the term is used in the constitution. Am. Sulphur & Mining Co. v. Brennan, 20 Colo. App. 439, 79 P. 750 (1905).

Power to make rules of procedure is right of supreme court. Aside from any common law right, or statutory grant, the power to make rules of procedure is the constitutional right of the Colorado supreme court. Kolkman v. People, 89 Colo. 8, 300 P. 575 (1931).

Under constitution as originally adopted, no part of judicial power of state could be vested in coroner. It is true that this constitution was amended in 1885 so as to permit the general assembly to create new courts, conferring upon that body a large discretion with reference to the jurisdiction that might be given to such courts, but no attempt has since been made to confer judicial power upon coroners in this state. Germania Life Ins. Co. v. Ross-Lewin, 24 Colo. 43, 51 P. 488 (1897).

Applied in Bd. of Comm'rs v. Bd. of Comm'rs, 9 Colo. App. 368, 48 P. 675 (1897); Mervin v. Bd. of Comm'rs, 29 Colo. 169, 67 P. 285 (1901); Ontario Mining Co. v. Indus. Comm'n, 86 Colo. 206, 280 P. 483 (1929); Allen v. Bailey, 91 Colo. 260, 14 P.2d 1087 (1932); Dill v. People, 94 Colo. 230, 29 P.2d 1035 (1934); Pub. Utils. Comm'n v. Manley, 99 Colo. 153, 60 P.2d 913 (1936); Local 13, Teamsters v. Perry Truck Lines, 106 Colo. 25, 101 P.2d 436 (1940); In re Water Rights, 181 Colo. 395, 510 P.2d 323 (1973).

SUPREME COURT

Section 2. Appellate jurisdiction. (1) The supreme court, except as otherwise provided in this constitution, shall have appellate jurisdiction only, which shall be coextensive with the state, and shall have a general superintending control over all inferior courts, under such regulations and limitations as may be prescribed by law.

(2) Appellate review by the supreme court of every final judgment of the district courts, the probate court of the city and county of Denver, and the juvenile court of the city and county of Denver shall be allowed, and the supreme court shall have such other appellate review as may be provided by law. There shall be no appellate review by the district court of any final judgment of the probate court of the city and county of Denver or of the juvenile court of the city and county of Denver.

Source: L. 61: Entire article R&RE, effective January 12, 1965, see **L. 63,** p. 1049.

Editor's note: (1) For amendments prior to 1961, see L. 1877, p. 46.

(2) This section is similar to § 2 as it existed prior to 1961.

Cross references: For supreme court review of judgments by the court of appeals, see § 13-4-108; for determination of jurisdiction, see § 13-4-110; for procedure for review in the supreme court on writ of certiorari, see C.A.R. 49 to 57.

ANNOTATION

Law reviews. For article, "Justice Court Practice by the Laity",

see 9 Dicta 65 (1932). For article, "Unauthorized Practice of Law", see 10 Dicta 284 (1933). For article, "The Judiciary Committee Plan and the 1949 General Assembly", see 25 Dicta 281 (1948). For article, "A Report from the Judiciary Committee", see 26 Dicta 139 (1949). For article, "Colorado and Minimum Judicial Standards", see 28 Dicta 1 (1951). For article, "Colorado Criminal Procedure -- Does It Meet Minimum Standards?", see 28 Dicta 14 (1951). For article, "Colorado's Program to Improve Court Administration", see 38 Dicta 1 (1961). For article, "A Summary of Colorado Supreme Court Internal Operating Procedures", see 11 Colo. Law. 356 (1982). For article, "Original Proceedings in the Colorado Supreme Court", see 12 Colo. Law. 413 (1983).

"Appellate jurisdiction", as used in this section, relates to the review, by a superior court, of the final judgment, order, or decree of some inferior court. Clark v. Denver & I. R. R., 78 Colo. 48, 239 P. 20 (1925).

"Superintending control" given by this section refers primarily to courts, not to parties or cases; its purpose is to keep the courts themselves "within bounds", and to insure the harmonious working of our judicial system; it was not designed to secure the review of judgments in connection with ordinary appellate jurisdiction; and insofar as the rights of suitors in particular causes may be affected, the effect is incidental purely. People ex rel. Attorney Gen. v. Richmond, 16 Colo. 274, 26 P. 929 (1891).

As a statutory court, the court of appeals does not possess general powers of supervision over lower courts or attorneys appearing therein. Rather, such powers are vested in the supreme court by this section. People v. Bergen, 883 P.2d 532 (Colo. App. 1994).

"Inferior courts", as used in this section, indicate the relative rank and authority of courts. Laizure v. Baker, 91 Colo. 48, 11 P.2d 560 (1932).

Supreme court possesses only jurisdiction that is expressly mentioned or necessarily implied. Wheeler v. Northern Colo. Irrigation Co., 9 Colo. 248, 11 P. 103 (1886).

Jurisdiction cannot be conferred by private agreement. Where parties to an arbitration agreement purported to allow the court of appeals or the supreme court to conduct a substantive review of the arbitration panel's award, clause was void and unenforceable. South Washington Assocs. v. Flanagan, 859 P.2d 217 (Colo. 1992).

It cannot expand its own jurisdiction by rule of court. Jurisdiction, as initially spelled out in the constitution, may be expanded by statute, but such is no authority for the supreme court to expand its own jurisdiction by rule of court. People ex rel. City of Aurora v. Smith, 162 Colo. 72, 424 P.2d 772 (1967); Bill Dreiling Motor Co. v. Court of Appeals, 171 Colo. 448, 468 P.2d 37 (1970).

The supreme court has authority to adopt rules for the regulation of the business of the courts and the procedure to be followed by litigants in doing that business. Nonetheless, absent constitutional authority, it is equally clear that this court cannot adopt a rule which changes jurisdiction of a court contrary to a provision of a statute. Bill Dreiling Motor Co. v. Court of Appeals, 171 Colo. 448, 468 P.2d 37 (1970).

Original jurisdiction of supreme court cannot be expanded by general assembly beyond the limits expressly set forth in the constitution. People v. Carter, 186 Colo. 391, 527 P.2d 875 (1974).

Supreme court is constituted to be primarily and essentially court of appellate jurisdiction. In re Garvey, 7 Colo. 502, 4 P. 758 (1884); Leppel v. District

Court, 33 Colo. 24, 78 P. 682 (1904).

This section undoubtedly defines the principal power and authority which the framers of the constitution intended this tribunal to exercise. As the head of the judicial system of the state, it was eminently appropriate to confine its jurisdiction to a review of causes and proceedings determined by inferior courts, and to a superintending control over such courts. The general intention clearly was to leave with the subordinate courts of the state the first or original jurisdiction of controversies, whether relating to purely private rights or whether involving the consideration of questions pertaining to the public welfare. But, for excellent reasons, it was deemed necessary that this court should, nevertheless, possess a certain limited original jurisdiction. Wheeler v. Northern Colo. Irrigation Co., 9 Colo. 248, 11 P. 103 (1886).

By this section and the following, the jurisdiction of this court is limited to appellate, and a general supervisory control over inferior courts, except such original jurisdiction as is thereby specially conferred. Whipple v. Stevenson, 25 Colo. 447, 55 P. 188 (1898).

Under the constitution the principal jurisdiction of the supreme court is first appellate, and second superintending. But there is also conferred upon it a limited original jurisdiction. Wheeler v. Northern Colo. Irrigation Co., 9 Colo. 248, 11 P. 103 (1886).

But not exclusively. While this section clothes the supreme court with appellate jurisdiction, such jurisdiction is not exclusive. True, the intent is clear to make this court essentially a court of review; the word "only", coupled with the other words employed, plainly indicates a purpose to render its primary and principal powers appellate; its superintending control over other courts and its limited original jurisdiction, together with its anomalous duty of answering executive and legislative questions, while functions of great importance and value, must be regarded as secondary. People ex rel. Attorney Gen. v. Richmond, 16 Colo. 274, 26 P. 929 (1891).

Appellate review of county court judgments by superior court is subject to ultimate review by supreme court, since any party has the right to petition for a writ of certiorari. People v. Superior Court, 175 Colo. 391, 488 P.2d 66 (1971).

The legislative plan authorizing the superior court to review county court judgments is not in conflict with this section, which provides that the supreme court shall have ultimate appellate review jurisdiction, or § 17 of this article, which specifies that appellate review of county court judgments shall be by the supreme court or the district courts. People v. Superior Court, 175 Colo. 391, 488 P.2d 66 (1971).

Mode of granting review by supreme court has not been prescribed. It can encompass any form of appellate review, including certiorari. Bill Dreiling Motor Co. v. Court of Appeals, 171 Colo. 448, 468 P.2d 37 (1970).

When it is said that an appellate court is to review the action of a court of original jurisdiction, this refers to the action of any appellate court concerning a case that is before it either on appeal, writ of error, or certiorari. Bill Dreiling Motor Co. v. Court of Appeals, 171 Colo. 448, 468 P.2d 37 (1970).

Certiorari is now, and always has been, a recognized form of appellate review. Indeed, under the common law, the only comparable types of review available were by writ of error, writ of false judgment, or writ of certiorari. Bill Dreiling Motor Co. v. Court of Appeals, 171 Colo. 448, 468 P.2d 37 (1970).

To the extent that it involves

the review of the proceedings of an inferior court, certiorari is an appellate proceeding. Bill Dreiling Motor Co. v. Court of Appeals, 171 Colo. 448, 468 P.2d 37 (1970); Menefee v. City & County of Denver, 190 Colo. 163, 544 P.2d 382 (1976).

Necessity for final judgment for review on writ of error. This section does not secure such review on writ of error as would disregard the rule that writ of error does not lie other than to a final judgment. Julius Hyman & Co. v. Velsicol Corp., 119 Colo. 121, 201 P.2d 380 (1948).

Necessity for superintending control. If the supreme court did not have a general superintending control over all inferior courts, its labors would be speedily ended; litigants would be deprived of their right of review by the higher court, and its opinions and orders would be wholly unenforceable. Greeley & Loveland Irrigation Co. v. Handy Ditch Co., 77 Colo. 487, 240 P. 270 (1925).

Where there was a dispute between two courts, both of which were inferior in jurisdiction to the supreme court, and a judge of one court had in effect "abolished" a judicial office created by the general assembly by declaring unconstitutional the legislation which brought this particular judicial office into being, thus posing a controversy which should be speedily resolved in order that there be as little disruption as possible of the orderly judicial process of the state, the supreme court elected to exercise its power of general superintending control over inferior courts, by resolving the controversy in an original proceeding. Sanders v. District Court, 166 Colo. 455, 444 P.2d 645 (1968).

Duty to keep inferior tribunals within their jurisdiction. In the interest of justice, it is as much the duty of the supreme court, when its superintending control of inferior tribunals is invoked, to keep the tribunals within their jurisdiction, as it is to correct errors of such tribunals exercising proper jurisdiction. Kellner v. District Court, 127 Colo. 320, 256 P.2d 887 (1953).

Trial judges may exercise judicial discretion only according to law, and a trial judge's exercise of discretion is subject to this court's supervisory authority granted by subsection (1) of this section. Spann v. People, 193 Colo. 53, 561 P.2d 1268 (1977).

The trial court has an affirmative obligation to exercise judicial discretion, and that obligation is subject to the state supreme court's supervisory authority granted by subsection (1) of this section. Overturf v. District Court, 198 Colo. 516, 602 P.2d 850 (1979).

Courts to be open to all citizens. One of the duties imposed by subsection (1) of this section is to see that the courts are open to all citizens. People v. Spencer, 185 Colo. 377, 524 P.2d 1084 (1974).

District court cannot transfer cause while it is pending in supreme court. By virtue of this section giving the supreme court a general superintending control over all inferior courts a district court is without jurisdiction to transfer a cause to another judge for hearing while the case is pending in the supreme court. George N. Sparling Coal Co. v. Colo. Pulp & Paper Co., 88 Colo. 523, 299 P. 41 (1931).

Supreme court's rule-making powers include manner of exercising subject matter jurisdiction. The manner in which subject matter jurisdiction is exercised is properly within the scope of the supreme court's rule-making powers vested by subsection (1) of this section. This procedure has been established and is set forth in C.A.R. 50-57. Bill Dreiling Motor Co. v. Court of Appeals, 171 Colo. 448, 468 P.2d 37 (1970).

Statutes pertaining to creation of appellate remedies take precedence over judicial rules of procedure. Bill Dreiling Motor Co. v. Court of Appeals, 171 Colo. 448, 468 P.2d 37 (1970).

A litigant cannot, as a matter of right, assert that he will come to supreme court by appeal, for such appeals remain creatures of statute, and, in the absence thereof, do not exist. He cannot claim a vested right to bring his case to this court by writ of error; for while this writ is in most cases a writ of right at the common law, it may by statute, unless the constitution forbids, be limited or abolished altogether. People ex rel. Attorney Gen. v. Richmond, 16 Colo. 274, 26 P. 929 (1891).

Defendant had constitutional right to effective assistance of counsel in filing of petition for rehearing in court of appeals as prerequisite for application for writ of certiorari because, while there is no right to effective assistance of counsel to pursue strictly discretionary appeal, review by petition for writ of certiorari to supreme court is application of right, not discretion. People v. Williams, 736 P.2d 1229 (Colo. App. 1986).

Criminal defendant filing application for certiorari has a constitutional right to effective assistance of counsel for the purpose of preparing and filing such application, since it is an application of right. People v. Valdez, 725 P.2d 29 (Colo. App. 1986), aff'd, 789 P.2d 406 (Colo. 1990), cert. denied, 498 U.S. 871, 111 S. Ct. 193, 112 L. Ed. 2d 156 (1990).

Two-pronged test enunciated in Strickland v. Washington (466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984)) is appropriate to assess adequacy of legal representation in appellate as well as trial settings. Initial inquiry must be whether conduct of the attorney was in fact deficient in light of prevailing standards of appellate practice. If conduct was deficient, the next inquiry must be whether, in view of all the circumstances, the deficient conduct so prejudiced the defendant as to substantially undermine the integrity of the appellate process. People v. Valdez, 725 P.2d 29 (Colo. App. 1986), aff'd, 789 P.2d 406 (Colo. 1990), cert. denied, 498 U.S. 871, 111 S. Ct. 193, 112 L. Ed. 2d 156 (1990).

There is not, however, a constitutionally mandated standard that appellate counsel must advise the defendant regarding opportunities for statutory postconviction relief or federal habeas corpus, especially absent evidence that counsel had reason to believe such relief would succeed or that defendant indicated an interest in such efforts. People v. Alexander, 129 P.3d 1051 (Colo. App. 2005).

Attorney's performance found to be patently deficient in a Crim. P. 35 (c) proceeding alleging ineffective assistance of counsel where such attorney failed to file a petition for writ of certiorari in a timely fashion after receiving three extensions of time from supreme court. People v. Valdez, 725 P.2d 29 (Colo. App. 1986), aff'd, 789 P.2d 406 (Colo. 1990), cert. denied, 498 U.S. 871, 111 S. Ct. 193, 112 L. Ed. 2d 156 (1990).

Motion for postconviction relief under Crim. P. 35(c) denied where defendant failed to establish that he had suffered prejudice due to patently deficient performance of attorney in handling criminal appeal. People v. Valdez, 725 P.2d 29 (Colo. App. 1986), aff'd, 789 P.2d 406 (Colo. 1990), cert. denied, 498 U.S. 871, 111 S. Ct. 193, 112 L. Ed. 2d 156 (1990).

Applied in McKercher v. Green, 13 Colo. App. 270, 58 P. 406 (1899); People ex rel. Graves v. District Court, 37 Colo. 443, 86 P. 87, 92 P. 958 (1906); Bulger v. People, 61 Colo. 187, 156 P. 800 (1916); People v.

Western Union Tel. Co., 70 Colo. 90, 198 P. 146 (1921); Mitchell v. People, 76 Colo. 346, 232 P. 685 (1924); People v. Wolff, 111 Colo. 46, 137 P.2d 693 (1943); Losavio v. District Court, 182 Colo. 186, 512 P.2d 264 (1973); In re Gardella, 190 Colo. 402, 547 P.2d 928 (1976); People v. Sepeda, 196 Colo. 13, 581 P.2d 723 (1978); Bd. of County Comm'rs v. Barday, 197 Colo. 519, 594 P.2d 1057 (1979); People v. Culbertson, 198 Colo. 153, 596 P.2d 1200 (1979); People v. Malacara, 199 Colo. 243, 606 P.2d 1300 (1980); Merchants Mtg. & Trust Corp. v. Jenkins, 659 P.2d 690 (Colo. 1983).

Section 3. Original jurisdiction - opinions. The supreme court shall have power to issue writs of habeas corpus, mandamus, quo warranto, certiorari, injunction, and such other original and remedial writs as may be provided by rule of court with authority to hear and determine the same; and each judge of the supreme court shall have like power and authority as to writs of habeas corpus. The supreme court shall give its opinion upon important questions upon solemn occasions when required by the governor, the senate, or the house of representatives; and all such opinions shall be published in connection with the reported decision of said court.

Source: L. 61: Entire article R&RE, effective January 12, 1965, see **L. 63,** p. 1049.

Editor's note: (1) For amendments prior to 1961, see L. 1877, p. 46, and L. 1885, p. 145.

(2) This section is similar to § 3 as it existed prior to 1961.

Cross references: For procedure in original actions in the supreme court, see C.A.R. 21.; for writs of habeas corpus, see article 45 of title 13; for certification of questions of law to the supreme court, see C.A.R. 21.1.

ANNOTATION

I. GENERAL CONSIDERATION.

Law reviews. For note, "Has the Colorado IRA Met an Advisory Death?", see 8 Rocky Mt. L. Rev. 140 (1936). For note, "Equitable Supervision of Elections", see 9 Rocky Mt. L. Rev. 279 (1937). For article, "A Voice from the Grave: Dying Declarations in Colorado", see 15 Dicta 127 (1938). For note, "Equitable Protection of the Right to Vote and Hold Office", see 13 Rocky Mt. L. Rev. 61 (1940). For article, "Constitutional Law", see 32 Dicta 397 (1955). For article, "Colorado's Program to Improve Court Administration", see 38 Dicta 1 (1961). For article, "A Summary of Colorado Supreme Court Internal Operating Procedures", see 11

Colo. Law. 356 (1982). For article, "Original Proceedings in the Colorado Supreme Court", see 12 Colo. Law. 413 (1983). For article, "Standing to Sue in Colorado: A State of Disorder", see 60 Den. L.J. 421 (1983).

Applied in In re Interrogatories Propounded by Senate Concerning House Bill 1078, 189 Colo. 1, 536 P.2d 308 (1975); People in Interest of D.H., 37 Colo. App. 544, 552 P.2d 29 (1976), aff'd, 192 Colo. 542, 561 P.2d 5 (1977); In re Interrogatories of Governor Regarding Certain Bills, 195 Colo. 198, 578 P.2d 200 (1978); Western Food Plan, Inc. v. District Court, 198 Colo. 251, 598 P.2d 1038 (1979); Bd. of County Comm'rs v. Fifty-First Gen. Ass'y, 198 Colo. 302, 599 P.2d 887 (1979); In re Claims for Water Rights Filed by United States, 198 Colo. 492, 602 P.2d 859 (1979); Williams v. District Court, 700 P.2d 549 (Colo. 1985).

II. ORIGINAL JURISDICTION.

A. In General.

Annotator's note. For other annotations concerning original jurisdiction of supreme court, see C.A.R. 21.

Supreme court is constitutional court with common-law powers. People ex rel. Attorney Gen. v. News-Times Publishing Co., 35 Colo. 253, 84 P. 912 (1906), writ of error dismissed for want of jurisdiction, 205 U.S. 454, 27 S. Ct. 556, 51 L. Ed. 879 (1907).

Constitution confers and defines jurisdiction of supreme court, but it does not "forbid the general assembly from regulating, to some extent, the quantity of its business by reasonably contracting or enlarging the limits of the exercise of such jurisdiction as the exigencies of the public welfare may require". People ex rel. Griffith v. Scott, 52 Colo. 59, 120 P. 126 (1911).

Power of supreme court to issue original writs comes from the constitution. People ex rel. Barnum v. District Court, 74 Colo. 48, 218 P. 912 (1923).

And is not dependent on statute or rules of civil procedure. The supreme court's authority to entertain remedial writs is conferred by the constitution, and is not dependent upon, or governed by the statute or rules of civil procedure on the subject. Leonhart v. District Court, 138 Colo. 1, 329 P.2d 781 (1958); Lucas v. District Court, 140 Colo. 510, 345 P.2d 1064 (1959).

The original jurisdiction conferred upon the supreme court by this section is not dependent upon or governed by either the statutes or the code; but the district courts are governed by the code insofar as it relates to civil actions. People ex rel. Graves v. District Court, 37 Colo. 443, 86 P. 87, 92 P. 958 (1906).

No procedure being prescribed, supreme court may conform to code, or common-law practice in such cases. It is the practice in applications for original writs to permit respondent to set forth his objections either by motion, demurrer or answer, or all of them. People ex rel. Barnum v. District Court, 74 Colo. 48, 218 P. 912 (1923).

This section refers to common-law writs. The remedial writs which the supreme court is authorized to entertain are the common-law writs. Leppel v. District Court, 33 Colo. 24, 78 P. 682 (1904); Lucas v. District Court, 140 Colo. 510, 345 P.2d 1064 (1959).

The writs mentioned in this section, which the supreme court is authorized to issue in the first instance, are the high prerogative writs of the common law. The supreme court alone is authorized to issue them, because it is the highest judicial tribunal in the state, and is vested with exclusive authority to exercise supervisory

control over all others. These writs can only be employed in proceedings which involve the sovereignty of the state, its prerogatives of franchises, or the liberty of its citizens. People ex rel. Graves v. District Court, 37 Colo. 443, 86 P. 87, 92 P. 958 (1906).

And may not be abridged or enlarged. It is beyond the power of the general assembly to abridge or enlarge the same. Leppel v. District Court, 33 Colo. 24, 78 P. 682 (1904).

Such writs are to be used for purpose of instituting original causes and not in aid of appellate jurisdiction. It is true that the writ of error is an original writ; and it may possibly be true that it is fairly included within the "other original and remedial writs" which the supreme court is authorized to issue by this section. But the jurisdiction conferred by this section is original, in contradistinction to the appellate authority given by the preceding section; the original writs mentioned are not to be used in connection with or in aid of ordinary appellate jurisdiction, but for the purpose of instituting original causes or proceedings. People ex rel. Attorney Gen. v. Richmond, 16 Colo. 274, 26 P. 929 (1891).

This section confers upon the supreme court the power to issue the writs therein mentioned for jurisdiction, and not in aid of jurisdiction previously specified. Wheeler v. Northern Colo. Irrigation Co., 9 Colo. 248, 11 P. 103 (1886).

Writs should be put only to prerogative uses. Some of these writs, including mandamus, have been, in this country, largely shorn of their prerogative character, so far as their general use is concerned; yet in this section they are intended to furnish the supreme court with an equipment powerful for the protection of the sovereign rights and interests of the state at large, and hence possess a leading prerogative feature. The supreme court is clearly of the opinion that original jurisdiction should be here entertained only in cases involving questions publici juris, and that the writs from the supreme court should, in general, be put only to prerogative uses. Wheeler v. Northern Colo. Irrigation Co., 9 Colo. 248, 11 P. 103 (1886).

It was clearly intent of framers of constitution to limit original jurisdiction of supreme court to those cases in which the writs thereby contemplated might issue; and unless a given case is of that character that one of such writs may issue, this court is without power to entertain it in the first instance. Whipple v. Stevenson, 25 Colo. 447, 55 P. 188 (1898).

Original jurisdiction conferred by this section is discretionary. Clark v. Denver & I. R. R., 78 Colo. 48, 239 P. 20 (1925); Shore v. District Court, 127 Colo. 487, 258 P.2d 485 (1953).

Supreme court will not exercise its discretion to take original jurisdiction in a case, merely because the parties do not object thereto. Clark v. Denver & I. R. R., 78 Colo. 48, 239 P. 20 (1925).

It may neither be enlarged nor abridged by general assembly. Clark v. Denver & I. R. R., 78 Colo. 48, 239 P. 20 (1925); Shore v. District Court, 127 Colo. 487, 258 P.2d 485 (1953).

Hence the attempt to force the supreme court to take original jurisdiction in suits involving the validity of decisions and orders of the public utilities commission is null and void, to say nothing of the further attempt to prescribe for the court rules concerning the hearing and decision of such question. Clark v. Denver & I. R. R., 78 Colo. 48, 239 P. 20 (1925).

Original jurisdiction of supreme court cannot be expanded by the general assembly beyond the limits expressly set forth in the constitution. People v. Carter, 186 Colo. 391, 527 P.2d 875 (1974).

It was conferred to protect sovereignty of state and liberties of its citizens. Original jurisdiction was, by this section conferred upon the supreme court by virtue of the authority to issue the writs mentioned, for the purpose of protecting the sovereignty of the state, its prerogatives and the liberties of its citizens. People ex rel. Miller v. Tool, 35 Colo. 225, 86 P. 224, 86 P. 229 86 P. 231 (1905).

Conditions for exercise of original jurisdiction. Supreme court will exercise such jurisdiction only in case of emergency, or where the questions involved are clearly of public interest, and then only when satisfied that the rights of the parties are not likely to be protected and enforced in the lower courts. People ex rel. Foley v. Montez, 48 Colo. 436, 110 P. 639 (1910).

It is the settled practice of this court not to exercise its original jurisdiction except in cases publici juris, or in cases where it is shown that a refusal to take jurisdiction would practically amount to a denial of justice. In re Rogers, 14 Colo. 18, 22 P. 1053 (1890).

Original jurisdiction of the writs mentioned, except in cases presenting some special or peculiar exigency, should not be here assumed, save where the interest of the state at large is directly involved; where its sovereignty is violated, or the liberty of its citizens menaced; where the usurpation or the illegal use of its prerogatives or franchises is the principal, and not a collateral, question. Wheeler v. Northern Colo. Irrigation Co., 9 Colo. 248, 11 P. 103 (1886).

No question of greater "public importance" can arise than one in which a court is proceeding without jurisdiction of the person or subject matter. Kellner v. District Court, 127 Colo. 320, 256 P.2d 887 (1953).

The court's original jurisdiction may be exercised when a pre-trial ruling will place a party at a significant disadvantage in litigating the merits of the controversy and conventional appellate remedies are inadequate. Mitchell v. Wilmore, 981 P.2d 172 (Colo. 1999).

Sole determination of "great public importance" is within province of supreme court. As to the question of what is of "great public importance", sole determination in all cases, according to the peculiar features of each, is within the province of the supreme court. Kellner v. District Court, 127 Colo. 320, 256 P.2d 887 (1953).

Original jurisdiction may be exercised to entertain an interlocutory appeal that was improperly brought pursuant to appellate rules. People v. Braunthal, 31 P.3d 167 (Colo. 2001).

Supreme court will decline jurisdiction where issues can be determined in district court. The supreme court will decline to take original jurisdiction in cases where the issues can be fully determined and the rights of all parties preserved and enforced in the district court. Clark v. Denver & I. R. R., 78 Colo. 48, 239 P. 20 (1925).

Function of supreme court is not to preempt trial court by directing the course of judicial proceedings before it. Stapleton v. District Court, 179 Colo. 187, 499 P.2d 310 (1972).

Jurisdiction of supreme court and district court exclude each other. It is clear from this provision that the jurisdiction of both the district court and the supreme court being created by the constitution, the jurisdiction of each was necessarily excluded from the other. Friesen v. People ex rel. Fletcher, 118 Colo. 1, 192 P.2d 430 (1948).

Effect of C.R.C.P. 106 and 116 on original jurisdiction. By C.R.C.P. 106 and 116 supreme court jurisdiction in original matters is curtailed, but, according to supreme

court discretion and determination, the limitations are removed. Kellner v. District Court, 127 Colo. 320, 256 P.2d 887 (1953).

The phrase, "and other original and remedial writs", in this section, includes writs belonging to the same class as those specifically named. Wheeler v. Northern Colo. Irrigation Co., 9 Colo. 248, 11 P. 103 (1886).

Court's duty and power to protect parties from deleterious pro se litigation. The supreme court has both the duty and the power to protect courts, citizens, and opposing parties from the deleterious impact of repetitive, unfounded pro se litigation. People v. Dunlap, 623 P.2d 408 (Colo. 1981).

Colorado supreme court's original jurisdiction has its source in this section; its exercise is discretionary and governed by the circumstances of the case. Sanchez v. District Court, 624 P.2d 1314 (Colo. 1981).

Original jurisdiction exercised to address issues of significant public importance. Although the exercise of original jurisdiction is discretionary and is not a substitute for an appeal, court will exercise such jurisdiction for the purpose of addressing issues of significant public importance. Florey v. District Court, 713 P.2d 840 (Colo. 1985).

Where adverse procedural ruling has a significant effect on a party's ability to litigate the merits of the controversy, original jurisdiction of supreme court is appropriate. Lutz v. District Court, 716 P.2d 129 (Colo. 1986); Jones v. District Court, 780 P.2d 526 (Colo. 1989); Walcott v. District Ct., 2nd Jud. Dist., 924 P.2d 163 (Colo. 1996).

Where court's failure to contemporaneously record bench conferences may interfere with supreme court's appellate jurisdiction, original jurisdiction of supreme court is appropriate. Jones v. District Court, 780 P.2d 526 (Colo. 1989).

Supreme court original jurisdiction is properly invoked when trial court has seriously abused its discretion and appellate remedy would not be adequate. Roldan Corp. v. District Court, 716 P.2d 120 (Colo. 1986).

Pretrial discovery matters not exempted from extraordinary relief under appropriate circumstances. Although matters of pretrial discovery are ordinarily within the discretion of the trial court, they are not exempted from extraordinary relief under appropriate circumstances. Sanchez v. District Court, 624 P.2d 1314 (Colo. 1981).

Review of pretrial discovery order is proper if the petitioner is wrongly compelled to produce financial information for use by its competitor, and the damage will be done regardless of an appeal. Direct Sales Tire Co. v. District Court, 686 P.2d 1316 (Colo. 1984).

Review of pretrial discovery order is proper when such order will cause unwarranted damage through discovery of privileged medical records and such damage cannot be cured on appeal. People v. District Court, 719 P.2d 722 (Colo. 1986).

Supreme court has jurisdiction to review trial court's order on attorney fees for a court-appointed attorney as an independent original proceeding, but, if there is an appeal on some aspect of the underlying action, the attorney fees issue may be raised in such appeal without the necessity of bringing the independent original proceeding. Bye v. District Court, 701 P.2d 56 (Colo. 1985).

Applied in Orman v. People, 18 Colo. App. 302, 71 P. 430 (1903); Del Monte Live Stock Co. v. Ryan, 24 Colo. App. 340, 133 P. 1048 (1913); In re Interrogatories of House of

Representatives, 127 Colo. 160, 254 P.2d 853 (1953); People v. Enlow, 135 Colo. 249, 310 P.2d 539 (1957).

B. Prohibition and Certiorari.

Jurisdiction in matters involving original and remedial writs is expressly conferred by constitutional provision. Shore v. District Court, 127 Colo. 487, 258 P.2d 485 (1953).

Supreme court may issue writs in its discretion. Within the sound discretion of the supreme court such writs, including writs of prohibition, may be issued or denied, without legislative interference, in the furtherance of justice and in the preventing of delay and expense of a retrial which necessarily would follow in the event of a reversal on writ of error. Shore v. District Court, 127 Colo. 487, 258 P.2d 485 (1953).

Function of certiorari. It is the function of the common-law writ of certiorari to correct substantial errors of law committed by an inferior tribunal which are not otherwise reviewable. Sutterfield v. District Court ex rel. County of Arapahoe, 165 Colo. 225, 438 P.2d 236 (1968).

Writ of certiorari under this section distinguished from statutory writ. The writ of certiorari mentioned in this section is to be distinguished from, and not to be confused with, the statutory writ of certiorari provided for in § 13-6-310. People ex rel. City of Aurora v. Smith, 162 Colo. 72, 424 P.2d 772 (1967); Bill Dreiling Motor Co. v. Court of Appeals, 171 Colo. 448, 468 P.2d 37 (1970).

Writ of certiorari is limited solely to the question of the jurisdiction of the inferior tribunal. Bulger v. People, 61 Colo. 187, 156 P. 800 (1916).

Certiorari may be issued to review interlocutory orders. While the issuance of a writ of certiorari is always discretionary, the supreme court has the power under this section, to issue such writs to review interlocutory orders of lower courts; such power has been exercised where the usual review by writ of error would not afford adequate protection to substantive rights of the petitioners. Sutterfield v. District Court, 165 Colo. 225, 438 P.2d 236 (1968).

Authority of supreme court to entertain proceedings in prohibition is conferred by this section. People ex rel. Lindsley v. District Court, 30 Colo. 488, 71 P. 388 (1903).

And is not dependent upon or governed by statute or code. People ex rel. Lindsley v. District Court, 30 Colo. 488, 71 P. 388 (1903).

General function of writ of prohibition is to enjoin an excessive or improper assumption of jurisdiction. Vaughn v. District Court, 192 Colo. 348, 559 P.2d 222 (1977).

The writs authorized by this section are directed to respondent district court to determine whether the court is proceeding without or in excess of its jurisdiction. Clinic Masters, Inc. v. District Court, 192 Colo. 120, 556 P.2d 473 (1976).

Writ of prohibition is designed to restrain rather than remedy an abuse of jurisdiction. Vaughn v. District Court, 192 Colo. 348, 559 P.2d 222 (1977).

A writ of prohibition is a discretionary writ. Vaughn v. District Court, 192 Colo. 348, 559 P.2d 222 (1977).

Issuance of prohibition is governed by circumstances of each case. The supreme court is to be governed, in the issuance of the extraordinary writ in the nature of prohibition, by the circumstances and conditions of each particular case. Shore v. District Court, 127 Colo. 487, 258 P.2d 485 (1953).

No inflexible rule can be made to fit every emergency. Each case must rest upon its own peculiar facts,

and the court should be guided, in the exercise of its discretion, by the needs and deserts of the case in hand. Shore v. District Court, 127 Colo. 487, 258 P.2d 485 (1953).

It is not believed that anyone ever thought or intended, that the authority given the supreme court by the constitution to exercise such discretion, had been permanently assigned away, because of a certain conclusion reached by it in a particular case, or by some mere rule of practice. Shore v. District Court, 127 Colo. 487, 258 P.2d 485 (1953).

Showing required to invoke intervention of supreme court is that the court is proceeding without or in excess of jurisdiction. Colo. & S. Ry. v. District Court, 177 Colo. 162, 493 P.2d 657 (1972).

Prohibition does not lie if trial court has jurisdiction. Shore v. District Court, 127 Colo. 487, 258 P.2d 485 (1953).

Prohibition is a discretionary writ with the supreme court and is not granted, unless, in connection with other matters, an inferior court has no jurisdiction to act. Shore v. District Court, 127 Colo. 487, 258 P.2d 485 (1953).

The traditional radius of the writ of prohibition, within which supreme court operates, is the inquiry whether the inferior court is exercising a jurisdiction which it does not possess, or, having jurisdiction, has exceeded its legitimate powers. City of Aurora v. Congregation Beth Medrosh Hagodol, 140 Colo. 462, 345 P.2d 385 (1959).

When a writ of prohibition is presented to the supreme court, its only inquiry is whether the inferior judicial tribunal is exercising jurisdiction it does not possess, or, having jurisdiction over parties and subject matter, has exceeded its powers. City of Aurora v. Congregation Beth Medrosh Hagodol, 140 Colo. 462, 345 P.2d 385 (1959).

Supreme court cannot by writ of prohibition stay hands of inferior tribunal because of alleged abuse of discretion in a matter of which it has jurisdiction. People ex rel. Lindsley v. District Court, 30 Colo. 488, 71 P. 388 (1903).

Prohibition should be granted only where no adequate remedy by writ of error. A writ in the nature of prohibition is an extraordinary remedy and should be granted only in cases where the party seeking the writ does not have an adequate remedy by writ of error. Shore v. District Court, 127 Colo. 487, 258 P.2d 485 (1953).

Ordinarily, prohibition only lies to prevent the lower court from proceeding further with the cause, but where this would not give the relator the relief to which he is entitled, the writ may direct that all proceedings had in excess of jurisdiction be quashed and the order entered which should have been. Shore v. District Court, 127 Colo. 487, 258 P.2d 485 (1953).

Prohibition may not take place of writ of error. Shore v. District Court, 127 Colo. 487, 258 P.2d 485 (1953).

The extraordinary writ of prohibition does not include the correction of error made by the trial court. Alspaugh v. District Court, 190 Colo. 282, 545 P.2d 1362 (1976).

A writ of prohibition does not correct mere error or provide a substitute for appeal. Vaughn v. District Court, 192 Colo. 348, 559 P.2d 222 (1977).

Judges cannot entertain application for prohibition in vacation. The judges of the supreme court have no authority by virtue of this section, in vacation to entertain an application for a writ of prohibition or to enter and order to show cause in such proceeding. People ex rel. Adams v. District Court, 28 Colo. 485, 69 P. 1066 (1901).

Writ of prohibition not appropriate. Vaughn v. District Court, 192 Colo. 348, 559 P.2d 222 (1977).

Applied in Pub. Utils. Comm'n v. District Court, 180 Colo. 389, 506 P.2d 371 (1973); Clinic Masters, Inc. v. District Court, 192 Colo. 120, 556 P.2d 473 (1976).

C. Mandamus and Quo Warranto.

Law reviews. For article, "The Misuse of Judicial Flexibility in Quo Warranto Cases", see 10 Rocky Mt. L. Rev. 239 (1938).

This section confers upon supreme court jurisdiction to grant writs of mandamus, and such jurisdiction is in no sense dependent upon statute. Keady v. Owers, 30 Colo. 1, 69 P. 509 (1902).

Authority to grant mandamus carries with it power to adjudicate questions brought before court. The authority of the supreme court, under the constitution, to issue writs of mandamus, carries with it the power to adjudicate such questions as may be brought before it in any proceeding for a mandamus, without further legislation. Greathouse v. Jameson, 3 Colo. 397 (1877).

Issuance of writ to mandate vacation of reference order to master is necessary to protect the rights of the petitioner where the court is proceeding in excess of its power, for to await the final judgment, based on the master's report, would be too late and any appeal at that point a futile act and the expenditure of both time and money would already have occurred and there would then be no way to undo what had already been erroneously done. Gelfond v. District Court, 180 Colo. 95, 504 P.2d 673 (1972).

The supreme court cannot exercise original jurisdiction under this section to decide whether a legislative referendum complies with the single-subject requirement where it has not been asked to respond to interrogatories regarding pending legislation. Prior to adoption by the electorate, a legislative referendum constitutes pending legislation, and the supreme court can only address the constitutionality of such pending legislation if requested by interrogatory submitted by either the governor or the general assembly. Polhill v. Buckley, 923 P.2d 119 (Colo. 1996).

Supreme court jurisdiction to review sentences. The supreme court has jurisdiction to review a defendant's sentence if the trial court's sentence is illegal. People v. District Court, 673 P.2d 991 (Colo. 1983).

Three-part test for mandamus: (1) A plaintiff must have a clear right to the relief sought; (2) a defendant must have a clear duty to perform the act requested; (3) there must be no other available remedy. State v. Bd. of County Comm'rs, Mesa County, 897 P.2d 788 (Colo. 1995).

Mandamus was appropriate remedy where county refused to honor its continuing statutory obligations to provide courthouses and court services, including security. State v. Bd. of County Comm'rs, Mesa County, 897 P.2d 788 (Colo. 1995).

This section confers upon supreme court power to issue writ of quo warranto. Bd. of County Comm'rs v. Sloan, 4 Colo. 128 (1878).

Under the provisions of this section the supreme court has power to issue writs of quo warranto and to hear and determine issues raised thereon. People ex rel. Rogers v. Letford, 102 Colo. 284, 79 P.2d 274 (1938).

This power is not limited by the code provisions concerning actions for usurpation of office or franchise. People ex rel. Rogers v. Letford, 102 Colo. 284, 79 P.2d 274 (1938).

Function of quo warranto at common law. The writ of quo warranto at common law served the function of testing title to public and corporate offices. Burns v. District Court, 144 Colo. 259, 356 P.2d 245 (1960).

The writ of quo warranto was

originally a prerogative writ of the crown against one who usurped any office, franchise or liberty of the crown and was also used in the case of nonuse or long neglect of a franchise or misuse or abuse thereof. Burns v. District Court, 144 Colo. 259, 356 P.2d 245 (1960).

Quo warranto is one of the most ancient and important writs known to the common law; the modern proceeding by information, which has almost entirely superseded the ancient writ, being itself nearly two hundred years old. This jurisdiction is expressly given to the supreme court by our constitution. People ex rel. Barton v. Londoner, 13 Colo. 303, 22 P. 764 (1889).

Substance of relief sought determines character of action as quo warranto. The name given an extraordinary writ such as quo warranto is unimportant; it is the substance of the relief sought which determines the character of the action. Burns v. District Court, 144 Colo. 259, 356 P.2d 245 (1960).

Availability of quo warranto. Under § 32-2-107 quo warranto is available only to the people on relation of the attorney general. Burns v. District Court, 144 Colo. 259, 356 P.2d 245 (1960).

General assembly may limit period within which quo warranto is available. The general assembly may validly limit the period within which the constitutionally guaranteed remedy of quo warranto is available unless the period is so unreasonably short as to destroy the substance of the remedy. Burns v. District Court, 144 Colo. 259, 356 P.2d 245 (1960).

Quo warranto is recognized as proper proceeding for attacking legal existence of quasi-municipal corporation. Burns v. District Court, 144 Colo. 259, 356 P.2d 245 (1960).

Quo warranto denied. Where a proceeding is primarily between individual citizens or groups entirely local in character, and it cannot injuriously affect the people of the state at large, the writ in the nature of quo warranto issued in such a case is not one within the intent of this provision of the constitution, and the district court has full jurisdiction to hear and determine the issues herein. Friesen v. People ex rel. Fletcher, 118 Colo. 1, 192 P.2d 430 (1948).

D. Habeas Corpus.

Justices of supreme court, acting singly out of term, are without jurisdiction to issue writs of habeas corpus, or to hear and determine matters arising thereon, notwithstanding the authority attempted to be conferred by the statute on habeas corpus. In re Garvey, 7 Colo. 502, 4 P. 758 (1884).

E. Injunctions.

Writ of injunction is extraordinary writ. The connection in which the word "injunction" is used in this section indicates that the writ of injunction thus authorized to be issued by this court in the exercise of its original jurisdiction is an extraordinary writ -- a jurisdictional writ as contradistinguished from the ordinary writ of injunction issued in aid of jurisdiction otherwise acquired -- a quasi prerogative writ. People ex rel. Bentley v. McClees, 20 Colo. 403, 38 P. 468 (1894).

All of the writs referred to in this section, save the writ of injunction, were prerogative writs of the common law, and the writ of injunction as therein provided for is made a quasi prerogative writ. Wheeler v. Northern Colo. Irrigation Co., 9 Colo. 248, 11 P. 103 (1886).

To warrant supreme court in taking jurisdiction, case must disclose question publici juris. To warrant the supreme court in taking jurisdiction in an original proceeding

by injunction, the case made by the complaint must not only show equitable ground for relief, but must disclose a question publici juris; the case must be one involving the rights or franchises of the state in its sovereign capacity, that is, public rights or interests as contradistinguished from matters of private or individual concern. People ex rel. Bentley v. McClees, 20 Colo. 403, 38 P. 468 (1894).

Hence, it will not take jurisdiction of ordinary suits in equity. The language of this section is sufficient to confer original jurisdiction by writ of injunction in a proper case, but it certainly was not designed to authorize this court to take original jurisdiction of ordinary suits in equity by granting writs of injunction. People ex rel. Bentley v. McClees, 20 Colo. 403, 38 P. 468 (1894).

Or in cases where title to public office is involved. Where the supreme court was asked in the exercise of its original jurisdiction to issue a writ of injunction to restrain the secretary of state from delivering certificates of election to certain persons elected as district judges, the injunction being asked on the ground that the terms of the incumbents of such judicial offices were not about to expire; held, that the real question in controversy was the question of title to public offices between the individual claimants; that the controversy did not involve the rights or franchises of the people; nor the rights of the state in its sovereign capacity; and so the writ was denied. People ex rel. Bentley v. McClees, 20 Colo. 403, 38 P. 468, 26 L.R.A. 646 (1894).

Injunction appropriate when private litigants' procedure conflicts with important public rights. An injunction issued from the supreme court is appropriate when the procedure followed by private litigants conflicts with important public rights and interests and when it resists other means of control. People v. Dunlap, 623 P.2d 408 (Colo. 1981).

An original petition for an injunction is proper when the attorney general has grave doubts about the constitutionality of a congressional redistricting plan. People ex rel. Salazar v. Davidson, 79 P.3d 1221 (Colo. 2003), cert. denied, 541 U.S. 1093, 124 S. Ct. 2228, 159 L. Ed. 2d 260 (2004).

III. OPINIONS.

A. General Consideration.

Law reviews. For article, "Limitations Upon Legislative Inquiries Under Colorado Advisory Opinion Clause", see 4 Rocky Mt. L. Rev. 237 (1932).

Original jurisdiction of supreme court enlarged. The constitutional amendment requiring the supreme court to answer questions propounded by the governor or by either branch of the general assembly is an enlargement of the original jurisdiction previously conferred upon that court by the constitution. In re House Bill No. 122, 12 Colo. 466, 21 P. 478 (1889).

Supreme court is not authorized to give advisory opinions other than pursuant to section. No provision of the law authorizes the supreme court to give advisory opinions to state agencies other than to the general assembly or to the governor when requested upon solemn occasions pursuant to this section. Cameron v. Carroll & Co., 138 Colo. 432, 334 P.2d 748 (1959).

Provision is only exception to rule that no court may construe legislation until it has been adopted. The only exception to the rule that neither the supreme court, nor any other court, may be called upon to construe or pass upon a legislative act until it has been adopted is the constitutional provision authorizing the general assembly to propound

interrogatories to the supreme court upon important questions upon solemn occasions. City of Rocky Ford v. Brown, 133 Colo. 262, 293 P.2d 974 (1956).

But no jurisdiction to pass on constitutionality of proposed law. The courts do not have jurisdiction to pass upon the constitutionality of the substance of legislation prior to enactment or adoption. CF & I Steel Corp. v. Buchanan, 191 Colo. 570, 554 P.2d 1354 (1976).

Courts should not take jurisdiction to pass upon the constitutionality of a proposed law prior to its enactment or adoption. Billings v. Buchanan, 192 Colo. 32, 555 P.2d 176 (1976).

Judicial response to ex parte inquiry from executive department is inconsistent with separation of governmental powers. It must be admitted that the promulgation of a judicial opinion in response to an ex parte inquiry from the executive department of the government, concerning the affairs of the legislative department, is anomalous and peculiar, and, apparently at least, inconsistent with the prevalent American system of separating the governmental powers into distinct departments. But it must be borne in mind that the same instrument which divides the powers of the government into distinct departments has been so amended by the voice of the people as to require the supreme court to "give its opinion upon important questions, upon solemn occasions, when required by the governor, the senate or the house of representatives". In re Speakership of House of Representatives, 15 Colo. 520, 25 P. 707 (1890).

Where there is no majority of supreme court as to either validity or invalidity of a statute which is the subject of interrogatories, no opinion respecting the interrogatories can be rendered under this section. In re Interrogatories Propounded By McNichols, 142 Colo. 188, 350 P.2d 811 (1960).

Answers by supreme court have effect of judicial precedents. The answers by the supreme court to questions are reported as are other opinions, and have the force and effect of judicial precedents; differing in this respect from the few analogous provisions elsewhere adopted. In re House Bill No. 122, 12 Colo. 466, 21 P. 478 (1889).

This section does not require wholesale exposition of all constitutional provisions relating to a given general subject. In re Senate Resolution, 9 Colo. 620, 21 P. 470 (1886); In re Senate Resolution No. 2, 94 Colo. 101, 31 P.2d 325 (1933).

There is no constitutional requirement that reasons be given in answering questions upon the governor's request. In re Senate Concurrent Resolution No. 10 of Forty-First Gen. Ass'y, 137 Colo. 491, 328 P.2d 103 (1958).

Rule that every statute duly passed must be held constitutional unless contrary appears beyond reasonable doubt is not applicable to pending legislation when submitted to the supreme court for its opinion under this section. In re Senate Resolution No. 2, 94 Colo. 101, 31 P.2d 325 (1933).

Presumption of constitutionality for state statutes is not applicable to interrogatories presented under this section because the bill in question has not been passed and because the general assembly has certified that it is not certain of the bill's constitutionality. Submission of Interrogatories on House Bill 99-1325, 979 P.2d 549 (Colo. 1999).

Applied in S. H. Kress & Co. v. Johnson, 16 F. Supp. 5 (D. Colo.), aff'd mem., 299 U.S. 511, 57 S. Ct. 49, 81 L. Ed. 378 (1936); In re House Bill No. 1353, 738 P.2d 371 (Colo. 1987); In re House Bill 91S-1005, 814 P.2d

875 (Colo. 1991).

B. Questions Submitted.

1. In General.

Question must relate to purely public rights, be propounded upon solemn occasion, and possess a peculiar or inherent importance not belonging to all questions of the kind; that executive questions must be exclusively publici juris, and legislative ones be connected with pending legislation, and relate either to the constitutionality thereof or to matters connected therewith of purely public right. In re Lieutenant Governorship, 54 Colo. 166, 129 P. 811 (1913).

This section has been construed by the supreme court as applying only to cases where questions publici juris are raised, thus excluding from this branch of its jurisdiction all controversies wherein private rights alone are involved. In re Senate Resolution, 12 Colo. 466, 21 P. 478 (1889).

Question submitted must be specific. As a necessary condition precedent to the exercise of our extraordinary jurisdiction, under this section, the question submitted must be specific. In re House Bill No. 165, 15 Colo. 593, 26 P. 141 (1890); In re Loan of Sch. Fund, 18 Colo. 195, 32 P. 273 (1893); In re University Fund, 18 Colo. 398, 33 P. 415 (1893); In re House Bill No. 107, 21 Colo. 32, 39 P. 431 (1895).

And particular section of constitution to be considered must be pointed out. One prerequisite required in such matters is that it must appear that the bill which is the subject of inquiry will likely pass the branch of the general assembly submitting the question, and the particular section of the constitution to be considered in connection therewith must be pointed out. In re House Bill No. 165, 15 Colo. 593, 26 P. 141 (1890); In re Loan of Sch. Fund, 18 Colo. 195, 32 P. 273 (1893); In re Senate Resolution No. 10, 33 Colo. 307, 79 P. 1009 (1905); In re Lieutenant Governorship, 54 Colo. 166, 129 P. 811 (1913).

Thus, a resolution asking the supreme court for its opinion under this section, that points out numerous particulars in which the bill may conflict with provisions of the constitution, and involves a wholesale exposition of constitutional provisions relating to a general subject, will for that reason be refused consideration by the court. In re House Bill No. 99, 26 Colo. 140, 56 P. 181 (1899).

Questions, when propounded by executive, must relate to matters exclusively juris publici. In re Senate Resolution, 12 Colo. 466, 21 P. 478 (1889); In re University Fund, 18 Colo. 398, 33 P. 415 (1893).

And when propounded by branch of general assembly, must be connected with pending legislation and relate either to the constitutionality thereof or to matters connected therewith of purely public right. In re Senate Resolution, 12 Colo. 466, 21 P. 478 (1889); In re University Fund, 18 Colo. 398, 33 P. 415 (1893); In re Interrogatories of House, 62 Colo. 188, 162 P. 1144 (1916); Submission of Interrogatories on Senate Bill 93-74, 852 P.2d 1 (Colo. 1993).

The question whether a bill proposing to increase the fees of district attorneys throughout the state will apply to district attorneys now in office does not come within the rule announced. In re Senate Resolution, 12 Colo. 466, 21 P. 478 (1889).

Department propounding question in first instance determines whether occasion exists which justifies its submission. In re Senate Resolution, 12 Colo. 466, 21 P. 478 (1889); In re Senate Resolution No. 10, 33 Colo. 307, 79 P. 1009 (1905).

But what are "important questions upon solemn occasions" must be ultimately determined by the

supreme court itself. In re Senate Resolution, 12 Colo. 466, 21 P. 478 (1889); In re Appropriations by Gen. Ass'y, 13 Colo. 316, 22 P. 464 (1889); In re Penitentiary Comm'rs, 19 Colo. 409, 35 P. 915 (1894); In re Senate Bill No. 416, 45 Colo. 394, 101 P. 410 (1909); In re Lieutenant Governorship, 54 Colo. 166, 129 P. 811 (1913); In re Interrogatories of House, 62 Colo. 188, 162 P. 1144 (1916); In re Senate Resolution No. 2, 94 Colo. 101, 31 P.2d 325 (1933).

Questions propounded to the supreme court by the senate are limited to those specifically enumerated in this section of the constitution, and the court must determine whether or not questions so propounded are within the specifications. In re Interrogatories of Senate, 94 Colo. 215, 29 P.2d 705 (1934).

While the supreme court concedes to the governor full liberty to submit such questions as he may deem consistent with his executive powers, it reserves for itself the right to express its opinion freely, in whole or in part, or not at all, as it shall deem consistent with its judicial powers and constitutional obligation. In re Fire & Excise Comm'rs, 19 Colo. 482, 36 P. 234 (1894).

While the governor is first to judge the relative importance and solemnity which justifies submitting questions, the supreme court must decide whether or not it should exercise jurisdiction and answer questions propounded to it under the provisions of this section. In re Interrogatories by the Governor, 126 Colo. 48, 245 P.2d 1173 (1952).

Mere fact that suits by actual parties in interest may be imminent, does not constitute "solemn occasion", in the constitutional sense, calling for the exercise of a jurisdiction to be properly assumed only under the extraordinary circumstances set forth in the constitution. In re Interrogatories by Governor, 111 Colo. 406, 141 P.2d 899 (1943).

Supreme court declined to give opinion where hasty consideration would have been required. The supreme court declined to give an opinion on a house bill authorizing counties and municipalities to issue revenue bonds where hasty consideration would have been required in order to serve the purposes of the governor. In re House Bill No. 1503 of Forty-Sixth Gen. Ass'y, 163 Colo. 45, 428 P.2d 75 (1967).

Section does not authorize ex parte adjudication of individual or corporate rights. It could not have been the intention of the provision in this section authorizing the supreme court to give opinions upon important questions to authorize an ex parte adjudication of individual or corporate rights by means of a legislative or executive question; parties must still adjudicate their rights in the ordinary and regular course of judicial proceeding. In re Senate Resolution, 9 Colo. 620, 21 P. 470 (1886).

This section was amended in 1886 so as to authorize the governor to request the opinion of the supreme court "upon important questions upon solemn occasions". It was not the intention of the amendment to authorize an ex parte adjudication by means of executive questions; and parties must still have their rights determined in the regular course of judicial proceedings. In re Interrogatories by the Governor, 126 Colo. 48, 245 P.2d 1173 (1952).

Applied in In re Interrogatories from House of Representatives, 127 Colo. 160, 254 P.2d 853 (1953).

2. Proper Questions.

Questions by governor on constitutionality of bill before him for his signature may be submitted. In re Interrogatories by Governor, 116 Colo.

318, 180 P.2d 1018 (1947).

Question regarding pending legislation. There were upon the statute books two acts relating to the hours of service of men employed in mines, smelting furnaces, and other like places, one adopted by the general assembly (L. 11, ch. 149), and which being referred to the people, had received their approval. The other, initiated pursuant to § 1 of art. V, Colo. Const. (L. 10, ch. 3), assuming to repeal the former. This act also received the popular sanction. A bill was pending in the general assembly upon the same subject, substantially identical with the earlier act, repealing both the former acts and declaring that the enactment therein proposed was "necessary for the immediate preservation of the public health and safety". Upon an interrogatory from the senate as to its duty in the premises, it being fairly inferable from the communication that it was a desire of that body to pass an act which should remove the embarrassments attending the situation so presented, held, that the question was within the provisions of this section. In re Senate Resolution No. 4, 54 Colo. 262, 130 P. 333 (1913).

Constitutional right of counties to fund valid debts incurred subsequent to a given date is a matter of sufficient "importance" and "solemnity" to require an answer by the court to an executive interrogatory propounded in connection therewith. In re Funding of County Indebtedness, 15 Colo. 421, 24 P. 877 (1890).

Enforcement of provisions of art. XXIV, Colo. Const. Where the governor was in doubt as to how to go about enforcing the provisions of art. XXIV, Colo. Const., and submitted certain inquiries to the justices of the supreme court regarding this article, it was regarded as a solemn occasion, within the meaning and intention of this section. In re Interrogatories of Governor, 99 Colo. 591, 65 P.2d 7 (1937).

Question as to resolution declaring vacancy in office of governor. In a contest before the general assembly for the office of governor, where a resolution was introduced declaring that, as it was impossible to separate the fraudulent from the legal votes, it was impossible to tell whether the contestor or contestee was elected, and declaring that no person was elected governor, an interrogatory from the senate to the supreme court, asking whether the general assembly could legally adopt said resolution and declare a vacancy in the office of governor, presents a question which it is the duty of the court to answer under this section. In re Senate Resolution No. 10, 33 Colo. 307, 79 P. 1009 (1905).

Question concerning entitlement to hold offices of fire commissioner and excise commissioner. While the practice of the supreme court has been to decline to give an opinion in response to executive or legislative questions, which might affect or prejudice private rights or interests, the gravity of the situation with respect to the pending question as to what persons were legally entitled to hold the offices of fire commissioner and excise commissioner of the city of Denver at the present time required a departure from the rule and an opinion upon the facts as submitted, without prejudice to the right to show other or different facts. In re Fire & Excise Comm'rs, 19 Colo. 482, 36 P. 234 (1894).

Questions by the general assembly on constitutional issues regarding legislation implementing section 20 of article X of the Colorado Constitution, properly submitted since the interrogatories related to either the constitutionality of the legislation or to matters connected therewith pertaining to purely public rights. Submission of Interrogatories on Senate Bill 93-74, 852 P.2d 1 (Colo. 1993).

3. Improper Questions.

Constitutionality of proposed legislation. Questions propounded by the governor as to the constitutionality of a proposed legislative bill not introduced and which may never be passed, are premature. In re Proposed Amendments to Constitution & Initiative & Referendum Measures, 50 Colo. 84, 114 P. 298 (1911); In re Interrogatories by Governor, 71 Colo. 331, 206 P. 383 (1922).

Under the provisions of this section, questions of the executive concerning the constitutionality of proposed legislation are only to be answered when doubt as to the constitutionality is expressed. In re Interrogatories by Governor, 71 Colo. 331, 206 P. 383 (1922).

Constitutionality of legislation no longer pending. When both houses of the general assembly have taken a final vote on a bill, it is no longer pending legislation, and the court will decline to respond to a question as to its constitutionality; nor will the court consider such a question when presented at so short a time before the termination of the legislative session as to afford no opportunity for such investigation as the question requires. In re Senate Bill No 416, 45 Colo. 394, 101 P. 410 (1909).

This section does not authorize the supreme court to answer questions propounded by the house of representatives concerning the constitutionality of a measure passed by that body and which is no longer before it for consideration. In re House Resolution No. 12, 88 Colo. 569, 298 P. 960 (1931).

Supreme court is not at liberty in response to legislative inquiry to pass upon the constitutionality of statutes. In re University Fund, 18 Colo. 398, 33 P. 415 (1893).

Questions of executive regarding legislation no longer pending. The jurisdiction conferred by the constitution upon this court to answer executive and legislative questions, is extraordinary; the construction of statutes is within the ordinary jurisdiction of the courts. One of the most common subjects of judicial consideration is the construction of legislative acts as they arise in due course of litigation. If we were to extend the extraordinary ex parte jurisdiction of this court to executive questions involving the construction of legislative acts, it would be a most serious innovation, and the tendency would be to transfer in a great measure the management of our state institutions from the executive to the judicial department of the government. In re Penitentiary Comm'rs, 19 Colo. 409, 35 P. 915 (1894).

Questions referring to statutes of long standing, and requiring the determination of the right and duty of certain officials, are not to be determined ex parte. In re Interrogatories of House, 62 Colo. 188, 162 P. 1144 (1916).

The duty of the court in responding to legislative questions is limited to those which relate to proposed legislation. Completed legislation is not a subject of legislative inquiry. It is not within the province of the court to advise the general assembly as to whether existing legislation upon any subject satisfies the requirements of the constitution. All departments of government are of equal dignity. Neither can declare that another has not performed a duty imposed by the constitution. In re Senate Resolution No. 4, 54 Colo. 262, 130 P. 333 (1913).

Questions relating to desirability or policy of proposed legislation cannot be propounded. In re Senate Resolution, 12 Colo. 466, 21 P. 478 (1889).

Complex question of constitutional and statutory construction. In order to answer

questions propounded by the governor the court would be obliged to construe at least three sections of the constitution and at least four sections of statutes. It appeared that there was a conflict between the specified constitutional provisions themselves as well as between the constitutional and statutory provisions, and a possible conflict between the statutory provisions, presenting a most difficult problem of constitutional and statutory construction requiring exhaustive research and most careful consideration. The questions propounded by the governor might all be the subject of litigation in which the parties to be affected will be afforded ample opportunity of presenting their causes, and then, and not until then, would it be the court's duty, on requested review, to give these important constitutional and statutory questions its exhaustive research and study. In re Interrogatories by the Governor, 126 Colo. 48, 245 P.2d 1173 (1952).

The supreme court should not prejudge involved legal problems and fundamental constitutional interpretations in ex parte proceedings, it being the policy of the supreme court to accommodate the general assembly only in such cases as are clear and where no prejudice will result to anyone in the future. In re Interrogatories Propounded by Senate, 131 Colo. 389, 281 P.2d 1013 (1955).

As a general proposition the supreme court seriously doubts the wisdom of prejudging involved and complex legal problems and fundamental constitutional questions in proceedings under this section, although the state constitution seems to provide that it shall so do; however, the constitutional directive cannot be taken to mean that the supreme court should so act when possible prejudice may well result later to citizens whose rights are protected by both the state and federal constitutions. In re Interrogatories of Governor Concerning Senate Bill No. 34, 142 Colo. 188, 350 P.2d 811 (1960).

Were the supreme court, in an ex parte proceeding, to respond to interrogatories propounded by the general assembly with respect to the validity of a proposed statute, to the effect that such legislation is in all respects constitutional, such holding would be prejudicial to any citizen who at a future date might question its validity in the supreme court. In re Interrogatories Propounded by Senate, 131 Colo. 389, 281 P.2d 1013 (1955).

This court should not give ex parte opinion in relation to controversy that has already arisen, especially if actual litigation involving private rights is likely to arise from such controversy. In re Penitentiary Comm'rs, 19 Colo. 409, 35 P. 915 (1894).

Ordinance proposed by people. An ordinance proposed by the people under the laws of initiative and referendum is clothed with the presumption of validity and its constitutionality will not be considered by the courts by means of a hypothetical question, but only after enactment. City of Rocky Ford v. Brown, 133 Colo. 262, 293 P.2d 974 (1956).

The supreme court may not intrude upon the legislative powers of the people through an advisory opinion since the separation of governmental powers must be held inviolate. City of Rocky Ford v. Brown, 133 Colo. 262, 293 P.2d 974 (1956).

Bill requiring corporations to pay their employees semimonthly in lawful money of the United States, prohibiting contracts in violation thereof and providing penalties for its violation involves private rights and a question from the senate as to the constitutionality of such bill does not invoke the jurisdiction of the supreme court so as to require an opinion thereon under this section. In re Senate

Bill No. 27, 28 Colo. 359, 65 P. 50 (1901).

A bill for an act to secure to laborers and others the payment of their wages in lawful money of the United States, and prescribing penalties for its violation, involves private rights of individuals and corporations, and is not a bill concerning matters publici juris such as will invoke the jurisdiction of the supreme court upon a question from the house of representatives as to its constitutionality under this section, authorizing the submission of questions to the court for its opinion. In re House Bill No. 99, 26 Colo. 140, 56 P. 181 (1899).

Rank of appropriation for administrative body not yet appointed. Under this section the court is not required to respond to a question as to the effect and rank of an appropriation for an administrative body not yet appointed. But to end doubt and controversy the court declared that an appropriation for the salary and expenses of the state tax commission was of the first class. In re Opinion of Justices, 55 Colo. 17, 123 P. 660 (1912).

Right of police commissioner to retain office after removal. The court will not, in a ex parte proceeding in response to an executive question, inquire into or determine the right of a police commissioner of Denver to retain his office after the governor has attempted to remove him. In re Fire & Excise Comm'rs, 19 Colo. 482, 36 P. 234 (1894).

C. Judicial Notice of Facts When Interrogatories Submitted.

In a proceeding on interrogatories propounded by the governor with respect to the constitutionality of a bill passed by the general assembly, court may take judicial notice of matters of public record and common knowledge. In re Senate Bill No. 95, 146 Colo. 233, 361 P.2d 350 (1961).

The court may take judicial notice of the history of a statute when the history is a matter of public record in the office of the legislative reference service. Indus. Comm'n v. Milkva, 159 Colo. 114, 410 P.2d 181 (1966).

And of that which is of common knowledge to an interested public. Four-County Metro. Capital Improvement Dist. v. Bd. of Comm'rs, 149 Colo. 284, 369 P.2d 67 (1962).

And of the primary purpose of a governor's special session call. In re House Bill 91S-1005, 814 P.2d 875 (Colo. 1991).

In the case of interrogatories submitted by the senate, the court has taken judicial notice of a governor's special session call. In re Opinion of the Justices, 94 Colo. 215, 29 P.2d 705 (1934).

Court has declined to take judicial notice of the existence and terms of a proposed intergovernmental agreement when the existence and terms of said agreement were not relevant to the specific questions submitted, when judicial notice would require the court to exceed the scope of its limited jurisdiction under this section of the constitution, and when judicial notice would not be proper under the Colorado rules of evidence. In re House Bill 91S-1005, 814 P.2d 875 (Colo. 1991).

Section 4. Terms. At least two terms of the supreme court shall be held each year, at the seat of government.

Source: L. 61: Entire article R&RE, effective January 12, 1965, see **L. 63,** p. 1049.

Editor's note: (1) For amendments prior to 1961, see L. 1877, p. 46, and L. 03, p. 148.

(2) This section is similar to § 4 as it existed prior to 1961.

Cross references: For terms of the supreme court, see also §§ 13-2-101 and 13-2-102.

Section 5. Personnel of court - departments - chief justice. (1) The supreme court shall consist of not less than seven justices, who may sit en banc or in departments. In case said court shall sit in departments, each of said departments shall have full power and authority of said court in the determination of causes, the issuing of writs and the exercise of all powers authorized by this constitution, or provided by law, subject to the general control of the court sitting en banc, and such rules and regulations as the court may make, but no decision of any department shall become judgment of the court unless concurred in by at least three justices, and no case involving construction of the constitution of this state or of the United States shall be decided except by the court en banc. Upon request of the supreme court, the number of justices may be increased to no more than nine members whenever two-thirds of the members of each house of the general assembly concur therein.

(2) The supreme court shall select a chief justice from its own membership to serve at the pleasure of a majority of the court, who shall be the executive head of the judicial system.

(3) The supreme court shall appoint a court administrator and such other personnel as the court may deem necessary to aid the administration of the courts. Whenever the chief justice deems assignment of a judge necessary to the prompt disposition of judicial business, he may: (a) Assign any county judge, or retired county judge who consents, temporarily to perform judicial duties in any county court if otherwise qualified under section 18 of this article, or assign, as hereafter may be authorized by law, said judge to any other court; or (b) assign any district, probate, or juvenile judge, or retired justice or district, probate, or juvenile judge who consents, temporarily to perform judicial duties in any court. For each day of such temporary service a retired justice or judge shall receive compensation in an amount equal to 1/20 of the monthly salary then currently applicable to the judicial position in which the temporary service is rendered.

(4) The chief justice shall appoint from the district judges of each judicial district a chief judge to serve at the pleasure of the chief justice. A chief judge shall receive no additional salary by reason of holding such position. Each chief judge shall have and exercise such administrative powers over all judges of all courts within his district as may be delegated to him by the chief justice.

Source: L. 61: Entire article R&RE, effective January 12, 1965, see **L. 63,** p. 1049. **Initiated 66:** Entire section amended, effective January 17, 1967, see **L. 67,** p. 5 of the supplement to the 1967 Session Laws.

Editor's note: (1) For amendments prior to 1961, see L. 1877, p. 46, L. 1885, p. 145, and L. 03, p. 148.

(2) This section is similar to § 5 as it existed prior to 1961.

Cross references: For employees of the supreme court and their compensation, see also § 13-2-111; for provision creating the position of state court administrator, see §

ANNOTATION

Law reviews. For article, "The Judiciary Committee Plan and the 1949 General Assembly", see 25 Dicta 281 (1948). For article, "A Report from the Judiciary Committee", see 26 Dicta 139 (1949). For article, "Colorado's Program to Improve Court Administration", see 38 Dicta 1 (1961). For article, "A Summary of Colorado Supreme Court Internal Operating Procedures", see 11 Colo. Law. 356 (1982).

Majority of judges constitute quorum of court. Mountain States Tel. & Tel. Co. v. People ex rel. Wilson, 68 Colo. 487, 190 P. 513 (1920).

And majority of quorum may speak for court in the decision of any case. Mountain States Tel. & Tel. Co. v. People ex rel. Wilson, 68 Colo. 487, 190 P. 513 (1920).

Justices sitting in department may render decision where no constitutional question is involved. Scott v. Shook, 80 Colo. 40, 249 P. 259 (1926).

But there must be concurrence of at least three judges. Whatever the number of departments, or the number of judges constituting a department, there must be a concurrence of at least three judges for a department decision. Mountain States Tel. & Tel. Co. v. People ex rel. Wilson, 68 Colo. 487, 190 P. 513 (1920).

There may be two departments, each composed of the chief justice and three other justices, or, according to the present arrangements, there may be three departments, each composed of the chief justice and two other justices. In either case three judges must concur in order to render a decision. Mountain States Tel. & Tel. Co. v. People ex rel. Wilson, 68 Colo. 487, 190 P. 513 (1920).

Minimum number of judges constituting court en banc is not expressly stated. The constitution is silent insofar as any express statement of the minimum number of judges constituting the court en banc is concerned. Mountain States Tel. & Tel. Co. v. People ex rel. Wilson, 68 Colo. 487, 190 P. 513 (1920).

But it has been held that majority of members of court constitutes court en banc. Mountain States Tel. & Tel. Co. v. People ex rel. Wilson, 68 Colo. 487, 190 P. 513 (1920).

And that majority of court as thus constituted might decide case. Mountain States Tel. & Tel. Co. v. People ex rel. Wilson, 68 Colo. 487, 190 P. 513 (1920).

When supreme court formerly consisted of three judges, two judges could "pronounce a decision" and no more than two were necessary to "form a quorum". Snider v. Rinehart, 18 Colo. 18, 31 P. 716 (1892).

Appointment of state public defender under subsection (3). General assembly's determination that the state public defender be appointed by the Colorado supreme court is within the ambit of subsection (3). People v. Mullins, 188 Colo. 29, 532 P.2d 736 (1975).

No authority to decide case as trial judge. A trial judge has no authority to decide a case after he has taken office as a judge of the Colorado court of appeals. Merchants Mtg. & Trust Corp. v. Jenkins, 659 P.2d 690 (Colo. 1983).

And any such orders entered are void. Absent constitutional or statutory authorization, a former district court judge does not have authority to act in a judicial capacity, and orders entered by such a person after he ceases to be a district court judge are void. Merchants Mtg. & Trust

Corp. v. Jenkins, 659 P.2d 690 (Colo. 1983).

Neither this section nor § 24-51-1105 (1)(a) prohibits a senior judge assigned to a case from consolidating other cases with the case where it is appropriate to do so under C.R.C.P. 42(a). Without an express prohibition, there is no reason to preclude a senior judge from performing the tasks required of a district court judge. Mortgage Inv. Corp. v. Battle Mountain Corp., 56 P.3d 1104 (Colo. App. 2001), rev'd on other grounds, 70 P.3d 1176 (Colo. 2003).

Chief justice of supreme court can properly delegate appointment powers to another judicial officer, and appointments by chief district judges are not limited to specific cases. There is no statutory basis for requiring the chief justice of the supreme court to personally make each temporary appointment. Furthermore, reading § 13-6-218 to preclude delegation would bring it into conflict with subsection (4) of this section, which expressly allows the chief justice to delegate administrative powers. People v. McCulloch, 198 P.3d 1264 (Colo. App. 2008).

Under subsection (4), a county court judge may act as a district court judge in a case in district court only if the chief judge or the chief judge's designee assigns the county court judge to the case in accordance with the proper procedures for such an assignment. People v. Torkelson, 971 P.2d 660 (Colo. App. 1998).

The proper appointment of a county court judge to act as a district court judge presents a jurisdictional question; therefore, the de facto judge doctrine does not apply. The appointment of the county court judge to act as a district court judge was not in accordance with statutory, constitutional, or chief justice directive provisions. Even though some may regard the error in making the appointment as a technical defect, it concerns the fundamental interest of litigants in ensuring that qualified county court judges are called upon to serve as acting district court judges. People v. Torkelson, 22 P.3d 560 (Colo. App. 2000).

Although § 17 of this article states that county courts cannot hear felonies, subsection (3) of this section limits such prohibition and allows a county court judge to sit as a district court judge and exercise the jurisdiction of the district court when assigned by the chief justice. Moreover, the chief justice may delegate this authority to the chief judges under subsection (4). People v. Johnson, 77 P.3d 845 (Colo. App. 2003).

Absent a valid appointment order, a county court judge lacks jurisdiction to act as a district court judge and preside over any stage of a felony trial; thus, a verdict reached under such circumstances is void. People v. Jachnik, 116 P.3d 1278 (Colo. App. 2005).

Applied in Bacher v. District Court, 186 Colo. 314, 527 P.2d 56 (1974); People v. Hedrick, 192 Colo. 37, 557 P.2d 378 (1976); In re Southwest Adams County Fire Prot. Dist., 192 Colo. 142, 556 P.2d 1215 (1976); In re Bunger v. Uncompahgre Valley Water Users Ass'n, 192 Colo. 159, 557 P.2d 389 (1976); In re Water Rights, 192 Colo. 279, 557 P.2d 1169 (1976); In re Water Rights, 192 Colo. 284, 557 P.2d 1173 (1976); Colo. Bar Ass'n v. Miles, 192 Colo. 294, 557 P.2d 1202 (1976); Bailey v. Clausen, 192 Colo. 297, 557 P.2d 1207 (1976); Hamm v. Scott, 426 F. Supp. 950 (D. Colo. 1977); In re Claims for Water Rights Filed by United States, 198 Colo. 492, 602 P.2d 859 (1979); People v. DeLeon, 44 Colo. App. 146, 613 P.2d 639 (1980); Malmgren v. Malmgren, 628 P.2d 164 (Colo. App. 1981); Thomas v. Nat'l State Bank, 628 P.2d 188 (Colo. App. 1981); DiChellis

v. Peterson Chiropractic Clinic, 630 P.2d 103 (Colo. App. 1981); Romero v. Indus. Comm'n, 632 P.2d 1052 (Colo. App. 1981); People v. Rautenkranz, 641 P.2d 317 (Colo. App. 1982); In re Eckman, 645 P.2d 866 (Colo. App. 1982); Dare v. Sobule, 648 P.2d 169 (Colo. App. 1982); People v. King, 648 P.2d 173 (Colo. App. 1982); People in Interest of W.C.L., 650 P.2d 1302 (Colo. App. 1982); Simon v. Pettit, 651 P.2d 418 (Colo. App. 1982); In re Sterling v. Indus. Comm'n, 662 P.2d 1096 (Colo. App. 1982); People in Interest of C.R.B., 662 P.2d 198 (Colo. App. 1983); Cherry v. A-P-A Sports, Inc., 662 P.2d 200 (Colo. App. 1983); People v. Borrego, 668 P.2d 21 (Colo. App. 1983); Bancroft-Clover Water & San. Dist. v. Metro. Denver Sewage Disposal Dist. No. 1, 670 P.2d 428 (Colo. App. 1983); Andrikopoulos v. Broadmoor Mgt. Co., 670 P.2d 435 (Colo. App. 1983); Colo. State Bd. of Agriculture v. First Nat'l Bank, 671 P.2d 1331 (Colo. App. 1983); Pena v. District Court, 681 P.2d 953 (Colo. 1984).

Section 6. Election of judges. (Repealed)

Source: L. 61: Entire article R&RE, effective January 12, 1965, see **L. 63,** p. 1050. **Initiated 66:** Entire section repealed, effective January 17, 1967, see **L. 67,** p. 6 of the supplement to the 1967 Session Laws.

Editor's note: For amendments prior to 1961, see L. 1877, p. 46, and L. 03, p. 149.

Section 7. Term of office. The full term of office of justices of the supreme court shall be ten years.

Source: L. 61: Entire article R&RE, effective January 12, 1965, see **L. 63,** p. 1050. **Initiated 66:** Entire section amended, effective January 17, 1967, see **L. 67,** p. 6 of the supplement to the 1967 Session Laws.

Editor's note: (1) For amendments prior to 1961, see L. 1877, p. 47, and L. 03, p. 149.

(2) This section is similar to § 7 as it existed prior to 1961.

ANNOTATION

Law reviews. For article, "A Report from the Judiciary Committee", see 26 Dicta 139 (1949).

Applied in People ex rel. Bentley v. Le Fevre, 21 Colo. 218, 40 P. 882 (1895).

Section 8. Qualifications of justices. No person shall be eligible to the office of justice of the supreme court unless he shall be a qualified elector of the state of Colorado and shall have been licensed to practice law in this state for at least five years.

Source: L. 61: Entire article R&RE, see **L. 63,** p. 1050.

Editor's note: (1) For amendments prior to 1961, see L. 1877, p. 47, and L. 03, p. 149.

(2) This section is similar to § 10 as it existed prior to 1961.

ANNOTATION

Law reviews. For article, "The Judiciary Committee Plan and the

1949 General Assembly", see 25 Dicta 281 (1948). For article, "A Report from the Judiciary Committee", see 26 Dicta 139 (1949).

DISTRICT COURTS

Section 9. District courts - jurisdiction. (1) The district courts shall be trial courts of record with general jurisdiction, and shall have original jurisdiction in all civil, probate, and criminal cases, except as otherwise provided herein, and shall have such appellate jurisdiction as may be prescribed by law.

(2) (Deleted by amendment, L. 2002, p. 3094, effective upon proclamation of the Governor, L. 2003, p. 3611, December 20, 2002.)

(3) In the city and county of Denver, exclusive original jurisdiction in all matters of probate, settlements of estates of deceased persons, appointment of guardians, conservators and administrators, and settlement of their accounts, the adjudication of the mentally ill, and such other jurisdiction as may be provided by law shall be vested in a probate court, created by section 1 of this article.

Source: L. 61: Entire article R&RE, effective January 12, 1965, see **L. 63,** p. 1050. **L. 2002:** (2) and (3) amended, p. 3094, effective upon proclamation of the Governor, **L. 2003,** p. 3611, December 20, 2002.

Editor's note: (1) For amendments prior to 1961, see L. 1877, p. 47.

(2) This section is similar to § 11 as it existed prior to 1961.

ANNOTATION

Law reviews. For article, "The District Court", see 4 Den. B. Ass'n Rec. 5 (April 1927). For article, "A Voice from the Grave: Dying Declarations in Colorado", see 15 Dicta 127 (1938). For article, "Commitment of Misdemeanants to the Colorado State Reformatory", see 29 Dicta 294 (1952). For note, "Jurisdiction of Custody Matters in Colorado", see 28 Rocky Mt. L. Rev. 393 (1956). For article, "Colorado's Program to Improve Court Administration", see 38 Dicta 1 (1961). For comment on Beere v. Miller appearing below, see 43 Den. L.J. 243 (1966). For note, "In re Gault and the Colorado Children's Code", see 44 Den. L.J. 644 (1967). For article, "Probate Jurisdiction for Creditors' Claims", see 29 Colo. Law. 57 (May 2000).

Annotator's note. Since this section is substantially the same as former § 11 of this article, relevant cases construing § 11 have been included in the annotations to this section.

This section fixes jurisdiction of district court. Weiss-Chapman Drug Co. v. People, 39 Colo. 374, 89 P. 778 (1907).

This is the only provision of the constitution which fixes the jurisdiction of the district court. Patterson v. People ex rel. Parr, 23 Colo. App. 479, 130 P. 618 (1913).

But it does not prescribe procedure. The constitution simply invests the court with the jurisdiction; it nowhere prescribes the procedure to be resorted to for the purpose of securing the desired relief, or provides the machinery by means of which the court's decree may be enforced. Blitz v. Moran, 17 Colo. App. 253, 67 P. 1020 (1902).

Jurisdiction conferred is all-embracing. The jurisdiction conferred on the district courts by this section should be construed as all-embracing, as its terms are unrestricted. Patterson v. People ex rel.

Parr, 23 Colo. App. 479, 130 P. 618 (1913).

And is to be received in broadest sense. The equitable powers of the district court extend to all cases where the law affords no adequate relief, even where there is no statutory provision, and even where the subject matter of the controversy was not known to be of equitable cognizance at the time of the adoption of the constitution. Patterson v. People ex rel. Parr, 23 Colo. App. 479, 130 P. 618 (1913).

District courts are constitutional courts of general jurisdiction. In re Question Concerning State Judicial Review, 199 Colo. 463, 610 P.2d 1340 (1980).

Constitutional jurisdiction may not be limited by statute. The constitutional jurisdiction of district courts is unlimited. It should not be limited without circumspection, and no statute should be held to limit it unless it says so plainly. People ex rel. Cruz v. Morley, 77 Colo. 25, 234 P. 178 (1925); In re A.W., 637 P.2d 366 (Colo. 1981).

No territorial limit to civil jurisdiction. No territorial limit is fixed by the constitution to the civil jurisdiction either of the district courts or of the county courts. Fletcher v. Stowell, 17 Colo. 94, 28 P. 326 (1891).

District courts of this state have statewide jurisdiction. Bacher v. District Court, 186 Colo. 314, 527 P.2d 56 (1974).

As will federal courts. In a diversity case the federal court inherits the jurisdictional scope that is enjoyed by the state court within the district. Hackbart v. Cincinnati Bengals, Inc., 601 F.2d 516 (10th Cir. 1979).

District courts are courts of general jurisdiction regardless of amount in controversy. Williams v. Speedster, Inc., 175 Colo. 73, 485 P.2d 728 (1971).

Jurisdiction of district and county courts is concurrent with respect to matters which fall within the jurisdiction of both. Ohmie v. Martinez, 141 Colo. 480, 349 P.2d 131 (1960).

Jurisdiction of district court and supreme court is not concurrent. People ex rel. Graves v. District Court, 37 Colo. 443, 86 P. 87, 92 P. 958 (1906).

But exclude each other. It is clear from this provision that the jurisdiction of both the district court and the supreme court being created by the constitution, the jurisdiction of each was necessarily excluded from the other. Friesen v. People ex rel. Fletcher, 118 Colo. 1, 192 P.2d 430 (1948).

Jurisdiction includes extraordinary and remedial writs. The jurisdiction conferred by this section is broad enough to include writs of certiorari, as well as the other extraordinary and remedial writs of which the supreme court is invested with jurisdiction by § 3 of this article. In re Rogers, 14 Colo. 18, 22 P. 1053 (1890); Turner v. City & County of Denver, 146 Colo. 336, 361 P.2d 631 (1961).

District court may not reject supreme court's holdings on common-law rule. It was not within discretion of the district court to reject the holdings of the supreme court of Colorado on a firmly entrenched common-law rule, even though the district court disagreed with the law as established. Heafer v. Denver-Boulder Bus Co., 176 Colo. 157, 489 P.2d 315 (1971).

Jurisdiction in equity cases. In cases of equitable cognizance, the district court may adjudicate and determine the claims of parties before it, and decree the proper relief; and, in doing so, it exercises the jurisdiction which the constitution confers. Blitz v. Moran, 17 Colo. App. 253, 67 P. 1020 (1902).

District court may decide when one may sue by his next friend. The district court is a tribunal of general jurisdiction with the broadest

equity powers, and has the right, unless prohibited by valid statute, to decide under what circumstances one may sue by his next friend. Ellis v. Colo. Nat'l Bank, 86 Colo. 391, 282 P. 255 (1929).

Presumptions of jurisdiction. The district court is a superior court, a court of record, and the presumptions of jurisdiction are all in its favor. Weiss-Chapman Drug Co. v. People, 39 Colo. 374, 89 P. 778 (1907).

This section confers general jurisdiction upon district courts, with original jurisdiction in all civil, probate, and criminal cases. This jurisdiction extends to cases involving federal rights, even when there is no governing Colorado authority. Telluride Co. v. Varley, 934 P.2d 888 (Colo. App. 1997).

The district court's jurisdiction clearly extends to action for breach of the child support provisions set forth in parties' agreement, as well as actions under the Uniform Dissolution of Marriage Act. Williamson v. Williamson, 39 P.3d 1199 (Colo. App. 2001).

District court has jurisdiction to review decision of public utilities commission. Fleming v. McFerson, 94 Colo. 1, 28 P.2d 1013 (1933).

And in habeas corpus proceedings. District courts have jurisdiction in habeas corpus proceedings under this section as well as under the provisions of § 13-45-101 et seq. People ex rel. Metzger v. District Court, 121 Colo. 141, 215 P.2d 327 (1949); Stilley v. Tinsley, 153 Colo. 66, 385 P.2d 677 (1963).

And to issue orders to exhume dead body. The district court wherein the estate of a dead person is filed has statewide jurisdiction to issue orders for the body to be exhumed. Beere v. Miller, 157 Colo. 502, 403 P.2d 862 (1965).

And over professional football games. This section provides no obstacles to a trial court asserting jurisdiction over a case arising out of a professional football game. Hackbart v. Cincinnati Bengals, Inc., 601 F.2d 516 (10th Cir. 1979).

And where proceeding is local in character. Where a proceeding is primarily between individual citizens or groups entirely local in character, and it cannot injuriously affect the people of the state at large, the writ in the nature of quo warranto issued in such a case is not one within the intent of § 3 of this article, and the district court has full jurisdiction to hear and determine the issues herein. Friesen v. People ex rel. Fletcher, 118 Colo. 1, 192 P.2d 430 (1948).

And over water matters. Where a hearing before a district court does not involve beneficial application of water nor matters of priorities of appropriation but with the manner in which water was allowed to run off the land after irrigation, that court as a court of general jurisdiction has power to prevent negligent or deliberate damage--by whatever means--to property and to enforce court orders designed to prevent irreparable injury. Baumgartner v. Stremel, 178 Colo. 209, 496 P.2d 705 (1972).

The fact that the Colorado statutes do not provide for the adjudication of the rights of the United States with priorities prior to the dates of later decrees does not mean that the district courts in a water adjudication cannot determine the rights of the United States in relation to decreed water rights. On the contrary, the district courts have that jurisdiction which is plenary. The Colorado Constitution, without the need of any statute, grants jurisdiction of the subject matter under consideration. United States v. District Court, 169 Colo. 555, 458 P.2d 760 (1969), aff'd, 401 U.S. 520, 91 S. Ct. 998, 28 L. Ed. 2d 278 (1971).

And to determine validity of school bond election. District court

has jurisdiction to determine validity of school bond election. Nicholson v. Stewart, 142 Colo. 566, 351 P.2d 461 (1960).

And to review election under local option act. The district court may review an election under the local option act, where fraud on the part of the election officers, the denial of the franchise to legal voters, and the receipt of the ballots of those not voters, in numbers sufficient to change the result, are charged; and it may enjoin the issuance of licenses for the sale of intoxicating liquors, pursuant to such fraudulent election. Patterson v. People ex rel. Parr, 23 Colo. App. 479, 130 P. 618 (1913).

But not to control and supervise an election. This section does not authorize the district courts to control and supervise an election merely because the supreme court has assumed a similar jurisdiction, since to so hold would render the original jurisdiction of the supreme court and the district courts the same, and thereby the supreme court would be entirely without authority to review on appeal or error any judgment in such causes, as conferred by § 2 of this article. People ex rel. Graves v. District Court, 37 Colo. 443, 86 P. 87, 92 P. 958 (1906).

Nor to restrain agency's statutory functions. A district court does not have jurisdiction to restrain an administrative agency from performing its statutory functions. State Bd. of Cosmetology v. District Court, 187 Colo. 175, 530 P.2d 1278 (1974).

Nor to interfere with executive branch's statutory duties. District courts do not have jurisdiction to interfere with the executive branch of the government in the performance of its statutory duties. Moore v. District Court, 184 Colo. 63, 518 P.2d 948 (1974).

District court has general subject matter jurisdiction over probate matters in all jurisdictions other than the city and county of Denver, though probate cases are typically assigned to the court's probate division for reasons of efficiency, administration, and convenience. Pierce v. Francis, 194 P.3d 505 (Colo. App. 2008).

In determining proper jurisdiction as between district court and probate court, the court must look at the facts alleged, claims asserted, and the relief requested. Here, where the complaints were premised upon defendant's alleged legal malpractice in the drafting of the estate instruments, the estate planning, and the implementation of the estate plan, the complaints were not considered probate claims, and, therefore, jurisdiction lay with the district court not the probate court. Levine v. Katz, 192 P.3d 1008 (Colo. App. 2006).

Probate court lacks subject matter jurisdiction over claims of legal malpractice where plaintiff does not seek to recover assets of the estate. Levine v. Katz, 167 P.3d 141 (Colo. App. 2006).

Provisions of the Workers' Compensation Act establishing that administrative law judges employed by the division of administrative hearings have original jurisdiction over matters arising under the act do not violate the constitutional conferment of jurisdiction on district courts, as the parties in workers' compensation proceedings have expressly surrendered common law rights, remedies, and proceedings in exchange for the benefits of the act. MGM Supply Co. v. Indus. Claim Appeals Office, 62 P.3d 1001 (Colo. App. 2002).

Article V, § 10, allowing general assembly to judge qualifications of members, does not limit authority of courts under this section to determine election controversies when no candidate declared duly elected. State constitutional provisions and statutes permitting general assembly to judge

election of members does not limit subject matter jurisdiction of district court to hear controversies related to elections where no candidate is yet declared duly elected by secretary of state. Meyer v. Lamm, 846 P.2d 862 (Colo. 1993).

"Criminal cases" not defined in constitution. The constitution itself does not define the phrase "criminal cases" nor does it create or define crimes, except as to treason. Hence, it is the general assembly which has the power to create and define crimes. People ex rel. Terrell v. District Court, 164 Colo. 437, 435 P.2d 763 (1967).

Although district courts have general jurisdiction over criminal cases pursuant to this section, it is the constitutional prerogative of the legislature to define crimes and to establish affirmative defenses for acts that might otherwise be criminal. People v. Gilliland, 769 P.2d 477 (Colo. 1989).

In any criminal case in which the court's jurisdiction is put at issue, the burden is on the prosecution to show that the court, whether district or county, has jurisdiction to hear the criminal case. People v. Jachnik, 116 P.3d 1278 (Colo. App. 2005).

Criminal trial court has ancillary jurisdiction to entertain defendant's post-sentence motion for return of property and enter orders resolving the matter. People v. Hargrave, 179 P.3d 226 (Colo. App. 2007).

Delinquency proceeding is not criminal case even though the adjudication of delinquency in a given case may rest upon the commission of acts by a juvenile that, if committed by an adult, would be deemed felonious. People ex rel. Rodello v. District Court, 164 Colo. 530, 436 P.2d 672 (1968).

There is a very fundamental difference between a criminal proceeding and a delinquency proceeding, and the clear legislative intent is that the handling of juvenile delinquents should be oriented towards rehabilitation and reformation, and not punishment as such, even though the actions of the child if committed by an adult would justify a criminal proceeding. People ex rel. Terrell v. District Court, 164 Colo. 437, 435 P.2d 763(1967).

Strictly speaking, proceedings concerning delinquent, dependent or neglected children or adoptions or relinquishment proceedings and the like are neither " a civil or criminal case". Garcia v. District Court, 157 Colo. 432, 403 P.2d 215 (1965).

Thus, district court retains jurisdiction in criminal cases. The district court still has its original jurisdiction in all criminal cases, the children's code simply limiting and restricting the institution of felony charges against children under 18 years of age. People ex rel. Terrell v. District Court, 164 Colo. 437, 435 P.2d 763 (1967).

And attempt to vest exclusive jurisdiction of certain criminal cases in juvenile court conflicts with section. A legislative effort to vest in the juvenile court of the city and county of Denver exclusive jurisdiction of those cases where a person under 16 years of age is charged with a crime punishable by death or life imprisonment is in direct conflict with this constitutional mandate that the district courts shall have original jurisdiction in all criminal cases. Garcia v. District Court, 157 Colo. 432, 403 P.2d 215 (1965).

Probate court cannot entertain collateral attack on district court judgment affecting will. Constitutional and statutory provisions vest in the probate court the authority to decide, inter alia, matters relating to the probate of wills. They do not, however, confer authority upon the probate court to disregard the rules

relating to collateral attacks on judgments and to set aside a divorce decree of a district court which has jurisdiction of the parties and of the subject matter. In re Estate of Bonfils, 190 Colo. 70, 543 P.2d 701 (1975).

Implied jurisdiction of water judge. It is inconceivable that the general assembly intended to grant water judge, who is a district judge, jurisdiction with respect to priorities but to bar him from determining the effect of a prior contract upon the priorities awarded. This jurisdiction is implied in the constitution and the statute. In re Application for Water Rights of Fort Lyon Canal Co., 184 Colo. 219, 519 P.2d 954 (1974); Oliver v. District Court, 190 Colo. 524, 549 P.2d 770 (1976).

Where a covenant in a deed required the grantee to maintain a certain reservoir level; the covenant was the subject of a suit for injunctive relief in the district court; and the covenant would affect the outcome of a suit pending in the water court, the district court suit was ancillary to that in the water court and could be transferred to the water court for determination. Oliver v. District Court, 190 Colo. 524, 549 P.2d 770 (1976).

District court had jurisdiction to find that certain records used in grand jury proceedings were subject to statutory provisions of secrecy. People v. Tynan, 701 P.2d 80 (Colo. App. 1984).

Actual controversy between adverse parties must exist if a court is to sua sponte address the constitutionality of a statute. Juvenile court's ruling that statute was unconstitutional was impermissible exercise of judicial authority since the issue was raised on behalf of unidentified parties that were not before the court on court's own motion in order to create a controversy that it then proceeded to decide. In re Tomlinson, 851 P.2d 170 (Colo. 1993).

Exercise of jurisdiction not precluded by absence of statute. The absence of a statute or constitutional provision which specifically designates a forum or spells out standards for decision will not preclude exercise of a court's jurisdiction, even where the subject matter would not have been subject to judicial authority at common law. In re A.W., 637 P.2d 366 (Colo. 1981).

Determination of subject matter jurisdiction. To determine whether the district court has subject matter jurisdiction, the court of appeals will rely on the nature and the substance of the proceeding, rather than its name. State ex rel. Colo. Dept. of Health v. I.D.I., Inc., 642 P.2d 14 (Colo. App. 1981).

Courts of general jurisdiction may issue common-law writs, including those in the nature of mandamus to inferior tribunals, boards, agencies, and officers of the state. In re Question Concerning State Judicial Review, 199 Colo. 463, 610 P.2d 1340 (1980).

Jurisdiction to hear matters dealing with injunctions against abuse of judicial process by pro se litigants. A district court may enjoin a litigant from filing suits pro se within any county in the district upon a finding of a serious abuse of judicial process. Bd. of County Comm'rs v. Winslow, 706 P.2d 792 (Colo. 1985).

Jurisdiction over incompetents. A court's inherent parens patriae jurisdiction over incompetents may extend to decisions involving irrevocable consequences for the incompetent individual. In re A.W., 637 P.2d 366 (Colo. 1981).

Jurisdiction to consider petition for sterilization of mentally retarded minor. Since the provisions of the Colorado revised statutes concerning sterilization of mentally retarded persons do not address the issue of sterilization of a minor, it is within the district court's inherent

authority to consider a petition for sterilization of a minor and, in the absence of legislative pronouncement, it is proper and necessary for the supreme court to promulgate standards for determining the circumstances under which such a procedure may be performed. In re A.W., 637 P.2d 366 (Colo. 1981).

A district court acting in its probate capacity has the power in the absence of statutory authorization to act on a petition for sterilization of a mentally retarded minor. In re A.W., 637 P.2d 366 (Colo. 1981).

Jurisdiction to appoint conservator for nursing home. The district court has subject matter jurisdiction to appoint a "conservator" to manage a nursing home. State ex rel. Colo. Dept. of Health v. I.D.I., Inc., 642 P.2d 14 (Colo. App. 1981).

Decision of board of parole to grant or deny parole is clearly discretionary since parole is a privilege, and no prisoner is entitled to it as a matter of right. In re Question Concerning State Judicial Review, 199 Colo. 463, 610 P.2d 1340 (1980).

Person denied parole can seek judicial review only as provided by C.R.C.P. 106(a)(2). In re Question Concerning State Judicial Review, 199 Colo. 463, 610 P.2d 1340 (1980).

When board of parole fails to exercise duties, courts have power to review. It is only when the Colorado state board of parole has failed to exercise its statutory duties that the courts of Colorado have the power to review the board's actions. In re Question Concerning State Judicial Review, 199 Colo. 463, 610 P.2d 1340 (1980).

Right of plaintiff to select forum for claim less than $5,000 is not conditioned by constitution or by statute; rather, the general assembly has seen fit to permit a claimant to file such actions in district court unconstrained by considerations of whether the county court is an adequate forum for just resolution of the complaint and of any increased costs to the public incident to the district court adjudicative process. Cook v. District Court ex rel. County of Weld, 670 P.2d 758 (Colo. 1983).

Dismissal of plaintiffs' request for injunctive relief on grounds of lack of jurisdiction was proper. State courts do not possess any power to restrain or enjoin federal court proceedings even though they may share concurrent jurisdiction in in personam actions. President's Co. v. Whistle, 812 P.2d 1194 (Colo. App. 1991).

District court has no jurisdiction to decide constitutionality of disciplinary rule as such jurisdiction lies exclusively with the supreme court. Colo. Supreme Ct. v. District Court, 850 P.2d 150 (Colo. 1993).

Dismissal of plaintiff's request for declaratory judgment was proper. State shared concurrent jurisdiction with federal court on in personam action for declaratory judgment, but issues it would settle would necessarily be settled by the pending federal action and the federal court's final determination of the issues would be dispositive of all issues before the state court, precluding the necessity of a duplicative state court determination. President's Co. v. Whistle, 812 P.2d 1194 (Colo. App. 1991).

District courts do not have subject matter jurisdiction to compel the commission on judicial discipline, created in § 23 of art. VI, Colo. Const., or its executive director to investigate a complaint alleging judicial misconduct. The trial court properly dismissed plaintiff's motion brought under C.R.C.P. 106 (a). Higgins v. Owens, 13 P.3d 837 (Colo. App. 2000).

Section 12 of art. VII, Colo. Const., does not limit exercise of equity powers granted to the district

court by this section. Nicholson v. Stewart, 142 Colo. 566, 351 P.2d 461 (1960).

Section 15 of this article does not override this section. Garcia v. District Court, 157 Colo. 432, 403 P.2d 215 (1965).

Temporary assignment of judges. Both district and county court judges, active and retired, are subject to temporary assignment by the chief justice from one county or district to another in order to expedite the business of the courts. Bacher v. District Court, 186 Colo. 314, 527 P.2d 56 (1974).

Question of whether county court judge may hear a felony case is a matter of authority not jurisdiction. The hearings and trial are still held in district court since that is where the case was filed, thus jurisdiction is not a question. People v. Sherrod, 204 P.3d 466 (Colo. 2009).

Nunc pro tunc order giving county court judge authority to hear a district court case is a legitimate means to correct irregularities in the record. The judge was otherwise qualified to act as a district court judge, so the lack of an appointment order was an irregularity in the record. Thus, the nunc pro tunc order properly documents the legality of the judge's action. People v. Sherrod, 204 P.3d 466 (Colo. 2009).

Applied in Swenson v. Girard, etc., Ins. Co., 4 Colo. 475 (1878); Jeffries v. Harrington, 11 Colo. 191, 17 P. 505 (1887); Cooper v. People ex rel. Wyatt, 13 Colo. 337, 22 P. 790 (1889); Arnett v. Berg, 18 Colo. App. 341, 71 P. 636 (1893); Johnson v. People, 6 Colo. App. 163, 40 P. 576 (1895); Currier v. Johnson, 19 Colo. App. 94, 73 P. 882 (1903); Mortgage Trust Co. v. Redd, 38 Colo. 458, 88 P. 473 (1906); Oles v. Wilson, 57 Colo. 246, 141 P. 489 (1914); Greeley Transp. Co. v. People, 79 Colo. 307, 245 P. 720 (1926); Packaging Corp. of Am. v. Roberts, 169 Colo. 316, 455 P.2d 652 (1969); Quintana v. Edgewater Mun. Court, 178 Colo. 90, 498 P.2d 931 (1972); Clinic Masters, Inc. v. District Court, 192 Colo. 120, 556 P.2d 473 (1976); Reed v. Dolan, 195 Colo. 193, 577 P.2d 284 (1978); People v. Rice, 40 Colo. App. 357, 579 P.2d 647 (1978); Mizel v. Banking Bd., 196 Colo. 98, 581 P.2d 306 (1978); Srb v. Bd. of County Comm'rs, 199 Colo. App. 496, 601 P.2d 1082 (1979); Tisdel v. Bd. of County Comm'rs, 621 P.2d 1357 (Colo. 1980); In re Stroud, 631 P.2d 168 (Colo. 1981); Mathews v. Urban, 645 P.2d 290 (Colo. App. 1982); United States v. City & County of Denver, 656 P.2d 1 (Colo. 1982); Paine, Webber, Jackson & Curtis v. Adams, 718 P.2d 508 (Colo. App. 1986).

Section 10. Judicial districts - district judges. (1) The state shall be divided into judicial districts. Such districts shall be formed of compact territory and be bounded by county lines. The judicial districts as provided by law on the effective date of this amendment shall constitute the judicial districts of the state until changed. The general assembly may by law, whenever two-thirds of the members of each house concur therein, change the boundaries of any district or increase or diminish the number of judicial districts.

(2) In each judicial district there shall be one or more judges of the district court. The full term of office of a district judge shall be six years.

(3) The number of district judges provided by law for each district on the effective date of this amendment shall constitute the number of judges for the district until changed. The general assembly may by law, whenever two-thirds of the members of each house concur therein, increase or diminish

the number of district judges, except that the office of a district judge may not be abolished until completion of the term for which he was elected or appointed, but he may be required to serve in a judicial district other than the one for which elected, as long as such district encompasses his county of residence.

(4) Separate divisions of district courts may be established in districts by law, or in the absence of any such law, by rule of court.

Source: L. 61: Entire article R&RE, see **L. 63,** p. 1051. **Initiated 66:** (2) amended, effective January 17, 1967, see **L. 67,** p. 6 of the supplement to the 1967 Session Laws.

Editor's note: (1) For amendments prior to 1961, see L. 1877, p. 47.

(2) This section is similar to §§ 12 and 14 as they existed prior to 1961.

Cross references: For the establishment of judicial districts, see also part 1 of article 5 of title 13; for vacancies in judicial office, see § 20 of this article.

ANNOTATION

Law reviews. For article, "The District Court", see 4 Den. B. Ass'n Rec. 5 (April 1927). For article, "A Report from the Judiciary Committee", see 26 Dicta 139 (1949). For article, "Colorado's Program to Improve Court Administration", see 38 Dicta 1 (1961).

Annotator's note. Since this section in substantially similar to former §§ 12 and 14 of this article, relevant cases construing §§ 12 and 14 have been included in the annotations to this section.

Each judge authorized to exercise powers of court. By the provisions of this section, providing for an increase in the number of judges of a district, each of the judges therein provided for is authorized to exercise the powers of a district court. Jordan v. People, 19 Colo. 417, 36 P. 218 (1894).

"Term of office" as used in this section meant the period or limit of time during which the incumbent was permitted to hold. People ex rel. Bentley v. Le Fevre, 21 Colo. 218, 40 P. 882 (1895).

Prior law as to terms of judges. Under a similar provision in effect prior to the adoption of the present section, judges of the district court who were elected at the regular sexennial election held their offices for the term of six years, and those elected to fill a vacancy held only for the unexpired term. People ex rel. Bentley v. Le Fevre, 21 Colo. 218, 40 P. 882 (1895).

Section has no relation to legislation changing county from one district to another. The increase, diminution, or change of boundaries in the judicial districts, or in the number of judges in any district, referred to in this section is such as is brought about by the formation of a new district or the abolition of an existing one. The section has no relation to legislation changing a county from one district to another, so as not to abolish any district. In re Senate Resolution No. 9, 54 Colo. 429, 131 P. 257 (1913).

Change of county from one district to another does not effect removal of judges. Where a county is changed from one district to another, the judge of the latter district will thereafter preside in the district court of such county; neither of the judges of the district from which the county is taken is thereby removed from office. In re Senate Resolution No. 9, 54 Colo. 429, 131 P. 257 (1913).

Boundary restriction placed on this section by section 24(3) of this article. As the amendatory provision of section 24(3) of this article provides that there will be seven members of each judicial nominating commission,

the provision placed a restriction upon this section in that the boundaries of any district may not be increased so that any district embraces more than seven counties. In re Interrogatories by Senate, 168 Colo. 563, 452 P.2d 382 (1969).

Section 1 of art. XX, Colo. Const., does not improperly delegate power to alter judicial district boundaries. In view of this section, providing that the general assembly may increase or diminish the number of judicial districts, the provisions of § 1 of art. XX, Colo. Const., do not amount to an improper delegation of legislative power to Denver even though annexations to Denver result in changing the boundaries of judicial districts, since there remains with the general assembly the power to increase or diminish the number of judicial districts. Bd. of County Comm'rs v. City & County of Denver, 150 Colo. 198, 372 P.2d 152 (1962), appeal dismissed for want of substantial federal question, 372 U.S. 226, 83 S. Ct. 679, 9 L. Ed. 2d 714 (1963).

Section 1 of art. XX, Colo. Const., does not delegate to the city council of Denver the power to alter at will the congressional, legislative, judicial, and school district boundaries. Bd. of County Comm'rs v. City & County of Denver, 150 Colo. 198, 372 P.2d 152 (1962), appeal dismissed for want of substantial federal question, 372 U.S. 226, 83 S. Ct. 679, 9 L. Ed. 2d 714 (1963).

No authority to decide case after elevation to court of appeals. A trial judge has no authority to decide a case after he has taken office as a judge of the Colorado court of appeals. Merchants Mtg. & Trust Corp. v. Jenkins, 659 P.2d 690 (Colo. 1983).

And any such order entered is void. Absent constitutional or statutory authorization, a former district court judge does not have authority to act in a judicial capacity, and orders entered by such a person after he ceases to be a district court judge are void. Merchants Mtg. & Trust Corp. v. Jenkins, 659 P.2d 690 (Colo. 1983).

Applied in Darrow v. People ex rel. Norris, 8 Colo. 417, 8 P. 661 (1885); In re Election of Dist. Judges, 11 Colo. 373, 18 P. 282 (1888); Jordan v. People, 19 Colo. 417, 36 P. 218 (1894); Bigcraft v. People, 30 Colo. 298, 70 P. 417 (1902).

Section 11. Qualifications of district judges. No person shall be eligible to the office of district judge unless he shall be a qualified elector of the judicial district at the time of his election or selection and shall have been licensed to practice law in this state for five years. Each judge of the district court shall be a resident of his district during his term of office.

Source: L. 61: Entire article R&RE, see **L. 63,** p. 1051.
Editor's note: (1) For amendments prior to 1961, see L. 1877, p. 47.
(2) This section is similar to §§ 16 and 29 as they existed prior to 1961.

ANNOTATION

Law reviews. For article, "The Judiciary Committee Plan and the 1949 General Assembly", see 25 Dicta 281 (1948). For article, "A Report from the Judiciary Committee", see 26 Dicta 139 (1949).

Annotator's note. Since this section is substantially similar to former §§ 16 and 29, relevant cases construing §§ 16 and 29 have been included in the annotations to this section.

"Residence" here means an actual, as distinguished from a legal or constructive, residence, or, its equivalent, domicile. People ex rel.

Post v. Owers, 29 Colo. 535, 69 P. 515 (1902).

The word "reside" may, and sometimes does, have different meanings in the same or different articles or sections of a constitution or statute, but the direction that a district judge shall reside within his district, manifestly was not intended for his convenience, but for the benefit of the people, whose servant he is. People ex rel. Post v. Owers, 29 Colo. 535, 69 P. 515 (1902).

Person is elector within judicial district where his domicile is within such district. The requirement of this section that a person to be eligible to the office of district judge, shall at the time of his election be an elector within the judicial district is met by showing that at the time of election a district judge had his domicile or legal or constructive residence, as distinguished from his actual abiding place, within the district. People ex rel. Post v. Owers, 29 Colo. 535, 69 P. 515 (1902).

It is not necessary for a district judge actually to reside and be physically present in his judicial district every hour, or day, or week, or month or continuously every year during his term of office. If, however, he has removed his actual residence from his district, and does not purpose to return, or intends to maintain his actual residence outside his district indefinitely, or for any considerable portion of his term, the section would be ignored. People ex rel. Post v. Owers, 29 Colo. 535, 69 P. 515 (1902).

But naked declaration of intention to maintain actual residence in district is not conclusive. The naked declaration of a district judge of his intention to maintain his actual residence in his district would not be conclusive of the question. People ex rel. Post v. Owers, 29 Colo. 535, 69 P. 515 (1902).

Absence of eight months from district because of health held not to work forfeiture of office. See People ex rel. Post v. Owers, 29 Colo. 535, 69 P. 515 (1902).

A properly appointed judge, despite even a concealed violation of the constitutional residency requirement, does not lose his or her authority to act as a judge merely because of the violation, and that authority may not be collaterally attacked. Relative Value Studies, Inc. v. McGraw-Hill Cos., 981 P.2d 687 (Colo. App. 1999).

Section 12. Terms of court. The time of holding courts within the judicial districts shall be as provided by rule of court, but at least one term of the district court shall be held annually in each county.

Source: L. 61: Entire article R&RE, effective January 12, 1965, see **L. 63,** p. 1052.

Editor's note: (1) For amendments prior to 1961, see L. 1877, p. 47, and L. 1885, p. 146.

(2) This section is similar to § 17 as it existed prior to 1961.

Cross references: For terms of district courts, see also § 13-5-101.

ANNOTATION

At least one term of court must be held each year, even though C.R.C.P. 121(a) has been repealed. People v. Gould, 844 P.2d 1273 (Colo. App. 1992).

DISTRICT ATTORNEYS

Section 13. District attorneys - election - term - salary - qualifications. In each judicial district there shall be a district attorney elected by the electors thereof, whose term of office shall be four years. District attorneys shall receive such salaries and perform such duties as provided by law. No person shall be eligible to the office of district attorney who shall not, at the time of his election possess all the qualifications of district court judges as provided in this article. All district attorneys holding office on the effective date of this amendment shall continue in office for the remainder of the respective terms for which they were elected or appointed.

Source: L. 61: Entire article R&RE, effective January 12, 1965, see **L. 63,** p. 1052.

Editor's note: (1) For amendments prior to 1961, see L. 1877, p. 47.

(2) This section is similar to § 21 as it existed prior to 1961.

Cross references: For limitation on terms of elected government officials, see § 11 of article XVIII; for the requirement that the governor make appointments to fill a vacancy in the office of the district attorney, see § 1-12-204; for the salary of district attorneys, see also § 20-1-301; for district attorneys generally, see article 1 of title 20.

ANNOTATION

Annotator's note. Since this section is substantially the same as former § 21 of this article, relevant cases construing § 21 have been included in the annotations to this section.

District attorney is by law a dignified and important officer of the state, ordained and provided for by the constitution. Stainer v. San Luis Valley Land & Mining Co., 166 F. 220 (1908).

And is member of executive rather than judicial branch. While a district attorney is an officer of the court as any other attorney, a district attorney is not a judicial officer nor a part of the judicial branch of the government. A district attorney belongs to the executive branch. People v. District Court, 186 Colo. 335, 527 P.2d 50 (1974).

The district attorney, although elected from a judicial district as provided in this section, is not a member of the judiciary. Rather, the district attorney is an executive officer of the state. Beacom v. Bd. of County Comm'rs, 657 P.2d 440 (Colo. 1983).

And is not county or precinct officer. The district attorney is an elected officer in a judicial district which may include one or more counties; he is not a county or precinct officer. People ex rel. Losavio v. Gentry, 199 Colo. 153, 606 P.2d 856 (1980).

Prosecutor has constitutional power to exercise his discretion in deciding which of several possible charges to press in a prosecution. Myers v. District Court, 184 Colo. 81, 518 P.2d 836 (1974).

Where reasonable distinctions can be drawn between a specific statute and a general statute, it is a matter of prosecutorial discretion for the district attorney to choose under which statute he will prosecute. People v. Trigg, 184 Colo. 78, 518 P.2d 841 (1974).

In determining whom to prosecute for criminal activity and on what charge, a prosecutor has wide discretion. People v. MacFarland, 189 Colo. 363, 540 P.2d 1073 (1975); Dresner v. County Court, 189 Colo.

374, 540 P.2d 1085 (1975); Gansz v. People, 888 P.2d 256 (Colo. 1995).

Ultimate discretionary charging authority is vested in the district attorney and, unless such authority is delegated, a defendant may not assert that some other person exercised authority to make a binding governmental promise. Lucero v. Goldberger, 804 P.2d 206 (Colo. App. 1990).

Test to determine whether prosecutor absolutely or only qualifiedly immune from suit under 42 U.S.C. § 1983 for certain acts. Factors to be considered in determining whether acts of prosecutor are "advocatory" in nature and absolutely immune or "investigative" or "administrative" functions and only qualifiedly immune: (1) Whether the challenged conduct occurred prior to or subsequent to the filing of formal criminal charges against the person seeking redress; (2) whether there existed safeguards that could deter or mitigate prosecutorial abuse and thus reduce the need for a civil action to redress the violation of constitutional rights; and (3) whether the challenged conduct more closely resembled traditional police conduct than prosecutorial conduct. Florey v. District Court, 713 P.2d 840 (Colo. 1985).

Prosecutors absolutely immune from suit under 42 U.S.C. § 1983 for "advocatory" functions closely related to the judicial process, but only qualifiedly immune from suit for "investigative" or "administrative" functions, which have a more attenuated connection with the judicial process. Florey v. District Court, 713 P.2d 840 (Colo. 1985).

Applied in McMullin v. Bd. of Comm'rs, 29 Colo. 478, 68 P. 779 (1902); People ex rel. Tooley v. District Court, 190 Colo. 486, 549 P.2d 774 (1976); People ex rel. Brown v. District Court, 196 Colo. 359, 585 P.2d 593 (1978); People ex rel. Losavio v. Gentry, 199 Colo. 153, 606 P.2d 57 (1980).

PROBATE AND JUVENILE COURTS

Section 14. Probate court - jurisdiction - judges - election - term - qualifications. The probate court of the city and county of Denver shall have such jurisdiction as provided by section 9, subsection (3) of this article. The judge of the probate court of the city and county of Denver shall have the same qualifications and term of office as provided in this article for district judges. Vacancies shall be filled as provided in section 20 of this article. The number of judges of the probate court of the city and county of Denver may be increased as provided by law.

Source: L. 61: Entire article R&RE, see **L. 63,** p. 1052. **L. 2002:** Entire section amended, p. 3094, effective upon proclamation of the Governor, **L. 2003,** p. 3611, December 20, 2002.

Editor's note: For amendments prior to 1961, see L. 1877, p. 48, and L. 1885, p. 146.

Cross references: For the probate court of Denver, see also article 9 of title 13.

Section 15. Juvenile court - jurisdiction - judges - election - term - qualifications. The juvenile court of the city and county of Denver shall have such jurisdiction as shall be provided by law. The judge of the juvenile court of the city and county of Denver shall have the same qualifications and term of

office as provided in this article for district judges. Vacancies shall be filled as provided in section 20 of this article. The number of judges of the juvenile court of the city and county of Denver may be increased as provided by law.

Source: L. 61: Entire article R&RE, see **L. 63,** p. 1052. **L. 2002:** Entire section amended, p. 3095, effective upon proclamation of the Governor, **L. 2003,** p. 3611, December 20, 2002.

Editor's note: For amendments prior to 1961, see L. 1877, p. 48.

Cross references: For the juvenile court of Denver, see also article 8 of title 13.

ANNOTATION

This section does not override section 9 of this article. Garcia v. District Court, 157 Colo. 432, 403 P.2d 215 (1965).

A legislative effort to vest in the juvenile court of the city and county of Denver exclusive jurisdiction of those cases where a person under 16 years of age is charged with a crime punishable by death or life imprisonment is in direct conflict with the constitutional mandate that the district courts shall have original jurisdiction in all criminal cases. Garcia v. District Court, 157 Colo. 432, 403 P.2d 215 (1965).

Jurisdiction over controversies arising outside areas encompassed in § 13-8-103. The Denver juvenile court has no general jurisdiction to litigate controversies arising outside the jurisdictional areas encompassed within section 13-8-103. City & County of Denver v. Brockhurst Boys Ranch, Inc., 195 Colo. 22, 575 P.2d 843 (1978).

Juvenile courts are creatures of statute and their jurisdiction does not extend beyond that established by the General Assembly. In re De La Cruz, 791 P.2d 1254 (Colo. App. 1990).

Actual controversy between adverse parties must exist if a court is to sua sponte address the constitutionality of a statute. Juvenile court's ruling that statute was unconstitutional was impermissible exercise of judicial authority since the issue was raised on behalf of unidentified parties that were not before the court on court's own motion in order to create a controversy that it then proceeded to decide. In re Tomlinson, 851 P.2d 170 (Colo. 1993).

Applied in People in Interest of an Unborn Child v. Estergard, 169 Colo. 445, 457 P.2d 698 (1969).

COUNTY COURTS

Section 16. County judges - terms - qualifications. In each county there shall be one or more judges of the county court as may be provided by law, whose full term of office shall be four years, and whose qualifications shall be prescribed by law. County judges shall be qualified electors of their counties at the time of their election or appointment.

Source: L. 61: Entire article R&RE, see **L. 63,** p. 1052. **Initiated 66:** Entire section amended, effective January 17, 1967, see **L. 67,** p. 6 of the supplement to the 1967 Session Laws.

Editor's note: (1) For amendments prior to 1961, see L. 1877, p. 48.

(2) This section is similar to § 22 as it existed prior to 1961.

Cross references: For judges and other personnel, see part 2 of article 6 of title 13.

ANNOTATION

Law reviews. For article, "The Judiciary Committee Plan and the 1949 General Assembly", see 25 Dicta 281 (1948). For article, "A Report from the Judiciary Committee", see 26 Dicta 139 (1949). For article, "Colorado's Program to Improve Court Administration", see 38 Dicta 1 (1961).

Annotator's note. Since this section is substantially the same as former § 22 of this article, relevant cases construing § 22 have been included in the annotations to this section.

County judge is state and not county officer. Dixon v. People ex rel. Elliott, 53 Colo. 527, 127 P. 930 (1912).

County judge is county officer within the meaning of the constitution. In re Compensation of County Judges, 18 Colo. 272, 32 P. 549 (1893).

Charter of city and county of Denver changing provisions relating to county judges held unconstitutional. People ex rel. Miller v. Johnson, 34 Colo. 143, 86 P. 233 (1905).

But acts of judge elected thereunder held valid. Although such provisions were unconstitutional, a county judge elected and discharging the duties of such office thereunder was discharging the duties of a legally existing office by virtue of an election under a charter provision declared invalid by this court, and that all of his acts in the discharge of the duties of such office must be upheld as the acts of a de facto officer. Butler v. Phillips, 38 Colo. 378, 88 P. 480 (1906).

Applied in Prudential Ins. Co. v. Hummer, 36 Colo. 208, 84 P. 61 (1906); Bd. of County Comm'rs v. Bullock, 122 Colo. 218, 220 P.2d 877 (1950).

Section 17. County courts - jurisdiction - appeals. County courts shall have such civil, criminal, and appellate jurisdiction as may be provided by law, provided such courts shall not have jurisdiction of felonies or in civil cases where the boundaries or title to real property shall be in question. Appellate review by the supreme court or the district courts of every final judgment of the county courts shall be as provided by law.

Source: L. 61: Entire article R&RE, effective January 12, 1965, see **L. 63,** p. 1053.

Editor's note: (1) For amendments prior to 1961, see L. 1877, p. 48.

(2) This section is similar to § 23 as it existed prior to 1961.

Cross references: For the jurisdiction of county courts in civil actions, see also §§ 13-6-104 and 13-6-105; for the jurisdiction of county courts in criminal actions, see also § 13-6-106; for creation of each county court as a court of record, see § 13-6-102; for the statewide jurisdiction of county courts, see § 13-6-103; for jurisdictional amount, see § 13-6-104; for appeals from county courts, see §§ 13-6-310 and 13-6-311.

ANNOTATION

I. General Consideration.
II. Jurisdiction.
A.In General.
B. Jurisdictional Amount.
III. Review.

I. GENERAL CONSIDERATION.

Law reviews. For article, "The District Court", see 4 Den. B. Ass'n Rec. 5 (April 1927). For article, "In Re: The Mourners", see 6 Dicta 7 (April 1929). For article, "The Judiciary Committee Plan and the 1949 General Assembly", see 25 Dicta 281 (1948). For article, "A Report from the Judiciary Committee", see 26 Dicta 139 (1949). For article, "The State as Parens Patriae: Juvenile Versus the Divorce Courts on Questions Pertaining to Custody", see 21 Rocky Mt. L. Rev. 375 (1949). For article, "Prosecution of Habitual Criminals", see 27 Dicta 376 (1950). For article, "One Year Review of Torts", see 36 Dicta 64 (1959). For article, "Colorado's Program to Improve Court Administration", see 38 Dicta 1 (1961).

Annotator's note. Since this section is substantially the same as former § 23 of this article, relevant cases construing § 23 have been included in the annotations to this section.

II. JURISDICTION.

A. In General.

County court is court of record. Herren v. People, 147 Colo. 442, 363 P.2d 1044 (1961).

And inferior tribunal of limited jurisdiction. A county court is an inferior tribunal and is thereby of limited jurisdiction. Swanson v. Prout, 127 Colo. 550, 259 P.2d 280 (1953).

It is the duty of the supreme court to rule strictly with regard to matters of jurisdiction of inferior courts to the end that such courts are kept within the limits of their jurisdiction. Swanson v. Prout, 127 Colo. 550, 259 P.2d 280 (1953).

This section makes of the county court a tribunal of limited jurisdiction. Williams v. People, 38 Colo. 497, 88 P. 463 (1906).

Jurisdiction of county court in civil cases not fixed by constitution; but it is expressly declared that such jurisdiction may, within certain definite limits, be prescribed by law, and also that appeals may be taken from the county to the district court in such cases as may be provided by law. In re Rogers, 14 Colo. 18, 22 P. 1053 (1890).

Nor is territorial limit to civil jurisdiction. No territorial limit is fixed by the constitution to the civil jurisdiction either of the district courts or of the county courts. Fletcher v. Stowell, 17 Colo. 94, 28 P. 326 (1891).

Wide discretion given general assembly to determine county courts' jurisdiction. As shown by this section, a wide discretion was given to the general assembly to determine the jurisdiction of the newly created county courts. Rowland v. Theobald, 159 Colo. 1, 409 P.2d 272 (1965).

Such jurisdiction as may be provided by "law", as that word is used in this section, obviously means "law" which is enacted by the legislative department of the state government which the constitution has created. Williams v. People, 38 Colo. 497, 88 P. 463 (1906).

Municipality cannot legislate with respect to jurisdiction and procedure of state courts. The charter convention by its charter, or the city council by its ordinance, though each instrument is a law local and municipal in its nature and controlling in local matters, cannot legislate with respect to the jurisdiction and procedure of the state courts, which necessarily are matters of governmental nature and state importance, and reserved exclusively for action by the general assembly. Williams v. People, 38 Colo. 497, 88 P. 463 (1906).

The jurisdiction of district and county courts is concurrent with respect to matters which fall within the jurisdiction of both. Ohmie v. Martinez,

141 Colo. 480, 349 P.2d 131 (1960).

But county courts are, in point of jurisdiction, inferior to district courts. The original jurisdiction of the district courts is, by the constitution, general and unlimited, subject only to reasonable statutory regulation, and the lawful supervision of the supreme court; while the jurisdiction of the county courts is limited, and, with certain exceptions, purely statutory. Hence, as compared with the district courts, county courts are in point of jurisdiction inferior. In re Rogers, 14 Colo. 18, 22 P. 1053 (1890).

Service of county court judges as judges of municipal and police courts. The 1962 judicial amendments envisioned that the county court judges could serve not only as judges of the county court but also as judges of municipal and police courts created under powers of home rule cities. Blackman v. County Court ex rel. City & County of Denver, 169 Colo. 345, 455 P.2d 885 (1969).

By the 1962 judicial amendment the justice of the peace courts were eliminated from the Colorado judicial system and the jurisdiction therefore vested in such courts was transferred to the county courts. This plan envisioned that the county court judges could serve not only as judges of the county court but also as judges of municipal and police courts. Francis v. County Court, 175 Colo. 308, 487 P.2d 375 (1971).

Service of county court judges as district court judges. A county court judge may be appointed to serve as a district court judge in accordance with statutory, constitutional, or chief justice directive provisions. The question of whether such appointment is valid is jurisdictional, therefore the de facto judge doctrine does not apply. Even though some may regard the error in making the appointment as a technical defect, it concerns the fundamental interest of litigants in ensuring that qualified county court judges are called upon to serve as acting district court judges. People v. Torkelson, 22 P.3d 560 (Colo. App. 2000).

Although this section states that county courts cannot hear felonies, § 5 (3) of this article limits such prohibition and allows a county court judge to sit as a district court judge and exercise the jurisdiction of the district court when assigned by the chief justice. Moreover, the chief justice may delegate this authority to the chief judges of the districts under § 5 (4) of this article. People v. Johnson, 77 P.3d 845 (Colo. App. 2003).

Absent a valid appointment order, a county court judge lacks jurisdiction to act as a district court judge and preside over any stage of a felony trial; thus, a verdict reached under such circumstances is void. People v. Jachnik, 116 P.3d 1278 (Colo. App. 2005).

In any criminal case in which the court's jurisdiction is put at issue, the burden is on the prosecution to show that the court, whether district or county, has jurisdiction to hear the criminal case. People v. Jachnik, 116 P.3d 1278 (Colo. App. 2005).

Forcible entry and detainer action in county court is limited to question of possession. Aasgaard v. Spar Consol. Mining & Dev. Co., 185 Colo. 157, 522 P.2d 726 (1974).

And title to land involved may not be an issue for resolution in a county court. Aasgaard v. Spar Consol. Mining & Dev. Co., 185 Colo. 157, 522 P.2d 726 (1974).

Applied in Currier v. Johnson, 31 Colo. 126, 72 P. 55 (1903); Kingdom of Yugo-Slavia v. Jovanovich, 100 Colo. 406, 69 P.2d 311 (1937); Latham v. People, 136 Colo. 252, 317 P.2d 894 (1957); People v. Superior Court, 175 Colo. 391, 488 P.2d 66 (1971).

B. Jurisdictional Amount.

Determination of jurisdictional amount. In proceedings to recover a tax illegally imposed, the jurisdiction of the county court is determined by the amount demanded, and not by the value of the property alleged to have been improperly assessed. Foster v. Hart Consol. Mining Co., 52 Colo. 429, 122 P. 54 (1912).

Case removed to federal court. A case removed from a county court to a federal court is subject to the limitations and restrictions which would have been applicable in the county court if it had not been removed into the federal court. Thus where the amount demanded exceeds the jurisdiction of the county court, the federal court is also without jurisdiction. Hummel v. Moore, 25 F. 380 (D. Colo. 1885).

Claimants may file claims less than $5,000 in district court. The right of a plaintiff to select the forum for a claim less than $5,000 is not conditioned by constitution or by statute; rather, the general assembly has seen fit to permit a claimant to file such actions in district court unconstrained by considerations of whether the county court is an adequate forum for just resolution of the complaint and of any increased costs to the public incident to the district court adjudicative process. Cook v. District Court ex rel. County of Weld, 670 P.2d 758 (Colo. 1983).

III. REVIEW.

The right of appeal from county court to district court is statutory and not constitutional. Andrews v. Lull, 139 Colo. 536, 341 P.2d 475 (1959).

Appellate jurisdiction of district court applies only to judgments rendered in ordinary civil actions. Appellate jurisdiction of a district court in appeals from final judgments of a county court, applies only to judgments rendered in ordinary civil actions; no such jurisdiction exists in special statutory proceedings where the right of appeal is statutory and not constitutional. Andrews v. Lull, 139 Colo. 536, 341 P.2d 475 (1959).

From decisions of county court, appeals and writs of certiorari lie to district court. There is no other way in which the district court can acquire jurisdiction of any matter pertaining to the administration of an estate, except where the county judge is himself interested in the estate. McKinnon v. Hall, 10 Colo. App. 291, 50 P. 1052 (1897).

Applied in Swenson v. Girard Ins. Co., 4 Colo. 475 (1878); Jeffries v. Harrington, 11 Colo. 191, 17 P. 505 (1887); Fletcher v. Smith, 18 Colo. App. 201, 70 P. 697 (1893); Unzicker v. Unzicker, 74 Colo. 211, 220 P. 495 (1923).

MISCELLANEOUS

Section 18. Compensation and services. Justices and judges of courts of record shall receive such compensation as may be provided by law, which may be increased but may not be decreased during their term of office and shall receive such pension or retirement benefits as may be provided by law. No justice or judge of a court of record shall accept designation or nomination for any public office other than judicial without first resigning from his judicial office, nor shall he hold at any other time any other public office during his term of office, nor hold office in any political party organization, nor contribute to or campaign for any political party or candidate for political office. No supreme

court justice, judge of any intermediate appellate court, district court judge, probate judge, or juvenile judge shall engage in the practice of law. Justices, district judges, probate judges, and juvenile judges when called upon to do so, may serve in any state court with full authority as provided by law. Any county judge may serve in any other county court, or serve, as hereinafter may be authorized by law, in any other court, if possessing the qualifications prescribed by law for a judge of such county court, or other court, or as a municipal judge or police magistrate as provided by law, or in the case of home rule cities as provided by charter and ordinances.

Source: L. 61: Entire article R&RE, effective January 12, 1965, see **L. 63,** p. 1053. **Initiated 66:** Entire section amended, effective January 17, 1967, see **L. 67,** p. 6 of the supplement to the 1967 Session Laws.

Editor's note: (1) For amendments prior to 1961, see L. 1877, p. 49, and L. 53, p. 228.

(2) This section is similar to § 18 as it existed prior to 1961.

Cross references: For compensation of justices and judges, see also article 30 of title 13.

ANNOTATION

Law reviews. For article, "A Report from the Judiciary Committee", see 26 Dicta 139 (1949). For article, "Colorado and Minimum Judicial Standards", see 28 Dicta 1 (1951). For article, "Constitutional Amendment No. 1 Needs Support of the Bar", see 29 Dicta 338 (1952).

1997 amendment to § 13-30-103 does not violate this section where the amended statute specifically provides that the adoption of the new formula for calculating county court judges' salaries will not have the effect of reducing any judge's salary. Alderton v. State of Colo., 17 P.3d 817 (Colo. App. 2000).

This section does not prohibit pensioning of judges. Bedford v. White, 106 Colo. 439, 106 P.2d 469 (1940).

County judges exercise municipal as well as state jurisdiction. Pursuant to the express authority of § 2 of art. XX, Colo. Const., county judges may exercise not only state jurisdiction but also municipal jurisdiction, if provided by charter and ordinance. Blackman v. County Court, 169 Colo. 345, 455 P.2d 885 (1969).

When acting pursuant to this article the court functions as a state court, and the judge as a state judge; whereas, acting pursuant to § 6 of art. XX, Colo. Const., the court functions as a municipal or police court, and the judge as a municipal or police judge. Blackman v. County Court, 169 Colo. 345, 455 P.2d 885 (1969).

Judge cannot decide case after elevation to court of appeals. A trial judge has no authority to decide a case after he has taken office as a judge of the Colorado court of appeals. Merchants Mtg. & Trust Corp. v. Jenkins, 659 P.2d 690 (Colo. 1983).

And any such order entered is void. Absent constitutional or statutory authorization, a former district court judge does not have authority to act in a judicial capacity, and orders entered by such a person after he ceases to be a district court judge are void. Merchants Mtg. & Trust Corp. v. Jenkins, 659 P.2d 690 (Colo. 1983).

Section 19. Laws relating to courts - uniform. All laws relating to state courts shall be general and of uniform operation throughout the state, and except as hereafter in this section specified the organization, jurisdiction, powers, proceedings, and practice of all courts of the same class, and the force and effect of the proceedings, judgments and decrees of such courts severally shall be uniform. County courts may be classified or graded as may be provided by law, and the organization, jurisdiction, powers, proceedings, and practice of county courts within the same class or grade, and the force and effect of the proceedings, judgments and decrees of county courts in the same class or grade shall be uniform; provided, however, that the organization and administration of the county court of the city and county of Denver shall be as provided in the charter and ordinances of the city and county of Denver.

Source: L. 61: Entire article R&RE, effective January 12, 1965, see **L. 63,** p. 1053.

Editor's note: (1) For amendments prior to 1961, see L. 1877, p. 49.
(2) This section is similar to § 28 as it existed prior to 1961.

ANNOTATION

Law reviews. For comment on Holland v. McAuliffe appearing below, see 28 Rocky Mt. L. Rev. 437 (1956).

Annotator's note. Since this section is substantially the same as former § 28 of this article, relevant cases construing § 28 have been included in the annotations to this section.

Purpose of section. The purpose in framing this section was to have all laws thereafter adopted in relation to courts general and of uniform operation throughout the state; also to require that statutes providing for the organization and defining the jurisdiction, practice or procedure of courts of the same class or grade, be so drawn as to secure to such courts an organization, jurisdiction, practice and procedure in all respects similar. Rogers v. People, 9 Colo. 450, 12 P. 843 (1886).

This section was not intended to inhibit the passage of statutes entirely upon other subjects, and sanctioned by other constitutional provisions, which, however, might incidentally and remotely operate to disturb, for the time being, the territorial uniformity of jurisdiction possessed by courts of the same class or grade. Rogers v. People, 9 Colo. 450, 12 P. 843 (1886); People v. Johnson, 987 P.2d 855 (Colo. App. 1998).

The restrictive language of this section does not require uniformity in all laws, but, rather, requires uniformity only in laws relating to the "organization, jurisdiction, powers, proceedings, and practice of all courts of the same class". Thus, this section has been applied only in situations dealing with the uniformity of burdens and rights in courts of the same class. People v. Johnson, 987 P.2d 855 (Colo. App. 1998).

Even though the direct-file statute permits a prosecutor to treat similarly situated juveniles differently, the plain language of the statute indicates that its mandates are to be applied uniformly across the state, and no more is required under this section of the constitution. People v. Johnson, 987 P.2d 855 (Colo. App. 1998).

Both mandatory and prohibitory. This section expressly requires the enactment of a general law

which shall have a uniform operation throughout the state for the above mentioned purposes. The case is enumerated in the constitution, and its provisions are both mandatory and prohibitory. Ex parte Stout, 5 Colo. 509 (1881).

No discretion is invested in the general assembly concerning the character of the law by which the organization, jurisdiction, powers, proceedings and practice of these courts shall be prescribed and regulated. The direction is peremptory that it shall be a general law of uniform operation throughout the state. Ex parte Stout, 5 Colo. 509 (1881).

And not expected to insure uniformity in judicial decisions. This provision deals with legislation. It is the laws pertaining to the organization, jurisdiction, etc., of courts, also the legal force and effect of the judgments, not the judgments themselves, that are to be uniform. People ex rel. Attorney Gen. v. Richmond, 16 Colo. 274, 26 P. 929 (1891).

Statute that permits relocation of Arapahoe district courts outside of county seat does not violate requirement that laws relating to the state courts be uniform. City of Littleton v. County Comm'rs, 787 P.2d 158 (Colo. 1990).

This section limits power of general assembly to establish other courts. The power of the general assembly is to establish other courts or judicial officers, as long as such other courts or judicial officers are inferior, jurisdictionally speaking, that is, to the supreme court subject to certain limitations, such as this section, which are themselves in the Colorado constitution. Sanders v. District Court, 166 Colo. 455, 444 P.2d 645 (1968).

"Law", as that word is used in this section, obviously means "law" which is enacted by the legislative department of the state government which the constitution has created. Williams v. People, 38 Colo. 497, 88 P. 463 (1906).

It is not within power of municipality to prescribe by ordinance manner and details of appeal. Holland v. McAuliffe, 132 Colo. 170, 286 P.2d 1107 (1955).

A municipality cannot, by ordinance, legally provide the right of appeal to a state court, because such extramural power can be exercised only when authorized by the general assembly or granted by the people, and an ordinance attempting to define such right is wholly invalid. Holland v. McAuliffe, 132 Colo. 170, 286 P.2d 1107 (1955).

And right to jury trials for petty offenses may not be changed by municipal court. It is consistent with the philosophy of this section to hold that the legislative grant of the right to jury trials for petty offenses is a substantive matter of statewide concern which cannot be changed by a municipal court. Hardamon v. Municipal Court, 178 Colo. 271, 497 P.2d 1000 (1972).

Applied in People v. Curley, 5 Colo. 412 (1880); Ex parte White, 5 Colo. 521 (1881); Ex parte Stout, 5 Colo. 509 (1881); Darrow v. People ex rel. Norris, 8 Colo. 417, 8 P. 661 (1885); In re Constitutionality of Senate Bill No. 76, 9 Colo. 623, 21 P. 471 (1886); Parker v. People, 13 Colo. 155, 21 P. 1120, 4 L.R.A. 803 (1889); Heinssen v. State, 14 Colo. 228, 23 P. 995 (1890); In re Dolph, 17 Colo. 35, 28 P. 470 (1891); McInerney v. City of Denver, 17 Colo. 302, 29 P. 516 (1892); Johnson v. People, 6 Colo. App. 163, 40 P. 576 (1895); Bd. of Comm'rs v. First Nat'l Bank, 24 Colo. 124, 48 P. 1043 (1897), aff'g 6 Colo. App. 423, 40 P. 894 (1895); Williams v. People, 38 Colo. 497, 88 P. 463 (1906); Selk v. Ramsey, 110 Colo. 223, 132 P.2d 454 (1942); City of Central v. Axton, 159 Colo. 69, 410 P.2d 173 (1966); Sanders v. District Court, 166 Colo. 455, 444 P.2d 645 (1968); Gold Star Sausage Co. v. Kempf, 653 P.2d

397 (Colo. 1982); Sky Chefs v. City & County of Denver, 653 P.2d 402 (Colo. 1982); R. Lloyd Co. v. District Court, 732 P.2d 612 (Colo. 1987).

Section 20. Vacancies. (1) A vacancy in any judicial office in any court of record shall be filled by appointment of the governor, from a list of three nominees for the supreme court and any intermediate appellate court, and from a list of two or three nominees for all other courts of record, such list to be certified to him by the supreme court nominating commission for a vacancy in the supreme court or a vacancy in any intermediate appellate court, and by the judicial district nominating commission for a vacancy in any other court in that district. In case of more than one vacancy in any such court, the list shall contain not less than two more nominees than there are vacancies to be filled. The list shall be submitted by the nominating commission not later than thirty days after the death, retirement, tender of resignation, removal under section 23, failure of an incumbent to file a declaration under section 25, or certification of a negative majority vote on the question of retention in office under section 25 hereof. If the governor shall fail to make the appointment (or all of the appointments in case of multiple vacancies) from such list within fifteen days from the day it is submitted to him, the appointment (or the remaining appointments in case of multiple vacancies) shall be made by the chief justice of the supreme court from the same list within the next fifteen days. A justice or judge appointed under the provisions of this section shall hold office for a provisional term of two years and then until the second Tuesday in January following the next general election. A nominee shall be under the age of seventy-two years at the time his name is submitted to the governor.

(2) Repealed.

(3) Other vacancies occurring in judicial offices shall be filled as now or hereafter provided by law.

(4) Vacancies occurring in the office of district attorney shall be filled by appointment of the governor. District attorneys appointed under the provisions of this section shall hold office until the next general election and until their successors elected thereat shall be duly qualified. Such successors shall be elected for the remainder of the unexpired term in which the vacancy was created.

Source: L. 61: Entire article R&RE, effective January 12, 1965, see **L. 63,** p. 1054. **Initiated 66:** Entire section amended, effective January 17, 1967, see **L. 67,** p. 7 of the supplement to the 1967 Session Laws. **L. 2002:** (2) repealed, p. 3095, effective upon proclamation of the Governor, **L. 2003,** p. 3611, December 20, 2002.

Editor's note: (1) For amendments prior to 1961, see L. 1877, p. 49.

(2) This section is similar to § 29 as it existed prior to 1961.

ANNOTATION

Annotator's note. Since this section is substantially similar to former § 29 of this article, relevant cases construing § 29 have been included in the annotations to this section.

"Vacancy". The word vacancy as used in this section means empty, unoccupied, as applied to an office without an incumbent. There is

no basis for the distinction urged, that it applies only to offices vacated by death, resignation, or otherwise. An existing office without an incumbent is vacant, whether it be a new or an old one. People v. Rucker, 5 Colo. 455 (1880).

"Vacancy" applies not to incumbent, but to term, or office, or both, depending generally upon the context. People ex rel. Bentley v. Le Fevre, 21 Colo. 218, 40 P. 882 (1895).

"Vacancy" applies to an existing office without an incumbent, although the office has never before been filled. In re Election of Dist. Judges, 11 Colo. 373, 18 P. 282 (1888).

An existing office without an incumbent may be vacant, whether it be a new or an old one. People v. Rucker, 5 Colo. 455 (1880).

Death of officer before commencement of term creates vacancy. The death of the judge-elect after having qualified, but before the commencement of his term, had the effect of creating a vacancy on the expiration of the antecedent term. People v. Boughton, 5 Colo. 487 (1880).

Filling office of district judge in new district. It is entirely competent for the general assembly, under the provisions of this section to provide that the office of district judge in a new district should first be filled, as in case of vacancy, by appointment by the governor, and thereafter by election. In re Election of Dist. Judges, 11 Colo. 373, 18 P. 282 (1888).

Section 21. Rule-making power. The supreme court shall make and promulgate rules governing the administration of all courts and shall make and promulgate rules governing practice and procedure in civil and criminal cases, except that the general assembly shall have the power to provide simplified procedures in county courts for the trial of misdemeanors.

Source: L. 61: Entire article R&RE, effective January 12, 1965, see **L. 63,** p. 1054. **L. 2002:** Entire section amended, p. 3095, effective upon proclamation of the Governor, **L. 2003,** p. 3611, December 20, 2002.

Editor's note: For amendments prior to 1961, see L. 1877, p. 49, and L. 01, p. 110.

Cross references: For general superintending control by supreme court over all inferior courts, see § 2 of this article.

ANNOTATION

Law reviews. For article, "Rule-Making in Colorado: An Unheralded Crisis in Procedural Reform", see 38 U. Colo. L. Rev. 137 (1966). For article, "Hearsay in Criminal Cases Under the Colorado Rules of Evidence: An Overview", see 50 U. Colo. L. Rev. 277 (1979). For article, "The Perjurious Defendant: A Proposed Solution to the Defense Lawyer's Conflicting Ethical Obligations to the Court and to His Client", see 59 Den. L.J. 75 (1981).

Supreme court's rule-making authority is described in this section. People v. McKenna, 199 Colo. 452, 611 P.2d 574 (1980).

Section 24-4-106 (4) constitutional. Section 24-4-106 (4), relating to judicial review of agency action, is not violative of this section. Warren Vill., Inc. v. Bd. of Assmt. Appeals, 619 P.2d 60 (Colo. 1980).

As is § 24-4-107. Section 24-4-107, which deals with the application of article 4 of title 24, does not impinge on the supreme court's rule-making power. Warren Vill., Inc. v. Bd. of Assmt. Appeals, 619 P.2d 60 (Colo. 1980).

This section confers upon supreme court power to make rules governing practice in civil cases. Colo. River Water Conservation Dist. v. Rocky Mt. Power Co., 174 Colo. 309, 486 P.2d 438 (1971).

This rule-making power includes power to make procedural rules of evidence and such power lies with the supreme court. Page v. Clark, 197 Colo. 306, 592 P.2d 792 (1979).

Constitution grants to supreme court the power to promulgate rules governing court procedure, but the question remains whether a particular rule or statute is procedural or substantive. People v. McKenna, 199 Colo. 452, 611 P.2d 574 (1980).

Exclusive power to adopt rules of procedure. The Colorado Constitution grants to the supreme court exclusive power to adopt rules of procedure for the courts. Gold Star Sausage Co. v. Kempf, 653 P.2d 397 (Colo. 1982).

Promulgation of substantive and procedural rules. The supreme court may promulgate procedural rules. The general assembly is free to fashion substantive rules which reflect policy judgments that may affect procedures in the judicial system. The line that separates a substantive rule from a procedural rule is amorphous; no legal test has been uniformly adopted. J.T. v. O'Rourke ex rel. Tenth Judicial Dist., 651 P.2d 407 (Colo. 1982).

When a statute and rule conflict, the conflict is resolved by determining whether the matter affected is "substantive" or "procedural". The test for distinguishing procedural from substantive matters requires an examination of the purpose of the statute: if the purpose is to permit the court to function and function efficiently, the statute must yield to the rule; whereas, if the statute embodies a matter of public policy, the statute controls. People v. Hollis, 670 P.2d 441 (Colo. App. 1983); People v. Prophet, 42 P.3d 61 (Colo. App. 2001).

General assembly has the power to promulgate substantive rules of evidence. People v. Bobian, 626 P.2d 1132 (Colo. 1981).

Section 18-3-408, dealing with jury instructions, does not violate constitutional requirement of separation of powers (art. III of this constitution) by interfering with the rule-making power of the court established in this section. People v. Estorga, 200 Colo. 78, 612 P.2d 520 (1980).

Section 24-4-103 creates a rule of substantive evidence. People v. Bobian, 626 P.2d 1132 (Colo. 1981).

Supreme court has not exercised its power to prescribe procedure for challenging annexation. There is no specific constitutional limitation that bears upon the question of the form or type of procedure which must be employed to challenge an annexation, and the supreme court has not yet exercised its rule-making power under this section. Fort Collins-Loveland Water Dist. v. City of Fort Collins, 174 Colo. 79, 482 P.2d 986 (1971).

The supreme court has exclusive jurisdiction to define the practice of law and prohibit the unauthorized practice of law. Unauthorized Practice of Law Comm. v. Grimes, 654 P.2d 822 (Colo. 1982); People v. Adams, 243 P.3d 256 (Colo. 2010).

Applied in People v. Buckles, 167 Colo. 64, 453 P.2d 404 (1968); Hardamon v. Municipal Court, 178 Colo. 271, 497 P.2d 1000 (1972); People v. Smith, 189 Colo. 50, 536 P.2d 820 (1975); Losavio v. Robb, 195 Colo. 533, 579 P.2d 1152 (1978); People v. Sepeda, 196 Colo. 13, 581 P.2d 723 (1978); People v. McKenna, 196 Colo. 367, 585 P.2d 275 (1978); People v. District Court, 199 Colo. 197, 606 P.2d 450 (1980); People v. Fierro,

199 Colo. 215, 606 P.2d 1291 (1980); People v. Horne, 619 P.2d 53 (Colo. 1980); People v. Scott, 630 P.2d 615 (Colo. 1981); People v. Hotopp, 632 P.2d 600 (1981); People v. Montoya, 647 P.2d 1203 (Colo. 1982).

Section 22. Process - prosecution - in name of people. In all prosecutions for violations of the laws of Colorado, process shall run in the name of "The People of the State of Colorado"; all prosecutions shall be carried on in the name and by the authority of "The People of the State of Colorado", and conclude, "against the peace and dignity of the same".

Source: L. 61: Entire article R&RE, see **L. 63,** p. 1055.

Editor's note: (1) For amendments prior to 1961, see L. 1877, p. 49, and L. 01, p. 111.

(2) This section is similar to § 30 as it existed prior to 1961.

ANNOTATION

Annotator's note. Since this section is similar to former § 30 of this article, relevant cases construing § 30 have been included in the annotations to this section.

"The state" means the whole people united in one body politic, and "the state", and "the people of the state", are equivalent expressions. A complaint brought in the name of "the state of Colorado", is in effect a suit in the name of "the people of the state", and is good on demurrer. Brown v. State, 5 Colo. 496 (1881).

"Same". The word "same" as used in this section means "the people of the state of Colorado", and these words are mere surplusage and may be disregarded. Holt v. People, 23 Colo. 1, 45 P. 374 (1896).

Effect of omission of phrase "against the peace and dignity of same". The omission from a criminal information, otherwise above exception, of the concluding phrase "and against the peace and dignity of the same", goes to matter of form, and in no degree impairs the jurisdiction of the court. Chemgas v. Tynan, 51 Colo. 35, 116 P. 1045 (1911); People v. Hunter, 666 P.2d 570 (Colo. 1983).

Information concluding "against the peace and dignity of the same people of the state of Colorado", is in substantial conformity with requirement of constitution that "all prosecutions shall be carried on in the name and by the authority of the people of the state of Colorado, and conclude against the peace and dignity of the same". Holt v. People, 23 Colo. 1, 45 P. 374 (1896).

In habeas corpus proceeding state is not party, does not appear and is not represented. Stilley v. Tinsley, 153 Colo. 66, 385 P.2d 677 (1963).

An application for a writ of habeas corpus is a civil action, independent of the criminal charge and is not part of the inquiry based on the information. Stilley v. Tinsley, 153 Colo. 66, 385 P.2d 677 (1963).

Applied in Carnahan v. Pell, 4 Colo. 190 (1878); People ex rel. Setters v. Lee, 72 Colo. 598, 213 P. 583 (1923); Wright v. People, 116 Colo. 306, 181 P.2d 447 (1947).

Section 23. Retirement and removal of justices and judges. (1) On attaining the age of seventy-two a justice or judge of a court of record shall retire and his judicial office shall be vacant, except as otherwise provided in section 20 (2).

(2) Whenever a justice or judge of any court of this state has been convicted in any court of this state or of the United States or of any state, of a felony or other offense involving moral turpitude, the supreme court shall, of its own motion or upon petition filed by any person, and upon finding that such a conviction was had, enter its order suspending said justice or judge from office until such time as said judgment of conviction becomes final, and the payment of salary of said justice or judge shall also be suspended from the date of such order. If said judgment of conviction becomes final, the supreme court shall enter its order removing said justice or judge from office and declaring his office vacant and his right to salary shall cease from the date of the order of suspension. If said judgment of conviction is reversed with directions to enter a judgment of acquittal or if reversed for a new trial which subsequently results in a judgment of dismissal or acquittal, the supreme court shall enter its order terminating the suspension of said justice or judge and said justice or judge shall be entitled to his salary for the period of suspension. A plea of guilty or nolo contendere to such a charge shall be equivalent to a final conviction for the purpose of this section.

(3) (a) There shall be a commission on judicial discipline. It shall consist of: Two judges of district courts and two judges of county courts, each selected by the supreme court; two citizens admitted to practice law in the courts of this state, neither of whom shall be a justice or judge, who shall have practiced in this state for at least ten years and who shall be appointed by the governor, with the consent of the senate; and four citizens, none of whom shall be a justice or judge, active or retired, nor admitted to practice law in the courts of this state, who shall be appointed by the governor, with the consent of the senate.

(b) Each member shall be appointed to a four-year term; except that one-half of the initial membership in each category shall be appointed to two-year terms, for the purpose of staggering terms. Whenever a commission membership prematurely terminates or a member no longer possesses the specific qualifications for the category from which he was selected, his position shall be deemed vacant, and his successor shall be appointed in the same manner as the original appointment for the remainder of his term. A member shall be deemed to have resigned if that member is absent from three consecutive commission meetings without the commission having entered an approval for additional absences upon its minutes. If any member of the commission is disqualified to act in any matter pending before the commission, the commission may appoint a special member to sit on the commission solely for the purpose of deciding that matter.

(c) No member of the commission shall receive any compensation for his services but shall be allowed his necessary expenses for travel, board, and lodging and any other expenses incurred in the performance of his duties, to be paid by the supreme court from its budget to be appropriated by the general assembly.

(d) A justice or judge of any court of record of this state, in accordance with the procedure set forth in this subsection (3), may be removed or

disciplined for willful misconduct in office, willful or persistent failure to perform his duties, intemperance, or violation of any canon of the Colorado code of judicial conduct, or he may be retired for disability interfering with the performance of his duties which is, or is likely to become, of a permanent character.

(e) The commission may, after such investigation as it deems necessary, order informal remedial action; order a formal hearing to be held before it concerning the removal, retirement, suspension, censure, reprimand, or other discipline of a justice or a judge; or request the supreme court to appoint three special masters, who shall be justices or judges of courts of record, to hear and take evidence in any such matter and to report thereon to the commission. After a formal hearing or after considering the record and report of the masters, if the commission finds good cause therefor, it may take informal remedial action, or it may recommend to the supreme court the removal, retirement, suspension, censure, reprimand, or discipline, as the case may be, of the justice or judge. The commission may also recommend that the costs of its investigation and hearing be assessed against such justice or judge.

(f) Following receipt of a recommendation from the commission, the supreme court shall review the record of the proceedings on the law and facts and in its discretion may permit the introduction of additional evidence and shall order removal, retirement, suspension, censure, reprimand, or discipline, as it finds just and proper, or wholly reject the recommendation. Upon an order for retirement, the justice or judge shall thereby be retired with the same rights and privileges as if he retired pursuant to statute. Upon an order for removal, the justice or judge shall thereby be removed from office, and his salary shall cease from the date of such order. On the entry of an order for retirement or for removal of a judge, his office shall be deemed vacant.

(g) Prior to the filing of a recommendation to the supreme court by the commission against any justice or judge, all papers filed with and proceedings before the commission on judicial discipline or masters appointed by the supreme court, pursuant to this subsection (3), shall be confidential, and the filing of papers with and the giving of testimony before the commission or the masters shall be privileged; but no other publication of such papers or proceedings shall be privileged in any action for defamation; except that the record filed by the commission in the supreme court continues privileged and a writing which was privileged prior to its filing with the commission or the masters does not lose such privilege by such filing.

(h) The supreme court shall by rule provide for procedures before the commission on judicial discipline, the masters, and the supreme court. The rules shall also provide the standards and degree of proof to be applied by the commission in its proceedings. A justice or judge who is a member of the commission or supreme court shall not participate in any proceedings involving his own removal or retirement.

(i) Nothing contained in this subsection (3) shall be construed to have any effect on article XIII of this constitution.

(j) Repealed.

Source: L. 61: Entire article R&RE, effective January 12, 1965, see **L. 63,** p. 1055. **Initiated 66:** Entire section amended, effective January 17, 1967, see **L. 67,** p. 7 of the supplement to the 1967 Session Laws. **L. 82:** (3) R&RE, p. 687, effective upon proclamation of the Governor, **L. 83,** p. 1674, July 1, 1983. **L. 2002:** (3)(j) repealed, p. 3095, effective upon proclamation of the Governor, **L. 2003,** p. 3611, December 20, 2002.

Editor's note: For amendments prior to 1961, see L. 1877, p. 49.

Cross references: For rules concerning the functions, responsibilities, and proceedings of the commission on judicial discipline, see C.R.J.D. 1 to 40.

ANNOTATION

Law reviews. For article, "A Report from the Judiciary Committee", see 26 Dicta 139 (1949). For article, "Colorado and Minimum Judicial Standards", see 28 Dicta 1 (1951). For article, "Constitutional Amendment No. 1 Needs Support of the Bar", see 29 Dicta 338 (1952). For note, "A Study of the Colorado Commission on Judicial Qualifications", see 47 Den. L.J. 491 (1970).

All of the justices and judges of the judicial department are accountable to the people. Hamm v. Scott, 426 F. Supp. 950 (D. Colo. 1977).

District courts do not have subject matter jurisdiction to compel the commission on judicial discipline or its executive director to investigate a complaint alleging judicial misconduct. The trial court properly dismissed plaintiff's motion brought under C.R.C.P. 106 (a). Higgins v. Owens, 13 P.3d 837 (Colo. App. 2000).

Applied in In re Mann, 655 P.2d 814 (Colo. 1982).

Section 24. Judicial nominating commissions. (1) There shall be one judicial nominating commission for the supreme court and any intermediate appellate court to be called the supreme court nominating commission and one judicial nominating commission for each judicial district in the state.

(2) The supreme court nominating commission shall consist of the chief justice or acting chief justice of the supreme court, ex officio, who shall act as chairman and shall have no vote, one citizen admitted to practice law before the courts of this state and one other citizen not admitted to practice law in the courts of this state residing in each congressional district in the state, and one additional citizen not admitted to practice law in the courts of this state. No more than one-half of the commission members plus one, exclusive of the chief justice, shall be members of the same political party. Three voting members shall serve until December 31, 1967, three until December 31, 1969, and three until December 31, 1971. Thereafter each voting member appointed shall serve until the 31st of December of the 6th year following the date of his appointment.

(3) Each judicial district nominating commission shall consist of a justice of the supreme court designated by the chief justice, to serve at the will of the chief justice who shall act as chairman ex officio, and shall have no vote, and seven citizens residing in that judicial district, no more than four of whom shall be members of the same political party and there shall be at least one voting member from each county in the district. In all judicial districts having a population of more than 35,000 inhabitants as determined by the last preceding

census taken under the authority of the United States, the voting members shall consist of three persons admitted to practice law in the courts of this state and four persons not admitted to practice law in the courts of this state. In judicial districts having a population of 35,000 inhabitants or less as determined above, at least four voting members shall be persons not admitted to practice law in the courts of this state; and it shall be determined by majority vote of the governor, the attorney general and the chief justice, how many, if any, of the remaining three members shall be persons admitted to practice law in the courts of this state. Two voting members shall serve until December 31, 1967, two until December 31, 1969, and three until December 31, 1971. Thereafter each voting member appointed shall serve until the 31st of December of the 6th year following the date of his appointment.

(4) Members of each judicial nominating commission selected by reason of their being citizens admitted to practice law in the courts of this state shall be appointed by majority action of the governor, the attorney general and the chief justice. All other members shall be appointed by the governor. No voting member of a judicial nominating commission shall hold any elective and salaried United States or state public office or any elective political party office and he shall not be eligible for reappointment to succeed himself on a commission. No voting member of the supreme court nominating commission shall be eligible for appointment as a justice of the supreme court or any intermediate appellate court so long as he is a member of that commission and for a period of three years thereafter; and no voting member of a judicial district nominating commission shall be eligible for appointment to judicial office in that district while a member of that commission and for a period of one year thereafter.

Source: Initiated 66: Entire section added, effective January 17, 1967, see **L. 67,** p. 9 of the supplement to the 1967 Session Laws. **L. 82:** (3) R&RE, effective July 1, 1983.

Editor's note: For amendments prior to 1961, see L. 1877, p. 50, and L. 1885, p. 146.

ANNOTATION

A judicial district is limited to seven counties by subsection (3) of this section. In re Interrogatories by Senate, 168 Colo. 563, 452 P.2d 382 (1969).

At least one voting member should be a resident of each county. When the people of this state adopted the amendatory provision providing that there should be at least one voting member from each county it was meant that at least one voting member should be a resident of each county. In re Interrogatories by Senate, 168 Colo. 563, 452 P.2d 382 (1969).

And no member may represent more than one county in a judicial district. The requirement that there shall be at least one voting member from each county in the district, prohibits a member of a nominating commission from representing more than one county in a judicial district. In re Interrogatories by Senate, 168 Colo. 563, 452 P.2d 382 (1969).

Section 25. Election of justices and judges. A justice of the supreme court or a judge of any other court of record, who shall desire to retain his judicial office for another term after the expiration of his then term of office shall file with the secretary of state, not more than six months nor less than three months prior to the general election next prior to the expiration of his then term of office, a declaration of his intent to run for another term. Failure to file such a declaration within the time specified shall create a vacancy in that office at the end of his then term of office. Upon the filing of such a declaration, a question shall be placed on the appropriate ballot at such general election, as follows:

"Shall Justice (Judge) .... of the Supreme (or other) Court be retained in office? YES/..../NO/..../." If a majority of those voting on the question vote "Yes", the justice or judge is thereupon elected to a succeeding full term. If a majority of those voting on the question vote "No", this will cause a vacancy to exist in that office at the end of his then present term of office.

In the case of a justice of the supreme court or any intermediate appellate court, the electors of the state at large; in the case of a judge of a district court, the electors of that judicial district; and in the case of a judge of the county court or other court of record, the electors of that county; shall vote on the question of retention in office of the justice or judge.

Source: Initiated 66: Entire section added, effective January 17, 1967, see **L. 67,** p. 10 of the supplement to the 1967 Session Laws.

Editor's note: For amendments prior to 1961, see L. 1877, p. 50.

ANNOTATION

County court judges of city and county of Denver may be appointed by mayor. Under this section, it is constitutional for judges of the county court of the city and county of Denver to be appointed by the mayor of Denver rather than being either elected by the people or appointed by the governor. Francis v. County Court, 175 Colo. 308, 487 P.2d 375 (1971).

All of the justices and judges of the judicial department are accountable to the people. Hamm v. Scott, 426 F. Supp. 950 (D. Colo. 1977).

The language in this section stating that "a question shall be placed on the . . . ballot" does not render judicial retention a "ballot question" for purposes of the Fair Campaign Practices Act (FCPA). A judicial retention vote is not a "ballot question" because it does not involve a citizen petition or referred measure. Because a judicial retention vote does not meet the definition of a "ballot issue" or "ballot question" contained in the FCPA, organization opposing retention of three justices of the Colorado supreme court is not an issue committee for purposes of Colorado law governing campaign finance. Colo. Ethics Watch v. Clear the Bench, 2012 COA 42, 277 P.3d 931.

Section 26. Denver county judges. The provisions of sections 16, 20, 23, 24 and 25 hereof shall not be applicable to judges of the county court of the City and County of Denver. The number, manner of selection, qualifications, term of office, tenure, and removal of such judges shall be as provided in the charter and ordinances of the City and County of Denver.

Source: Initiated 66: Entire section added, effective January 17, 1967, see **L. 67,** p. 10 of the supplement to the 1967 Session Laws.

ANNOTATION

County court judges of city and county of Denver may be appointed by mayor. Under this section, it is constitutional for judges of the county court of the city and county of Denver to be appointed by the mayor of Denver rather than being either elected by the people or appointed by the governor. Francis v. County Court, 175 Colo. 308, 487 P.2d 375 (1971).

It is not a violation of the equal protection clause of the fourteenth amendment to the United States constitution to provide for the only city and county in the state a procedure for judicial selection different from the remainder of the state. Francis v. County Court, 175 Colo. 308, 487 P.2d 375 (1971).

This home rule provision apportions independent authority over county court judgeships in the city and county of Denver. Francis v. County Court, 175 Colo. 308, 487 P.2d 375 (1971); Matter of Title, Ballot Title and Sub. Cl., and Summary for 1999-2000 No. 104, 987 P.2d 249 (Colo. 1999).

Home rule provisions reflect an intent to vest in home rule cities the plenary power of self-government over matters of local concern. Denver Urban Renewal Auth. v. Byrne, 618 P.2d 1374 (Colo. 1980); Matter of Title, Ballot Title and Sub. Cl., and Summary for 1999-2000 No. 104, 987 P.2d 249 (Colo. 1999).

ARTICLE VII
Suffrage and Elections

Law reviews: For article, "The Colorado Constitution in the New Century", see 78 U. Colo. L. Rev. 1265 (2007).

Section 1. Qualifications of elector. Every citizen of the United States who has attained the age of eighteen years, has resided in this state for such time as may be prescribed by law, and has been duly registered as a voter if required by law shall be qualified to vote at all elections.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 51. **L. 01:** Entire section amended, p. 107. **L. 62:** Entire section amended, see **L. 63,** p. 1057. **L. 88:** Entire section amended, p. 1453, effective upon proclamation of the Governor, **L. 89,** p. 1657, January 3, 1989. **L. 2004:** Entire section amended, p. 2745, effective upon proclamation of the Governor, **L. 2005,** p. 2341, December 1, 2004.

Cross references: For the right of citizens eighteen years or older to vote, see article XXVI of the constitution of the United States; for the qualifications of electors, see also § 1-2-101.

ANNOTATION

Law reviews. For article, "Legal Classification of Special District Corporate Forms in Colorado", see 45 Den. L.J. 347 (1968).

Article confers power on general assembly to make rules and regulations. The constitution of Colorado, in and by this article

distinctly and in terms confers upon the legislative branch of the government the making of all laws and regulations for the conduct of elections in said state, and to secure the purity of such elections and guard against abuses of the elective franchises, and that under and by said constitution the judicial department is without authority in that behalf. People ex rel. Attorney Gen. v. News-Times Publishing Co., 35 Colo. 253, 84 P. 912 (1906), dismissed for want of jurisdiction, 205 U.S. 454, 27 S. Ct. 556, 51 L. Ed. 879 (1907).

"Elections" in this section is not used in its general or comprehensive sense, but in its restricted political sense, meaning public elections for the choice of public officers. Mayor of Valverde v. Shattuck, 19 Colo. 104, 34 P. 947, 41 Am. St. R. 208 (1893).

Right to determine residency requirement reserved to general assembly. This section specifically reserves to the general assembly the right to determine the length of residence required in the county, or precinct, as a qualification for voting. It therefore was purely a question for the general assembly as to whether the same rule should be adopted as to residence in the case of an election to locate a county seat, as the constitution has already adopted in the case of an election upon the question of removal of a county seat. Town of Sugar City v. Bd. of Comm'rs, 57 Colo. 432, 140 P. 809 (1914).

The residence contemplated is synonymous with "home" or "domicile", and means an actual settlement within the state, and its adoption as a fixed and permanent habitation; and requires not only a personal presence for the requisite time, but a concurrence therewith of an intention to make the place of inhabitancy the true home; and that one who has made a home or domicile in some other state or territory where his family reside, cannot, by a sojourn here on business or pleasure, however long, without abandoning such former domicile, acquire a residence in the constitutional and statutory sense. Sharp v. McIntire, 23 Colo. 99, 46 P. 115 (1896).

Requirements for "domicile". Personal presence and intent to remain necessary to acquire new domicile. Merrill v. Shearston, 73 Colo. 230, 214 P. 540 (1923).

Voter need not be personally present when "he offers to vote". Bullington v. Grabow, 88 Colo. 561, 298 P. 1059 (1931) (upholding validity of absent voters' law).

Municipal charter cannot prohibit person from voting for person of own choice. An amendment of municipal charter that makes no provision for qualified elector to cast ballot for person of own selection violates this section. People ex rel. Walker v. Stapleton, 79 Colo. 629, 247 P. 1062 (1926).

Elector may cast vote according to his own preference. Any elector may cast his vote at each election according to his own preference, and have it counted as cast. People ex rel. Eaton v. District Court, 18 Colo. 26, 31 P. 339 (1892).

Student in college town is presumed not to have right to vote. Merrill v. Shearston, 73 Colo. 230, 214 P. 540 (1923).

Registering to vote does not come within ambit of constitutional qualification to vote. Duprey v. Anderson, 184 Colo. 70, 518 P.2d 807 (1974).

But is merely administrative process. Whether initial registration, or registration after purging is involved, it is not a qualification to vote, but is merely an administrative process designed to facilitate rather than complicate participation in the election process. Duprey v. Anderson, 184 Colo. 70, 518 P.2d 807 (1974).

Election under soil

conservation act not same as election under this section. An election under soil conservation act amendment dealing with questions of land use ordinances, is not the same as an election under this constitutional provision setting out age requirements and so on. People ex rel. Cheyenne Soil Erosion Dist. v. Parker, 118 Colo. 13, 192 P.2d 417 (1948).

Where nonresidents, corporations and others owning land in soil erosion district were extended right to vote upon adoption of land use ordinance, it did not violate constitutional provisions dealing with qualifications of voters. People ex rel. Cheyenne Soil Erosion Dist. v. Parker, 118 Colo. 13, 192 P.2d 417 (1948).

Applied in Bd. of Comm'rs v. People ex rel. Love, 26 Colo. 297, 57 P. 1080 (1899).

Section 1a. Qualifications of elector - residence on federal land. (First paragraph deleted by amendment, L. 2004, p. 2746, effective upon proclamation of the Governor, L. 2005, p. 2341, December 1, 2004.)

Any person who otherwise meets the requirements of law for voting in this state shall not be denied the right to vote in an election because of residence on land situated within this state that is under the jurisdiction of the United States.

Source: L. 70: Entire section added, p. 446, effective upon proclamation of the Governor, December 7, 1970. **L. 2004:** Entire section amended, p. 2746, effective upon proclamation of the Governor, **L. 2005,** p. 2341, December 1, 2004.

Cross references: For qualifications and registration of electors, see parts 1 and 2 of article 2 of title 1; for residency requirements in municipal elections, see § 31-10-201.

ANNOTATION

Constitutionality. This section, insofar as it attempts to establish a three month durational residency as a condition of the right to vote is unconstitutional under the fourteenth amendment to the United States constitution. Jarmel v. Putnam, 179 Colo. 215, 499 P.2d 603 (1972).

Section 2. Suffrage to women. (Repealed)

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 52. **L. 1893:** Entire section amended, p. 256. **L. 88:** Entire section repealed, p. 1454, effective upon proclamation of the Governor, **L. 89,** p. 1657, January 3, 1989.

Section 3. Educational qualifications of elector. (Deleted by amendment.)

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 52. **L. 90:** Entire section amended, p. 1861, effective upon proclamation of the Governor, **L. 91,** p. 2033, January 3, 1991.

Section 4. When residence does not change. For the purpose of voting and eligibility to office, no person shall be deemed to have gained a residence by reason of his or her presence, or lost it by reason of his or her

absence, while in the civil or military service of the state, or of the United States, nor while a student at any institution of learning, nor while kept at public expense in any asylum, nor while confined in public prison.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 52. **L. 2004:** Entire section amended, p. 2746, effective upon proclamation of the Governor, **L. 2005,** p. 2341, December 1, 2004.

Cross references: For when residence does not change because of presence in the state as a student or confinement in a state institution or correctional facility or jail or while in the civil or military service, see also § 1-2-103.

ANNOTATION

Purpose of section. The purpose of this provision is to prevent the control of municipal affairs by persons who have no pecuniary interest in them. Merrill v. Shearston, 73 Colo. 230, 214 P. 540 (1923).

This provision of the constitution is aimed at the participation of an unconcerned body of men in the control through the ballot box of municipal affairs in whose further conduct they have no interest, and from the mismanagement of which by the officers their ballots might elect, they sustain no injury. Merrill v. Shearston, 73 Colo. 230, 214 P. 540 (1923).

"Asylum". The word "asylum" is defined as "an institution for the protection and relief of the unfortunate". Merrill v. Shearston, 73 Colo. 230, 214 P. 540 (1923).

This section does not prevent inmate or student from becoming voter. An inmate of an asylum, or a student attending school, is not, by this constitutional provision, prevented from becoming a voter in the place where the school or asylum is situated. Merrill v. Shearston, 73 Colo. 230, 214 P. 540 (1923).

But right to vote is not gained by mere residence at a place. The right to vote is not gained by a mere residence at a place; but, if it exists, it must be shown by acts entirely distinct from such residence. Merrill v. Shearston, 73 Colo. 230, 214 P. 540 (1923).

Thus, student coming into state to attend school does not acquire residence in this state for the purpose of voting. His mere presence does not give the right. Parsons v. People, 30 Colo. 388, 70 P. 689 (1902).

Nor do inmates of soldiers' homes. Inmates of soldiers' homes have no connection with local municipal government, and that they are there only in the character of beneficiaries, for a temporary purpose. Merrill v. Shearston, 73 Colo. 230, 214 P. 540 (1923).

A hospital maintained by the United States government for the treatment of disabled soldiers, who may be transferred or discharged as determined by the government authorities, is an asylum, as that term is used in this section and the inmates of such an institution are not, on account of their mere residence there, entitled to vote at general elections. Merrill v. Shearston, 73 Colo. 230, 214 P. 540 (1923).

Nor do civilian employees in government hospital. Civilian employees in government hospital are not entitled to vote. Kemp v. Heebner, 77 Colo. 177, 234 P. 1068 (1925).

Under the state constitution and controlling statutes, employees of a hospital would and could not acquire on hospital grounds a home or domicile, a place of permanent residence. Their stay there was subject to the determination of hospital authorities and, in the nature of the

case, was limited. Kemp v. Heebner, 77 Colo. 177, 234 P. 1068 (1925).

Section 5. Privilege of voters. Voters shall in all cases, except treason, felony or breach of the peace, be privileged from arrest during their attendance at elections, and in going to and returning therefrom.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 52.

Section 6. Electors only eligible to office. No person except a qualified elector shall be elected or appointed to any civil or military office in the state.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 52.

Cross references: For the requirements for election to office of county commissioner, see § 1-4-205; for the eligibility requirements making qualified electors in general, primary, and special elections eligible to hold office, see also § 1-4-501; for the eligibility requirements making qualified electors in municipal elections eligible to hold office, see also § 31-10-301.

ANNOTATION

"Qualified elector", as employed in this section, is used in its broadest sense, meaning a person qualified to vote generally. In re House Bill No. 166, 9 Colo. 628, 21 P. 473 (1886).

"Civil office" is frequently used interchangeably with term "public trust". The phrase "civil office" as thus employed is frequently used interchangeably with the term "public trust"; it undoubtedly relates to public offices; that is, to those offices which involve an election or appointment by or on behalf of the general public and the performance of duties essentially public in their nature. In re Thomas, 16 Colo. 441, 27 P. 707 (1891).

A civil office is defined to be a public station or employment, conferred by the appointment of government. The term embraces the ideas of tenure, duration, emolument, and duties. An office held under a state government necessarily includes the same characteristics, and all of them are comprised in the office of notary public. In re House Bill No. 166, 9 Colo. 628, 21 P. 473 (1886).

Eligibility to hold office distinguished from eligibility to be elected. There is a distinct difference between the eligibility of a person to be designated by a county assembly for nomination at a direct primary election of a candidate for a county office, and his eligibility to hold such office if elected by the voters of the county. Andersen v. Smyth, 146 Colo. 165, 360 P.2d 970 (1961).

Party affiliation unnecessary. It is not necessary that one have any party affiliation in order to hold the office of county commissioner. Andersen v. Smyth, 146 Colo. 165, 360 P.2d 970 (1961).

Person who has completed term of imprisonment eligible to run for public office. A person who has been convicted of a crime, but who has served his full term of imprisonment and is on probation on another count, the period of which had not expired, is eligible to be a candidate for public office under this section of this article. Sterling v. Archambault, 138 Colo. 222, 332 P.2d 994 (1958).

Attorneys at law are not "civil officers" within meaning of this section. In re Thomas, 16 Colo. 441, 27 P. 707, 13 L.R.A. 538 (1891).

Applied in Darrow v. People ex rel. Norris, 8 Colo. 417, 8 P. 661 (1885); Jeffries v. Harrington, 11 Colo. 191, 17 P. 505 (1887); Mannix v. Selbach, 31 Colo. 502, 74 P. 460 (1903).

Section 7. General election. The general election shall be held on such day as may be prescribed by law.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 52. **L. 92:** Entire section amended, p. 2316, effective upon proclamation of the Governor, **L. 93,** p. 2163, January 14, 1993.

Cross references: For time for holding the general election, see also § 1-4-201.

ANNOTATION

Annual elections have since been changed to biennial, and the day now "prescribed by law" is the first Tuesday after the first Monday in November. People ex rel. Austin v. Billig, 72 Colo. 209, 210 P. 324 (1922).

"General election", as here used, means state elections. That "general elections" may be either state or municipal, or both, requires no argument and no citation of authority. That the term as used in the constitution, wherever state officers or state questions are under consideration, means a general state election is also clear. People ex rel. Austin v. Billig, 72 Colo. 209, 210 P. 324 (1922).

Section 8. Elections by ballot or voting machine. All elections by the people shall be by ballot, and in case paper ballots are required to be used, no ballots shall be marked in any way whereby the ballot can be identified as the ballot of the person casting it. The election officers shall be sworn or affirmed not to inquire or disclose how any elector shall have voted. In all cases of contested election in which paper ballots are required to be used, the ballots cast may be counted and compared with the list of voters, and examined under such safeguards and regulations as may be provided by law. Nothing in this section, however, shall be construed to prevent the use of any machine or mechanical contrivance for the purpose of receiving and registering the votes cast at any election, provided that secrecy in voting is preserved.

When the governing body of any county, city, city and county or town, including the city and county of Denver, and any city, city and county or town which may be governed by the provisions of special charter, shall adopt and purchase a voting machine, or voting machines, such governing body may provide for the payment therefor by the issuance of interest-bearing bonds, certificates of indebtedness or other obligations, which shall be a charge upon such city, city and county, or town; such bonds, certificates or other obligations may be made payable at such time or times, not exceeding ten years from date of issue, as may be determined, but shall not be issued or sold at less than par.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 52. **L. 05:** Entire section amended, p. 168. **L. 46:** Entire section amended, see. **L. 47,** p. 427.

Cross references: For notice and preparation for general, primary, and special elections, see article 4 of title 1; for notice and preparation for municipal elections, see § 31-10-501; for the conduct of general, primary, and special elections, see article 7 of title

1; for the conduct of municipal elections, see part 6 of article 10 of title 31; for the method of voting and use of voting systems for general, primary, and special elections, see parts 4 and 6 of article 5 of title 1; for use of voting machines for municipal elections, see part 7 of article 10 of title 31; for contests of general, primary, and special elections, see part 2 of article 11 of title 1; for contests of municipal elections, see part 13 of article 10 of title 31.

ANNOTATION

Privilege of inspecting ballots in contested elections. The purpose of the provision that ballots may be examined in contested elections, was to give, in the election contests authorized by section 12 of this article, the privilege of inspecting and comparing ballots; not to withdraw it from the proceedings in which theretofore it had been universally exercised. People ex rel. Barton v. Londoner, 13 Colo. 303, 22 P. 764 (1889).

The leading object of this section was to preserve the purity of the ballot by insuring its secrecy; but, lest the language indicating this intent should be carried too far, and become the means of perpetrating fraud, the privilege in question was carefully extended to election contests, in which, perhaps, it might otherwise have been challenged. People ex rel. Barton v. Londoner, 13 Colo. 303, 22 P. 764 (1889).

The content of a ballot is not protected from public inspection when the identity of the individual voter cannot be discerned from such content. Marks v. Koch, 284 P.3d 118 (Colo. App. 2011).

To the extent digital copies of paper ballots do not reveal a particular voter's identity, permitting the right to inspect the copies under the Colorado Open Records Act would not be contrary to the "secrecy in voting" provision of this section. Marks v. Koch, 284 P.3d 118 (Colo. App. 2011).

Right of examination of ballot not limited to contested elections. The declaration in this section that the ballots may be examined in contested elections, does not limit this examination to such proceedings. The right mentioned has always been freely exercised in quo warranto, which is the common-law method of inquiring into election frauds. People ex rel. Barton v. Londoner, 13 Colo. 303, 22 P. 764 (1889).

Reasonable requirements may be imposed as condition to examination of ballots. With regard to the phrase "the ballots cast may be counted and compared with the list of voters, and examined under such safeguards and regulations as may be provided by law", the supreme court has never attempted to change and has no right to change the permissive word, "may", to the mandatory word, "must", without due regard to proper "safeguards and regulations" further therein referred to. To do so would be to promote unending chaos after every election. Gray v. Huntley, 77 Colo. 478, 238 P. 53 (1925).

Imposition of "reasonable requirement" that some evidence should be first introduced as to the charges before bringing in the election judges from the different precincts to open the ballot boxes at the expense of the county upheld. See Kindel v. Le Bert, 23 Colo. 385, 48 P. 641 (1897).

The phrase "secrecy in voting" protects from public disclosure the identity of an individual voter and any content of the voter's ballot that could identify the voter. Marks v. Koch, 284 P.3d 118 (Colo. App. 2011).

Use of marked ballots contrary to this section. An election wherein ballots are numbered in such a manner that the vote of any person

thereafter may be determined by comparison with the number on the ballot and the poll registration book is contrary to constitutional and statutory guarantee of a secret ballot. Taylor v. Pile, 154 Colo. 516, 391 P.2d 670 (1964).

And results in void election. The use of "marked ballots" by which the vote of every elector could be ascertained resulted in a void election. Taylor v. Pile, 154 Colo. 516, 391 P.2d 670 (1964).

Right to refuse to testify as to how vote was cast. The constitutional and statutory right to cast a secret ballot carries with it the accompanying right to refuse to testify as to how or for what the vote was cast. Taylor v. Pile, 154 Colo. 516, 391 P.2d 670 (1964).

This protection does not extend to "illegal" voter. Taylor v. Pile, 154 Colo. 516, 391 P.2d 670 (1964).

But voter listed as qualified who acts in good faith is not "illegal" voter. A voter who is listed as qualified, and who at all times acts in the good faith belief that he is qualified to vote, is not an illegal voter. Taylor v. Pile, 154 Colo. 516, 391 P.2d 670 (1964).

Purchase of voting machines optional. Purchase of voting machines is not made mandatory by this section, but optional. Kingsley v. City & County of Denver, 126 Colo. 194, 247 P.2d 805 (1952).

Purchase of voting machines by municipality is local matter. While the right to use voting machines in general elections is a matter of state control, the purchase of such machines by a municipality is a local or municipal matter, and bonds issued under authority of this section must also comply with the requirements of a charter adopted under authority of § 6 of art. XX, Colo. Const. Kingsley v. City & County of Denver, 126 Colo. 194, 247 P.2d 805 (1952).

Section 9. No privilege to witness in election trial. In trials of contested elections, and for offenses arising under the election law, no person shall be permitted to withhold his testimony on the ground that it may criminate himself, or subject him to public infamy; but such testimony shall not be used against him in any judicial proceeding, except for perjury in giving such testimony.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 53.

ANNOTATION

Where vote illegal, voter can be compelled to answer how he voted. If it is not shown that the vote was illegal, the voter cannot be compelled to answer how he voted; but if illegal, in addition to compelling him to answer, other evidence may be received and considered on the subject. People v. Turpin, 49 Colo. 234, 112 P. 539, 33 L.R.A. (n.s.) 766, 1912A Ann. Cas. 724 (1910).

Where place of residence is voluntarily placed at issue by defendant in prior civil proceedings, the constitutional protection of the testimony is not needed to protect the purity of elections, and testimony may be admitted at subsequent proceedings. People v. Onesimo Romero, 746 P.2d 534 (Colo. 1987).

Civil proceeding for certification as a candidate on the primary election ballot for state senator is not within statutory meaning of contested election and testimony offered at such civil proceeding is not

protected and may be introduced in criminal proceeding. People v. Onesimo Romero, 746 P.2d 534 (Colo. 1987).

Section 10. Disfranchisement during imprisonment. No person while confined in any public prison shall be entitled to vote; but every such person who was a qualified elector prior to such imprisonment, and who is released therefrom by virtue of a pardon, or by virtue of having served out his full term of imprisonment, shall without further action, be invested with all the rights of citizenship, except as otherwise provided in this constitution.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 53.

Cross references: For disfranchisement of any person confined in a state institution or correctional facility or jail as to general, primary, and special elections, see § 1-2-103; for disfranchisement of any person confined in a correctional facility or jail as to municipal elections, see § 31-10-201.

ANNOTATION

Section limited to disenfranchisement while in public prison. The constitutional prohibition is limited to the disenfranchisement of persons while confined in a public prison. Sterling v. Archambault, 138 Colo. 222, 332 P.2d 994 (1958).

A person who has been convicted of a crime, but who has served his full term of imprisonment and is on probation on another count, the period of which has not expired, is no longer confined and hence is eligible to be a candidate for public office under this section and section 6 of this article. Sterling v. Archambault, 138 Colo. 222, 332 P.2d 994 (1958).

The intent of this provision is to prohibit from voting only those who, at the time of an election, are confined in a public prison serving a term of imprisonment. Moore v. MacFarlane, 642 P.2d 496 (Colo. 1982).

A person serving a sentence of parole does not meet the requirement of having served out the full term of imprisonment and, therefore, is ineligible to vote. Danielson v. Dennis, 139 P.3d 688 (Colo. 2006).

Section 11. Purity of elections. The general assembly shall pass laws to secure the purity of elections, and guard against abuses of the elective franchise.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 53.

Cross references: For offenses committed in relation to general, primary, or special elections, see article 13 of title 1; for offenses committed in relation to municipal elections, see part 15 of article 10 of title 31.

ANNOTATION

Law reviews. For article, "Legal Classification of Special District Corporate Forms in Colorado", see 45 Den. L.J. 347 (1968).

This constitutional duty was imposed upon general assembly, and not upon municipalities. Mauff v. People, 52 Colo. 562, 123 P. 101 (1912); City & County of Denver v. Mountain States Tel. & Tel. Co., 67 Colo. 225, 184 P. 604 (1919), appeal dismissed for want of jurisdiction, 251 U.S. 545, 40 S. Ct. 219, 64 L. Ed. 407 (1920).

Laws enacted in response to this mandate do not relate to subjects pertaining to local self-government or municipal affairs, and such laws are not within the contemplation of § 13 of art. XIV, Colo. Const., requiring the general assembly to provide, by general laws, for the organization and classification of cities. People ex rel. Johnson v. Earl, 42 Colo. 238, 94 P. 294 (1908).

In this and the next section there are express constitutional commands that the general assembly shall pass "laws" to secure the purity of elections, and by "general laws", designate the courts and judges by whom the several classes of election contests shall be tried. If, then, the general assembly, with respect to these election matters which are of governmental and state importance, has jurisdiction over election contests, such jurisdiction in the general assembly is exclusive, and manifestly neither the charter of a city, nor an ordinance of its council, which must be confined to matters strictly local and municipal in their character, can legislate concerning it. Williams v. People, 38 Colo. 497, 88 P. 463 (1906).

There are limitations on power of general assembly. While the general assembly is expressly commanded by the constitution, to "pass laws to secure the purity of elections, and guard against abuses of the elective franchise", there are, nevertheless, certain limitations beyond which it cannot proceed. Littlejohn v. People, 52 Colo. 217, 121 P. 159 (1912).

Registration laws should be construed in light of this section. People ex rel. Johnson v. Earl, 42 Colo. 238, 94 P. 294 (1908).

Purging registration book is exclusively an administrative adjunct which is necessary in order to provide for the purity of elections and to guard against abuses. Duprey v. Anderson, 184 Colo. 70, 518 P.2d 807 (1974).

Married woman signing husband's name with "Mrs." The signing by a married woman of her husband's name preceded by "Mrs." does not constitute an abuse of elective franchise. Case v. Morrison, 118 Colo. 517, 197 P.2d 621 (1948).

Applied in People ex rel. Lowry v. District Court, 32 Colo. 15, 74 P. 896 (1903); Fish v. Kugel, 63 Colo. 101, 165 P. 249 (1917); Bullington v. Grabow, 88 Colo. 561, 298 P. 1059 (1931); Friesen v. People ex rel. Fletcher, 118 Colo. 1, 192 P.2d 430 (1948); People ex rel. Cheyenne Soil Erosion Dist. v. Parker, 118 Colo. 13, 192 P.2d 417 (1948); Martin v. Boyle, 124 Colo. 289, 237 P.2d 110 (1951); Meyer v. Putnam, 186 Colo. 132, 526 P.2d 139 (1974); Olshaw v. Buchanan, 192 Colo. 45, 555 P.2d 979 (1976).

Section 12. Election contests - by whom tried. The general assembly shall, by general law, designate the courts and judges by whom the several classes of election contests, not herein provided for, shall be tried, and regulate the manner of trial, and all matters incident thereto, but no such law shall apply to any contest arising out of an election held before its passage.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 53.

Cross references: For regulation of contests of general, primary, and special elections, see part 2 of article 11 of title 1; for regulation of contests of municipal elections, see part 13 of article 10 of title 31.

ANNOTATION

This section relates to contests between candidates for

public office, and is not a limitation upon the equity powers granted to the district court by § 11 of art. VI, Colo. Const., nor upon the power of the general assembly to make statutory provision of the contest of other elections than those specifically mentioned in the constitution. Patterson v. People ex rel. Parr, 23 Colo. App. 479, 130 P. 618 (1913); Nicholson v. Stewart, 142 Colo. 566, 351 P.2d 461 (1960).

Jurisdiction to try election contests must be conferred by statute; and unless by some legislative enactment the county court has been designated as the tribunal for the trial of a contest of this character, the interposition of the supreme court is properly invoked to restrain it from entertaining jurisdiction of the contest in question. Booth v. County Court, 18 Colo. 561, 33 P. 581 (1893).

While it is true that the charter is a "law", and in a limited sense, it is not a "law" as to county or state or governmental affairs. The express constitutional provision that election contests shall be tried by courts or judges designated by the general assembly by general law necessarily negatives the existence of any such authority in any other legislative body. Williams v. People, 38 Colo. 407, 88 P. 189 (1906).

When the constitution commands the general assembly to provide a method and forum for the trial of "election contests", the statute passed in obedience to such command is exclusive as to such contests, though no exclusive words be employed. People ex rel. Barton v. Londoner, 13 Colo. 303, 22 P. 764 (1899).

Election contests have no relation to quo warranto proceedings. People ex rel. Barton v. Londoner, 13 Colo. 303, 22 P. 764 (1889).

A quo warranto proceeding is not an election contest in the same sense in which those terms are used in the constitution. That proceeding only determines that the person holding the office is or is not a usurper. But, ousting him, if the court finds against him, it adjudges the right to the office to no one. People ex rel. Barton v. Londoner, 13 Colo. 303, 22 P. 764 (1889).

Because the constitution, in this section directs specific legislation for the trial of "election contests", it does not necessarily follow that the people, in their sovereign capacity, are thereby precluded from inquiring by information in the nature of quo warranto into usurpations of office. People ex rel. Barton v. Londoner, 13 Colo. 303, 22 P. 764 (1889).

This section covers special proceedings for contesting elections of municipal officers. County Court v. Schwarz, 13 Colo. 291, 22 P. 783 (1889).

Election contest of franchise within purview of section. If there is such a thing as an election contest of a franchise, it is conceded that it is within the purview of this section. Williams v. People, 38 Colo. 497, 88 P. 463 (1906).

Applied in Heinssen v. State, 14 Colo. 228, 23 P. 995 (1890); Cox v. Starkweather, 128 Colo. 89, 260 P.2d 587 (1953).

ARTICLE VIII
State Institutions

Section 1. Established and supported by state. Educational, reformatory and penal institutions, and those for the benefit of insane, blind, deaf and mute, and such other institutions as the public good may require, shall be established and supported by the state, in such manner as may be prescribed

by law.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 53.

Cross references: For the university of Colorado, see articles 20 and 20.5 of title 23; for the university of Colorado university hospital, see article 21 of title 23; for the university of Colorado psychiatric hospital, see article 22 of title 23; for the Colorado children's diagnostic center, see article 23 of title 23; for Colorado state university, see article 31 of title 23; for university of northern Colorado, see article 40 of title 23; for Colorado school of mines, see article 41 of title 23; for Fort Lewis college, see article 52 of title 23; for state universities, see articles 51, 53, 54, and 56 of title 23; for Colorado state university - Pueblo, see article 31.5 of title 23; for community colleges, see article 60 of title 23; for the Colorado mental health institute at Pueblo, see article 93 of title 27; for the state regional centers for persons with developmental disabilities, see part 3 of article 10.5 of title 27; for Colorado mental health institute at Fort Logan, see article 94 of title 27; for state correctional facilities, see § 17-1-104.3; for the Colorado school for the deaf and the blind, see article 80 of title 22.

ANNOTATION

Law reviews. For article, "Commitment of Misdemeanants to the Colorado State Reformatory", see 29 Dicta 294 (1952). For article, "Protecting the Mentally Incompetent Child's Trust Interest from State Reimbursement Claims", see 58 Den. L.J. 557 (1981).

"Educational institutions" refers to schools other than public schools. This section uses the term "educational institutions" in referring to schools other than the constitutionally-required public schools. Wilmore v. Annear, 100 Colo. 106 , 65 P.2d 1433 (1937).

Reformatory and penitentiary are creatures of constitution, and not of the general assembly, and legislation affecting them must be regarded in the light of this provision. Hessick v. Moynihan, 83 Colo. 43, 262 P. 907 (1927).

State highway department is state institution within the meaning of this section. Johnson v. McDonald, 97 Colo. 324, 49 P.2d 1017 (1935); Mitchell v. Bd. of Comm'rs, 112 Colo. 582, 152 P.2d 601 (1944).

Soldiers' and sailors' home is entitled to be supported by state same as other state institutions, except that those institutions in which the inmates are involuntarily confined may be entitled to preference, in case the public revenues are not sufficient for all. Goodykoontz v. People ex rel. Sawyer, 20 Colo. 374, 38 P. 473 (1894).

"Support" means something more than mere passage of biennial appropriation bills. This would seem to be self-evident from the words that follow: "in such manner as may be prescribed by law". Hessick v. Moynihan, 83 Colo. 43, 262 P. 907 (1927).

This provision does not prevent collection for expenses of care. Wigington v. State Home & Training Sch., 175 Colo. 159, 486 P.2d 417 (1971).

Providing suitable buildings for use of state normal school held mandatory on trustees. Pursuant to this constitutional mandate, the general assembly, by statute, prescribed the control and regulation of the state normal school (formerly Colorado state college, now University of Northern Colorado), authorized the establishment of the school and created the board of trustees. Such statutes not only grant to the latter the power, but in addition, make it mandatory upon such trustees, to provide suitable buildings

for the use of the school. Hoyt v. Trustees of State Normal Sch., 96 Colo. 442, 44 P.2d 513 (1935).

Applied in Wicks v. City and County of Denver, 61 Colo. 266, 156 P. 1100 (1916).

Section 2. Seat of government - where located. The general assembly shall have no power to change or to locate the seat of government of the state, which shall remain at the city and county of Denver.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 53. **L. 88:** Entire section amended, p. 1454, effective upon proclamation of the Governor, **L. 89,** p. 1657, January 3, 1989.

Section 3. Seat of government - how changed - definitions. (1) When the seat of government shall have been located in the city and county of Denver as provided in section 2 of this article, the location thereof shall not thereafter be changed, except by a vote of two-thirds of all the qualified electors of the state voting on that question, at a general election, at which the question of location of the seat of government shall have been submitted by the general assembly.

(2) Notwithstanding the provisions of subsection (1) of this section, if the governor determines that a disaster emergency exists that substantially affects the ability of the state government to operate in the city and county of Denver, the governor may issue an executive order declaring a disaster emergency. After declaring the disaster emergency and after consulting with the chief justice of the supreme court, the president of the senate, and the speaker of the house of representatives, the governor may designate a temporary meeting location for the general assembly.

(3) After the declaration of a disaster emergency by the governor, the general assembly shall convene at the temporary meeting location, whether during regular session or in a special session convened by the governor or by written request by two-thirds of the members of each house. The general assembly, acting by bill, may then designate a temporary location for the seat of government. The bill shall contain a date on which the temporary location of the seat of government shall expire.

(4) As used in this section:

(a) "Disaster emergency" means the occurrence or imminent threat of widespread or severe damage, injury, illness, or loss of life or property resulting from an epidemic or a natural, man-made, or technological cause.

(b) "Seat of government" means the location of the legislative, executive, and judicial branches of the state of Colorado.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 54. **L. 2010:** Entire section amended, p. 3033, effective upon proclamation of the Governor, **L. 2011,** p. ____, December 21, 2010.

Section 4. Appropriation for capitol building. (Repealed)

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 54. **L. 88:** Entire section repealed, p. 1454, effective upon proclamation of the Governor, **L. 89,** p. 1657, January 3, 1989.

Section 5. Educational institutions. (1) The following educational institutions are declared to be state institutions of higher education: The university at Boulder, Colorado Springs, and Denver; the university at Fort Collins; the school of mines at Golden; and such other institutions of higher education as now exist or may hereafter be established by law if they are designated by law as state institutions. The establishment, management, and abolition of the state institutions shall be subject to the control of the state, under the provisions of the constitution and such laws and regulations as the general assembly may provide; except that the regents of the university at Boulder, Colorado Springs, and Denver may, whenever in their judgment the needs of that institution demand such action, establish, maintain, and conduct all or any part of the schools of medicine, dentistry, nursing, and pharmacy of the university, together with hospitals and supporting facilities and programs related to health, at Denver; and further, that nothing in this section shall be construed to prevent state educational institutions from giving temporary lecture courses in any part of the state, or conducting class excursions for the purpose of investigation and study; and provided further, that subject to prior approval by the general assembly, nothing in this section shall be construed to prevent the state institutions of higher education from hereafter establishing, maintaining, and conducting or discontinuing centers, medical centers, or branches of such institutions in any part of the state.

(2) The governing boards of the state institutions of higher education, whether established by this constitution or by law, shall have the general supervision of their respective institutions and the exclusive control and direction of all funds of and appropriations to their respective institutions, unless otherwise provided by law.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 54. **L. 09:** Entire section amended, p. 324. **L. 22:** Entire section amended, effective December 21, 1922, see **L. 23,** p. 227. **L. 72:** Entire section amended, p. 644, effective upon proclamation of the Governor, January 11, 1973.

Cross references: For establishment and support of educational institutions, see § 1 of this article.

ANNOTATION

Law reviews. For note, "Standing to Challenge Special Admission Programs: DiLeo v. Board of Regents of the Univ. of Colorado", see 50 U. Colo. L. Rev. 361 (1979).

Effect of this section is to fix permanently location of state universities, establishing their principal campuses as a matter of law. Londer v. Friednash, 38 Colo. App. 350, 560 P.2d 102 (1976).

Change of location of institutions. The location of the agricultural college (now Colorado state university) and the other institutions having been fixed by the constitution, such location cannot be changed except by amendment of the constitution. In re Senate Resolution, 9 Colo. 626, 21 P. 472 (1886).

Under this section, the location of the state university at Boulder cannot be changed except by constitutional amendment. People ex rel. Jerome v. Regents of Univ. of Colo., 24 Colo. 175, 49 P. 286 (1897).

This section does not support assertion that medical school is principal campus of university. Londer v. Friednash, 38 Colo. App. 350, 560 P.2d 102 (1976).

City cannot, under its home rule powers, compel regents of state university to collect admissions tax on charges for attendance at public events the university sponsors, such as lectures, dissertations, concerts, etc., because such duties would interfere with the regents' control of the university. City of Boulder v. Regents of Univ. of Colo., 179 Colo. 420, 501 P.2d 123 (1972).

Unless statutorily authorized. No municipality, absent statutory authority, can compel the state or its officers to collect municipal taxes. City of Boulder v. Regents of Univ. of Colo., 179 Colo. 420, 501 P.2d 123 (1972).

But such tax valid as applied to football games. Absent a showing that football is so related to the educational process that its devotees may not be taxed by a home rule city, the court will uphold the validity of a city admissions tax as applied to football games sponsored by a state university. City of Boulder v. Regents of Univ. of Colo., 179 Colo. 420, 501 P.2d 123 (1972).

Implied repeals of authority guarded against. The language ". . . unless otherwise provided by law", in subsection (2), operates so that any qualification of the constitutional grant is to be construed as divesting the supervision and control granted only when a legislative enactment expressly so provides. Implied repeals are thereby intended to be guarded against. Associated Students of Univ. of Colo. v. Regents of Univ. of Colo., 189 Colo. 482, 543 P.2d 59 (1975).

For cases discussing powers of board of regents to regulate affairs of university of Colorado, see Sigma Chi Fraternity v. Regents of Univ. of Colo., 258 F. Supp. 515 (D. Colo. 1966); Buttny v. Smiley, 281 F. Supp. 280 (D. Colo. 1968).

Power of regents contemplated by this section is limited power of general supervision only. Civil Rights Comm'n v. Univ. of Colo., 759 P.2d 726 (Colo. 1988).

University of Colorado's university hospital held to be public, not private, institution despite operation by "private" corporation, where hospital was established by regents pursuant to authority granted in this section and hospital's budget and spending remained under regents' control following reorganization. Colo. Ass'n of Pub. Employees v. Bd. of Regents, 804 P.2d 138 (Colo. 1990) (decided prior to 1991 repeal of § 23-21-401 et seq.).

University of Colorado subject to statutory scheme prohibiting discrimination in employment. Civil rights commisssion's exercise of jurisdiction in matter of professor allegedly denied tenure on grounds of ethnic origin did not violate constitutional provision granting regents' supervisory authority "unless otherwise provided by law". Civil Rights Comm'n v. Univ. of Colo., 759 P.2d 726 (Colo. 1988).

State board of agriculture (SBA) was proper party appellant to challenge order requiring Colorado State University (CSU) to reinstate women's fast pitch softball team. Though CSU maintains control over certain internal policies, SBA has general control and supervisory power over CSU including complete financial control. Roberts v. Colo. State Bd. of Agriculture, 998 F.2d 824 (10th Cir. 1993), cert. denied, 510 U.S. 1004, 114 S. Ct. 580, 126 L. Ed. 2d 478 (1993).

Applied in People ex rel.

Thomas v. Scott, 9 Colo. 422, 12 P. 608 (1886); People ex rel. Jerome v. Regents of Univ. of Colo., 24 Colo. 175, 49 P. 286 (1897); In re Inheritance Tax, 46 Colo. 79, 102 P. 1075 (1909); Houle v. Adams State Coll., 190 Colo. 406, 547 P.2d 926 (1976).

ARTICLE IX
Education

Law reviews: For article, "The Colorado Constitution in the New Century", see 78 U. Colo. L. Rev. 1265 (2007).

Section 1. Supervision of schools - board of education. (1) The general supervision of the public schools of the state shall be vested in a board of education whose powers and duties shall be as now or hereafter prescribed by law. Said board shall consist of a member from each congressional district of the state and, if the total number of such congressional districts is an even number, one additional member, and said members shall be elected as hereinafter provided. The members of said board shall be elected by the registered electors of the state, voting at general elections, in such manner and for such terms as may be by law prescribed; provided, that provisions may be made by law for election of a member from each congressional district of the state by the electors of such district; and provided, further, that each member from a congressional district of the state shall be a qualified elector of such district. If the total number of congressional districts of the state is an even number, the additional member of said board shall be elected from the state at large. The members of said board shall serve without compensation, but they shall be reimbursed for any necessary expenses incurred by them in performing their duties as members of said board.

(2) The commissioner of education shall be appointed by the board of education and shall not be included in the classified civil service of the state.

(3) The qualifications, tenure, compensation, powers, and duties of said commissioner shall be as prescribed by law, subject to the supervision of said board.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 54. **L. 48:** Entire section amended, see **L. 49,** p. 359. **L. 92:** Entire section amended, p. 2316, effective upon proclamation of the Governor, **L. 93,** p. 2163, January 14, 1993.

Cross references: For education generally, see title 22.

ANNOTATION

Adoption of this section did not change meaning of § 13 of art. XII, Colo. Const., either expressly or by implication. The particular provision of this section creating the office of commissioner of education does not serve to repeal or modify § 13 of art. XII, Colo. Const.; it simply substitutes the appointive office of commissioner of education for the elective office of superintendent of public instruction. Bd. of Educ. v. Spurlin, 141 Colo. 508, 349 P.2d 357 (1960).

Framers contemplated "general supervision" to include direction, inspection, and critical evaluation of Colorado's public education system from a statewide

perspective; intended the state board to serve as both a conduit of and a source for educational information and policy; and intended the general assembly to have broad but not unlimited authority to delegate to the state board "powers and duties" consistent with this intent. Bd. of Educ., Dist. No. 1 v. Booth, 984 P.2d 639 (Colo. 1999).

Creation of state charter school institute in part 5 of article 30.5 of title 22 does not violate the "general supervision" provision because it is intended to make the statewide education system more thorough by expanding the options available to all students in the state and more uniform by ensuring that comparable opportunities for creating charter schools exist across the state. Boulder Valley Sch. Dist. RE-2 v. Colo. State Bd. of Educ., 217 P.3d 918 (Colo. App. 2009).

Section 2. Establishment and maintenance of public schools. The general assembly shall, as soon as practicable, provide for the establishment and maintenance of a thorough and uniform system of free public schools throughout the state, wherein all residents of the state, between the ages of six and twenty-one years, may be educated gratuitously. One or more public schools shall be maintained in each school district within the state, at least three months in each year; any school district failing to have such school shall not be entitled to receive any portion of the school fund for that year.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 55.
Cross references: For residence of child in school district, see § 22-1-102.

ANNOTATION

Law reviews. For note, "Power of School Boards to Discontinue Schools", see Rocky Mt. L. Rev. 210 (1933). For note, "The Right to Dress and Go to School", see 37 U. Colo. L. Rev. 493 (1965). For note, "The Constitutionality of Colorado's School Finance System", see 50 U. Colo. L. Rev. 115 (1978). For comment, "The Rights of Handicapped Students in Disciplinary Proceedings by Public School Authorities", see 53 U. Colo. L. Rev. 367 (1982). For comment, "Colorado Public School Financing: Constitutional Issues", see 59 U. Colo. L. Rev. 149 (1988). For article, "'Of Greater Value Than the Gold of Our Mountains': The Right to Education in Colorado's Nineteenth-Century Constitution", see 83 U. Colo. L. Rev. 781 (2012).

Education of children of state is duty which devolves upon state government. This article provides for a general system of public schools, the details to be supplied by legislation. The administration of the laws in relation to schools is confided to state officers, county officers, and district officers. Florman v. Sch. Dist. No. 11, 6 Colo. App. 319, 40 P. 469 (1895).

Education not fundamental right. The Colorado Constitution does not establish education as a fundamental right, and it does not require that the general assembly establish a central public school finance system restricting each school district to equal expenditures per student. Lujan v. Colo. State Bd. of Educ., 649 P.2d 1005 (Colo. 1982).

Education is not a fundamental right under the United States Constitution. Lujan v. Colo. State Bd. of Educ., 649 P.2d 1005 (Colo. 1982).

This section requires the general assembly to establish and maintain a public school system but

does not create a duty to teach morality in public schools. Skipworth v. Bd. of Educ., 874 P.2d 487 (Colo. App. 1994).

Parent has constitutional right to have children educated in the public schools. People ex rel. Vollimar v. Stanley, 81 Colo. 276, 255 P. 610 (1927); Zavilla v. Masse, 112 Colo. 183, 147 P.2d 823 (1944).

Hence this section is mandatory and requires affirmative action on part of general assembly to the extent and in the manner specified. In re Kindergarten Sch., 18 Colo. 234, 32 P. 422 (1893); Duncan v. People ex rel. Moser, 89 Colo. 149, 299 P. 1060 (1931).

And arrangements for accommodations for pupils in another district does not satisfy constitutional mandate, although authorized by a vote of the district electors. Duncan v. People ex rel. Moser, 89 Colo. 149, 299 P. 1060 (1931).

Where two school districts although functioning otherwise, instead of conducting schools within their respective territories, had arranged with defendant school district to have their pupils enjoy its educational facilities, and in furtherance thereof provided transportation for the pupils to its school buildings and return, it was held that, under this section, a complaining parent could have required either school board to abandon the transportation plan and cause school to be held at a school house within the territorial limits of the district. Sch. Dist. No. 6 v. Hards, 112 Colo. 319, 149 P.2d 651 (1944).

"Thorough and uniform system" should not be interpreted to mean a single uniform system of public schools consisting of school districts governed by locally elected officials. The state is not prohibited from creating a school system with different types of schools, some controlled by school districts while others are not, so long as the additional educational opportunities are open to all students in the state. Boulder Valley Sch. Dist. RE-2 v. Colo. State Bd. of Educ., 217 P.3d 918 (Colo. App. 2009).

"Public schools" as the term is used in this section clearly applies to schools that serve only those between the ages of six and 21 residing in the district. Wilmore v. Annear, 100 Colo. 106, 65 P.2d 1433 (1937).

"Free public school" is one to which any resident of the state, between the ages of six and 21 years, shall be admitted, and there be educated gratuitously, that is to say, at public expense, or from the public funds provided for that purpose. Sch. Dist. No. 16 v. Union High Sch. No. 1, 25 Colo. App. 510, 139 P. 1039 (1914), rev'd on other grounds, 60 Colo. 292, 152 P. 1149 (1915).

But free books to all students not intended. It was not the intent of the framers of the state constitution that school districts furnish books free to all students. Marshall v. Sch. Dist. RE #3, 191 Colo. 451, 553 P.2d 784 (1976).

A school district does not have a constitutional duty to furnish without charge the use of school books in connection with the education of the children of nonindigent parents. Marshall v. Sch. Dist. RE #3, 191 Colo. 451, 553 P.2d 784 (1976).

This section is in no measure prohibitory or limitation on power to provide free schools for children under six years of age, whenever the general assembly deems it wise and beneficial to do so. This view is in harmony with other sections of this article. In re Kindergarten Sch., 18 Colo. 234, 32 P. 422 (1893).

And enactment authorized if not prohibited. The question was whether this affirmative section limited the powers of the general assembly to establish free schools for any person outside the ages of six and 21 years. The court applied the rule of construction which is: The general

assembly being invested with complete power for all the purposes of civil government, and the state constitution being merely a limitation upon that power, the court will look into it, not to see if the enactment in question is authorized, but only to see if is prohibited. Schwartz v. People, 46 Colo. 239, 104 P. 92 (1909).

Under this provision, charge for tuition is permissible. Sch. Dist. No. 16 v. Union High Sch. No. 1, 25 Colo. App. 510, 139 P. 1039 (1914), rev'd on other grounds, 60 Colo. 292, 152 P. 1149 (1915).

School district is subdivision of state for educational purposes. The several officers charged with the supervision of the schools, from the state board of education down to the directors of the school district, are merely the instruments of the state government, chosen for the purpose of effectuating its policy in relation to schools. Hazlet v. Gaunt, 126 Colo. 385, 250 P.2d 188 (1952).

The entire control of schools and school property is in the state, to be exercised as it may see fit, subject to the requirements and restrictions contained in the constitution; and school officers and school districts are merely the agencies through which it acts in the performance of duties with which it is charged by that instrument. Hazlet v. Gaunt, 126 Colo. 385, 250 P.2d 188 (1952).

Where the general assembly allocated authority between the state board and local boards in order to further a legitimate educational purpose under the charter schools act, there is a presumption the allocation is valid unless it clearly impedes the capacity of either the state board or local board to exercise its independent constitutional authority. Bd. of Educ., Dist. No. 1 v. Booth, 984 P.2d 639 (Colo. 1999).

Formation, dissolution, and change in boundaries of school districts are legislative matters. Hazlet v. Gaunt, 126 Colo. 385, 250 P.2d 188 (1952).

School districts may be abolished or dissolved at the will of the general assembly, subject to constitutional limitations, if any. It is not necessary that the districts affected give their consent to such action, except as otherwise provided by statute. A change of boundaries of school districts may occur in a variety of instances, as in the case of consolidation of districts, division to create new districts, taking from one district and adding to another, cutting off a part of a district, annexing unorganized territory to a district, etc. Hazlet v. Gaunt, 126 Colo. 385, 250 P.2d 188 (1952).

And in exercise of its power, general assembly may act directly, or may delegate its power to subordinate authorities without violating the general rule against the delegation of legislative power. Hazlet v. Gaunt, 126 Colo. 385, 250 P.2d 188 (1952).

Individual taxpayers and directors have no property interest in school. The argument that the schoolhouse or some interest therein is the property of the directors or individual taxpayers and that by its transfer the constitutional rights of the plaintiffs as school directors or as individuals have been invaded is not sound. The directors have no interest as such. The property is not theirs but the district's. The individual taxpayers do not own the property nor have they any legal or equitable interest in it. Hazlet v. Gaunt, 126 Colo. 385, 250 P.2d 188 (1952).

Equal educational opportunities not required. The "thorough and uniform" clause does not require the state to provide equal educational opportunity to its schoolchildren. Lujan v. Colo. State Bd. of Educ., 649 P.2d 1005 (Colo. 1982).

This section is satisfied if thorough and uniform educational opportunities are available through state action in each school district. Lujan v. Colo. State Bd. of Educ., 649 P.2d 1005 (Colo. 1982).

Nor identical educational expenditures. The requirement of a "thorough and uniform system of free public schools" does not require that educational expenditures per pupil in every school district be identical. Lujan v. Colo. State Bd. of Educ., 649 P.2d 1005 (Colo. 1982).

Section does not require either equal expenditures within a district or that educational expenditures per pupil in every school district be identical. Such an interpretation would conflict with the grant of control over locally raised funds to school districts under art. IX, § 15, of the Colorado constitution. Dolores Huerta Prep. High v. Colo. State Bd. of Educ., 215 P.3d 1229 (Colo. App. 2009).

The "thorough and uniform" clause does not provide any manageable standard for determining the qualitative guarantee asserted by parents of children in various Colorado school districts as a method of assessing adequate education funding. Lobato v. Colo., 216 P.3d 29 (Colo. App. 2008).

Broad reference to "thorough and uniform system of free public schools" does not create a duty to teach morality in public schools. Skipworth v. Bd. of Educ., 874 P.2d 487 (Colo. App. 1994).

Colorado's school finance system does not violate this section, nor does it deny equal protection of the law. Lujan v. Colo. State Bd. of Educ., 649 P.2d 1005 (Colo. 1982).

The legislature is constitutionally mandated to implement a "thorough and uniform" system of public education. This mandate imposes a judicial constraint, or check, on the legislature's general appropriation power, giving the court the authority to review the merits of the plaintiffs' claims that the state's school finance system is unconstitutional. Lobato v. State, 218 P.3d 358 (Colo. 2009).

A local school board's right to control instruction within the district pursuant to § 15 of this article does not limit the general assembly's authority to establish substantive and procedural criteria for the termination of teachers and for judicial review of such decisions. The concept that the courts should be the ultimate tribunal in school district employment disputes is not a novel one. Heimer v. Bd. of Educ., Adams County, 895 P.2d 152 (Colo. App. 1994), rev'd on other grounds, 919 P.2d 786 (Colo. 1996).

Applied in Chicago, B. & Q. R. R. v. Sch. Dist. No. 1, 63 Colo. 159, 165 P. 260 (1917); Hotchkiss v. Montrose County High Sch. Dist., 85 Colo. 67, 273 P. 652 (1928); Cline v. Knight, 111 Colo. 8, 137 P.2d 680 (1943); Simonson v. Sch. Dist. No. 14, 127 Colo. 575, 258 P.2d 1128 (1953).

Section 3. School fund inviolate. The public school fund of the state shall, except as provided in this article IX, forever remain inviolate and intact and the interest and other income thereon, only, shall be expended in the maintenance of the schools of the state, and shall be distributed amongst the several counties and school districts of the state, in such manner as may be prescribed by law. No part of this fund, principal, interest, or other income shall ever be transferred to any other fund, or used or appropriated, except as provided in this article IX. The state treasurer shall be the custodian of this fund, and the same shall be securely and profitably invested as may be by law

directed. The state shall supply all losses thereof that may in any manner occur. In order to assist public schools in the state in providing necessary buildings, land, and equipment, the general assembly may adopt laws establishing the terms and conditions upon which the state treasurer may (1) invest the fund in bonds of school districts, (2) use all or any portion of the fund or the interest or other income thereon to guaranty bonds issued by school districts, or (3) make loans to school districts. Distributions of interest and other income for the benefit of public schools provided for in this article IX shall be in addition to and not a substitute for other moneys appropriated by the general assembly for such purposes.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 55. **Initiated 96:** Entire section amended, effective upon proclamation of the Governor, **L. 97,** p. 2399, December 26, 1996.

Cross references: For the public school fund, see also article 41 of title 22; for pledging the credit of a state, county, city, town, or school district, see § 1 of article XI of this constitution.

ANNOTATION

Law reviews. For article, "The 'New' Colorado State Land Board", see 78 Den. U. L. Rev. 347 (2001).

This section is imperative mandate binding upon all departments of government. In re Loan of Sch. Fund, 18 Colo. 195, 32 P. 273 (1893).

The changes to this section enacted in 1996 do not violate Colorado's fiduciary obligations arising out of the federal trust enacted by the Colorado Enabling Act and therefore do not facially violate the supremacy clause of article VI of the United States Constitution. Branson Sch. Dist. RE-82 v. Romer, 161 F.3d 619 (10th Cir. 1998).

Appropriation of land and proceeds to state or municipal purpose prohibited. State constitutional provisions, declaring that land granted by the federal government to states for school purposes and the proceeds thereof shall be faithfully applied to the objects for which it was given, prohibit its appropriation to state or municipal purposes, directly or indirectly. People ex rel. Dunbar v. City of Littleton, 183 Colo. 195, 515 P.2d 1121 (1973).

This section can be held to be requirement, and not prohibition, and such construction is in harmony with the progressive school policy of the state, and will enable the general assembly to confer upon all classes of children the advantages of a system that has proven of incalculable benefit. In re Kindergarten Sch., 18 Colo. 234, 32 P. 422, 19 L.R.A. 469 (1893).

Public school fund of state and interest derived therefrom is state property. Such interest pursuant to this section must be apportioned and distributed amongst the several counties and school districts in this state in such manner as may be prescribed by law and not in conflict with any constitutional provision. Upon the distribution thereof, title thereto vests in the distributees. Craig v. People ex rel. Hazzard, 89 Colo. 139, 299 P. 1064 (1931).

This section requires state to supply all losses to school fund, and that liability rested upon the state at the moment it came into being. Leddy v. People ex rel. Farrar, 59 Colo. 120, 147 P. 365 (1915).

Security of investment of school fund is of highest importance. It is true, the section provides that the public school fund shall be invested as may be by law directed; but a further requirement is, that such fund shall be securely and profitably invested. The security of the investment is of the first and highest importance. In re Loan of Sch. Fund, 18 Colo. 195, 32 P. 273 (1893).

Legislation respecting such investment is left to discretion of general assembly and governor. It may in some cases be difficult to determine in advance whether a proposed investment of the school fund will be secure as well as profitable. In general, legislation respecting such matters must be left to the wisdom and discretion of the general assembly and of the chief executive of the state. In re Loan of Sch. Fund, 18 Colo. 195, 32 P. 273 (1893).

Lands granted by federal government to states for school purposes are exempt from special assessments upon one of three overlapping reasons, the essence of which is that enforcement of the assessments against either the land or its proceeds would be a diversion of school funds in violation of either: (1) the act of congress granting the land to the state for school purposes; (2) state constitutional provisions making such land part of the state school fund and declaring that the principal must remain inviolate; and (3) the fact that the state holds such lands in trust for the purpose of the grant. People ex rel. Dunbar v. City of Littleton, 183 Colo. 195, 515 P.2d 1121 (1973).

Municipal fee for flood control was not a "special assessment", but instead was a service fee reasonably related and essential to the provision of flood control services benefiting all property within the municipal flood control district, including school lands. Therefore, imposition of the fee against the State Land Board did not contravene constitutional limitations on the board's authority to expend state funds. City of Littleton v. State, 855 P.2d 448 (Colo. 1993).

Taxpayer has no standing to challenge the management decisions of the state board of land commissioners with regard to school lands. Such decisions have no effect on taxpayers, because the management of school lands has no effect on the state's funding of schools through the taxing power. Brotman v. East Lake Creek Ranch L.L.P., 31 P.3d 886 (Colo. 2001).

Applied in Post Printing & Publishing Co. v. Shafroth, 53 Colo. 129, 124 P. 176 (1912); People ex rel. Miller v. Higgins, 69 Colo. 79, 168 P. 740 (1917); Wilmore v. Annear, 100 Colo. 106, 65 P.2d 1433 (1937); People ex rel. Dunbar v. People ex rel. City & County of Denver, 141 Colo. 459, 349 P.2d 142 (1960).

Section 4. County treasurer to collect and disburse. Each county treasurer shall collect all school funds belonging to his county, and the several school districts therein, and disburse the same to the proper districts upon warrants drawn by the county superintendent, or by the proper district authorities, as may be provided by law.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 55.

ANNOTATION

Duty of county treasurer. Under this section, it is the duty of the county treasurer to collect his county's allotted share of the public school

income fund. Craig v. People ex rel. Hazzard, 89 Colo. 139, 299 P. 1064 (1931).

Section 5. Of what school fund consists. The public school fund of the state shall consist of the proceeds of such land as have heretofore been, or may hereafter, be granted to the state by the general government for educational purposes; all estates that may escheat to the state; also all other grants, gifts or devises that may be made to this state for educational purpose.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 55.

ANNOTATION

Appropriation of land and proceeds to state or municipal purposes prohibited. State constitutional provisions, declaring that land granted by the federal government to states for school purposes and the proceeds thereof shall be faithfully applied to the objects for which it was given, prohibit its appropriation to state or municipal purposes, directly or indirectly. People ex rel. Dunbar v. City of Littleton, 183 Colo. 195, 515 P.2d 1121 (1973).

Lands granted by federal government for school purposes are exempt from special assessments upon one of three overlapping reasons, the essence of which is that enforcement of the assessments against either the land or its proceeds would be a diversion of school funds in violation of either: (1) the act of congress granting the land to the state for school purposes; (2) state constitutional provisions making such land part of the state school fund and declaring that the principal must remain inviolate; and (3) the fact that the state holds such lands in trust for the purpose of the grant. People ex rel. Dunbar v. City of Littleton, 183 Colo. 195, 515 P.2d 1121 (1973).

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General assembly determines character and type of estates which shall escheat to the state. This section does no more than lay down the general principle for the general assembly that property defined by the general assembly as an "estate" and which the general assembly declares to be escheatable to the state, shall go to the school fund. People ex rel. Dunbar v. People ex rel. City & County of Denver, 141 Colo. 459, 349 P.2d 142 (1960).

Section 6. County superintendent of schools. There may be a county superintendent of schools in each county, whose term of office shall be four years, and whose duties, qualifications, and compensation shall be prescribed by law.

The provisions of section 8 of article XIV of this constitution to the contrary notwithstanding, the office of county superintendent of schools may be abolished by any county if the question of the abolishment of said office is first

submitted, at a general election, to a vote of the qualified electors of said county and approved by a majority of the votes cast thereon. In any county so voting in favor of such abolishment, the office of county superintendent of schools and the term of office of any incumbent in said county shall terminate on June 30 following.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 55. **L. 64:** Entire section amended, p. 840.

Editor's note: Because there are currently no county superintendents of schools, the requirement that such person be elected was stricken in section 8 of article XIV as obsolete in senate concurrent resolution 00-005.

ANNOTATION

Applied in People v. G.H. Hard Land Co., 51 Colo. 260, 117 P. 141 (1911).

Section 7. Aid to private schools, churches, sectarian purpose, forbidden. Neither the general assembly, nor any county, city, town, township, school district or other public corporation, shall ever make any appropriation, or pay from any public fund or moneys whatever, anything in aid of any church or sectarian society, or for any sectarian purpose, or to help support or sustain any school, academy, seminary, college, university or other literary or scientific institution, controlled by any church or sectarian denomination whatsoever; nor shall any grant or donation of land, money or other personal property, ever be made by the state, or any such public corporation to any church, or for any sectarian purpose.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 55.

Cross references: For religious freedom, see § 4 of article II of this constitution; for prohibition against appropriations to private institutions, see § 34 of article V of this constitution.

ANNOTATION

Law reviews. For article, "Blaine's Name in Vain?: State Constitutions, School Choice, and Charitable Choice", see 83 Den. U.L. Rev. 57 (2005).

This section prohibits aid by school district to church. Sch. Dist. No. 97 v. Schmidt, 128 Colo. 495, 263 P.2d 581 (1953).

And state aid to sectarian controlled school. As to a school "controlled by a sectarian denomination", a public school cannot be that. It is controlled by the public. Sectarian meant, to the members of the convention and to the electors who voted for and against the constitution, "pertaining to some one of the various religious sects", and the purpose of this section was to forestall public support of institutions controlled by such sects. It had no reference to public schools. People ex rel. Vollmar v. Stanley, 81 Colo. 276, 255 P. 610 (1927), overruled to the extent that it is inconsistent with the establishment clause standards set forth in Abington Sch. Dist. v. Schempp, 374 U.S. 203, 83 S. Ct. 1560, 10 L. Ed. 2d 844 (1963); Conrad v. City & County of Denver, 656 P.2d 662 (Colo. 1982).

Bible reading in public schools does not cause taxpayers to pay for aid to sectarian purpose.

People ex rel. Vollmar v. Stanley, 81 Colo. 276, 255 P. 610 (1927), overruled to the extent that it is inconsistent with the establishment clause standards set forth in Abington Sch. Dist. v. Schempp, 374 U.S. 203, 83 S. Ct. 1560, 10 L. Ed. 2d 844 (1963), Conrad v. City & County of Denver, 656 P.2d 662 (Colo. 1982).

Loan of services of employee of school district to church, while his regularly assigned tasks were to be performed by others, was not a payment from any public funds or moneys in aid of the church under this section. Sch. Dist. No. 97 v. Schmidt, 128 Colo. 495, 263 P.2d 581 (1953).

Educational grant program not aid to sectarian institution. An educational grant program, available to students at both private and public institutions, does not amount to constitutionally significant aid to a sectarian educational institution. Americans United for Separation of Church & State Fund, Inc. v. State, 648 P.2d 1072 (Colo. 1982).

Applied in In re Kindergarten Sch., 18 Colo. 234, 32 P. 422 (1893).

Section 8. Religious test and race discrimination forbidden - sectarian tenets. No religious test or qualification shall ever be required of any person as a condition of admission into any public educational institution of the state, either as a teacher or student; and no teacher or student of any such institution shall ever be required to attend or participate in any religious service whatsoever. No sectarian tenets or doctrines shall ever be taught in the public school, nor shall any distinction or classification of pupils be made on account of race or color, nor shall any pupil be assigned or transported to any public educational institution for the purpose of achieving racial balance.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 56. **Initiated 74:** Entire section was amended, effective upon proclamation of the Governor, December 20, 1974, but does not appear in the session laws.

Cross references: For religious freedom, see § 4 of article II of this constitution.

ANNOTATION

Law reviews. For note, "Standing to Challenge Special Admission Programs: DiLeo v. Board of Regents of the Univ. of Colorado", see 50 U. Colo. L. Rev. 361 (1979). For comment, "Fundamentalist Christians, the Public Schools and the Religion Clauses", see 66 Den. U. L. Rev. 289 (1989). For article, "Durable School Desegregation in the Tenth Circuit: A Focus on Effectiveness in the Remedial Stage", see 67 Den. U. L. Rev. 489 (1990).

Colorado's "busing clause" does not violate the fourteenth amendment to the United States Constitution. Keyes v. Congress of Hispanic Educators, 902 F. Supp. 1274 (D. Colo. 1995).

Purpose of constitutional restriction of "sectarian" instruction was to provide against the promulgation or teaching of the distinctive doctrines, creeds, or tenets of any particular Christian or other religious sect. People ex rel. Vollmar v. Stanley, 81 Colo. 276, 255 P. 610 (1927), overruled to the extent that it is inconsistent with the establishment clause standards set forth in Abington Sch. Dist. v. Schempp, 374 U.S. 203, 83 S. Ct. 1560, 10 L. Ed. 2d 844 (1963); Conrad v. City & County of Denver, 656 P.2d 662 (Colo. 1982).

"Sectarian" means pertaining to a sect and is commonly used to describe things pertaining to the various sects of Christianity and is not extended beyond the various religious sects. A sectarian doctrine or tenet would be one peculiar to one or more of these sects, as, for example, the doctrine held by Baptists that immersion is necessary to valid baptism, a practice which many other sects tolerate but do not require. People ex rel. Vollmar v. Stanley, 81 Colo. 276, 255 P. 610 (1927); overruled to the extent that it is inconsistent with the establishment clause standards set forth in Abington Sch. Dist. v. Schempp, 374 U.S. 203, 83 S. Ct. 1560, 10 L. Ed. 2d 844 (1963); Conrad v. City & County of Denver, 656 P.2d 662 (Colo. 1982).

"Educational institution of the state" means one of the so-called state institutions, such as, the university of Colorado. People ex rel. Walker v. Higgins, 67 Colo. 441, 184 P. 365 (1919).

Meaning of clause as to religious test is that any person of any religion or no religion may become a teacher or student, and it has nothing to do with what may be taught; and even if it had there would be no religious test for admission to the school merely because some of the pupils were taught what the religion of others forbade them to learn, but which the school did not require them to learn. People ex rel. Vollmar v. Stanley, 81 Colo. 276, 255 P. 610 (1927), overruled to the extent that it is inconsistent with the establishment clause standards set forth in Abington Sch. Dist. v. Schempp, 374 U.S. 203, 83 S. Ct. 1560, 10 L. Ed. 2d 844 (1963); Conrad v. City & County of Denver, 656 P.2d 662 (Colo. 1982).

Religious opinion may not justify denial of right to attend school. Where plaintiffs were denied the civil right to attend the public schools because of their opinion that it is a violation of one of God's commandments to salute the flag, and their consequent refusal to do so, it was held that their opinion concerning this matter was, in the constitutional sense, a religious opinion not justifying denial of right to attend public school. Zavilla v. Masse, 112 Colo. 183, 147 P.2d 823 (1944).

School board's neighborhood school policy is not to be determinative of whether segregation is practiced simply because it appears to be neutral. Keyes v. Sch. Dist. No. 1, 413 U.S. 189, 93 S. Ct. 2686, 37 L. Ed. 2d 513 (1973).

Especially where policy not free of manipulation. The mere assertion of a neighborhood school policy is not dispositive where the school authorities have been found to have practiced de jure segregation in a meaningful portion of the school system by techniques that indicate that the "neighborhood school" concept has not been maintained free of manipulation. Keyes v. Sch. Dist. No. 1, 413 U.S. 189, 93 S. Ct. 2686, 37 L. Ed. 2d 513 (1973).

Proof of substantial segregation supports finding of dual system. Proof of state-imposed segregation in a substantial portion of the district will suffice to support a finding by the trial court of the existence of a dual system. Keyes v. Sch. Dist. No. 1, 413 U.S. 189, 93 S. Ct. 2686, 37 L. Ed. 2d 513 (1973).

Provision for separate social functions of white and black pupils violates section. An authorized order of school officials that separate social functions must be provided for white and black pupils, held to be in violation of this section. Jones v. Newlon, 81 Colo. 25, 253 P. 386, 50 A.L.R. 1263 (1927).

Section 9. State board of land commissioners. (1) The state board of

land commissioners shall be composed of five persons to be appointed by the governor, with the consent of the senate, one of whom shall be elected by the board as its president.

(2) The governor shall endeavor to appoint members of the board who reside in different geographic regions of the state. The board shall be composed of one person with substantial experience in production agriculture, one person with substantial experience in public primary or secondary education, one person with substantial experience in local government and land use planning, one person with substantial experience in natural resource conservation, and one citizen at large.

(3) The governor shall appoint a new board of land commissioners on or before May 1, 1997. The term of each member shall be for four years; except that of the first board members appointed under this subsection (3), two members shall be appointed for terms that expire June 30, 1999, and three members shall be appointed for terms that expire June 30, 2001. No member shall serve more than two consecutive terms. Members of the board shall be subject to removal, and vacancies on the board shall be filled, as provided in article IV, section 6 of this constitution.

(4) The board shall, pursuant to section 13 of article XII of this constitution, hire a director with the consent of the governor, and, through the director, a staff, and may contract for office space, acquire equipment and supplies, and enter into contracts as necessary to accomplish its duties. Payment for goods, services, and personnel shall be made from the income from the trust lands. The general assembly shall annually appropriate from the income from the trust lands, sufficient moneys to enable the board to perform its duties and in that regard shall give deference to the board's assessment of its budgetary needs. The members of the board shall not, by virtue of their appointment, be employees of the state; they may be reimbursed for their reasonable and necessary expenses and may, in addition, receive such per diem as may be established by the general assembly, from the income from the trust lands.

(5) The individual members of the board shall have no personal liability for any action or failure to act as long as such action or failure to act does not involve willful or intentional malfeasance or gross negligence.

(6) The board shall serve as the trustee for the lands granted to the state in public trust by the federal government, lands acquired in lieu thereof, and additional lands held by the board in public trust. It shall have the duty to manage, control, and dispose of such lands in accordance with the purposes for which said grants of land were made and section 10 of this article IX, and subject to such terms and conditions consistent therewith as may be prescribed by law.

(7) The board shall have the authority to undertake nonsimultaneous exchanges of land, by directing that the proceeds from a particular sale or other disposition be deposited into a separate account to be established by the state treasurer with the interest thereon to accrue to such account, and withdrawing therefrom an equal or lesser amount to be used as the purchase price for other land to be held and managed as provided in this article, provided that the

purchase of lands to complete such an exchange shall be made within two years of the initial sale or disposition. Any proceeds, and the interest thereon, from a sale or other disposition which are not expended in completing the exchange shall be transferred by the state treasurer to the public school fund or such other trust fund maintained by the treasurer for the proceeds of the trust lands disposed of or sold. Moneys held in the separate account shall not be used for the operating expenses of the board or for expenses incident to the disposition or acquisition of lands.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 56. **L. 09:** Entire section amended, p. 322, effective January 10, 1911. **L. 92:** Entire section amended, p. 2317, effective upon proclamation of the Governor, **L. 93,** p. 2163, January 14, 1993. **Initiated 96:** Entire section amended, effective upon proclamation of the Governor, **L. 97,** p. 2399, December 26, 1996. **L. 2004:** Section 9 (3) amended, p. 2746, effective upon proclamation of the Governor, **L. 2005,** p. 2341, December 1, 2004.

Cross references: For state board of land commissioners, see also article 1 of title 36.

ANNOTATION

Law reviews. For article, "One Year Review of Constitutional Law", see 40 Den. L. Ctr. J. 134 (1963). For article, "The 'New' Colorado State Land Board", see 78 Den. U. L. Rev. 347 (2001).

This section is special provision of constitution and deals with special object. People ex rel. Murphy v. Field, 66 Colo. 367, 181 P. 526 (1919).

State board of land commissioners is agency of state, created by this article of the constitution. Sunray Mid-Continent Oil Co. v. State, 149 Colo. 159, 368 P.2d 563 (1961).

And member of board is clearly made constitutional officer, deriving all his powers from constitutional authority. People ex rel. Murphy v. Field, 66 Colo. 367, 181 P. 526 (1919).

This section does not conflict with § 13 of art. XII, Colo. Const. There is no repugnance between the provisions of the constitution as to civil service and the provisions in the instant section for the appointment of state board of land commissioners, as to render them irreconcilable. A member of the land board holds only for the term for which he was appointed. He is not continued in office by the articles regulating civil service. People ex rel. Murphy v. Field, 66 Colo. 367, 181 P. 526 (1919).

The changes to this section enacted in 1996 do not violate Colorado's fiduciary obligations arising out of the federal trust enacted by the Colorado Enabling Act and therefore do not facially violate the supremacy clause of article VI of the United States Constitution. Branson Sch. Dist. RE-82 v. Romer, 161 F.3d 619 (10th Cir. 1998).

Whatever power board possesses to sell state lands or any part thereof is derived from constitution. Briggs v. People, 21 Colo. App. 85, 121 P. 127 (1912).

And general assembly is without power to give to body of its own creation authority to exercise such powers conjointly with such board. In re Canal Certificates, 19 Colo. 63, 34 P. 274 (1893).

Although general assembly has constitutional authority to regulate board's activities. Evans v. Simpson, 190 Colo. 426, 547 P.2d 931 (1976).

Through reasonable rules. By the terms "under such regulations as may be prescribed by law", occurring in this section, is meant under such reasonable rules as may be prescribed from time to time by the legislative department of the government. In re Leasing of State Lands, 18 Colo. 359, 32 P. 986 (1893); In re Canal Certificates, 19 Colo. 63, 34 P. 274 (1893).

And board's activities may not contradict or exceed specific statutory limits. Evans v. Simpson, 190 Colo. 426, 547 P.2d 931 (1976).

Where an attempted nonsimultaneous exchange of land did not specify a time period for transfer of the private property and the board issued a patent when the private property had not yet even been identified, the transfer amounted to a sale in violation of both the constitution and the implementing statutes. East Lake Creek Ranch, LLP v. Brotman, 998 P.2d 46 (Colo. App. 1999), rev'd on other grounds, 31 P.3d 886 (Colo. 2001).

There is nothing facially invalid about requiring in subsection (2) a diverse board, so long as the board is motivated solely to benefit the public schools. Diversity in experience on the board may help it make more prudent decisions, considering a variety of factors and circumstances, thereby benefitting the public schools. Branson Sch. Dist. RE-82 v. Romer, 958 F. Supp. 1501 (D. Colo. 1997), aff'd on other grounds, 161 F.3d 619 (10th Cir. 1998).

It is contrary to neither the Enabling Act nor ordinary trust principles to alter in subsection (5) the standards for liability of the individual board members. The individual members may take no action on their own with regard to school lands. They may act only as a board. The board is subject to the fiduciary duties generally applicable to trustees. Branson Sch. Dist. RE-82 v. Romer, 958 F. Supp. 1501 (D. Colo. 1997), aff'd on other grounds, 161 F.3d 619 (10th Cir. 1998).

Leases may contain any terms not prohibited by law. The constitution mandates that unless limited by express statutory regulations the board shall enter into whatever leases it deems to be most beneficial to the state. It may therefore utilize any lease terms not prohibited by law, such as provision for cancellation to obtain maximum revenues. Evans v. Simpson, 190 Colo. 426, 547 P.2d 931 (1976).

Effect of failure of board to comply with legislative act. When the board attempts to dispose of the state lands under its lawful powers, a failure on its part to substantially comply with the requirements of a legislative act concerning such disposition leaves the title unaffected and conveys no title in the land to the purchaser. Briggs v. People, 21 Colo. App. 85, 121 P. 127 (1912).

Taxpayer has no standing to challenge the management decisions of the state board of land commissioners with regard to school lands. Such decisions have no effect on taxpayers, because the management of school lands has no effect on the state's funding of schools through the taxing power. Brotman v. East Lake Creek Ranch L.L.P., 31 P.3d 886 (Colo. 2001).

Moneys held not to be "income" of board. Moneys received by the state land board from the sale of the state lands, or rentals or royalties therefrom, or for interest on deferred installments of purchase money, are not "the income" of the board within the meaning of this section. In re Salaries of Comm'rs & Employees of State Land Bd., 55 Colo. 105, 133 P. 140 (1913).

Applied, as to sale of school lands, in People v. G.H. Hard Land Co., 51 Colo. 260, 117 P. 141 (1911).

Section 10. Selection and management of public trust lands.(1) The people of the state of Colorado recognize (a) that the state school lands are an endowment of land assets held in a perpetual, inter-generational public trust for the support of public schools, which should not be significantly diminished, (b) that the disposition and use of such lands should therefore benefit public schools including local school districts, and (c) that the economic productivity of all lands held in public trust is dependent on sound stewardship, including protecting and enhancing the beauty, natural values, open space and wildlife habitat thereof, for this and future generations. In recognition of these principles, the board shall be governed by the standards set forth in this section 10 in the discharge of its fiduciary obligations, in addition to other laws generally applicable to trustees.

It shall be the duty of the state board of land commissioners to provide for the prudent management, location, protection, sale, exchange, or other disposition of all the lands heretofore, or which may hereafter be, held by the board as trustee pursuant to section 9(6) of this article IX, in order to produce reasonable and consistent income over time. In furtherance thereof, the board shall:

(a) Prior to the lease, sale, or exchange of any lands for commercial, residential or industrial development, determine that the income from the lease, sale, or exchange can reasonably be anticipated to exceed the fiscal impact of such development on local school districts and state funding of education from increased school enrollment associated with such development;

(b) Protect and enhance the long-term productivity and sound stewardship of the trust lands held by the board, by, among other activities:

(I) Establishing and maintaining a long-term stewardship trust of up to 300,000 acres of land that the board determines through a statewide public nomination process to be valuable primarily to preserve long-term benefits and returns to the state; which trust shall be held and managed to maximize options for continued stewardship, public use, or future disposition, by permitting only those uses, not necessarily precluding existing uses or management practices, that will protect and enhance the beauty, natural values, open space, and wildlife habitat thereof; at least 200,000 acres of which land shall be designated on or before January 1, 1999, and at least an additional 95,000 acres of which land shall be designated on or before January 1, 2001; specific parcels of land held in the stewardship trust may be removed from the trust only upon the affirmative vote of four members of the board and upon the designation or exchange of an equal or greater amount of additional land into said trust.

(II) Including in agricultural leases terms, incentives, and lease rates that will promote sound stewardship and land management practices, long-term agricultural productivity, and community stability;

(III) Managing the development and utilization of natural resources in a manner which will conserve the long-term value of such resources, as well as existing and future uses, and in accordance with state and local laws and regulations; and

(IV) Selling or leasing conservation easements, licenses and other

similar interests in land.

(c) Comply with valid local land use regulations and land use plans.

(d) Allow access by public schools without charge for outdoor educational purposes so long as such access does not conflict with uses previously approved by the board on such lands.

(e) Provide opportunities for the public school districts within which such lands are located to lease, purchase, or otherwise use such lands or portions thereof as are necessary for school building sites, at an amount to be determined by the board, which shall not exceed the appraised fair market value, which amount may be paid over time.

(2) No law shall ever be passed by the general assembly granting any privileges to persons who may have settled upon any such public trust lands subsequent to the survey thereof by the general government, by which the amount to be derived by the sale, or other disposition of such lands, shall be diminished, directly or indirectly.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 56. **L. 96:** Entire section amended, effective upon proclamation of the Governor, **L. 97,** p. 2401, December 26, 1996.

Cross references: For the sale of state lands, see also § 36-1-124.

ANNOTATION

Law reviews. For article, "One Year Review of Constitutional Law", see 40 Den. L. Ctr. J. 134 (1963). For article, "The 'New' Colorado State Land Board", see 78 Den. U. L. Rev. 347 (2001).

The changes to this section enacted in 1996 do not violate Colorado's fiduciary obligations arising out of the federal trust enacted by the Colorado Enabling Act and therefore do not facially violate the supremacy clause of article VI of the United States Constitution. Branson Sch. Dist. RE-82 v. Romer, 161 F.3d 619 (10th Cir. 1998).

As phrased, subsection (1)(c) seeks only to further the economic productivity of the school lands through consideration of natural resource concerns. Therefore, the court did not enjoin it in a facial challenge. Branson Sch. Dist. RE-82 v. Romer, 958 F. Supp. 1501 (D. Colo. 1997), aff'd on other grounds, 161 F.3d 619 (10th Cir. 1998).

Subsection (1)(b)(II) does not require the board to take any action that is not consonant with its duty to benefit the sole beneficiary of the trust. Facially there is no reason why sound stewardship and land management practices, long-term agricultural productivity, and community stability are at odds with the best interests of the common schools. Branson Sch. Dist. RE-82 v. Romer, 958 F. Supp. 1501 (D. Colo. 1997), aff'd on other grounds, 161 F.3d 619 (10th Cir. 1998).

"General government", in the second sentence, can only mean the United States of America. Sunray Mid-Continent Oil Co. v. State, 149 Colo. 159, 368 P.2d 563 (1961).

State board of land commissioners is legal landlord of state lands and it executes all leases of state lands in the capacity of landlord. Harrah v. People ex rel. Attorney Gen., 125 Colo. 420, 243 P.2d 1035 (1952).

Constitution specifically describes lands which shall be subject to disposition by land commissioners. Sunray Mid-Continent

Oil Co. v. State, 149 Colo. 159, 368 P.2d 563 (1961).

Board alone has duty to provide for sale or other disposition of lands granted to the state by the general government under such regulations as may be prescribed by law. Sunray Mid-Continent Oil Co. v. State, 149 Colo. 159, 368 P.2d 563 (1961).

And power applies to oil and gas leases. Where the lands included within oil and gas leases are lands granted to the state by the general government, they are lands concerning which the land commissioners have exclusive powers of disposal. It does not lie within the power of the general assembly to place limitation or qualification upon the exercise of that power. Sunray Mid-Continent Oil Co. v. State, 149 Colo. 159, 368 P.2d 563 (1961).

And to school land. Lands granted to the state by the United States, to be held and maintained as an institution of learning under § 23-52-101, are lands over which the land commissioners have exclusive powers of disposal, and it is not within the power of the general assembly to place limitations upon the exercise thereof. Sunray Mid-Continent Oil Co. v. State, 149 Colo. 159, 368 P.2d 563 (1961).

Yet, board is mere agency, with the duty to do no less, and power to do no more, in the disposition of the state lands, than to comply with the directions of the statute. Walpole v. State Bd. of Land Comm'rs, 62 Colo. 554, 163 P. 848 (1917).

And board must exercise its constitutional powers in accordance with regulations prescribed and in such manner as, by its judgment, will secure the maximum amount under such regulations. In re Leasing of State Lands, 18 Colo. 359, 32 P. 986 (1893).

As general assembly has constitutional authority to regulate board's activities. Evans v. Simpson, 190 Colo. 426, 547 P.2d 931 (1976).

And board's activities may not contradict or exceed specific statutory limits. Evans v. Simpson, 190 Colo. 426, 547 P.2d 931 (1976).

Leases may contain any terms not prohibited by law. The constitution mandates that unless limited by express statutory regulations the board shall enter into whatever leases it deems to be most beneficial to the state. It may therefore utilize any lease terms not prohibited by law, such as provision for cancellation to obtain maximum revenues. Evans v. Simpson, 190 Colo. 426, 547 P.2d 931 (1976).

Payment for state land held unconstitutional. In re Canal Certificates, 19 Colo. 63, 34 P. 274 (1893).

Board cannot dedicate land simply by showing roadway on original subdivision plat. The state board of land commissioners does not have the authority to dedicate land to be used as a public highway simply by showing the roadway on an original subdivision plat. Tuttle v. County Comm'rs, 44 Colo. App. 334, 613 P.2d 641 (1980).

Municipal fee for flood control was not a "special assessment", but instead was a service fee reasonably related and essential to the provision of flood control services benefiting all property within the municipal flood control district, including school lands. Therefore, imposition of the fee against the State Land Board did not contravene constitutional limitations on the board's authority to expend state funds. City of Littleton v. State, 855 P.2d 448 (Colo. 1993).

Applied in People v. G.H. Hard Land Co., 51 Colo. 260, 117 P. 141 (1911); Harrah v. People ex rel. Attorney Gen., 125 Colo. 420, 243 P.2d 1035 (1952).

Section 11. Compulsory education. The general assembly may require, by law, that every child of sufficient mental and physical ability, shall attend the public school during the period between the ages of six and eighteen years, for a time equivalent to three years, unless educated by other means.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 56.

ANNOTATION

This section is not limit on general assembly's power to compel school attendance for more than three years. People v. In Interest of Y.D.M., 197 Colo. 403, 593 P.2d 1356 (1979).

Section 12. Regents of university. There shall be nine regents of the university of Colorado who shall be elected in the manner prescribed by law for terms of six years each. Said regents shall constitute a body corporate to be known by the name and style of "The Regents of the University of Colorado". The board of regents shall select from among its members a chairman who shall conduct the meetings of the board and a vice-chairman who shall assume the duties of the chairman in case of his absence.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 57. **L. 72:** Entire section R&RE, p. 645, effective July 1, 1973.

Cross references: For regents of the university of Colorado, see also § 23-20-102; for power to establish, maintain, and conduct departments of medicine, dentistry, nursing, and pharmacy of the university of Colorado, see § 5 of article VIII of this constitution; for control over university of Colorado university hospital, see part 5 of article 21 of title 23.

ANNOTATION

Regents constitute body corporate, but this body is a part of the state, a department of the state to which is entrusted the supervision and government of the university of the state. In re Macky's Estate, 46 Colo. 79, 102 P. 1075 (1909).

Its functions of administration deemed franchises, subject to alteration. Although it is true that the board of regents is a public corporation and that its rights and franchises are not vested, yet its various functions of administration affecting the public are franchises conferred by the constitution and general assembly, just as much as though the corporation was a private one, and are franchises in the same sense, subject to alteration, that the various functions of a private corporation are franchises. People ex rel. Jerome v. Regents of Univ. of Colo., 24 Colo. 175, 49 P. 286 (1897).

Applied in Sigma Chi Fraternity v. Regents of Univ. of Colo., 258 F. Supp. 515 (D. Colo. 1966); Associated Students of Univ. of Colo. v. Regents of Univ. of Colo., 189 Colo. 482, 543 P.2d 59 (1975).

Section 13. President of university. The regents of the university shall elect a president of the university who shall hold his office until removed by the board of regents. He shall be the principal executive officer of the university, a member of the faculty thereof, and shall carry out the policies and programs established by the board of regents.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 57. **L. 72:** Entire section R&RE, p. 645, effective July 1, 1973.

ANNOTATION

Applied in Sigma Chi Fraternity v. Regents of Univ. of Colo., 258 F. Supp. 515 (D. Colo. 1966).

Section 14. Control of university. (Repealed)

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 57. **L. 72:** Entire section repealed, p. 645, effective upon proclamation of the Governor, January 11, 1973.

Section 15. School districts - board of education. The general assembly shall, by law, provide for organization of school districts of convenient size, in each of which shall be established a board of education, to consist of three or more directors to be elected by the qualified electors of the district. Said directors shall have control of instruction in the public schools of their respective districts.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 57.

Cross references: For requirement that one or more public schools be maintained in each district, see § 2 of this article.

ANNOTATION

Law reviews. For article, "Constitutional Law", which discusses Tenth Circuit decisions dealing with the constitutionality of corporal punishment in schools, see 65 Den. U. L. Rev. 527 (1988). For comment, "The Colorado Charter Schools Act and the Potential for Unconstitutional Applications Under Article IX, Section 15 of the State Constitution", see 67 U. Colo. L. Rev. 171 (1996). For article, "'Of Greater Value Than the Gold of Our Mountains': The Right to Education in Colorado's Nineteenth-Century Constitution", see 83 U. Colo. L. Rev. 781 (2012).

There is no federal constitutional right to education. Cary v. Bd. of Educ., 598 F.2d 535 (10th Cir. 1979).

Whether there is public education system is left to states. Cary v. Bd. of Educ., 598 F.2d 535 (10th Cir. 1979).

School districts are subdivisions of state. Hazlet v. Gaunt, 126 Colo. 385, 250 P.2d 188 (1952); Bagby v. Sch. Dist. No. 1, 186 Colo. 428, 528 P.2d 1299 (1974).

And school districts are created only through legislative authority. Hazlet v. Gaunt, 126 Colo. 385, 250 P.2d 188 (1952).

Subject to legislative control. School districts being public agencies, they and their directors are subject to legislative control, save as the legislative power may be limited by the constitution. Sch. Dist. No. 16 v. Union High Sch. No. 1, 25 Colo. App. 510, 139 P. 1039 (1914), rev'd on other grounds, 60 Colo. 292, 152 P. 1149 (1915); Hazlet v. Gaunt, 126 Colo. 385, 250 P.2d 188 (1952).

General assembly has almost unlimited power to alter school districts. Because few, if any, restrictions are placed upon the legislative power in school affairs by the constitution, the general assembly

has almost unlimited power to abolish, divide or alter school districts. Hazlet v. Gaunt, 126 Colo. 385, 250 P.2d 188 (1952).

In authorizing procedures for the reorganization of school districts, the general assembly has the power to provide for the inclusion of existing districts, or portions thereof, in a new proposed district and to direct transfer of assets of the existing districts to the new one, notwithstanding the fact that the existing districts and a majority of the electors residing therein may in fact oppose the reorganization and the resultant transfer of assets. Hazlet v. Gaunt, 126 Colo. 385, 250 P.2d 188 (1952).

And may delegate power to administrative bodies. It has been generally recognized that the broad discretionary power to change the boundaries of school districts may be delegated by the general assembly to administrative bodies to be exercised under certain conditions, and in agreement with certain standards. Hazlet v. Gaunt, 126 Colo. 385, 250 P.2d 188 (1952).

Consent of particular districts, or inhabitants thereof, is not necessary as constitutional prerequisite to the changing of boundaries, dissolution or division of school districts, or to the transfer of assets from an existing school district to the larger reorganized district of which it becomes a part. Whether such consent should be required before reorganization is effected is a question of legislative policy. Hazlet v. Gaunt, 126 Colo. 385, 250 P.2d 188 (1952).

This section vests in directors of every school district control of instruction of youth of that district, in public schools. Sch. Dist. No. 16 v. Union High Sch. No. 1, 60 Colo. 292, 152 P. 1149 (1915).

And state has authority to effectuate state's education purposes. A school district is a subordinate division of the government and exercises authority to effectuate the state's education purposes. Bagby v. Sch. Dist. No. 1, 186 Colo. 428, 528 P.2d 1299 (1974).

Value system and educational emphasis to reflect will of people. It is legitimate for the curriculum of the school district to reflect the value system and educational emphasis which are the collective will of those whose children are being educated and who are paying the costs. Cary v. Bd. of Educ., 598 F.2d 535 (10th Cir. 1979).

Rules for discipline and control of school may be adopted. A board of education has power to adopt such rules and bylaws for the discipline and control of the school as it deems proper, and courts will not interfere unless there is a clear abuse of the power and discretion vested in the board. Goodman v. Sch. Dist. No. 1, 32 F.2d 586 (8th Cir. 1929).

And much latitude allowed. Under such a grant of control of instruction as contained in this section much latitude is indulged, provided the object of the power sought to be exercised is reasonably germane to the purposes of the grant. Goodman v. Sch. Dist. No. 1, 32 F.2d 586 (8th Cir. 1929).

On an underlying constitutional basis, school boards are accorded by statute the authority to employ and to fix the salaries of their employees and are vested with "considerable discretion". Ball v. Weld County Sch. Dist. No. RE-3J, 37 Colo. App. 16, 545 P.2d 1370 (1975).

Taxpayers and directors do not own school property. The argument that the schoolhouse or some interest therein is the property of the directors or individual taxpayers and that by its transfer the constitutional rights of the plaintiffs as school directors or as individuals have been invaded is not sound. The directors have no interest as such. The property is not theirs but the district's. The

individual taxpayers do not own the property nor have they any legal or equitable interest in it. Hazlet v. Gaunt, 126 Colo. 385, 250 P.2d 188 (1952).

School district has no right to school property formerly within its jurisdiction, and no right to control or operate public schools in that geographical area, because the general assembly has plenary power to determine the number and territory of school districts. Sch. Dist. No. 1 v. Sch. Planning Comm., 164 Colo. 541, 437 P.2d 787 (1968).

Candidate for school director properly elected. A candidate for school director residing in and nominated from a subdistrict, but elected by votes of electors of the entire district, was held to be properly elected. Berni v. Cook, 153 Colo. 444, 386 P.2d 588 (1963).

Teacher may bargain away freedom to communicate in official role. Cary v. Bd. of Educ., 427 F. Supp. 945 (D. Colo. 1977), aff'd, 598 F.2d 535 (10th Cir. 1979).

Where senior high school English teachers brought suit claiming that the action of the school district board of education in prohibiting the use of certain books as instructional material constituted an infringement of academic freedom, the federal district court held that such claims must be denied where all the teachers of the district, through a bargaining agent, entered a collective bargaining agreement with the school board in which final authority for the choice of instructional material was yielded to the school board. Cary v. Bd. of Educ., 427 F. Supp. 945 (D. Colo. 1977), aff'd, 598 F.2d 535 (10th Cir. 1979).

Employment termination procedures outlined in a school district's handbook do not contravene an explicit grant of authority by the state. Adams Cty. Sch. Dist. No. 50 v. Dickey, 791 P.2d 688 (Colo. 1990).

This section does not require that a court defer to a board of education's decision not to retain a teacher when the court is reviewing that decision pursuant to § 22-63-302. This section must be read in conjunction with sections 1 and 2 of this article in which responsibility for the general supervision of schools is vested in the state board of education, with powers and duties prescribed by law, and in which responsibility for establishing and maintaining a thorough and uniform system of free public schools is vested in the general assembly. These sections establish that school districts are subdivisions of the state and created through legislative authority. Furthermore, the general assembly has laid down substantive and procedural criteria applicable to the termination of teachers and judicial review of such decisions. Heimer v. Bd. of Educ., Adams County, 895 P.2d 152 (Colo. App. 1994), rev'd on other grounds, 919 P.2d 786 (Colo. 1996).

Where the state board and local boards have potentially conflicting authority, a reviewing court must strike a balance between local control of instruction and the state board's general supervision. Review must be on a case-by-case basis, guided by these principles: First, a local board's resolution of individual cases inherently implicates its ability to control instruction; second, generally applicable law triggers control of instruction concerns when applied to specific decisions likely to implicate education policy; third, local board discretion can be limited in such circumstances by statutory criteria and/or judicial review; and fourth, such general constraints, if they exist, must not usurp the local board's decision-making authority or its ability to implement, guide, or manage the educational programs for which it is ultimately responsible. Bd. of Educ., Dist. No. 1 v. Booth, 984 P.2d 639 (Colo. 1999).

Because a pilot program deprived the school districts of all

local control of instruction, Booth is not applicable since there are no constitutional powers to balance. Owens v. Colo. Cong. of Parents, 92 P.3d 933 (Colo. 2004).

Pilot program violated the local control requirement of this section because it directed the school districts to turn over a portion of their locally raised funds to nonpublic schools over whose instruction the districts have no control. The pilot program stripped local school districts of any discretion over the character of instruction participating students receive at district expense. Owens v. Colo. Cong. of Parents, 92 P.3d 933 (Colo. 2004).

Control over instruction is meaningless without control over local funding because local funding provides the link connecting the local citizenry to their school district. Allowing a district to raise and disburse its own funds enables the district to determine its own educational policy, free from restrictions imposed by the state or any other entity. Owens v. Colo. Cong. of Parents, 92 P.3d 933 (Colo. 2004).

Beginning with Belier v. Wilson, 59 Colo. 96, 147 P. 355 (1915), the court has stressed the importance of district control of locally raised funds over and above the legislature's power to guide and implement education policy. Owens v. Colo. Cong. of Parents, 92 P.3d 933 (Colo. 2004).

The constitutional division of power between the state and local boards is not measured by funding. The court rejected defendant's argument that with greater state funding comes greater state control over educational policy. Owens v. Colo. Cong. of Parents, 92 P.3d 933 (Colo. 2004).

The basic rationale of our statewide school finance system is effectuating local control over public schools. Lujan v. Colo. State Bd. of Educ., 649 P.2d 1005 (Colo. 1982); Owens v. Colo. Cong. of Parents, 92 P.3d 933 (Colo. 2004).

Framers of this section sought to empower the electors in each school district, including the parents of public school students, with control over instruction through the creation of local school boards which would represent the will of the electorate. Owens v. Colo. Cong. of Parents, 92 P.3d 933 (Colo. 2004).

School districts deemed to have standing when alleging that charter school legislation infringed upon powers granted under this section. Boulder Valley Sch. Dist. RE-2 v. Colo. State Bd. of Educ., 217 P.3d 918 (Colo. App. 2009).

Local boards' power to implement, guide, or manage educational programs in local public schools is not usurped by charter school institute. Nothing in part 5 of article 30.5 of title 22 forces anything upon local school districts. Boulder Valley Sch. Dist. RE-2 v. Colo. State Bd. of Educ., 217 P.3d 918 (Colo. App. 2009).

Applied in Kyle v. Abernathy, 46 Colo. 214, 102 P. 746 (1909); Lujan v. Colo. State Bd. of Educ., 649 P.2d 1005 (Colo. 1982).

Section 16. Textbooks in public schools. Neither the general assembly nor the state board of education shall have power to prescribe textbooks to be used in the public schools.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 57.

ANNOTATION

Law reviews. For comment, "The Colorado Charter Schools Act and

the Potential for Unconstitutional Applications Under Article IX, Section 15 of the State Constitution", see 67 U. Colo. L. Rev. 171 (1996).

Applied in Lujan v. Colo. State Bd. of Educ., 649 P.2d 1005 (Colo. 1982).

Section 17. Education - Funding. (1) **Purpose.** In state fiscal year 2001-2002 through state fiscal year 2010-2011, the statewide base per pupil funding, as defined by the Public School Finance Act of 1994, article 54 of title 22, Colorado Revised Statutes on the effective date of this section, for public education from preschool through the twelfth grade and total state funding for all categorical programs shall grow annually at least by the rate of inflation plus an additional one percentage point. In state fiscal year 2011-2012, and each fiscal year thereafter, the statewide base per pupil funding for public education from preschool through the twelfth grade and total state funding for all categorical programs shall grow annually at a rate set by the general assembly that is at least equal to the rate of inflation.

(2) **Definitions.** For purposes of this section: (a) "Categorical programs" include transportation programs, English language proficiency programs, expelled and at-risk student programs, special education programs (including gifted and talented programs), suspended student programs, vocational education programs, small attendance centers, comprehensive health education programs, and other current and future accountable programs specifically identified in statute as a categorical program.

(b) "Inflation" has the same meaning as defined in article X, section 20, subsection (2), paragraph (f) of the Colorado constitution.

(3) **Implementation.** In state fiscal year 2001-2002 and each fiscal year thereafter, the general assembly may annually appropriate, and school districts may annually expend, monies from the state education fund created in subsection (4) of this section. Such appropriations and expenditures shall not be subject to the statutory limitation on general fund appropriations growth, the limitation on fiscal year spending set forth in article X, section 20 of the Colorado constitution, or any other spending limitation existing in law.

(4) **State Education Fund Created.** (a) There is hereby created in the department of the treasury the state education fund. Beginning on the effective date of this measure, all state revenues collected from a tax of one third of one percent on federal taxable income, as modified by law, of every individual, estate, trust and corporation, as defined in law, shall be deposited in the state education fund. Revenues generated from a tax of one third of one percent on federal taxable income, as modified by law, of every individual, estate, trust and corporation, as defined in law, shall not be subject to the limitation on fiscal year spending set forth in article X, section 20 of the Colorado constitution. All interest earned on monies in the state education fund shall be deposited in the state education fund and shall be used before any principal is depleted. Monies remaining in the state education fund at the end of any fiscal year shall remain in the fund and not revert to the general fund.

(b) In state fiscal year 2001-2002, and each fiscal year thereafter, the general assembly may annually appropriate monies from the state education

fund. Monies in the state education fund may only be used to comply with subsection (1) of this section and for accountable education reform, for accountable programs to meet state academic standards, for class size reduction, for expanding technology education, for improving student safety, for expanding the availability of preschool and kindergarten programs, for performance incentives for teachers, for accountability reporting, or for public school building capital construction.

(5) **Maintenance of Effort.** Monies appropriated from the state education fund shall not be used to supplant the level of general fund appropriations existing on the effective date of this section for total program education funding under the Public School Finance Act of 1994, article 54 of title 22, Colorado Revised Statutes, and for categorical programs as defined in subsection (2) of this section. In state fiscal year 2001-2002 through state fiscal year 2010-2011, the general assembly shall, at a minimum, annually increase the general fund appropriation for total program under the "Public School Finance Act of 1994," or any successor act, by an amount not below five percent of the prior year general fund appropriation for total program under the "Public School Finance Act of 1994," or any successor act. This general fund growth requirement shall not apply in any fiscal year in which Colorado personal income grows less than four and one half percent between the two previous calendar years.

Source: Initiated 2000: Entire section added, effective upon proclamation of the Governor, **L. 2001,** p. 2387, December 28, 2000.

Editor's note: The "effective date of this section" referred to in subsection (1) is December 28, 2000.

ANNOTATION

This section prescribes minimum increases for state funding of education. It was not intended to qualify, quantify, or modify the "thorough and uniform" mandate expressed in § 2 of this article. Consequently, the mandate in this section relates solely to a minimum level of funding. Lobato v. State, 218 P.3d 358 (Colo. 2009).

ARTICLE X
Revenue

Law reviews: For article, "The Colorado Constitution in the New Century", see 78 U. Colo. L. Rev. 1265 (2007).

Section 1. Fiscal year. The fiscal year shall commence on the first day of October in each year, unless otherwise provided by law.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 57.

Editor's note: The fiscal period begins on July 1 in each year, pursuant to § 24-30-204.

Cross references: For taxation generally, see title 39.

ANNOTATION

The whole of this article relates to revenue and taxation. Weidenhaft v. Bd. of County Comm'rs, 131 Colo. 432, 283 P.2d 164 (1955).

The general assembly may not exempt from taxation any property that is not specifically exempted in this article. Logan Irrigation Dist. v. Holt, 133 P.2d 530 (Colo. 1943); Young Life Campaign v. Bd. of County Comm'rs, 300 P.2d 535 (Colo. 1956); Denver Beechcraft v. Bd. of Assessment Appeals, 681 P.2d 945 (Colo. 1984); Mesa Verde Co. v. Montezuma County Bd. of Equaliz., 898 P.2d 1 (Colo. 1995).

Only qualification to the rule barring exemption of property not specifically exempted in this article is supplied by the supremacy clause of the United States Constitution. Mesa Verde Co. v. Montezuma County Bd. of Equaliz., 898 P.2d 1 (Colo. 1995).

Possessory interest in federal land is not among the types of property exempted in this article. Mesa Verde Co. v. Montezuma County Bd. of Equaliz., 898 P.2d 1 (Colo. 1995).

Applied in Watrous v. Golden Chamber of Commerce, 121 Colo. 521, 218 P.2d 498 (1950).

Section 2. Tax provided for state expenses. The general assembly shall provide by law for an annual tax sufficient, with other resources, to defray the estimated expenses of the state government for each fiscal year.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 57.
Cross references: For maximum rate of taxation, see § 11 of this article.

ANNOTATION

I. General Consideration.
II. Power of General Assembly to Tax.

I. GENERAL CONSIDERATION.

Law reviews. For comment on Johnson v. McDonald appearing below, see 8 Rocky Mt. L. Rev. 152 (1936).

This section is mandate to general assembly. It limits its otherwise plenary power to act or not to act by requiring an annual tax to be provided sufficient, when supplemented by other resources of the state, to defray the estimated state expenses for each fiscal year. Johnson v. McDonald, 97 Colo. 324, 49 P.2d 1017 (1935); Bd. of County Comm'rs v. Vail Assocs., Inc., 19 P.3d 1263 (Colo. 2001).

It is made the imperative duty of the general assembly under this section to provide a tax sufficient to defray the estimated expenses of the state government for each fiscal year. People ex rel. Thomas v. Scott, 9 Colo. 422, 12 P. 608 (1886); In re Appropriations by Gen. Ass'y, 13 Colo. 316, 22 P. 464 (1889); People ex rel. Regents of State Univ. v. State Bd. of Equalization, 20 Colo. 220, 37 P. 964 (1894).

This mandate is not absolute, but contingent; contingent on the estimated expense exceeding the other resources which might be derived from various sorts of excise taxation. Johnson v. McDonald, 97 Colo. 324, 49 P.2d 1017 (1935).

Primary purpose for which annual tax required is to provide sufficient appropriations to defray the estimated expenses of the state government for each fiscal year. In re Appropriations by Gen. Ass'y, 13 Colo. 316, 22 P. 464 (1889).

The fund derived cannot be

diverted to other objects until its primary purpose is satisfied. Having provided a revenue for a specific purpose, as under this section, in obedience to the constitutional mandate, it is manifest that the fund cannot be diverted to other objects until the primary purpose of its creation is satisfied. It would be trifling with a serious provision of the constitution to hold that the obligation to provide a tax for a given purpose is imperative, but that the appropriation of the fund arising from such tax is optional. In re Appropriations by Gen. Ass'y, 13 Colo. 316, 22 P. 464 (1889).

Expenses primarily intended to be provided for by this section. The ordinary expenses of the legislative, executive, and judicial departments of the state are the expenses primarily intended to be provided for by this section. In re Appropriations by Gen. Ass'y, 13 Colo. 316, 22 P. 464 (1889).

This section relates merely to raising of revenue, not to its disposition after it is raised. Johnson v. McDonald, 97 Colo. 324, 49 P.2d 1017 (1935).

This section is clearly applicable to ad valorem taxes and at least of debatable applicability to excise taxes. Johnson v. McDonald, 97 Colo. 324, 49 P.2d 1017 (1935).

Legislative appropriations may be declared void for deficiency of revenue. When the entire revenue of a given fiscal year has been exhausted the legislative appropriations for that year remaining unpaid, or any unpaid portions thereof, are totally void, constitute no debt and impose no obligation, legal or moral, upon the people or upon any future general assembly. People ex rel. Colo. State Hosp. v. Armstrong, 104 Colo. 238, 90 P.2d 522 (1939).

But not prior to expiration of fiscal year. Appropriations cannot be declared void for deficiency of revenue previous to the expiration of the fiscal year. People ex rel. Colo. State Hosp. v. Armstrong, 104 Colo. 238, 90 P.2d 522 (1939).

Applied in People ex rel. Hershey v. McNichols, 91 Colo. 141, 13 P.2d 266 (1932).

II. POWER OF GENERAL ASSEMBLY TO TAX.

Taxation indisputably legislative prerogative. Gates Rubber Co. v. South Sub. Metro. Recreation & Park Dist., 183 Colo. 222, 516 P.2d 436 (1973).

General assembly has unlimited power of taxation. Except as inhibited by the constitution, the legislative department of government has the unlimited power of taxation, not only as to the subjects of taxation, but also as to the rate, and may tax its own citizens for the prosecution of any particular business. Parsons v. People, 32 Colo. 221, 76 P. 666 (1904).

And is not restricted to taxation upon property. There is nothing in the revenue article or elsewhere in the constitution which expressly, or by necessary implication, restricts the lawmaking body in its attempts to produce revenue for state purposes to taxation upon property, real and personal. Parsons v. People, 32 Colo. 221, 76 P. 666 (1904).

This section expressly speaks of other sources of revenue to defray the expenses of the state government than that provided for by an annual tax on property. Parsons v. People, 32 Colo. 221, 76 P. 666 (1904).

Hence it may derive revenue from occupation or privilege taxes. The general assembly may derive revenue from other sources, such as an occupation tax, with which, in connection with a property tax, the expenses of the state government shall be met. Parsons v. People, 32 Colo. 221, 76 P. 666 (1904).

If the general assembly has power to raise revenue to aid in

defraying the expenses of the state government by the imposition of a poll tax, it may also, for the same purpose, lay a tax upon occupations, or a privilege tax. People v. Ames, 24 Colo. 422, 51 P. 426 (1897); Parsons v. People, 32 Colo. 221, 76 P. 666 (1904).

General assembly also has power to create central body to assess county property. There should be no doubt as to the power of the general assembly to create a central body, and empower it with the duty of performing those functions of assessment, in each county, essential to bring the property therein for taxation purposes to its full cash value, the standard by it prescribed to insure a just valuation. Such law would in no wise interfere with the constitutional powers of the state or county boards of equalization. People ex rel. State Bd. of Equalization v. Hively, 139 Colo. 49, 336 P.2d 721 (1959).

General assembly may require Denver to pay registrar of registration district within its limits. This section does not deprive the general assembly of the power to require the city and county of Denver to pay the compensation of the registrar of the registration district situated within its limits since the general assembly may require a city, as a governmental agency, to perform, at its own expense, many duties of a governmental nature. People ex rel. Hershey v. McNichols, 91 Colo. 141, 13 P.2d 266 (1932).

Section 3. Uniform taxation - exemptions. (1) (a) Each property tax levy shall be uniform upon all real and personal property not exempt from taxation under this article located within the territorial limits of the authority levying the tax. The actual value of all real and personal property not exempt from taxation under this article shall be determined under general laws, which shall prescribe such methods and regulations as shall secure just and equalized valuations for assessments of all real and personal property not exempt from taxation under this article. Valuations for assessment shall be based on appraisals by assessing officers to determine the actual value of property in accordance with provisions of law, which laws shall provide that actual value be determined by appropriate consideration of cost approach, market approach, and income approach to appraisal. However, the actual value of residential real property shall be determined solely by consideration of cost approach and market approach to appraisal; and, however, the actual value of agricultural lands, as defined by law, shall be determined solely by consideration of the earning or productive capacity of such lands capitalized at a rate as prescribed by law.

(b) Residential real property, which shall include all residential dwelling units and the land, as defined by law, on which such units are located, and mobile home parks, but shall not include hotels and motels, shall be valued for assessment at twenty-one percent of its actual value. For the property tax year commencing January 1, 1985, the general assembly shall determine the percentage of the aggregate statewide valuation for assessment which is attributable to residential real property. For each subsequent year, the general assembly shall again determine the percentage of the aggregate statewide valuation for assessment which is attributable to each class of taxable property, after adding in the increased valuation for assessment attributable to new

construction and to increased volume of mineral and oil and gas production. For each year in which there is a change in the level of value used in determining actual value, the general assembly shall adjust the ratio of valuation for assessment for residential real property which is set forth in this paragraph (b) as is necessary to insure that the percentage of the aggregate statewide valuation for assessment which is attributable to residential real property shall remain the same as it was in the year immediately preceding the year in which such change occurs. Such adjusted ratio shall be the ratio of valuation for assessment for residential real property for those years for which such new level of value is used. In determining the adjustment to be made in the ratio of valuation for assessment for residential real property, the aggregate statewide valuation for assessment that is attributable to residential real property shall be calculated as if the full actual value of all owner-occupied primary residences that are partially exempt from taxation pursuant to section 3.5 of this article was subject to taxation. All other taxable property shall be valued for assessment at twenty-nine percent of its actual value. However, the valuation for assessment for producing mines, as defined by law, and lands or leaseholds producing oil or gas, as defined by law, shall be a portion of the actual annual or actual average annual production therefrom, based upon the value of the unprocessed material, according to procedures prescribed by law for different types of minerals. Non-producing unpatented mining claims, which are possessory interests in real property by virtue of leases from the United States of America, shall be exempt from property taxation.

(c) The following classes of personal property, as defined by law, shall be exempt from property taxation: Household furnishings and personal effects which are not used for the production of income at any time; inventories of merchandise and materials and supplies which are held for consumption by a business or are held primarily for sale; livestock; agricultural and livestock products; and agricultural equipment which is used on the farm or ranch in the production of agricultural products.

(d) Ditches, canals, and flumes owned and used by individuals or corporations for irrigating land owned by such individuals or corporations, or the individual members thereof, shall not be separately taxed so long as they shall be owned and used exclusively for such purposes.

(2) (a) During each property tax year beginning with the property tax year which commences January 1, 1983, the general assembly shall cause a valuation for assessment study to be conducted. Such study shall determine whether or not the assessor of each county has complied with the property tax provisions of this constitution and of the statutes in valuing property and has determined the actual value and valuation for assessment of each and every class of taxable real and personal property consistent with such provisions. Such study shall sample at least one percent of each and every class of taxable real and personal property in the county.

(b) (I) If the study conducted during the property tax year which commences January 1, 1983, shows that a county assessor did not comply with the property tax provisions of this constitution or the statutes or did not

determine the actual value or the valuation for assessment of any class or classes of taxable real and personal property consistent with such provisions, the state board of equalization shall, during such year, order such county assessor to reappraise during the property tax year which commences January 1, 1984, such class or classes for such year. Such reappraisal shall be performed at the expense of the county.

(II) If the study performed during the property tax year which commences January 1, 1984, shows that the county assessor failed to reappraise such class or classes as ordered or failed in his reappraisal to meet the objections of the state board of equalization, the state board of equalization shall cause a reappraisal of such class or classes to be performed in the property tax year which commences January 1, 1985. The cost of such reappraisal shall be paid by the state by an appropriation authorized by law. However, if such reappraisal shows that the county assessor did not value or assess taxable property as prescribed by the provisions of this constitution or of the statutes, upon certification to the board of county commissioners by the state board of equalization of the cost thereof, the board of county commissioners shall pay to the state the cost of such reappraisal.

(III) The reappraisal performed in the property tax year which commences January 1, 1985, shall become the county's abstract for assessment with regard to such reappraised class or classes for such year. The state board of equalization shall order the county's board of county commissioners to levy, and the board of county commissioners shall levy, in 1985 an additional property tax on all taxable property in the county in an amount sufficient to repay, and the board of county commissioners shall repay, the state for any excess payment made by the state to school districts within the county during the property tax year which commences January 1, 1985.

(c) (I) Beginning with the property tax year which commences January 1, 1985, and applicable to each property tax year thereafter, the annual study conducted pursuant to paragraph (a) of this subsection (2) shall, in addition to the requirements set forth in paragraph (a) of this subsection (2), set forth the aggregate valuation for assessment of each county for the year in which the study is conducted.

(II) If the valuation for assessment of a county as reflected in its abstract for assessment is more than five percent below the valuation for assessment for such county as determined by the study, during the next following year, the state board of equalization shall cause to be performed, at the expense of the county, a reappraisal of any class or classes of taxable property which the study shows were not appraised consistent with the property tax provisions of this constitution or the statutes. The state board of equalization shall cause to be performed during the next following year, at the expense of the county, a reappraisal of any class or classes of taxable property which the study shows were not appraised consistent with the property tax provisions of this constitution or the statutes even though the county's aggregate valuation for assessment as reflected in the county's abstract for assessment was not more than five percent below the county's aggregate valuation for assessment as

determined by the study. The reappraisal shall become the county's valuation for assessment with regard to such reappraised class or classes for the year in which the reappraisal was performed.

(III) In any case in which a reappraisal is ordered, state equalization payments to school districts within the county during the year in which the reappraisal is performed shall be based upon the valuation for assessment as reflected in the county's abstract for assessment. The state board of equalization shall also order the board of county commissioners of the county to impose, and the board of county commissioners shall impose, at the time of imposition of property taxes during such year an additional property tax on all taxable property within the county in an amount sufficient to repay, and the board of county commissioners shall repay, the state for any excess payments made by the state to school districts within the county during the year in which such reappraisal was performed plus interest thereon at a rate and for such time as are prescribed by law.

(IV) If the valuation for assessment of a county as reflected in its abstract for assessment is more than five percent below the valuation for assessment for such county as determined by the study and if the state board of equalization fails to order a reappraisal, state equalization payments to school districts within the county during the year following the year in which the study was conducted shall be based upon the valuation for assessment for the county as reflected in the county's abstract for assessment. The board of county commissioners of such county shall impose in the year in which such school payments are made an additional property tax on all taxable property in the county in an amount sufficient to repay, and the board of county commissioners shall repay, the state for the difference between the amount the state actually paid in state equalization payments during such year and what the state would have paid during such year had such state payments been based on the valuation for assessment as determined by the study.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 58. **L. 1879:** Entire section amended, p. 31. **L. 1891:** Entire section amended, p. 89. **L. 03:** Entire section amended, p. 152. **L. 56:** Entire section amended, see **L. 57,** p. 796. **L. 82:** Entire section amended, p. 691, effective upon proclamation of the Governor, **L. 83,** p. 1682, December 30, 1982. **L. 88:** (1)(b) amended, p. 1457, effective upon proclamation of the Governor, **L. 89,** p. 1662, January 3, 1989. **L. 2000:** (1)(b) amended, p. 2783, effective upon proclamation of the Governor, **L. 2001,** p. 2392, December 28, 2000.

Cross references: For provisions concerning property valuation by market approach only, see § 20 (8)(c) of this article and § 39-1-103 (5)(a); for the performance of labor or making improvements upon any lode claim or placer claim or for the payment of an annual claim rental fee, see §§ 30-1-103 (2)(m) and 34-43-114; for property exempt from taxation, see article 3 of title 39; for valuation and assessment of public utilities, see article 4 of title 39; for valuation of real and personal property, see part 1 of article 5 of title 39; for valuation of mines, see article 6 of title 39; for valuation of oil and gas leaseholds and lands, see article 7 of title 39.

I. GENERAL CONSIDERATION.

Law reviews. For note, "State Income Tax Laws and the 'Uniformity Clause'", see 3 Rocky Mt. L. Rev. 132 (1931). For note, "State Income Tax Laws and the 'Uniformity Clause'", see 5 Rocky Mt. L. Rev. 70 (1932). For note, "The Validity of Colorado's New Chain Store Tax", see 7 Rocky Mt. L. Rev. 138 (1935). For note, "Would an Income Tax in Colorado Be Constitutional?", see 7 Rocky Mt. L. Rev. 147 (1935). For article, "The Problem of Tax Exempt Property in Colorado", see 19 Rocky Mt. L. Rev. 22 (1946). For article, "Constitutional Law", see 32 Dicta 397 (1955). For article, "A Review of the 1959 Constitutional and Administrative Law Decisions", see 37 Dicta 81 (1960). For article, "Irrigation Corporations", see 32 Rocky Mt. L. Rev. 527 (1960). For note, "The Constitutionality of Colorado's School Finance System", see 50 U. Colo. L. Rev. 115 (1978). For article, "Property Tax Incentives for Implementing Soil Conservation Programs Under Constitutional Taxing Limitations", see 59 Den. L.J. 485 (1982). For article, "Property Tax Assessments in Colorado", see 12 Colo. Law. 563 (1983). For article, "Taxation of Colorado's Sand and Gravel Reserves", see 12 Colo. Law. 927 (1983). For article, "Appealing Property Tax Assessments", see 15 Colo. Law. 798 (1986). For comment, "Colorado Public School Financing: Constitutional Issues", see 59 U. Colo. L. Rev. 149 (1988). For article, "Three Sources of Municipal Revenue in Colorado", see 19 Colo. Law. 2065 (1990).

Purpose and construction of section. The principal design of this section is to subject taxable property to the payment of its fair and equitable proportion of the revenue necessary for governmental purposes. People ex rel. Iron Silver Mining Co. v. Henderson, 12 Colo. 369, 21 P. 144 (1888).

If there is doubt as to the meaning of a particular word or phrase made use of in this section, such doubt should be so resolved as to most effectively accomplish this beneficent purpose. People ex rel. Iron Silver Mining Co. v. Henderson, 12 Colo. 369, 21 P. 144 (1888).

Specific requirements of section. It is manifest that three things were attempted to be required: 1. That all taxes should be uniform upon the same class of subjects. 2. That they should be levied and collected under general laws. 3. That such general laws should prescribe such regulations as would secure a just valuation for taxation of all property, real and personal. Bd. of Comm'rs v. Rocky Mt. News Printing Co., 15 Colo. App. 189, 61 P. 494 (1900).

This section prohibits the general assembly from providing purely statutory exemptions that are not within the constitutional exemption categories of this article or enacting provisions that would prevent certain private interests from bearing their fair and proportionate burden of taxation. Bd. of County Comm'rs v. Vail Assocs., Inc., 19 P.3d 1263 (Colo. 2001).

Section is only limitation upon taxing power of state. This

section requiring uniformity of all taxes is the only constitutional limitation upon the taxing power of the state. City & County of Denver v. Lewin, 106 Colo. 331, 105 P.2d 854 (1940).

There is but one mode of taxation provided, and this mode is applicable alike to the levy of taxes for state, county, city and town purposes. Taxes levied under this mode must "be uniform upon the same class of subjects within the territorial limits of the authority levying the tax", and must be assessed upon all property according to its "just valuation". Palmer v. Way, 6 Colo. 106 (1881).

Taxation must be under authority of statute and cannot be authorized solely by constitutional provisions. City & County of Denver v. Sec. Life & Accident Co., 173 Colo. 248, 477 P.2d 369 (1970).

The imposition of a tax is a legislative act, and unless authority is so given, it does not exist; also the property to be taxed, as well as the mode of taxation, is subject to legislative control. Carlisle v. Pullman Palace Car Co., 8 Colo. 320, 7 P. 164 (1885).

All property not exempted is subject to taxation. Estes Park Toll Rd. Co. v. Edwards, 3 Colo. App. 74, 32 P. 549 (1893).

The constitution of this state, and the laws passed in pursuance thereof, subject all property, real and personal, within the state to taxation, that shall not be expressly exempted by law. Carlisle v. Pullman Palace Car Co., 8 Colo. 320, 7 P. 164 (1885).

"Property" is to be taken in its broad and general sense. Property within the meaning of the constitution and statutes providing for taxation is to be taken in its broad and general sense, and to constitute property which is subject to ownership as the terms are used in their broad sense there must exist the exclusive right to alienate or transfer, as well as the right to use and enjoyment. Bd. of Comm'rs v. Rocky Mt. News Printing Co., 15 Colo. App. 189, 61 P. 494 (1900).

Property owner cannot by contract escape taxation. The owner of the fee or reversionary interest in real property cannot by contract escape the burden of taxation placed upon him by the constitutional mandate of this section concerning uniformity of taxation. Bd. of County Comm'rs v. Boettcher, 99 Colo. 408, 63 P.2d 447 (1936).

Social services code funding scheme does not violate this section. The counties retain sufficient control over the funds raised by levy under the code to be deemed the taxing authorities so that, since the levies fall uniformly upon the same class of property within each county, the funding scheme does not violate this section. Colo. Dept. of Soc. Servs. v. Bd. of County Comm'rs, 697 P.2d 1 (Colo. 1985).

Review is limited to the narrow ascertainment of agency abuse of discretion by neglecting to abide by the statute in the calculation of tax assessments. Leavell-Rio Grande v. Bd. of Assess. Appeals, 753 P.2d 797 (Colo. App. 1988).

Applied in Murray v. Bd. of Comm'rs, 28 Colo. 427, 65 P. 26 (1901); Burton v. City & County of Denver, 99 Colo. 207, 61 P.2d 856 (1936); City & County of Denver v. Tax Research Bureau, 101 Colo. 140, 71 P.2d 809 (1937); Gordon v. Wheatridge Water Dist., 107 Colo. 128, 109 P.2d 899 (1941); Ginsberg v. City & County of Denver, 164 Colo. 572, 436 P.2d 685 (1968); Bd. of County Comm'rs v. Fifty-first Gen. Ass'y, 198 Colo. 302, 599 P.2d 887 (1979).

II. CLASSIFICATION AND VALUATION OF PROPERTY.

This section does not attempt to classify property for taxation, and the only limitation

contained in this section upon the method of taxing property is with respect to ditches, etc., used in a certain way. Ames v. People ex rel. Temple, 26 Colo. 83, 56 P. 656 (1899).

There is no constitutional restriction against general assembly classifying property for taxation and providing methods of taxation so long as the discrimination is based upon the nature or use of property justifying it. The uniformity and equality enjoined by the constitution require only that the same means and methods be applied impartially to all the constituents of each class so that it operates equally and uniformly upon all persons and corporations in similar circumstances. Ames v. People ex rel. Temple, 26 Colo. 83, 56 P. 656 (1899).

General assembly may classify for purpose of taxation so long as classification is reasonable one. Western Elec. Co. v. Weed, 185 Colo. 340, 524 P.2d 1369 (1974); Am. Mobilehome Ass'n v. Dolan, 191 Colo. 433, 553 P.2d 758 (1976).

If the classification conceivably rests upon some reasonable considerations of difference or policy, there is no constitutional violation. Am. Mobilehome Ass'n v. Dolan, 191 Colo. 433, 553 P.2d 758 (1976).

To justify judicial interference, classification must be based on invidious distinction. To justify judicial interference, the classification adopted must be based upon an invidious and unreasonable distinction or difference with reference to similar kinds of property. People ex rel. Iron Silver Mining Co. v. Henderson, 12 Colo. 369, 21 P. 144 (1888); Citizens' Comm. for Fair Prop. Taxation v. Warner, 127 Colo. 121, 254 P.2d 1005 (1953).

The burden is on one attacking classification to negative every conceivable basis which might support it, at least where no fundamental right is imperiled. Am. Mobilehome Ass'n v. Dolan, 191 Colo. 433, 553 P.2d 758 (1976).

General assembly determines persons and objects to be taxed. The power of taxation is an incident to sovereignty, and belongs to the legislative department to determine the persons and objects to be taxed subject to constitutional limitations, and to provide the necessary mode and provisions for making the law effective. Stanley v. Little Pittsburg Mining Co., 6 Colo. 415 (1882); Bd. of Comm'rs v. Rocky Mt. News Printing Co., 15 Colo. App. 189, 61 P. 494 (1900).

Thus it may enlarge list of taxable subjects. There is nothing in this section imposing upon the general assembly any restrictions or limitations so as to preclude it from extending and enlarging the list of taxable subjects so as to embrace tangible and intangible things which might not be property under the broad definition of the word, and which might be the subjects of qualified ownership only. Bd. of Comm'rs v. Rocky Mt. News Printing Co., 15 Colo. App. 189, 61 P. 494 (1900).

General assembly could constitutionally treat and classify movable structures differently than conventional residences for tax purposes. Am. Mobilehome Ass'n v. Dolan, 191 Colo. 433, 553 P.2d 758 (1976).

Just valuation required. This section enjoins upon the general assembly the duty of providing such regulations as shall secure a just valuation for taxation of all property. Carlisle v. Pullman Palace Car Co., 8 Colo. 320, 7 P. 164 (1885); Ames v. People ex rel. Temple, 26 Colo. 83, 56 P. 656 (1899); People ex rel. Hallett v. Bd. of Comm'rs, 27 Colo. 86, 59 P. 733 (1899).

Mode of making assessments is legislative function. Citizens' Comm. for Fair Prop. Taxation v. Warner, 127 Colo. 121, 254 P.2d 1005 (1953).

Subject to the fundamental or organic limitations on the power of the state, the general assembly has plenary power on the matter of taxation, and it alone has the right and discretion to determine all questions of time, method, nature, purpose, and extent in respect of the imposition of taxes, the subjects on which the power may be exercised, and all the incidents pertaining to the proceedings from beginning to end. Bartlett & Co. v. Bd. of County Comm'rs, 152 Colo. 388, 382 P.2d 193 (1963).

And is not for determination by courts. The method or plan by which valuations for taxation purposes is to be formulated is not for determination by the courts. Citizens' Comm. for Fair Prop. Taxation v. Warner, 127 Colo. 121, 254 P.2d 1005 (1953).

The exercise of discretion in the matter of taxation, within constitutional limitations, is not subject to judicial control. Bartlett & Co. v. Bd. of County Comm'rs, 152 Colo. 388, 382 P.2d 193 (1963).

However, legislative jurisdiction over assessment of property is limited to enactment of general laws. Legislative jurisdiction over the assessment of property, in the legal signification of that term, is limited by the constitution, so far at least as counties and other municipal corporations are concerned, to the enactment of "general laws which shall prescribe such regulations as shall secure a just valuation for taxation of all property, real and personal". In re House Bill No. 270, 9 Colo. 635, 21 P. 476 (1886).

The assessment, levy, and collection of ad valorem taxes is exclusively a legislative function and is to be exercised pursuant to general laws, subject only to limitations imposed by the constitution of the state of Colorado and the constitution of the United States. Bartlett & Co. v. Bd. of County Comm'rs, 152 Colo. 388, 382 P.2d 193 (1963).

General assembly has power to create central body to assess county property. Bearing in mind the constitutional duty imposed upon the general assembly to provide by law for a state tax sufficient, with other resources, to defray the estimated expenses of the state government for each fiscal year, the constitutional limitation of the rate of taxation on property for state purposes, the necessity for uniformity, and the constitutional mandate that taxes shall be levied upon a plan which shall secure a just valuation for the purposes of taxation, there should be no doubt as to the power of the general assembly to create a central body, and empower it with the duty of performing those functions of assessment, in each county, essential to bring the property therein for taxation purposes to its full cash value, the standard by it prescribed to insure a just valuation. Such law would in no wise interfere with the constitutional powers of the state or county boards of equalization. People ex rel. State Bd. of Equaliz. v. Hively, 139 Colo. 49, 336 P.2d 721 (1959).

Section 39-1-103(14)(b), prohibiting assessors from considering the indirect costs of development in ascertaining the assessment value of vacant land under the present worth valuation method does not violate the provision of this section, which requires the assessor to determine the actual value of property. Fid. Castle Pines, Ltd. v. State, 948 P.2d 26 (Colo. App. 1997).

Section 39-1-103(14)(b) does not violate this section by creating a separate class of commercial property, nor does it create an unreasonable classification of commercial property. Fid. Castle Pines, Ltd. v. State, 948 P.2d 26 (Colo. App. 1997).

A residential dwelling must be situated upon a lot zoned for

residential use in order for the lot to qualify as "residential real property" eligible for the tax assessment relief granted homeowners pursuant to subsection (1)(b). Lots possessing improvements and amenities which are not appurtenant to a residential dwelling do not qualify as residential real property. Vail Assocs., Inc. v. Bd. of Assess. Appeals, 765 P.2d 593 (Colo. App. 1988).

Based on a reading of the constitutional definition of residential real property and this section together, residential land must contain a residential dwelling unit and be used as a unit in conjunction with the residential improvements on the residential land. Fifield v. Pitkin County Bd. of Comm'rs, 2012 COA 197, __ P.3d __.

Land on a parcel contiguous to another commonly owned parcel with a residential dwelling unit need only be used as a unit in conjunction with that residential dwelling unit or associated residential improvement to qualify as residential land. Fifield v. Pitkin County Bd. of Comm'rs, 2012 COA 197, __ P.3d __.

Definition of residential property contains no prescribed limit on the amount of acreage which may be so classified. Rather, the size of a residential tract must be determined on a case-by-case basis according to the amount of acreage which is being used as a unit in conjunction with the residential improvements on each particular property. Gyurman v. Weld County Bd. of Equaliz., 851 P.2d 307 (Colo. App. 1993).

Egg handling equipment, items used in cleaning chicken houses, and item used for vaccinating chickens are agricultural equipment which shall be exempt from property taxation as personal property. Morning Fresh Farms v. Bd. of Equaliz., 794 P.2d 1073 (Colo. App. 1990).

Processing costs occurring on oil leasehold site are properly deducted from the sale price of the oil in valuing the unprocessed material at the wellhead under subsection (1)(b) of this section and § 39-7-101 (1)(d). The legislature, consistent with the constitution, intended "wellhead" to mean the physical location where the extracted material emerges from the ground. The statute defines "selling price at the wellhead" as the "next taxable revenues realized by the taxpayer for sale of the oil or gas, whether such sale occurs at the wellhead or after gathering, transportation, manufacturing, and processing of the product". In determining whether on-site processing costs are properly deductible in arriving at the wellhead value of the unprocessed material, the essential practice and lesson of the industry is that there is no market for the material until the initial steps of processing the unprocessed material have occurred. Here, the selling price of the separated oil was established at the storage tanks. Because gathering, processing, and transportation occurred before the product was valued at the tank battery, those costs are properly deductible in arriving at the value of the "unprocessed material" at the wellhead. Washington County Bd. of Equaliz. v. Petron Dev. Co., 109 P.3d 146 (Colo. 2005).

III. EQUALITY AND UNIFORMITY OF TAXATION.

A. In General.

This section establishes a framework for the uniform taxation of real and personal property situated in Colorado. Arapahoe County Bd. of Equaliz. v. Podoll, 935 P.2d 14 (Colo. 1997); San Miguel County Bd. of Equaliz. v. Telluride Co., 947 P.2d 1381 (Colo. 1997).

Uniformity required is uniformity of taxes, not uniformity of

procedure, or of rules or regulations to govern the levy thereof. To demand absolute uniformity in the latter regard would tend strongly to defeat the prior and supreme requirement. The constitution leaves this matter with the general assembly, simply directing that the regulations shall be made by general law, and shall secure just valuations. It is hardly necessary to dwell upon the vital importance of having different rules for the assessment of railroad rolling stock, or the net output of mines and other kinds of personalty, or of producing mines and other realty, etc. Stanley v. Little Pittsburg Mining Co., 6 Colo. 415 (1882); Carlisle v. Pullman Palace Car Co., 8 Colo. 320, 7 P. 164 (1885); People ex rel. Iron Silver Mining Co. v. Henderson, 12 Colo. 369, 21 P. 144 (1888); Am. Refrigerator Transit Co. v. Adams, 28 Colo. 119, 63 P. 410 (1900); Citizens' Comm. for Fair Prop. Taxation v. Warner, 127 Colo. 121, 254 P.2d 1005 (1953).

Neither due process nor equal protection imposes upon state any rigid rule of equality of taxation. Tom's Tavern, Inc. v. City of Boulder, 186 Colo. 321, 526 P.2d 1328 (1974).

This section requires all taxes to be uniform upon same class of subjects. Atchison, T. & S.F. Ry. v. Sullivan, 173 F. 456 (8th Cir. 1909). Carbon County Sheep & Cattle Co. v. Bd. of Comm'rs, 60 Colo. 224, 152 P. 903 (1915).

Taxation burden must be uniform on same class of property. This provision requires that the burden of taxation be uniform on the same class of property within the jurisdiction of the authority levying the tax. Denver Urban Renewal Auth. v. Byrne, 618 P.2d 1374 (Colo. 1980).

Under the "uniformity of taxation" clause, as well as the "due process of law" and the "equal protection of the law" provisions, the general assembly is not prohibited from defining "various classes of real and personal property", which may be taxed for a specific purpose. The uniformity which is required is that all persons who are members of any class, or all property logically belonging in a given classification, shall receive equal treatment to that accorded all other persons or property in the same class. Any "classification" of persons or property must not be unreasonable or arbitrary, and must have sanction in reason and logic. Dist. 50 Metro. Recreation Dist. v. Burnside, 167 Colo. 425, 448 P.2d 788 (1968).

And same methods must be applied to all in same class. The uniformity and equality enjoined by the constitution require only that the same means and methods be applied impartially to all the constituents of each class, so that it operates equally and uniformly upon all persons and corporations in similar circumstances. Ames v. People ex rel. Temple, 26 Colo. 83, 56 P. 656 (1899); City & County of Denver v. Lewin, 106 Colo. 331, 105 P.2d 854 (1940); Citizens' Comm. for Fair Prop. Taxation v. Warner, 127 Colo. 121, 254 P.2d 1005 (1953); Podoll v. Arapahoe County Bd. of Equaliz., 920 P.2d 861 (Colo. App. 1995), rev'd on other grounds, 935 P.2d 14 (Colo. 1997).

If the same method is applied without discrimination throughout the state to the valuation of all property included in a particular class, the requirement of the constitution is sufficiently complied with. People ex rel. Iron Silver Mining Co. v. Henderson, 12 Colo. 369, 21 P. 144 (1888).

Uniformity and equality enjoined by constitution require only that same means and methods be applied impartially to all constituents of each class, so that it operates equally and uniformly upon all persons and corporations in similar circumstances. M.H.C. Realty Corp. v. Bd. of County Comm'rs, 31 Colo. App. 564, 506 P.2d 762 (1972).

Actual value is the guiding principle for the taxation of real property in Colorado. Arapahoe County Bd. of Equaliz. v. Podoll, 935 P.2d 14 (Colo. 1997); San Miguel County Bd. of Equaliz. v. Telluride Co., 947 P.2d 1381 (Colo. 1997).

Actual value of residential property must be determined using means and methods applied impartially to all the members of each class, in order to reconcile the requirement of article X, § 20, of the constitution that the market approach be used for valuation with the equalization requirement of this section. Podoll v. Arapahoe County Bd. of Equaliz., 920 P.2d 861 (Colo. App. 1995), rev'd on other grounds, 935 P.2d 14 (Colo. 1997).

Uniformity in taxing implies equality in burden of taxation. Leonard v. Reed, 46 Colo. 307, 104 P. 410, 133 Am. St. R. 77 (1909).

The requirement of equality is not met when a higher or greater levy in proportion to value is imposed upon one species of property than upon others similarly situated or of like character. Hutchinson v. Herrick, 70 Colo. 534, 203 P. 275 (1921).

Thus it is well settled that the property or business of a nonresident cannot be taxed in a different manner or at a different rate than that of a resident. Bd. of Comm'rs v. Dunn, 21 Colo. 185, 40 P. 357 (1895).

Statute authorizing the imposition of disparate tax levies upon real property in the same district does not violate the uniform taxation provision of this section. Senior Corp. v. Bd. of Assess. Appeals, 702 P.2d 732 (Colo. 1985) (decided under section in effect prior to 1982 amendment).

Taxes resulting in flagrant inequality are unconstitutional. Where taxes result in a flagrant inequality between the burden imposed and the benefit received, such is confiscatory and unconstitutional. Ochs v. Town of Hot Sulphur Springs, 158 Colo. 456, 407 P.2d 677 (1965).

To secure uniformity in taxation, there must be uniformity in valuation of subjects upon which tax is levied. To attain this end, boards of equalization have been provided, one object of which is to so equalize assessment as to bring the different assessments of the several parts of a taxing district to the same relative standard, so that no one part will be compelled to pay a disproportionate share of a tax. People v. Ames, 27 Colo. 126, 60 P. 346 (1900).

Use of base year approach for valuing property does not violate provision requiring "actual value" to be basis for tax. Carrara Place v. Bd. of Equaliz., 761 P.2d 197 (Colo. 1988).

Valuation, however low, which is equal and uniform is just valuation. There is no constitutional requirement that taxes be levied under a plan which shall secure a full valuation, and, therefore, a valuation, however low, which is equal and uniform, is a just valuation and meets the constitutional requirement. People ex rel. State Bd. of Equaliz. v. Pitcher, 56 Colo. 343, 138 P. 509 (1914), aff'd sub nom. Bi-Metallic Inv. Co. v. State Bd. of Equaliz., 239 U.S. 441, 36 S. Ct. 141, 60 L. Ed. 372 (1915).

The rule of uniformity is enforced although it involves in some particular instance a departure from the letter of the statute providing how property shall be taxed. First Nat'l Bank v. Bd. of Comm'rs, 36 Colo. 265, 84 P. 1111 (1906).

The basic principle of taxation is not valuation, but equalization. Fundamentally, in the necessity of obtaining public funds through taxation for the purpose of operating the government, valuations fixed on taxable property are within themselves, of no particular moment. The basic principle of taxation is not valuation, but equalization. From the

very beginning of state government, stress has been placed upon equalization in the contribution of taxes levied for governmental use. Weidenhaft v. Bd. of County Comm'rs, 131 Colo. 432, 283 P.2d 164 (1955).

Equality and uniformity are essential to constitutionality of taxation. People ex rel. State Bd. of Equaliz. v. Pitcher, 56 Colo. 343, 138 P. 509 (1914), aff'd sub nom. Bi-Metallic Inv. Co. v. State Bd. of Equaliz., 239 U.S. 441, 36 S. Ct. 141, 60 L. Ed. 372 (1915).

Equality and uniformity of taxation are necessary under the provisions of the constitutions of which part requires that taxation shall be equal and uniform, that all property in the state shall be taxed in proportion to its value, that all taxes shall be uniform on the same class of subjects within the territorial limits of the authority levying the tax, or that the general assembly shall provide for an equal and uniform rate of assessment and taxation. Such requirements lie at the foundation of the taxing power of the state, and have for their purpose the distribution of the burden of taxation evenly and equitably as far as practical. Pueblo Junior Coll. Dist. v. Donner, 154 Colo. 26, 387 P.2d 727 (1963).

Exact uniformity and mathematical accuracy in values for assessment and taxation of property are absolutely impossible. No statute can be framed which would bring about these results. People ex rel. Iron Silver Mining Co. v. Henderson, 12 Colo. 369, 21 P. 144 (1888); Foster v. Hart Consol. Mining Co., 52 Colo. 459, 122 P. 48 (1912).

Exact uniformity or mathematical accuracy in tax valuations is not required. Am. Mobilehome Ass'n v. Dolan, 191 Colo. 433, 553 P.2d 758 (1976).

If it were necessary, in order to comply with the constitutional requirement regarding uniformity of taxation, that a statute to that end must prescribe such rules as would bring about absolute exactness, it would be impossible to frame one which would stand the constitutional test. Foster v. Hart Consol. Mining Co., 52 Colo. 459, 122 P. 48 (1912).

In disallowing taxpayer's deductions, the county assessor determined that "gathering, processing, and transportation" expenses could not be deducted unless they occurred "away from" or "beyond" the leasehold property surrounding the well. This construction of the applicable law would result in non-uniform treatment of similarly situated taxpayers within the same class and is contrary to both this section and the legislature's implementing statute. County was required to allow for deduction of processing costs on the leasehold site to comply with the constitutional and statutory provisions. Washington County Bd. of Equaliz. v. Petron Dev. Co., 109 P.3d 146 (Colo. 2005).

A definition of "well site" that includes an entire oil or gas leasehold violates the uniformity of taxation requirement. Leaseholds vary in size and numbers of wells, and the definition would force oil and gas producers with larger leaseholds who are able to gather, transport, manufacture, and process material entirely on their leaseholds to pay higher taxes by preventing them from deducting the costs of those activities. Petron Dev. Co. v. Washington County Bd. of Equaliz., 91 P.3d 408 (Colo. App. 2003), aff'd on other grounds, 109 P.3d 146 (Colo. 2005).

A cyclical revaluation plan is violative of constitutional equality and uniformity standards only where its implementation results in intentional discrimination, arbitrary action, constructive fraud, or grossly and relatively unfair assessments. Nuttall v. Leffingwell, 193 Colo. 137, 563 P.2d 356 (1977).

The temporary existence of

differences in property valuations which result from a systematic and definite revaluation plan does not constitute discrimination of a nature violative of constitutional and statutory uniformity and equality requirements, absent a showing of conduct which amounts to an intentional violation of the essential principle of practical uniformity. Nuttall v. Leffingwell, 193 Colo. 137, 563 P.2d 356 (1977).

There are neither constitutional nor statutory requirements that all taxable property be revalued before individual revaluations are entered on the tax rolls. Nuttall v. Leffingwell, 193 Colo. 137, 563 P.2d 356 (1977).

Exclusion of apartments and boarding houses from levy and collection of ad valorem taxes on taxable commercial property by business improvement district pursuant to § 31-25-1213 does not violate uniformity requirement of this section as legislature's classification of apartments and boarding houses as residential property is reasonable. Jensen v. City & County of Denver, 806 P.2d 381 (Colo. 1991).

Applied in Bd. of County Comm'rs v. Owen, 7 Colo. 467, 4 P. 795 (1884); In re House Bill No. 165, 15 Colo. 595, 26 P. 141 (1890); Mayor of Town of Valverde v. Shattuck, 19 Colo. 104, 34 P. 947, 41 Am. St. R. 208 (1893); Millheim v. Moffat Tunnel Imp. Dist., 72 Colo. 268, 211 P. 649 (1922); Walker v. Bedford, 93 Colo. 400, 26 P.2d 1051 (1933); Consol. Motor Freight, Inc. v. Bedford, 93 Colo. 440, 26 P.2d 1066 (1933); Rinn v. Bedford, 102 Colo. 475, 84 P.2d 827 (1938); Allardice v. Adams County, 173 Colo. 133, 476 P.2d 982 (1970); Platinum Props. v. Assessment App. Bd., 738 P.2d 34 (Colo. App. 1987).

B. Assessment of Property.

Purpose of provisions regulating assessment is to secure uniformity. The purpose of the provisions of the constitution and statute regulating the assessment of property, is to secure uniformity of taxation in each county of the state, for county purposes, and enable the commissioners in each county to determine the rate of tax necessary to meet the expenses of the county for the ensuing fiscal year. City & County of Denver v. Pitcher, 54 Colo. 203, 129 P. 1015 (1913).

Actual value of residential property must be determined using means and methods applied impartially to all the members of each class, in order to reconcile the requirement of article X, § 20, of the constitution that the market approach be used for valuation with the equalization requirement of this section. Podoll v. Arapahoe County Bd. of Equaliz., 920 P.2d 861 (Colo. App. 1995), rev'd on other grounds, 935 P.2d 14 (Colo. 1997).

Imposition of a tax is a legislative act so method by which valuation for taxation purposes is to be formulated is not proper subject for judicial determination. Leavell-Rio Grande v. Bd. of Assessment Appeals, 753 P.2d 797 (Colo. App. 1988).

Assessor has duty of listing and valuing property. The duty of listing and valuing all taxable property devolves upon the assessor, and him alone. Bartlett & Co. v. Bd. of County Comm'rs, 152 Colo. 388, 382 P.2d 193 (1963).

And duty of uniform assessment. It not only is the duty of the assessor to see to it that all property within his county is returned for tax assessment, and to finally fix the valuation upon each item for that purpose, but he further is obligated to undertake, so far as within his power and judgment, to see to it that taxes shall be uniformly assessed within his county. Citizens' Comm. for Fair Prop. Taxation v. Warner, 127 Colo. 121, 254 P.2d 1005 (1953); Bartlett &

Co. v. Bd. of County Comm'rs, 152 Colo. 388, 382 P.2d 193 (1963).

It is expressly stated that the assessor has specific duties to perform in conformity with legislative directives and that in performing these duties he, as well as others, shall comply with the very general admonitions in this section with the ultimate goal of securing just and equalized valuations. Bartlett & Co. v. Bd. of County Comm'rs, 152 Colo. 388, 382 P.2d 193 (1963).

The assessor is not a free agent in the performance of the exacting official duties imposed upon him by law, but he is under the supervision of the Colorado tax commission, the express province of which is to see to it that the assessment of all property throughout the state be made relatively just and uniform and at its true and full cash value; and to require all county assessors, under penalty of forfeiture and removal from office, to assess all property of every kind or character at its actual and full cash value. Citizens' Comm. for Fair Prop. Taxation v. Warner, 127 Colo. 121, 254 P.2d 1005 (1953).

When the assessor presents evidence of all three approaches to valuation, it would impose an onerous and unnecessary burden also to require the taxpayer to provide those valuations. Because neither the constitution nor the statute imposes such a requirement, the court will not so interpret them. Principal Mut. Ins. v. Bd. of Equaliz., 890 P. 273 (Colo. App. 1994).

No requirement for assessor or board to compare valuations with other counties. The constitutional provision for just and equal valuation of property among counties does not require the assessor or the board of assessment appeals to compare valuations with those made for comparable properties in other counties and make adjustments to achieve equality. Bd. of Assess. App. v. E.E. Sonnenberg, 797 P.2d 27 (Colo. 1990).

Bill in equity will lie to enjoin collection of tax resulting from illegal discrimination. Where there is a systematic, intentional, continuing omission or undervaluation of other taxable property by the taxing officers of a state or county, in violation of the constitution or law, which inevitably effects an unjust discrimination in taxation against the property of the complainant and against other property similarly situated, a bill in equity will lie to enjoin the collection of that portion of the tax which resulted from the illegal discrimination. Atchison, T. & S.F. Ry. v. Sullivan, 173 F. 456 (8th Cir. 1909).

But court may not substitute its judgment for that of tax officials in the matter of assessment of property, where they have regularly exercised their legal powers. Colo. Tax Comm'n v. Colo. Cent. Power Co., 94 Colo. 287, 29 P.2d 1030 (1934).

Reclassification from residential to commercial property satisfies constitutional requirement that assessments be just and equal where property was used as a community center in a planned community development despite fact that model homes used for commercial purposes in same county are classified as residential. Mission Viejo v. Douglas Cty. Bd. of Equaliz., 881 P.2d 462 (Colo. App. 1994).

In determining whether a valuation for assessment is just and equal under the constitution, actual use is only one factor to be considered. Mission Viejo v. Douglas Cty. Bd. of Equaliz., 882 P.2d 462 (Colo. App. 1994).

No requirement for assessor or board to reduce assessed value of lots that were correctly assessed to conform to erroneous assessment of adjacent lots. Bishop v. Colo. Bd. of Assess. Appeals, 899 P.2d 251 (Colo. App. 1994).

It is not error for board to

consider evidence of other sales of comparable property within the base period which were subject to long-term leases like the subject property. Bd. of Assess. App. v. City and County of Denver, 829 P.2d 1319 (Colo. App. 1991), aff'd, 848 P.2d 355 (Colo. 1993).

Valuation presumed to be right. The evaluation of property for taxation, as determined by the assessor, is presumed to be right and one who attacks it has the burden of affirmatively and clearly showing that it is manifestly excessive, fraudulent or oppressive. Citizens' Comm. for Fair Prop. Taxation v. Warner, 127 Colo. 121, 254 P.2d 1005 (1953).

Mere error of judgment or overvaluation is not sufficient to overthrow the assessor's determination, nor is exactness necessary in working out a relative uniformity between properties of the same general classification. Citizens' Comm. for Fair Prop. Taxation v. Warner, 127 Colo. 121, 254 P.2d 1005 (1953).

The use of standard depreciation schedule to determine taxable value is not arbitrary just because individual variations in value may occur. Rather, it can constitute a reasonable method of appraising value where mass produced, fungible items are involved. Am. Mobilehome Ass'n v. Dolan, 191 Colo. 433, 553 P.2d 758 (1976).

No reduction in improvement assessments based on quality grades is required by this section. Assessor used the market approach to determine the median value for all of the property in the subdivision and applied the median value to each individual residence. Arapahoe Cty. Bd. of Equaliz. v. Podoll, 935 P.2d 14 (Colo. 1997).

Valuation was not just and equal where county could offer no reasonable explanation why there was a 32.8% increase in the assessed value of plaintiffs' residences but only a 10.73% average increase as to the vast majority of comparable residences. Podoll v. Arapahoe County Bd. of Equaliz., 920 P.2d 861 (Colo. App. 1995), rev'd on other grounds, 935 P.2d 14 (Colo. 1997).

Applied in People ex rel. Hallett v. Bd. of Comm'rs, 27 Colo. 86, 59 P. 733 (1899); Carbon County Sheep & Cattle Co. v. Bd. of Comm'rs, 60 Colo. 224, 152 P. 903 (1915); Mtn. States Tel. v. Bd. of Assess., 696 P.2d 326 (Colo. 1985).

C. Taxes Affected.

1. Ad Valorem Taxes.

Ad valorem tax is tax levied upon classes of real and personal property located within the boundaries of the taxing entity for the purpose of providing revenues in order to defray general governmental expenses. Bloom v. City of Ft. Collins, 784 P.2d 304 (Colo. 1989).

This section refers to levy of ad valorem taxes on property. It seems to be almost universally accepted that this and like constitutional provisions refer to the levy of ad valorem taxes upon property. Denver City Ry. v. City of Denver, 21 Colo. 350, 41 P. 826 (1895); Pub. Utils. Comm'n v. Manley, 99 Colo. 153, 60 P.2d 913 (1936); Colo. Dept. of Soc. Servs. v. Bd. of County Comm'rs, 697 P.2d 1 (Colo. 1985).

This section of the constitution refers solely to taxation according to the commonly accepted meaning of that term, by assessment, levy, and collection. Ard v. People, 66 Colo. 480, 182 P. 892 (1919).

A general ad valorem tax is prescribed by this section which must be imposed uniformly upon both real and personal property according to their assessed valuation. Ochs v. Town of Hot Sulphur Springs, 158 Colo. 456, 407 P.2d 677 (1965); Bloom v. City of Ft. Collins, 784 P.2d 304 (Colo. 1989).

If tax is for "general" purpose it must be an ad valorem tax. Ochs v. Town of Hot Sulphur Springs, 158 Colo. 456, 407 P.2d 677 (1965).

General assembly is not at liberty to impose property tax upon theory that it is imposing excise tax. When all the elements of regulation or restraint are wanting and the primary purpose of a tax act is the raising of revenue, it loses its character as a license tax and becomes a tax for revenue. Walker v. Bedford, 93 Colo. 400, 26 P.2d 1051 (1933).

A revenue measure is one which has for its object the levying of taxes in the strict sense of the words. If the principal object is another purpose, the incidental production of revenue growing out of the enforcement of the act will not make it one for raising revenue. Colo. Nat'l Life Assurance Co. v. Clayton, 54 Colo. 256, 130 P. 330 (1913); Chicago B. & Q. R.R. v. Sch. Dist. No. 1, 63 Colo. 159, 165 P. 260 (1917); Ard v. People, 66 Colo. 480, 182 P. 892 (1919).

Municipal transportation utility fee does not constitute a property tax and therefore does not violate the uniformity requirement of this section. Bloom v. City of Ft. Collins, 784 P.2d 304 (Colo. 1989).

2. Excise and Privilege Taxes.

Distinction between excise and property taxes. Where a tax is imposed directly by the general assembly without assessment, and is measured by the extent a privilege is exercised by the taxpayer without regard to the nature or value of his assets, it is an excise tax; if the tax be computed upon a valuation of property which is fixed by assessors, although a privilege may be included in the valuation, it is a property tax. Walker v. Bedford, 93 Colo. 400, 26 P.2d 1051 (1933).

A tax levied directly by the city, without assessment, and imposed without regard to the nature or value of assets, constitutes an excise tax and not an ad valorem tax and is therefore not subject to the constitutional restriction of this section. Deluxe Theatres, Inc. v. City of Englewood, 198 Colo. 85, 596 P.2d 771 (1979).

Excise tax is imposed on a particular act, event, or occurrence rather than being based on assessed value of property subject to the tax. Bloom v. City of Ft. Collins, 784 P.2d 304 (Colo. 1989).

Section not applicable to taxes on privileges and occupations. This section refers to the levy of ad valorem taxes upon property, and does not apply to taxes imposed upon privileges and occupations. Jackson v. City of Glenwood Springs, 122 Colo. 323, 221 P.2d 1083 (1950); California Co. v. State, 141 Colo. 288, 348 P.2d 382 (1959), appeal dismissed, 364 U.S. 285, 81 S. Ct. 42, 5 L. Ed. 2d 37, reh'g denied, 364 U.S. 897, 81 S. Ct. 219, 5 L. Ed. 2d 191 (1960); Tom's Tavern, Inc. v. City of Boulder, 186 Colo. 321, 526 P.2d 1328 (1974); Deluxe Theatres, Inc. v. City of Englewood, 198 Colo. 85, 596 P.2d 771 (1979).

The uniformity provision of this section is not applicable to excise taxes, as it applies only to direct or ad valorem taxes. Denver City Ry. v. City of Denver, 21 Colo. 350, 41 P. 826 (1907); Ard v. People, 66 Colo. 480, 182 P. 892 (1919); Hughes v. State, 97 Colo. 279, 49 P.2d 1009 (1935).

Thus imposition of a tax upon occupations not governed by rule of uniformity and neither expressly nor by implication is the general assembly inhibited thereby from conferring upon the city the power to exact such a tax. And the general assembly, having in express terms conferred upon the city the power to tax, as well as to license and regulate, the enactment of the ordinance under consideration was a legitimate exercise of that power, and

the charge for license therein provided may be enforced as a valid tax. Parsons v. People, 32 Colo. 221, 76 P. 666 (1904); Denver City Ry. v. City of Denver, 21 Colo. 350, 41 P. 826 (1907); Hamilton v. City & County of Denver, 176 Colo. 6, 490 P.2d 1289 (1971).

There must be reasonable relation between license fee and cost of regulatory services performed. Even though a license fee may incidentally raise revenue, yet there must be some reasonable relation between the fee and the cost of services performed in the matter of regulation. Heckendorf v. Town of Littleton, 132 Colo. 108, 286 P.2d 615 (1955).

But exaction of license fee with view to revenue is exercise of power of taxation. The exaction of a license fee with a view to revenue is not the exercise of the police power, but of the power of taxation. Walker v. Bedford, 93 Colo. 400, 26 P.2d 1051 (1933).

While a license tax may be levied upon such business or occupations as are proper subjects of municipal regulation and control, and the purpose of such tax is for regulation or restraint, yet when all the elements of regulation or restraint are wanting, and the primary purpose of the act is the raising of revenue only, then it loses its character as a license tax and becomes a tax for revenue. Bd. of Comm'rs v. Dunn, 21 Colo. 185, 40 P. 357 (1895).

Where regulation or restraint despite the nomenclature of an act is almost negligible, if not entirely so, the levy ceased to be a license fee and becomes in reality a revenue raising measure. Heckendorf v. Town of Littleton, 132 Colo. 108, 286 P.2d 615 (1955).

City has power to impose license tax as revenue measure or as police regulation or both; consequently it is immaterial, where the validity of an ordinance imposing such a tax is attacked, whether it is for one purpose or the other or for both. Denver City Ry. v. City of Denver, 21 Colo. 350, 41 P. 826 (1895); Hollenbeck v. City & County of Denver, 97 Colo. 370, 49 P.2d 435 (1935).

In the absence of a showing that it acted arbitrarily, a city council's action in adopting licensing ordinances is not subject to review by the courts unless the ordinances so enacted operate as a prohibition of a legitimate occupation or business and one not inherently dangerous to the public welfare. Hollenbeck v. City & County of Denver, 97 Colo. 370, 49 P.2d 435 (1935).

And where each class is affected alike by licensing ordinance, the latter is not discriminatory or repugnant to the "uniformity" clause of the constitution. Hollenbeck v. City & County of Denver, 97 Colo. 370, 49 P.2d 435 (1935).

City's service expansion fee is excise tax. City's service expansion fee which was imposed on persons who obtain building permits from the city for new construction, additions to existing structures, and substantial alterations or reconstruction of existing buildings and which was calculated on the square footage and type of proposed improvement for which the building permit was sought was an excise tax and not an ad valorem tax subject to this section's uniformity requirement. Cherry Hills Farms, Inc. v. City of Cherry Hills Vill., 670 P.2d 779 (Colo. 1983).

Municipal transportation utility fee does not constitute an excise tax. Bloom v. City of Ft. Collins, 784 P.2d 304 (Colo. 1989).

Inheritance tax is not tax on property as is contemplated by this section. It is, rather, a contribution which the state levies for itself as a condition upon which the title to property shall pass upon the death of its owner. In re House Bill No. 122, 23 Colo. 492, 48 P. 535 (1897); First Nat'l

Bank v. People, 183 Colo. 320, 516 P.2d 639 (1973).

But is considered a privilege tax. Succession to an inheritance may be taxed as a privilege, though the property of the estate itself be already taxed as property, and taxes are required to be uniform. It is an impost or duty upon the devolution of an estate. Brown v. Elder, 32 Colo. 527, 77 P. 853 (1904).

Tax on use of highway is not property tax. Pub. Utils. Comm'n v. Manley, 99 Colo. 153, 60 P.2d 913 (1936).

Nor are fees for registration of motor vehicles, etc. The purpose of registration fees for motor vehicles, trailers and semitrailers, and trailer coaches is not the levying of taxes or the collection of revenue. Such fees are in the nature of a license or toll for the use of the public highways. Ard v. People, 66 Colo. 480, 182 P. 892 (1919).

Nor is tax on income from oil and gas. This section does not apply to the excise tax upon income derived from the production of oil and gas. California Co. v. State, 141 Colo. 288, 348 P.2d 382 (1959), appeal dismissed, 364 U.S. 285, 81 S. Ct. 42, 5 L. Ed. 2d 37, reh'g denied, 364 U.S. 897, 81 S. Ct. 219, 5 L. Ed. 2d 191 (1960).

Tax providing for old age pensions is excise tax. In re Hunter's Estate, 97 Colo. 279, 49 P.2d 1009 (1935).

Tax imposed on gasoline is excise tax. Altitude Oil Co. v. People, 70 Colo. 452, 202 P. 180 (1921), appeal dismissed for want of jurisdiction, 260 U.S. 693, 43 S. Ct. 11, 67 L. Ed. 467 (1922); People v. City & County of Denver, 84 Colo. 576, 272 P. 629 (1928).

3. Local Assessments.

"Tax" does not refer to assessments for local improvements. The word "tax", when used in the constitution, refers to the ordinary public taxes, and not to the assessments for benefits in the nature of local improvements. While, therefore, the power to make such assessments is referable to the taxing power, it is held not to be an infringement upon the rule requiring all taxes to be uniform. City of Denver v. Knowles, 17 Colo. 204, 30 P. 1041 (1892); Reams v. City of Grand Junction, 676 P.2d 1189 (Colo. 1984); Zelinger v. City & County of Denver, 724 P.2d 1356 (Colo. 1986).

"Taxation" and "assessment" are not synonymous terms. Each is a separate and distinct exercise of the sovereign power to tax. Ochs v. Town of Hot Sulphur Springs, 158 Colo. 456, 407 P.2d 677 (1965).

Taxation is that burden or charge upon all property laid for raising revenue for general public purposes in defraying the expense of the government. Ochs v. Town of Hot Sulphur Springs, 158 Colo. 456, 407 P.2d 677 (1965).

Assessments are local and resorted to for making local improvements on the theory that the property affected is increased in value at least to the amount of the levy. Ochs v. Hot Sulphur Springs, 158 Colo. 456, 407 P.2d 677 (1965); Bloom v. City of Ft. Collins, 784 P.2d 304 (Colo. 1989).

If the principal object of an ordinance is to defray the expense of operating a utility directed against those desiring to use the service, the incidental production of revenue does not make it a revenue measure. Western Heights Land Corp. v. City of Fort Collins, 146 Colo. 464, 362 P.2d 155 (1961).

Uniformity clause does not apply to such special assessments. The uniformity of taxation enjoined by this section does not prohibit the general assembly from authorizing the levy of special assessments in cities and towns, for local improvements in the nature of benefits to the abutting property. All matters of hardship and

expediency must be left for legislative cognizance and action. City of Denver v. Knowles, 17 Colo. 204, 30 P. 1041 (1892).

Local assessments are upheld upon the theory that the property against which the assessment is made is specially benefited by the improvement, while taxes refer more particularly to those burdens imposed for revenue. City of Denver v. Knowles, 17 Colo. 204, 30 P. 1041 (1892).

Special assessments are not imposed upon the basis of value, but upon the basis of special benefits accruing from their construction, so that the question of value cuts no figure. Hildreth v. City of Longmont, 47 Colo. 79, 105 P. 107 (1909).

Revenues from special assessments cannot be diverted to general town purposes. If "taxes" are special assessments upon the certain properties, the revenues therefrom cannot be diverted to providing for general town purposes, but will necessarily have to be used and confined to payment for the capital improvement resulting in an equivalent benefit to the properties. Ochs v. Town of Hot Sulphur Springs, 158 Colo. 456, 407 P.2d 677 (1965); Reams v. City of Grand Junction, 676 P.2d 1189 (Colo. 1984); Zelinger v. City & County of Denver, 724 P.2d 1356 (Colo. 1986); Bloom v. City of Ft. Collins, 784 P.2d 304 (Colo. 1989).

Special assessments for conservancy districts are not a tax within the meaning of this section. People ex rel. Setters v. Lee, 72 Colo. 598, 213 P. 583 (1923).

Rates adopted by city ordinance with reference to its water and sewer service cannot be considered as taxes even though imposed and collected by the city, such ordinance not being a revenue measure, but designed to defray expense of operating a utility directed against those using the service. W. Heights Land Corp. v. City of Fort Collins, 146 Colo. 464, 362 P.2d 155 (1961).

Special service fee does not constitute a tax if it is a charge imposed for the purpose of defraying the cost of a particular government service rather than designed to raise revenues to defray general governmental expenses. Bloom v. City of Ft. Collins, 784, P.2d 304 (Colo. 1989).

Municipal transportation utility fee constitutes a special service fee rather than a special assessment. Bloom v. City of Ft. Collins, 784 P.2d 304 (Colo. 1989).

IV. EXEMPTION OF DITCHES, CANALS, AND FLUMES.

Purpose of section to avoid double taxation. It is evident that the intention of this section is only to exempt, in cases where the ditch and right could be regarded under the decisions as appurtenant and the land taxed to cover the increased value, so as to prevent double taxation. Empire Land & Canal Co. v. Bd. of County Comm'rs, 1 Colo. App. 205, 28 P. 482 (1891).

"Ditches, canals, and flumes" includes dams, reservoirs, and improvements. Ditches, canals, and flumes have been defined so as to include headgates, dams, reservoirs, reservoir beds, the earth upon which the dam stands, and the lands surrounding the reservoirs with the improvements thereon that are an integral part of the irrigation system as a whole and necessary for its proper maintenance and operation. Logan Irrigation Dist. v. Holt, 110 Colo. 253, 133 P.2d 530 (1943); Jacobucci v. District Court, 189 Colo. 380, 541 P.2d 667 (1975).

But not horses, machinery, and tools. Exemption does not reach horses, machinery, and tools with which repairing is done. The provision of this section which exempts from

separate taxation certain ditches, canals and flumes, does not reach the horses, machinery and tools with which the cleaning and repairing is done. Koenig v. Jewish Consumptives' Relief Soc'y, 98 Colo. 253, 55 P.2d 325 (1936).

The words "ditches, canals and flumes", as used in this section, do not extend to agricultural implements, machinery, and livestock kept for the purpose of the repair and maintenance of such ditches, canals and flumes. Logan Irrigation Dist. v. Holt, 110 Colo. 253, 133 P.2d 530 (1943).

Irrigation works not exempt from taxation. The provision of this section relating to canals, ditches and flumes owned by corporations and used exclusively to irrigate their lands or the lands of individual stockholders thereof, or owned by individuals and used exclusively to irrigate their lands, does not exempt such properties from taxation. It provides that they shall not be separately taxed. Shaw v. Bond, 64 Colo. 366, 171 P. 1142 (1918); Beaty v. Bd. of County Comm'rs, 101 Colo. 346, 73 P.2d 982 (1937).

But may be considered as one class for taxation purposes. Such ditches, canals, and flumes thus used may be considered as constituting one class for purposes of taxation, and the method for ascertaining the value of this class is likewise fixed. Ames v. People ex rel. Temple, 26 Colo. 83, 56 P. 656 (1899).

Ditch in one county and land in another must be valued together. While the main portion of the ditch may be situate in one county and the land in another, nevertheless in ascertaining values the two must be taken together. Ames v. People ex rel. Temple, 26 Colo. 83, 56 P. 656 (1899).

General assembly cannot extend provisions of this section. Logan Irrigation Dist. v. Holt, 110 Colo. 253, 133 P.2d 530 (1943).

Canals exempted. The exemption from separate taxation applies to (a) canals owned by one or more individuals, used exclusively to irrigate their lands; (b) canals owned by corporations, used exclusively to irrigate their lands or the lands of their stockholders; (c) canals owned in part by individuals and partly by corporations, used exclusively to irrigate lands of either or both. In other words, canals owned and used exclusively for irrigation of lands owned by the owners of the canals. Shaw v. Bond, 64 Colo. 366, 171 P. 1142 (1918).

Exemption applies to ditches owned by corporation when the water is exclusively used by corporation or individual members. It was evidently the intention of the framers of the constitution to exempt from taxation ditches owned by a corporation when the water is used by the corporation or individual members, who by virtue of their corporate interests are joint owners in the ditch, or where an individual owns a private ditch, or where a number of individuals, having a common right to water, unite in constructing the ditch, own and use it in common, and the water is distributed pro rata for the exclusive use of the owners of the ditch upon land owned by them respectively; but in each case the water carried by the ditch must be used exclusively by the owners of the ditch. When the ditch is so owned, and the water so used, the ditch shall not be taxed separately from the land. Empire Land & Canal Co. v. Bd. of County Comm'rs, 1 Colo. App. 205, 28 P. 482 (1891); Bd. of Comm'rs v. Cortez Land & Sec. Co., 81 Colo. 266, 254 P. 996 (1927).

And to interest of shareholder in such corporation. The interest of a shareholder in an irrigation corporation, the property of which is exempt from taxation, is also exempt. Bd. of Comm'rs v. Cortez Land & Sec. Co., 81 Colo. 266, 254 P. 996 (1927).

And to ditch conveying water to reservoir. Ditch conveying

water to reservoir where it is distributed to those entitled to ditch is not subject to separate taxation. Shaw v. Bond, 64 Colo. 366, 171 P. 1142 (1918).

Irrigation system owned exclusively by company owning no land is not exempt under this section. San Luis Power & Water Co. v. Trujillo, 93 Colo. 385, 26 P.2d 537 (1933).

Reservoir dam may not be separately taxed as improvement upon land on which it stood. Kendrick v. Twin Lakes Reservoir Co., 58 Colo. 281, 144 P. 884 (1914); Shaw v. Bond, 64 Colo. 366, 171 P. 1142 (1918).

Mere diversion of water does not constitute appropriation of water so as to satisfy requirements of this section. Jacobucci v. District Court, 189 Colo. 380, 541 P.2d 667 (1975).

Section 3.5. Homestead exemption for qualifying senior citizens and disabled veterans. (1) For property tax years commencing on or after January 1, 2002, fifty percent of the first two hundred thousand dollars of actual value of residential real property, as defined by law, that, as of the assessment date, is owner-occupied and is used as the primary residence of the owner-occupier shall be exempt from property taxation if:

(a) The owner-occupier is sixty-five years of age or older as of the assessment date and has owned and occupied such residential real property as his or her primary residence for the ten years immediately preceding the assessment date;

(b) The owner-occupier is the spouse or surviving spouse of an owner-occupier who previously qualified for a property tax exemption for the same residential real property under paragraph (a) of this subsection (1); or

(c) For property tax years commencing on or after January 1, 2007, only, the owner-occupier, as of the assessment date, is a disabled veteran.

(1.3) An owner-occupier may claim only one exemption per property tax year even if the owner-occupier qualifies for an exemption under both paragraph (c) of subsection (1) of this section and either paragraph (a) or paragraph (b) of subsection (1) of this section.

(1.5) For purposes of this section, "disabled veteran" means an individual who has served on active duty in the United States armed forces, including a member of the Colorado national guard who has been ordered into the active military service of the United States, has been separated therefrom under honorable conditions, and has established a service-connected disability that has been rated by the federal department of veterans affairs as one hundred percent permanent disability through disability retirement benefits or a pension pursuant to a law or regulation administered by the department, the department of homeland security, or the department of the army, navy, or air force.

(2) Notwithstanding the provisions of subsection (1) of this section, section 20 of this article, or any other constitutional provision, for any property tax year commencing on or after January 1, 2003, the general assembly may raise or lower by law the maximum amount of actual value of residential real property of which fifty percent shall be exempt under subsection (1) of this section.

(3) For any property tax year commencing on or after January 1, 2002, the general assembly shall compensate each local governmental entity that

receives property tax revenues for the net amount of property tax revenues lost as a result of the property tax exemption provided for in this section. For purposes of section 20 of article X of this constitution, such compensation shall not be included in local government fiscal year spending and approval of this section by the voters statewide shall constitute a voter-approved revenue change to allow the maximum amount of state fiscal year spending for the 2001-02 state fiscal year to be increased by forty-four million one hundred twenty-three thousand six hundred four dollars and to include said amount in state fiscal year spending for said state fiscal year for the purpose of calculating subsequent state fiscal year spending limits. Payments made from the state general fund to compensate local governmental entities for property tax revenues lost as a result of the property tax exemption provided for in this section shall not be subject to any statutory limitation on general fund appropriations because the enactment of this section by the people of Colorado constitutes voter approval of a weakening of any such limitation.

Source: L. 2000: Entire section added, p. 2784, effective upon proclamation of the Governor, December 28, 2000. **L. 2006:** (1) amended and (1.3) and (1.5) added, p. 2953, effective upon proclamation of the Governor, **L. 2007,** p. 2963, December 31, 2006.

ANNOTATION

Law reviews: For article, "The Colorado Constitution in the New Century", see 78 U. Colo. L. Rev. 1265 (2007).

Section 4. Public property exempt. The property, real and personal, of the state, counties, cities, towns and other municipal corporations and public libraries, shall be exempt from taxation.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 58.

ANNOTATION

Law reviews. For article, "Legal Classification of Special District Corporate Forms in Colorado", see 45 Den. L.J. 347 (1968). For article, "Property Tax Incentives for Implementing Soil Conservation Programs Under Constitutional Taxing Limitations", see 59 Den. L.J. 485 (1982).

Reason for exemption. The property of a state is exempt from the operation of its own tax statutes because, as the sovereign power, the state, through its officers or through the municipalities it creates, receives the revenue from the taxes levied and collected, and, from the means thus furnished, discharges the duties and pays the expenses of government. Game & Fish Comm'n v. Feast, 157 Colo. 303, 402 P.2d 169 (1965).

The property of a state constitutes one of the instrumentalities by which it performs its functions. Since every tax would to a certain extent diminish its capacity and ability, the courts have generally been unwilling to hold that such property is subject to taxation in any form. Game & Fish Comm'n v. Feast, 157 Colo. 303, 402 P.2d 169 (1965).

This section enunciates a policy that public property owned by governmental entities that have the

power to levy taxes is exempt from ad valorem taxation because taxation of such property would diminish public revenues available to carry out public purposes. City and County of Denver v. Bd. of Assessment Appeals, 30 P.3d 177 (Colo. 2001).

Ownership of land by city is only condition essential for exemption. City of Colo. Springs v. Bd. of Comm'rs, 36 Colo. 231, 84 P. 1113 (1906); Stewart v. City & County of Denver, 70 Colo. 514, 202 P. 1085 (1921).

An exemption from taxation of the property of cities is absolute, and depends upon no condition but ownership by the city. Stewart v. City & County of Denver, 70 Colo. 514, 202 P. 1085 (1921).

Fact that land lies outside city limits is immaterial. The fact that property lies outside of the territorial limits of the municipal corporation owning the same, and a part of such property is alleged, in effect, to be unnecessary for waterworks, or other municipal purposes does not bring the property within any exception to this constitutional provision simply because there is no exception concerning the character or situation of the property. All property of a municipal corporation is included. Stewart v. City & County of Denver, 70 Colo. 514, 202 P. 1085 (1921).

Section does not exempt cities from excise taxes. People v. City & County of Denver, 84 Colo. 576, 272 P. 629 (1928).

"Municipal corporations" applies only to municipal corporations proper. An express exemption of property of "municipal corporations" applies only to municipal corporations proper and not to corporations composed of shareholders which in form and controlling features are business enterprises upon which municipal powers have been incidentally conferred in promotion of their primary purpose. Logan Irrigation Dist. v. Holt, 110 Colo. 253, 133 P.2d 530 (1943).

Irrigation district's property not exempt. Irrigation districts are public corporations, but they are not in any true sense within classification, "state, counties, cities, towns, and other municipal corporations", so as to render property belonging to them exempt from taxation under this provision. Logan Irrigation Dist. v. Holt, 110 Colo. 253, 133 P.2d 530 (1943).

Fire and police pension association's property not exempt from taxation. The fire and police pension association (FPPA) lacks ad valorem taxation authority and therefore is not a political subdivision for purposes of the statute that exempts property of political subdivisions from taxation. Moreover, there is no other statutory provision that specifically exempts the FPPA's property from taxation. City and County of Denver v. Bd. of Assessment Appeals, 30 P.3d 177 (Colo. 2001).

Properties, the rents and income of which are devoted to the maintenance of a school, are exempt under this section. City & County of Denver v. Gunter, 63 Colo. 69, 163 P. 1118 (1917); Pitcher v. Miss Wolcott Sch. Ass'n, 63 Colo. 294, 165 P. 608 (1917).

There is no reason why the property of a political subdivision of the state should not be exempt from taxation under this section as "property...of the state". Therefore, § 41-3-107, exempting airport authorities from taxation, is constitutional. Denver Beechcraft v. Bd. of Assess. Appeals, 681 P.2d 945 (Colo. 1984).

Section no defense to action by city to enforce warranty of title. This section was held to be no defense to an action brought by city to enforce warranty of title to real property on which was a tax lien, since the lien of record constituted a cloud on title. Wellshire Land Co. v. City & County

of Denver, 103 Colo. 416, 87 P.2d 1 (1929).

Applied in Colo. Farm & Livestock Co. v. Beerbohm, 43 Colo. 464, 96 P. 443 (1908); People v. City & County of Denver, 90 Colo. 598, 10 P.2d 1106 (1932); Cooper Motors, Inc. v. Bd. of County Comm'rs, 131 Colo. 78, 279 P.2d 685 (1955); Game & Fish Comm'n v. Feast, 157 Colo. 303, 402 P.2d 169 (1965); Allardice v. Adams County, 173 Colo. 133, 476 P.2d 982 (1970); City & County of Denver v. Security Life & Accident Co., 173 Colo. 248, 477 P.2d 369 (1970); Denver v. Bd. of Assessment Appeals, 782 P.2d 817 (Colo. App. 1989).

Section 5. Property used for religious worship, schools and charitable purposes exempt. Property, real and personal, that is used solely and exclusively for religious worship, for schools or for strictly charitable purposes, also cemeteries not used or held for private or corporate profit, shall be exempt from taxation, unless otherwise provided by general law.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 58. **L. 36, 2nd Ex. Sess.:** Entire section amended, p. 107, see **L. 37,** p. 1034.

ANNOTATION

I. GENERAL CONSIDERATION.

Law reviews. For comment on Colorado Tax Comm'n v. Denver Bible Institute appearing below, see 6 Rocky Mt. L. Rev. 293 (1934). For comment on unpublished supreme court decision, City & County of Denver v. Colorado Seminary, see 7 Rocky Mt. L. Rev. 153 (1935). For comment on Hanagan v. Grand Lodge Knights of Pythias appearing below, see 11 Rocky Mt. L. Rev. 62 (1938). For article, "The Problem of Tax Exempt Property in Colorado", see 19 Rocky Mt. L. Rev. 22 (1946). For article, "One Year Review of Constitutional and Administrative Law", see 34 Dicta 79 (1957). For article, "Property Tax Incentives for Implementing Soil Conservation Programs Under Constitutional Taxing Limitations", see 59 Den. L.J. 485 (1982).

Purpose of exemptions. Exemptions to charitable and educational institutions are predicated on the fact that they render service to the state, and thus relieve the state and its people of a burden which they otherwise would have to assume. Young Life Campaign v. Bd. of County Comm'rs, 134 Colo. 15, 300 P.2d 535 (1956).

Distinction must be made between charitable and religious exemptions; a religious group does not have as a fundamental purpose the providing of services which the state would otherwise have to provide since the state is constitutionally prohibited from such religious involvement. General Conference of Church of God--7th Day v. Carper, 192 Colo. 178, 557 P.2d 832 (1976).

While such "social benefit" analysis may have continuing validity in the determination of charitable

exemptions, it has no place in the state's evaluation of its treatment of bona fide religious groups. General Conference of Church of God--7th Day v. Carper, 192 Colo. 178, 557 P.2d 832 (1976).

To the extent that Young Life Campaign v. Bd. of County Comm'rs, 134 Colo. 15, 300 P.2d 535 (1956) established some requirement of benefit to the people of the state of Colorado as a condition for the property tax exemption of religious organizations, it is hereby overruled. General Conference of Church of God--7th Day v. Carper, 192 Colo. 178, 557 P.2d 832 (1976).

"Taxation" is used in its ordinary sense. The evident purpose in inserting the word "general" before the word "taxation" was to show the legislative intention that "taxation" was used in the ordinary sense in which it is employed in the constitution and statutes generally, as distinguished from "assessments" against property for local improvements. City & County of Denver v. Tihen, 77 Colo. 212, 235 P. 777 (1925).

As to constitutionality of tax exemption statutes, see Young Life Campaign v. Bd. of County Comm'rs, 134 Colo. 15, 300 P.2d 535 (1956).

Taxation must be under authority of statute and cannot be authorized solely by constitutional provisions such as this section. City & County of Denver v. Security Life & Accident Co., 173 Colo. 248, 477 P.2d 369 (1970).

The taxing power of the state is exclusively a legislative function, and taxes can be imposed only in pursuance of legislative authority, there being no such thing as taxation by implication. Bartlett & Co. v. Bd. of County Comm'rs, 152 Colo. 388, 382 P.2d 193 (1963).

But tax exemptions must arise directly from constitutional authorization, and until such authorization is granted, the legislative branch of the government is impotent. Young Life Campaign v. Bd. of County Comm'rs, 134 Colo. 15, 300 P.2d 535 (1956).

There are no implied exemptions. Young Life Campaign v. Bd. of County Comm'rs, 134 Colo. 15, 300 P.2d 535 (1956).

General assembly may limit, modify, or abolish exemptions provided by this section. Under this constitutional provision with reference to exemptions, it is expressly provided that the property exempted, "shall be exempt from taxation, unless otherwise provided by general law", thus leaving it absolutely within the power of the general assembly to limit, modify, or abolish the exemptions provided by the constitution. McGlone v. First Baptist Church, 97 Colo. 427, 50 P.2d 547 (1935).

"Use" is test of right of exemption. Use, not use and ownership, is the test of the right of exemption under this section. City amp; County of Denver v. Tihen, 77 Colo. 212, 235 P. 777 (1925).

The constitution requires only "use", and use, rather than ownership, is the well-established test of exemption from taxation. United Presbyterian Ass'n v. Bd. of County Comm'rs, 167 Colo. 485, 448 P.2d 967 (1968).

This section mentions no particular or specific character of use, and all requirements are met if a use is for the purposes fostered for exemption. The taxing authorities admit a use by contending that the use is insignificant. It is not for them to measure a use. Horton v. Fountain Valley Sch., 98 Colo. 480, 56 P.2d 933 (1936).

Financial insolvency is not a condition precedent to tax exempt status. Am. Water Works Ass'n v. Bd. of Assmt. Appeals, 38 Colo. App. 341, 563 P.2d 359 (1976).

Requirements of this

section are met if some work has been done. The requirements of the constitution concerning exemption from taxation of property of religious, charitable, and educational institutions are met if there has been work done on the lots and there is a bona fide continuous intention on the part of such organizations that their real property, and buildings to be by them constructed thereon, are to be devoted exclusively to religious, charitable, or educational purposes. McGlone v. First Baptist Church, 97 Colo. 427, 50 P.2d 547 (1935).

The fact that an addition to a hospital remains in an unfinished state, due to inability to obtain funds to complete it, does not destroy the property's tax exempt status, because of the uses to which it is being put, related to hospital activity, pending its completion. City & County of Denver v. Spears' Free Clinic & Hosp. for Poor Children, 142 Colo. 347, 350 P.2d 1057 (1960).

Thus "structure" is "building", although incomplete, within the meaning of the latter term as used in this section relating to property exempt from taxation. El Jebel Shrine Ass'n v. McGlone, 93 Colo. 334, 26 P.2d 108 (1933).

Application of section to corporations. The constitution and statute granting exemption from taxation to certain charitable and educational nonprofit corporations should, in the absence of plain indications to the contrary, apply only to corporations created by the state itself and over which it has control, or to those corporations whose property in the state of Colorado is operated for the benefit of the people of this state. Young Life Campaign v. Bd. of County Comm'rs, 134 Colo. 15, 300 P.2d 535 (1956).

This section must be understood to have exclusive reference to institutions or corporations created by the laws of this state, and not to foreign corporations that may choose to locate branches in this state. Young Life Campaign v. Bd. of County Comm'rs, 134 Colo. 15, 300 P.2d 535 (1956).

A nonprofit foreign corporation operating educational or eleemosynary institutions in Colorado for the benefit of the people of this state, is not deprived of the tax exemptions granted by the constitution and statutes. Young Life Campaign v. Bd. of County Comm'rs, 134 Colo. 15, 300 P.2d 535 (1956).

A resident or nonresident, nonprofit, educational or charitable corporation which is not using its property in this state for the benefit of people of Colorado is not exempt from the payment of general taxes on property held by it within this state. Young Life Campaign v. Bd. of County Comm'rs, 134 Colo. 15, 300 P.2d 535 (1956).

A foreign corporation operating in Colorado but not primarily serving the people of this state should not qualify for such exemptions simply by the device of changing into a Colorado domestic corporation. Young Life Campaign v. Bd. of County Comm'rs, 134 Colo. 15, 300 P.2d 535 (1956).

Injunction is proper relief from assessments where property is exempt. Where property specifically exempt, under the constitution and statute, is involved, and relief is sought from clouded titles and continuing assessments, equity may be invoked. In such cases the generally recognized rule supports resort to injunction. Such is the holding in this jurisdiction. Colo. Farm & Live Stock Co. v. Beerbohm, 43 Colo. 464, 96 P. 443 (1908); Shaw v. Bond, 64 Colo. 366, 171 P. 1142 (1918); Grisard v. Roselawn Cem. Ass'n, 92 Colo. 289, 19 P.2d 766 (1933).

An important exception to the general doctrine of noninterference by injunction against the collection of the

revenue because of illegality in the tax is recognized in that class of cases where the relief is sought against a tax assessed upon property which has been exempted by law from taxation. Indeed, the exception has been so uniformly recognized as to become of itself a governing rule. City & County of Denver v. Spears' Free Clinic & Hosp. for Poor Children, 142 Colo. 347, 350 P.2d 1057 (1960).

So is declaratory judgment. A declaratory action will lie at the instance of a taxpayer to test the right of the taxpayer's exemption from taxes. City & County of Denver v. Spears' Free Clinic & Hosp. for Poor Children, 142 Colo. 347, 350 P.2d 1057 (1960).

Applied in Colo. Tax Comm'n v. Denver Bible Inst., 94 Colo. 402, 30 P.2d 870 (1934); Beth Medrosh Hagodol v. City of Aurora, 126 Colo. 267, 248 P.2d 732 (1952); First Nat'l Bank v. Bd. of County Comm'rs, 189 Colo. 128, 538 P.2d 427 (1975).

II. PROPERTY EXPRESSLY EXEMPT.

A. Property Used for Religious Worship.

Exemption not perpetual. The exemption provided by this section is not perpetual and does not run with the land but is dependent upon the use to which the property is put. St. Mark Coptic Orthodox Church v. State Bd. of Assessment Appeals, 762 P.2d 775 (Colo. App. 1988).

The test for determining whether the exemption for property used for religious worship applies depends upon the character of the use of to which the property is put. St. Mark Coptic Orthodox Church v. State Bd. of Assessment Appeals, 762 P.2d 775 (Colo. App. 1988); Maurer v. Young Life, 779 P.2d 1317 (Colo. 1989); Pilgrim Rest Baptist Church, Inc. v. Prop. Tax Adm'r, 971 P.2d 270 (Colo. App. 1998).

Property tax exemptions based on religious use should not be narrowly construed, and each claim for tax exemption must be resolved on the basis of its own facts under the applicable legal standards. Maurer v. Young Life, 779 P.2d 1317 (Colo. 1989); Bd. of Assessment Appeals v. AM/FM Int'l, 940 P.2d 338 (Colo. 1997); Pilgrim Rest Baptist Church, Inc. v. Prop. Tax Adm'r, 971 P.2d 270 (Colo. App. 1998).

Implicit within the property tax scheme is a requirement that, in order for the property to qualify for tax exemption for that tax year, there must be at least some actual use of the property for tax exempt purposes in that tax year. Pilgrim Rest Baptist Church, Inc. v. Prop. Tax Adm'r, 971 P.2d 270 (Colo. App. 1998).

Court declines to hold, as a matter of law, that any particular frequency or quantity of use religious in character is required to satisfy the constitutional and statutory standards for an exemption based on religious use. Pilgrim Rest Baptist Church, Inc. v. Prop. Tax Adm'r, 971 P.2d 270 (Colo. App. 1998).

Church property used primarily for commercial purposes is not exempt. Where property owned by a church corporation is not used exclusively for religious worship, but on the contrary is employed primarily for commercial and business purposes, it is not exempt from taxation. First Congregational Church v. Wright, 110 Colo. 135, 131 P.2d 419 (1942).

Buildings must be used for designated purpose before exemption applies. The mandate of the constitution, subject to no exceptions, is that buildings be used for a designated purpose before the exemption applies. McGlone v. First Baptist Church, 97 Colo. 427, 50 P.2d 547 (1935).

The intention to construct a building to be used for religious worship does not exempt the real estate

upon which it is to be located from taxation. McGlone v. First Baptist Church, 97 Colo. 427, 50 P.2d 547 (1935).

B. Property Used for Schools.

This section is to be liberally construed. Pitcher v. Miss Wolcott Sch. Ass'n, 63 Colo. 294, 165 P. 608, 1917E L.R.A. 1095 (1917).

Thus it includes all property the income of which is used for particular educational institutions. Under the statute granting a charter to defendant in error and making certain of its property exempt from taxation, the exemption held to include all property of the corporation the income from which is devoted exclusively to its purposes as an educational institution or which is necessary to carry out its design. City & County of Denver v. Colo. Sem., 96 Colo. 109, 41 P.2d 1109 (1934).

Exemption is not lost by change of name. The fact that an educational institution operating by virtue of a state charter under which its property is exempt from taxation may have changed its name, held not to operate as a forfeiture or abandonment of its rights under the charter. City & County of Denver v. Colo. Sem., 96 Colo. 109, 41 P.2d 1109 (1934).

What permissible uses must embrace. In determining whether or not property used for school purposes is exempt from taxation, the uses permissible must necessarily embrace all which are proper and appropriate to effect the objects of the institution claiming the benefits of the exemption. Horton v. Fountain Valley Sch., 98 Colo. 480, 56 P.2d 933 (1936).

Where question as to future profit is not to be considered. In determining whether property used for school purposes is exempt from taxation, it being conceded that the institution involved is not operating at a profit, the question of whether it might at some time become a profit-making enterprise is not open for consideration. Horton v. Fountain Valley Sch., 98 Colo. 480, 56 P.2d 933 (1936).

Formerly, premises of private schools conducted for profit were exempt. Pitcher v. Miss Wolcott Sch. Ass'n, 63 Colo. 294, 165 P. 608 (1917).

Now only those not conducted for profit are exempt. School buildings, with the grounds connected therewith, used solely for religious, educational, and benevolent purposes, and not conducted for profit, are exempt from taxation. Kemp v. Pillar of Fire, 94 Colo. 41, 27 P.2d 1036 (1933).

Exemption not lost even though some money is received as part tuition and rental. The fact that some money is received from a few students as part payment for their tuition, board, and lodging, and that a small rental is received for some of the land does not, in the circumstances, deprive the property of its exempt character. Bishop & Chapter of Cathedral of St. John the Evangelist v. Treasurer of City & County of Denver, 37 Colo. 378, 86 P. 1021 (1906); Pitcher v. Miss Wolcott Sch. Ass'n, 63 Colo. 294, 165 P. 608 (1917); Horton v. Colo. Springs Masonic Bldg. Soc'y, 64 Colo. 529, 173 P. 61 (1918); Bd. of Comm'rs v. San Luis Valley Masonic Ass'n, 80 Colo. 183, 250 P. 147 (1926); Denver Turnverein v. McGlone, 91 Colo. 473, 15 P.2d 709 (1932); Kemp v. Pillar of Fire, 94 Colo. 41, 27 P.2d 1036 (1933).

Nor because part of school building is used as living quarters. A building and lots donated for a theological school on condition that the bishop of the diocese should be the chief instructor and reside in the building, and in which such school is conducted, the bishop being the principal instructor, is exempt from taxes under the provisions of the constitution and this section exempting

from taxes lots and buildings thereon, where the buildings are used solely and exclusively for schools, although the bishop resides in the building with his family and uses all of the rooms thereof for living purposes and the students are limited to half a dozen, none of whom reside in the building, but attend recitations and lectures at the building, and none of the instructors receive any salary as such, and a considerable part of the bishop's time is devoted to his duties as bishop of the diocese. Bishop & Chapter of Cathedral of St. John the Evangelist v. Treasurer of Arapahoe County, 29 Colo. 143, 68 P. 272 (1901).

C. Property Used for Charitable Purposes.

The justification for charitable tax exemption, especially insofar as the rights of the body politic are involved, is that if the charitable work were not being done by a private party, it would have to be undertaken at public expense. United Presbyterian Ass'n v. Bd. of County Comm'rs, 167 Colo. 485, 448 P.2d 967 (1968).

One justification for exempting charitable enterprises from taxation is that they perform functions which tax-supported governmental entities would otherwise be required to perform. West Brandt Found., Inc. v. Carper, 652 P.2d 564 (Colo. 1982).

Present benefit to public required. But there must be present benefit to the general public which is sufficient to justify the loss of tax revenue. United Presbyterian Ass'n v. Bd. of County Comm'rs, 167 Colo. 485, 448 P.2d 967 (1968).

Charitable purpose as an end will be strictly construed. United Presbyterian Ass'n v. Bd. of County Comm'rs, 167 Colo. 485, 448 P.2d 967 (1968).

But means to achieve that end will be liberally construed. Charitable purpose as an end will be strictly construed; but if the end be clearly established as charitable, then the means used to achieve that end will be liberally construed as a use for a charitable purpose. United Presbyterian Ass'n v. Bd. of County Comm'rs, 167 Colo. 485, 448 P.2d 967 (1968); West Brandt Found., Inc. v. Carper, 652 P.2d 564 (Colo. 1982).

Constitution does not authorize general assembly to define "charitable purpose". The power to construe the constitutional meaning of "charitable purposes" is vested solely in the judiciary. United Presbyterian Ass'n v. Bd. of County Comm'rs, 167 Colo. 485, 448 P.2d 967 (1968).

"Charity". A charity in the legal sense may be more fully defined as a gift, to be applied consistently with existing laws, for the benefit of an indefinite number of persons, either by bringing their minds or hearts under the influence of education or religion, by relieving their bodies from disease, suffering or constraint, by assisting them to establish themselves in life, or by erecting or maintaining public buildings or works or otherwise lessening the burdens of government. Bishop & Chapter of Cathedral of St. John the Evangelist v. Treasurer of City & County of Denver, 37 Colo. 378, 86 P. 1021 (1906); Horton v. Colo. Springs Masonic Bldg. Soc'y, 64 Colo. 529, 173 P. 61 (1918); Bd. of County Comm'rs v. Denver & R. G. R. R. Employees' Relief Ass'n, 70 Colo. 592, 203 P. 850 (1922); Bd. of Comm'rs v. San Luis Valley Masonic Ass'n, 80 Colo. 183, 250 P. 147 (1926); Denver Press Club v. Collins, 92 Colo. 74, 18 P.2d 451 (1932).

"Charitable" includes both public and private charity. United Presbyterian Ass'n v. Bd. of County Comm'rs, 167 Colo. 485, 448 P.2d 967 (1968).

This section does not contain the work "public" in connection with "strictly charitable purposes". Horton v. Colo. Springs Masonic Bldg. Soc'y, 64

Colo. 529, 173 P. 61 (1918).

Charity should have "spontaneity" -- the generous giving of one's talents and goods to those in need. United Presbyterian Ass'n v. Bd. of County Comm'rs, 167 Colo. 485, 448 P.2d 967 (1968).

Reciprocity between recipients and donor negates charity. Where material reciprocity between alleged recipients and their alleged donor exists -- then charity does not. United Presbyterian Ass'n v. Bd. of County Comm'rs, 167 Colo. 485, 448 P.2d 967 (1968).

The special facilities and services of the residence for physically independent senior citizens who pay a monthly rental differ only in type, but not in nature, from those provided by commercial multi-residential buildings. The aggregate of the facilities and services provided does not suggest "charity" within the ordinary connotation of that term. United Presbyterian Ass'n v. Bd. of County Comm'rs, 167 Colo. 485, 448 P.2d 967 (1968).

Character of institution is determined by purpose of construction and manner of operation. The character of an institution is to be determined by the purpose of its construction and the manner of its operation, and not by the opinion of any individual as to whether its work conforms to his notion of charity or not. Bishop & Chapter of Cathedral of St. John the Evangelist v. Treasurer of City & County of Denver, 37 Colo. 378, 86 P. 1021 (1906).

Where compensation exacted from patients does not exceed what is required for the successful maintenance of the institution, it does not render it less a charity. Bishop & Chapter of Cathedral of St. John the Evangelist v. Treasurer of City & County of Denver, 37 Colo. 378, 86 P. 1021 (1906).

Charging fees for use will not preclude exemption. The fact that fees are charged for use of facilities is not fatal to a claim for exemption. West Brandt Found., Inc. v. Carper, 652 P.2d 564 (Colo. 1982).

Rather than charitable character of owner. Whether property alleged to be used for charitable purposes is exempt from taxation must depend upon the use made of the property, rather than upon the charitable character of the owner. Bd. of County Comm'rs v. Denver & R. G. R. R. Employees' Relief Ass'n, 70 Colo. 592, 203 P. 850 (1922).

Nonprofit status cannot be equated with charitableness. It is but one factor which merits consideration in the determination of whether property is being used for strictly charitable purposes. United Presbyterian Ass'n v. Bd. of County Comm'rs, 167 Colo. 485, 448 P.2d 967 (1968).

Property of fraternal organization is exempt. Property owned by a Masonic association and used for charitable purposes and for fraternal pleasure and recreation only, held, under the facts disclosed, to be used strictly for charitable purposes within the spirit and meaning of the constitution and this section, and to be exempt from taxation. Bd. of Comm'rs v. San Luis Valley Masonic Ass'n, 80 Colo. 183, 250 P. 147 (1926).

A building owned by a corporation organized by several Masonic societies who own all the stock except the qualifying shares issued to its directors, and which derive all their income from annual dues, fees for initiation, and charitable donations, and devote it entirely to the relief of the needy, is exempt from taxation, though a stand is maintained therein, for the sale to those privileged to be there, of cigars, tobacco, and other like wares, as well as a reading room for the use of members of the different Masonic bodies, and though dances and dinners are given in a room devoted to this purpose, where nonmembers are admitted, and an admission fee is

charged. Horton v. Colo. Springs Masonic Bldg. Soc'y, 64 Colo. 529, 173 P. 61 (1918).

As is property of corporation used for physical culture, etc., of its members. Property of a corporation not for profit and which is used in connection with the promotion of physical culture and mental qualities of its members and others who may comply with its rules, held exempt from general taxation. Denver Turnverein v. McGlone, 91 Colo. 473, 15 P.2d 709 (1932).

As are land and buildings used as home for consumptives, notwithstanding that payment is exacted from patients for actual necessities furnished, according to their circumstances and the accommodations received, where such compensation does not exceed the expenses, and the institution is not maintained for gain or profit, and the sums paid or contributed are devoted to the purpose for which the charity was founded. Bishop & Chapter of Cathedral of St. John the Evangelist v. Treasurer of City & County of Denver, 37 Colo. 378, 86 P. 1021 (1906).

Office building used partly for charitable purposes is not exempt. A five-story office building owned by a purely charitable organization which rents all of the floors, with the exception of part of the fourth and all of the fifth, to businesses is not exempt from taxation under this section. Creel v. Pueblo Masonic Bldg. Ass'n, 100 Colo. 281, 68 P.2d 23 (1937).

But proportionate part of building is exempt. Where a part of a building is exempt from taxation because used for strictly charitable purposes, a proportionate part of the lot upon which it is located also is exempt. Hanagan v. Rocky Ford Knights of Pythias Bldg. Ass'n, 101 Colo. 545, 75 P.2d 780 (1938).

Real property not occupied by owner is not exempt. Real property alleged to be used solely and exclusively for charitable purposes is not exempt from taxation where it is not occupied by the owner, although the revenue therefrom is devoted exclusively to charity. Spears' Free Clinic & Hosp. for Poor Children v. Wilson, 103 Colo. 182, 84 P.2d 66 (1938); City Temple Institutional Soc'y v. McGuire, 104 Colo. 11, 87 P.2d 760 (1939).

Nor is property of corporation organized to maintain hospital for members by payment of dues. The property of a corporation organized to create a fund by the payment of monthly dues by its members, employees of a railroad company, which fund is used to secure and maintain a hospital for the benefit of such members, is not used exclusively for strictly charitable purposes, so as to be exempt from taxation under this section. Bd. of County Comm'rs v. Denver & R. G. R. R. Employees' Relief Ass'n, 70 Colo. 592, 203 P. 850 (1922).

Nor is property adjacent to that used for charitable purposes. Property, laterally adjacent to other property of a fraternal organization which is used for charitable purposes and therefore exempt from taxation, when such property is used solely for producing revenue which is not merely incidental income "from property which otherwise is necessary to effect the objects of the institution", is subject to taxation. Hanagan v. Grand Lodge, Knights of Pythias, 102 Colo. 277, 80 P.2d 328 (1938).

Organization held not charitable. A social organization, not for profit, held, under the disclosed facts, not to be strictly charitable organization so as to exempt its property from taxation under this section of the constitution. Denver Press Club v. Collins, 92 Colo. 74, 18 P.2d 451 (1932).

Labor union is not a charity. Real property belonging to a

labor union is not exempt from taxation on the ground that it is devoted to a "strictly charitable purpose". "A beneficial society whose beneficence is confined to the members, their families, dependents or friends, and depends upon the contributions made", not voluntarily given, but assessed against its members, is not "charity", but a private institution for the mutual advantage of its members. Lane v. Wilson, 103 Colo. 99, 83 P.2d 331 (1938).

Evidence insufficient to support claim for exemption. West Brandt Found., Inc. v. Carper, 652 P.2d 564 (Colo. 1982).

D. Cemeteries.

Cemeteries not used or held for profit are exempt from taxation under this section. City & County of Denver v. Tihen, 77 Colo. 212, 235 P. 777 (1925); Grisard v. Roselawn Cem. Ass'n, 92 Colo. 289, 19 P.2d 766 (1933).

A nonprofit cemetery is entitled to the exemption under this provision even though the city attempting to collect a local improvement assessment levied on it was a home-rule city. People v. City & County of Denver, 90 Colo. 598, 10 P.2d 1106 (1932).

General assembly may exempt such cemeteries from local assessments. The law-making body, possessing plenary legislative power over the subject of assessments may, if it chooses, and as it has done, exempt nonprofit cemeteries from local assessments. City & County of Denver v. Tihen, 77 Colo. 212, 235 P. 777 (1925).

Taxation and assessment are not synonymous terms. Each is a separate and distinct exercise of the sovereign power to tax, but taxation, as the word is employed in our constitution and statutes generally, is that burden or charge upon all property laid for raising revenue for general public purposes in defraying the expense of government. Assessments are local and resorted to for making local improvements on the theory that the property affected is increased in value at least to the amount of the levy. City & County of Denver v. Tihen, 77 Colo. 212, 235 P. 777 (1925).

Section 6. Self-propelled equipment, motor vehicles, and certain other movable equipment. The general assembly shall enact laws classifying motor vehicles and also wheeled trailers, semi-trailers, trailer coaches, and mobile and self-propelled construction equipment, prescribing methods of determining the taxable value of such property, and requiring payment of a graduated annual specific ownership tax thereon, which tax shall be in lieu of all ad valorem taxes upon such property; except that such laws shall not exempt from ad valorem taxation any such property in process of manufacture or held in storage, or which constitutes the inventory of manufacturers or distributors thereof or dealers therein; and further except that the general assembly shall provide by law for the taxation of mobile homes.

Such graduated annual specific ownership tax shall be in addition to any state registration or license fees imposed on such property, shall be payable to a designated county officer at the same time as any such registration or license fees are payable, and shall be apportioned, distributed, and paid over to the political subdivisions of the state in such manner as may be prescribed by law.

All laws exempting from taxation property other than that specified in

this article shall be void.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 58. **Initiated 36:** Entire section amended, see **L. 37,** p. 326. **L. 66:** Entire section R&RE, see **L. 67,** p. 3 of the supplement to the 1967 Session Laws. **L. 75:** Entire section amended, p. 1579.

Cross references: For statutory provisions providing for specific ownership tax, see §§ 42-3-101 to 42-3-111.

ANNOTATION

Law reviews. For article, "Colorado Constitutional Amendments: An Analysis", see 3 Den. B. Ass'n Rec. 4 (Nov. 1926). For comment on Colorado Tax Comm'n v. Denver Bible Inst. appearing below, see 6 Rocky Mt. L. Rev. 293 (1934). For article, "Legal Classification of Special District Corporate Forms in Colorado", see 45 Den. L.J. 347 (1968). For article, "Property Tax Incentives for Implementing Soil Conservation Programs Under Constitutional Taxing Limitations", see 59 Den. L.J. 485 (1982).

Annotator's note. Cases material to § 6 of art. X, Colo. Const., decided prior to its 1966 amendment have been included in the annotations to § 6 of art. X, Colo. Const.

1936 reenactment of section conferred additional power on general assembly. When this article was amended by a vote of the people in 1936, this section was reenacted, and additional power was conferred upon general assemblies to provide for specially classified or limited taxation or the exemption of tangible or intangible personal property in the administration of an income tax law, which power did not exist prior to the amendment. City & County of Denver v. Tax Research Bureau, 101 Colo. 140, 71 P.2d 809 (1937).

Taxation must be under authority of statute and cannot be authorized solely by constitutional provisions such as this section. City & County of Denver v. Security Life & Accident Co., 173 Colo. 248, 477 P.2d 369 (1970).

Statements in section construed together. The statement in this section that laws passed by the general assembly shall not exempt from ad valorem taxation any property specified in this section in the process of manufacture, etc. must be construed in connection with the declaration that the graduated annual specific ownership tax shall be in lieu of all ad valorem taxes upon such property. Cooper Motors, Inc. v. Bd. of County Comm'rs, 131 Colo. 78, 279 P.2d 685 (1955).

Property specifically mentioned in section distinguished from other personal property. It is clear that by the constitutional amendment authorizing the classification of motor vehicles and the imposition of a graduated annual specific ownership tax thereon, the people intended to, and did, direct that the chattel property specifically mentioned should be distinguished from all other personal property subject to payment of an ad valorem tax, and that once the specific ownership tax was paid no other property tax could be levied thereon. Cooper Motors, Inc. v. Bd. of County Comm'rs, 131 Colo. 78, 279 P.2d 685 (1955).

By the amendment the people themselves created a class of "motor vehicles, etc.", within the broad classification of personal property, and commanded that this new "class of subjects" be separately treated for purposes of taxation. Cooper Motors, Inc. v. Bd. of County Comm'rs, 131

Colo. 78, 279 P.2d 685 (1955).

Where specific ownership taxes are paid, no ad valorem taxes should be assessed. Motor vehicles on which specific ownership taxes are paid should not be assessed for ad valorem taxes even though they become part of a dealer's stock. Cooper Motors, Inc. v. Bd. of County Comm'rs, 131 Colo. 78, 279 P.2d 685 (1955).

The dealer should not be subjected to a tax for a given year upon the value of merchandise consisting of vehicles on which a specific ownership tax had been paid for that year. Cooper Motors, Inc. v. Bd. of County Comm'rs, 131 Colo. 78, 279 P.2d 685 (1955).

But where owner does not pay specific ownership taxes, vehicles are subject to ad valorem taxes. The owner of vehicles "in process of manufacture", and those "held in storage", and new unused vehicles which "constitute the stock of manufacturers, or distributors thereof or of dealers therein", never will be called upon to pay the specific ownership tax. Unquestionably it is only such vehicles that should always be subject to the ad valorem tax, and this for the reason that no specific ownership tax is to be collectible unless and until a license to operate the vehicle is obtained. Cooper Motors, Inc. v. Bd. of County Comm'rs, 131 Colo. 78, 279 P.2d 685 (1955).

If a motor vehicle is carried over a dealer's stock for a year for which no specific ownership tax is paid, then such vehicle is subject to an ad valorem tax for that year. Cooper Motors, Inc. v. Bd. of County Comm'rs, 131 Colo. 78, 279 P.2d 685 (1955).

Special mobile equipment held not subject to assessment by county assessor. A partnership engaging in constructing and maintaining highways having "elected" to make application for the registration of its special mobile equipment and having in fact paid a special ownership tax thereon, such property was not thereafter subject to assessment by the county assessor by virtue of this section. Bd. of County Comm'rs v. E.J. Rippy & Sons, 161 Colo. 261, 421 P.2d 461 (1966).

Water conservation district is not "political subdivision". A water conservation district is not a "political subdivision" of the state within the meaning of this section. Northern Colo. Water Conservancy Dist. v. Witwer, 108 Colo. 307, 116 P.2d 200 (1941).

Applied in Koenig v. Jewish Consumptives' Relief Soc'y, 98 Colo. 253, 55 P.2d 325 (1936); Bd. of County Comm'rs v. Morris, 104 Colo. 139, 89 P.2d 248 (1939); Jackson v. City of Glenwood Springs, 122 Colo. 323, 221 P.2d 1083 (1950); Pueblo Junior Coll. Dist. v. Donner, 154 Colo. 26, 387 P.2d 727 (1963); State Farm Mut. Auto. Ins. Co. v. Temple, 176 Colo. 537, 491 P.2d 1371 (1971).

Section 7. Municipal taxation by general assembly prohibited. The general assembly shall not impose taxes for the purposes of any county, city, town or other municipal corporation, but may by law, vest in the corporate authorities thereof respectively, the power to assess and collect taxes for all purposes of such corporation.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 58.

Cross references: For the authority of the general assembly to levy income taxes for the support of the state, see § 17 of this article; for county and municipal sales or use tax, see article 2 of title 29; for powers of municipalities to levy taxes, see part 1 of article 20 of title 31.

Law reviews. For note, "The Constitutionality of a Colorado Municipal Income Tax", see 25 Rocky Mt. L. Rev. 343 (1953). For article, "One Year Review of Real Property", see 36 Dicta 57 (1959). For note, "Increased Revenues for Colorado Municipalities", see 35 U. Colo. L. Rev. 370 (1963). For article, "Legal Classification of Special District Corporate Forms in Colorado", see 45 Den. L.J. 347 (1968). For article, "Three Sources of Municipal Revenue in Colorado", see 19 Colo. Law. 2065 (1990).

Source of municipality's authorization to impose taxes. The source by which a municipality may impose either a general ad valorem tax or special assessment taxes upon the properties within its corporate limits is found under the provisions of this section. Ochs v. Town of Hot Sulphur Springs, 158 Colo. 456, 407 P.2d 677 (1965).

Right to impose taxes for county expenses is vested exclusively in counties by the constitution, which prohibits the general assembly from imposing taxes for county purposes, but places no restriction upon the general assembly from placing a limit upon the amount of levy, nor does it prohibit the general assembly from curtailing the amount of taxes the county may impose for county purposes. People ex rel. Seeley v. May, 9 Colo. 80, 10 P. 641 (1885); Tallon v. Vindicator Consol. Gold Mining Co., 59 Colo. 316, 149 P. 108 (1915).

This section contains a specific restriction upon the general assembly, and in turn provides for a specific grant to the county. It is evident that this right, which the general assembly was empowered to give to a county, town or municipality to exercise for itself, was withheld from the general assembly, undoubtedly with the view that the limited needs, uses, and purposes of such local communities could be better determined by those directly affected. This would include the purpose here involved (old age pensions), if it still remained a county function or purpose; but under the present act, the county and its officials are stripped of all authority except as trustees for its distribution. In re Hunter's Estate, 97 Colo. 279, 49 P.2d 1009 (1935).

But section 17 of this article overrides this section by directing that the general assembly may levy income tax for any political subdivision, which includes home rule cities among others. The fact that the general assembly has not seen fit so to do is immaterial. City & County of Denver v. Sweet, 138 Colo. 41, 329 P.2d 441 (1958).

Constitution neither defines "county purpose" nor prevents general assembly from doing so. It does prevent the general assembly from singling out, at its pleasure, one or more counties, levying a tax upon the property therein for the uses and purposes singular to such county or counties, which would be of no statewide interest or concern, but does not prevent the levy of a tax, the distribution of which will reach the beneficial subjects wherever located, within the state, according to proportionate needs. In re Hunter's Estate, 97 Colo. 279, 49 P.2d 1009 (1935).

The whole people, by this section of their constitution, say to their general assembly, "You shall not impose taxes for county purposes. That is definite and final." What are county purposes? The constitution does not say, and does not forbid the general assembly to say. Hence the general assembly, within all reasonable limit (of course it cannot, by mere fiat, make black white), has that power. It has exercised it. An examination of its acts from territorial days discloses that it has always said that the purpose for which this statute imposes taxes (i.e.

poor relief) is a county purpose. Walker v. Bedford, 93 Colo. 400, 26 P.2d 1051 (1933).

Test for "county purposes". The test as to "county purposes" is, "Is it for strictly county uses, for which the county or its inhabitants alone would benefit, or is it for a purpose in which the entire state is concerned or will benefit?" In re Hunter's Estate, 97 Colo. 279, 49 P.2d 1009 (1935); Pub. Utils. Comm'n v. Manley, 99 Colo. 153, 60 P.2d 913 (1936).

The word "other" in the phrase "county, city, town or other municipal corporation" does not necessarily refer back to the word "county". No violence would be done to the language employed, if the word should be confined, in its reference, to the words "cities" and "towns"; and if it is important to know what meaning the makers of the constitution attached to the words "municipal corporations", as used in that instrument, an examination of § 13 of art. XIV, Colo. Const., will be satisfactory. Stemer v. Bd. of Comm'rs, 5 Colo. App. 379, 38 P. 839 (1895).

"Taxes" as used in this section refers to the ordinary public taxes. See City of Denver v. Knowles, 17 Colo. 204, 30 P. 1041, 17 L.R.A. 135 (1892).

Municipal purpose may be changed to state purpose. While at the time of the adoption of the state constitution, a particular purpose may have been municipal only, under changed conditions it may have become a state purpose, and no longer under the ban of the constitutional provision contained in this section. Police Protective Ass'n v. Warren, 101 Colo. 586, 76 P.2d 94 (1937).

Distinction between water conservancy districts and irrigation districts. Under powers conferred upon the general assembly by this section water conservancy districts have been authorized to levy and collect general taxes on all property, real and personal, within the districts, and to levy and collect assessments for special benefits. In this grant of power lies the distinction between water conservancy districts and irrigation districts organized under the Colorado statutes as such. The public character of the former constitutes the difference. People ex rel. Rogers v. Letford, 102 Colo. 284, 79 P.2d 274 (1938).

Apportioning revenue is not carrying out county purpose. In dividing the revenue remaining after cost of administration between the highway department and the counties, apportioning it on the basis of state highway mileage within the respective counties, the state is not carrying out a county purpose, but carrying out a purpose in which the entire state is concerned. Pub. Utils. Comm'n v. Manley, 99 Colo. 153, 60 P.2d 913 (1936).

Funding provisions of social services code not violative of this section because the social services code serves both state and local purposes. Colo. Dept. of Soc. Servs. v. Bd. of County Comm'rs, 697 P.2d 1 (Colo. 1985).

Applied in Palmer v. Way, 6 Colo. 106 (1881); People ex rel. Seeley v. Hull, 8 Colo. 485, 9 P. 34 (1885); In re House Bill No. 270, 9 Colo. 635, 21 P. 476 (1886); People ex rel. Sch. Dist. No. 2 v. County Comm'rs, 12 Colo. 89, 19 P. 892 (1888); Mayor of Valverde v. Shattuck, 19 Colo. 104, 34 P. 947 (1893); Ames v. People ex rel. Temple, 26 Colo. 83, 56 P. 656 (1899); Wolff v. City of Denver, 20 Colo. App. 135, 77 P. 364 (1904); People ex rel. State Bd. of Equalization v. Pitcher, 56 Colo. 343, 138 P. 509 (1914), aff'd sub nom. Bi-Metallic Inv. Co. v. State Bd. of Equalization, 239 U.S. 441, 36 S. Ct. 141, 60 L. Ed. 372 (1915); Milheim v. Moffat Tunnel Imp. Dist., 72 Colo. 268, 211 P. 649 (1922); Walker v. Bedford, 93 Colo. 400, 26 P.2d 1051 (1933); Consolidated Motor Freight, Inc. v. Bedford, 93 Colo. 440, 26 P.2d

1066 (1933); State v. Tolbert, 98 Colo. 433, 56 P.2d 45 (1936); Wilmore v. Annear, 100 Colo. 106, 65 P.2d 1433 (1937); City of Aurora v. Aurora San. Dist., 112 Colo. 406, 149 P.2d 662 (1944); Town of Greenwood Vill. v. District Court, 138 Colo. 283, 332 P.2d 210 (1958).

Section 8. No county, city, town to be released. No county, city, town or other municipal corporation, the inhabitants thereof, nor the property therein, shall be released or discharged from their or its proportionate share of taxes to be levied for state purposes.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 58.

ANNOTATION

This section proscribes legislative power to impair financial base of government operations. Allardice v. Adams County, 173 Colo. 133, 476 P.2d 982 (1970).

The word "other" in the phrase "county, city, town or other municipal corporation" does not necessarily refer back to the word "county". No violence would be done to the language employed, if the word should be confined, in its reference, to the words "cities" and "towns"; and if it is important to know what meaning the makers of the constitution attached to the words "municipal corporations", as used in that instrument, an examination of § 13 of art. XIV, Colo. Const., will be satisfactory. Stemer v. Bd. of Comm'rs, 5 Colo. App. 379, 38 P. 839 (1895).

Tax revenues to Denver not lost where portion allocated to urban renewal authority. Where the portion of the ad valorem tax revenues allocated to the Denver urban renewal authority represented the amount generated as a result of increased property valuation due to the project, Denver had not lost the benefit of any tax revenues which would have otherwise been available, and no impairment of contracts occurred. Denver Urban Renewal Auth. v. Byrne, 618 P.2d 1374 (Colo. 1980).

Funding provisions of social services code not violative of this section because the social services code serves both state and local purposes. Colo. Dept. of Soc. Servs. v. Bd. of County Comm'rs, 697 P.2d 1 (Colo. 1985).

Applied in Burton v. City & County of Denver, 99 Colo. 207, 61 P.2d 856 (1936); City Real Estate, Inc. v. Sullivan, 116 Colo. 169, 180 P.2d 504 (1947).

Section 9. Relinquishment of power to tax corporations forbidden. The power to tax corporations and corporate property, real and personal, shall never be relinquished or suspended.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 58.

ANNOTATION

Taxation must be under authority of statute and cannot be authorized solely by constitutional provisions such as this section. City & County of Denver v. Security Life & Accident Co., 173 Colo. 248, 477 P.2d 369 (1970).

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Applied in Am. Smelting & Ref. Co. v. People ex rel. Lindsley, 34 Colo. 240, 82 P. 531 (1905); Burton v. City & County of Denver, 99 Colo. 207, 61 P.2d 856 (1936); Union P. R. R. v. Heckers, 181 Colo. 374, 509 P.2d 1255, appeal dismissed for want of substantial federal question, 414 U.S. 806, 94 S. Ct. 74, 38 L. Ed. 2d 42 (1973).

Section 10. Corporations subject to tax. All corporations in this state, or doing business therein, shall be subject to taxation for state, county, school, municipal and other purposes, on the real and personal property owned or used by them within the territorial limits of the authority levying the tax.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 58.

ANNOTATION

This section proscribes legislative power to impair financial base of government operations. Allardice v. Adams County, 173 Colo. 133, 476 P.2d 982 (1970).

This section should be interpreted in harmony with the power under section 3 of this article to classify property and prescribe various methods for ascertaining the value of the different classes. Ames v. People ex rel. Temple, 26 Colo. 83, 56 P. 656 (1899).

Taxation must be under authority of statute and cannot be authorized solely by constitutional provisions such as this section. City & County of Denver v. Security Life & Accident Co., 173 Colo. 248, 477 P.2d 369 (1970).

Right of state to tax all subjects within its jurisdiction is unquestionable. Hall v. Am. Refrigerator Transit Co., 24 Colo. 291, 51 P. 421 (1897), aff'd, 174 U.S. 70, 19 S. Ct. 599, 43 L. Ed. 899 (1899).

The general assembly may not exempt from taxation any property that is not specifically exempted in article X of the Colorado Constitution. Denver Beechcraft v. Bd. of Assessment Appeals, 681 P.2d 945 (Colo. 1984); Young Life Campaign v. Bd. of County Comm'rs, 300 P.2d 535 (Colo. 1956); Logan Irrigation Dist. v. Holt, 133 P.2d 530 (Colo. 1943); Mesa Verde Co. v. Montezuma County Bd. of Equaliz., 898 P.2d 1 (Colo. 1995).

Only qualification to the rule barring exemption of property not specifically exempted in article X of the Colorado Constitution is supplied by the supremacy clause of the United States Constitution. Mesa Verde Co. v. Montezuma County Bd. of Equaliz., 898 P.2d 1 (Colo. 1995).

Possessory interest in federal land is not among the types of property exempted in this article. Mesa Verde Co. v. Montezuma County Bd. of Equaliz., 898 P.2d 1 (Colo. 1995).

Corporations using personal property in carrying on their business are subject to taxation thereon, though such use be not united with the ownership. Denver & R. G. Ry. v. Church, 17 Colo. 1, 28 P. 468 (1891).

Tax revenues to Denver not lost where portion allocated to urban renewal authority. Where the portion of the ad valorem tax revenues allocated to the Denver urban renewal authority represented the amount generated as a result of increased property valuation due to the project, Denver had not lost the benefit of any tax revenues which would have otherwise been available, and no impairment of contracts occurred. Denver Urban Renewal Auth. v. Byrne, 618 P.2d 1374 (Colo. 1980).

Applied in Callaway v. Denver & R. G. R. R., 6 Colo. App. 284, 40 P. 573 (1895); Imperial Fire Ins. Co. v. Bd. of County Comm'rs, 51 Colo. 456, 118 P. 970 (1911); Burton v. City & County of Denver, 99 Colo. 207, 61 P.2d 856 (1936).

Section 11. Maximum rate of taxation. The rate of taxation on property, for state purposes, shall never exceed four mills on each dollar of valuation; provided, however, that in the discretion of the general assembly an additional levy of not to exceed one mill on each dollar of valuation may from time to time be authorized for the erection of additional buildings at, and for the use, benefit, maintenance, and support of the state educational institutions; provided, further, that the rate of taxation on property for all state purposes, including the additional levy herein provided for, shall never exceed five mills on each dollar of valuation, unless otherwise provided in the constitution.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 59. **L. 1891:** Entire section amended, p. 90. **Initiated 20:** Entire section amended, effective December 4, 1920, see **L. 21,** p. 179.

Cross references: For limitation of county levy, see part 2 of article 25 of title 30.

ANNOTATION

Law reviews. For article, "A Review of the 1959 Constitutional and Administrative Law Decisions", see 37 Dicta 81 (1960).

Purpose of section is to provide for economy. The purpose of the framers of the constitution was to provide for economy in the administration of the affairs of state, and for that reason they limited the rate of taxation on property. Parsons v. People, 32 Colo. 221, 76 P. 666 (1904).

A principal design of the framers of the constitution, and of the people in adopting the same, was to inaugurate an economical state government, and, in order to carry out this purpose, limitations against extravagance in the administration of it were inserted. People ex rel. Thomas v. Scott, 9 Colo. 422, 12 P. 608 (1886).

Its language is plain, clear, and unambiguous, and no room is left for construction as to the limitations therein imposed, unless it be in respect to the meaning intended to be conveyed by the clause "for state purposes". People ex rel. Thomas v. Scott, 9 Colo. 422, 12 P. 608 (1886).

It requires the levying of a tax for state purposes. Bd. of Comm'rs v. People, 17 Colo. App. 519, 69 P. 73 (1902).

The levy for state purposes is as much a legislative levy as the levy for any special purpose. It is a levy of four mills when no lower rate is directed by the state board of equalization. This, therefore, is to be treated as an absolute levy of four mills, subject to two conditions: First, that all prior levies, if not repugnant to

constitutional requirements, shall be respected; second, a reservation of power in the state board of equalization to reduce the general levy. This levy is fixed by the general assembly subject to the right of the state board of equalization to reduce the rate to an amount sufficient merely to meet appropriations, should the assessment justify such reduction. People ex rel. Regents of State Univ. v. State Bd. of Equaliz., 20 Colo. 220, 37 P. 964 (1894).

And limits rate of taxation for such purposes. People ex rel. Seeley v. May, 9 Colo. 80, 10 P. 641 (1885); People ex rel. Thomas v. Scott, 9 Colo. 422, 12 P. 608 (1886); In re Appropriations by Gen. Ass'y, 13 Colo. 316, 22 P. 464 (1889); People ex rel. Regents of State Univ. v. State Bd. of Equaliz., 20 Colo. 220, 37 P. 964 (1894); Goodykoontz v. People, 20 Colo. 374, 38 P. 473 (1894); Parks v. Commissioners of Soldiers' & Sailors' Home, 22 Colo. 86, 43 P. 542 (1896); In re State Bd. of Equaliz., 24 Colo. 446, 51 P. 493 (1897).

The general assembly having power to levy taxes aggregating four mills in amount, its mandates must if not contrary to other constitutional requirements, be enforced until the four mill limit is reached. The power being then exhausted, further levies cannot be made. When the total levies aggregate more than four mills on the dollar, it is the plain duty of every officer connected with the levy and collection of the revenue to refrain from doing any act which falls within the inhibition of the state constitution. People ex rel. Thomas v. Scott, 9 Colo. 422, 12 P. 608 (1886); In re Appropriations by Gen. Ass'y, 13 Colo. 316, 22 P. 464 (1889); People ex rel. Regents of State Univ. v. State Bd. of Equaliz., 20 Colo. 220, 37 P. 964 (1894).

But limitation applies to rate of taxation on property for state purposes only, and does not abridge the power of the general assembly to provide for the levy of a military poll tax. People v. Ames, 24 Colo. 422, 51 P. 426 (1897).

And does not prevent general assembly from selecting other subjects of taxation. The provisions in this article containing restrictions as to rate of taxation evidently refer exclusively to a property tax, but there is nothing therein which prevents the general assembly from selecting other subjects of taxation, and prescribing the amount of the tax that it may see fit to impose thereon. Parsons v. People, 32 Colo. 221, 76 P. 666 (1904); Brown v. Elder, 32 Colo. 527, 77 P. 853 (1904).

When the court observed that the general assembly, in attempting to provide revenue for state purposes, is confined to that derived from the levy at the rate of four mills on the dollar, and that the way to obtain adequate revenue therefor is to increase the assessed valuation, it was referring to revenue derived from the taxation of property, and not of other sources of revenue. Parsons v. People, 32 Colo. 221, 76 P. 666 (1904).

This section pertains to property tax, and has no application to excise tax. California Co. v. State, 141 Colo. 288, 348 P.2d 382 (1959), appeal dismissed, 364 U.S. 285, 81 S. Ct. 42, 5 L. Ed. 2d 37, reh'g denied, 364 U.S. 897, 81 S. Ct. 219, 5 L. Ed. 2d 191 (1960).

Or to service tax. The service tax not being a property tax, constitutional provisions like this are not in point in an attack on the constitutionality of the tax. Rinn v. Bedford, 102 Colo. 475, 84 P.2d 827 (1938).

It is intended that annual state tax will meet annual expenditure. Taking the provisions of this section and section 16 of this article together, the intention would seem to be that the annual state tax should meet the annual state expenditure. People ex rel. Seeley v.

May, 9 Colo. 80, 10 P. 641 (1885).

That difficulty encountered by the state board of equalization in making the total amount of taxes produced by a four-mill levy pay all appropriations, is no reason for overriding this mandatory section of the constitution either by the board or by this court. The remedy, as often pointed out, is either for the general assembly to lessen appropriations, or to bring about an increase of the valuation for state purposes. In re State Bd. of Equaliz., 24 Colo. 446, 51 P. 493 (1897).

Levy may be as much less than maximum as is deemed proper. The constitution limits the maximum of the levy for general state purposes to four mills on the dollar, and the tax levying authorities for that purpose may make it as much less as in their judgment they deem proper. People ex rel. State Bd. of Equaliz. v. Pitcher, 56 Colo. 343, 138 P. 509 (1914), aff'd sub nom. Bi-Metallic Inv. Co. v. State Bd. of Equaliz., 239 U.S. 441, 36 S. Ct. 141, 60 L. Ed. 372 (1915).

Rates in excess of constitutional limit. Under this section, providing that, when the assessed value of property in the state shall have reached $100,000,000, the tax for "state purposes" shall not exceed four mills per dollar of valuation, rates of taxation for state purposes aggregating five and seventeen-thirtieths mills per dollar, declared after the assessed value of property in the state had reached $100,000,000, are in excess of the constitutional limit, although only four mills thereof is declared to be for state purposes, and the remainder is for the support of state institutions authorized by the constitution. People ex rel. Thomas v. Scott, 9 Colo. 422, 12 P. 608 (1886).

Purpose for which debt is created determines whether payment is to be within or without rate prescribed. The purpose, whether ordinary or extraordinary, for which, and not the authority, whether the general assembly or the people, by which, a state debt is created, is the true test for determining whether its payment is to be provided for by taxation, within, or beyond, the rate prescribed by the constitution for state purposes. In re State Bd. of Equaliz., 24 Colo. 446, 51 P. 493 (1897).

Expenses held ordinary. Indebtedness contracted for the capitol building and to meet casual deficiencies in the revenue fall within the ordinary expenses of the state, and a tax levied to pay the interest and principal of such bonds must be included in, and form a part of, the four mills general levy for state purposes. In re State Bd. of Equaliz., 24 Colo. 446, 51 P. 493 (1897).

Suppression of insurrection is extraordinary expense. In the absence of a limitation in the constitution, the power of the general assembly in matters of taxation is plenary. There being no such restriction upon taxation for suppressing an insurrection, the general assembly may appropriate any sum required for such purpose, and levy any rate necessary to pay the same. In re State Bd. of Equaliz., 24 Colo. 446, 51 P. 493 (1897).

And that portion of the public debt created to meet expenditure to suppress insurrection does not fall within the limit of this section of the constitution limiting the rate of taxation for state purposes on each dollar of valuation. In re State Bd. of Equaliz., 24 Colo. 446, 51 P. 493 (1897).

Hence special tax may be levied to pay interest and principal of insurrection bonds. The general assembly may levy a special tax, if necessary, in excess of, and in addition to, the four-mill rate for state purposes, to pay the interest and principal of insurrection bonds. In re State Bd. of Equaliz., 24 Colo. 446, 51 P. 493 (1897).

Section 12. Public funds - report of state treasurer. (1) The general assembly may provide by law for the safekeeping and management of the public funds in the custody of the state treasurer, but, notwithstanding any such provision, the state treasurer and his sureties shall be responsible therefor.

(2) The state treasurer shall keep adequate records of all moneys coming into his custody and shall at the end of each quarter of the fiscal year submit a written report to the governor, signed under oath, showing the condition of the state treasury, the amount of money in the several funds, and where such money is kept or deposited. Swearing falsely to any such report shall be deemed perjury.

(3) The governor shall cause every such quarterly report to be promptly published in at least one newspaper printed at the seat of government, and otherwise as the general assembly may require.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 59. **L. 74:** Entire section R&RE, p. 454, effective upon proclamation of the Governor, December 20, 1974.

ANNOTATION

Treasurer is constitutional custodian of public funds. See In re House Resolution, 12 Colo. 395, 21 P. 486 (1888); People ex rel. Miller v. Higgins, 69 Colo. 79, 168 P. 740 (1917).

General assembly cannot devolve this stewardship upon another. In re House Resolution, 12 Colo. 395, 21 P. 486 (1888).

It may command him to disburse such funds as it shall see fit, subject only to constitutional restriction, and it may also direct the investment of the school fund. But for the safekeeping of the public moneys, till paid out or invested as authorized by statute, he alone is responsible. In re House Resolution, 12 Colo. 395, 21 P. 486 (1888). People ex rel. Miller v. Higgins, 69 Colo. 79, 168 P. 740 (1917).

But cannot, directly or indirectly, divest him of general control of custody of public moneys before disbursement or investment; hence a bill authorizing the governor to dictate the particular banks in which such moneys shall be deposited is invalid. In re House Resolution, 12 Colo. 395, 21 P. 486 (1888).

This section has no application to a special fund. This section giving the state treasurer control over state money, has no application to a special fund, not a part of the general revenues of the state, and of which the treasurer is custodian only, e.g., the state compensation insurance fund. Stong v. Indus. Comm'n, 71 Colo. 133, 204 P. 892 (1922).

General assembly to regulate safekeeping and management of public funds. By this section power is expressly lodged in the general assembly to make all reasonable and proper regulations regarding the safekeeping and management of the public funds. Ample provision in the premises is here conferred upon the general assembly. People v. Walsen, 17 Colo. 170, 28 P. 1119 (1892).

Absolute liability of treasurer and his sureties for all public moneys received by him is fixed by this section. In this respect the obligation of the treasurer is different from that of an ordinary trustee. No

amount of care will excuse him in case of loss by theft, fire, or by insolvency of the banks selected as depositaries; he must make the loss good to the state. He can only be discharged by paying over the money when required, and the sureties upon his official bond also assume this unusual liability. In re House Resolution, 12 Colo. 395, 21 P. 486 (1888).

The language of the state constitution which makes the treasurer absolutely liable, takes away an important right of a trustee. In re House Resolution, 12 Colo. 395, 21 P. 486 (1888); People v. Walsen, 17 Colo. 170, 28 P. 1119 (1892).

It is true the last clause of the last sentence of this section makes absolute the liability of the state treasurer, for all public funds received by him by virtue of his office, but taking the whole sentence together we are of the opinion that it was not intended to create a new liability but to avoid the possibility of regulation on the part of the general assembly from being construed as creating an exception to the general rule of absolute liability. Gartley v. People ex rel. Pueblo County, 24 Colo. 155, 49 P. 272 (1897).

Treasurer's liability ceases when funds have lawfully passed out of his hands. Unquestionably absolute liability rests upon the state treasurer in reference to all money actually in his custody, but it is equally certain that where the public money has passed out of his hands by lawful means or procedure, upon valid claims or legal loans, he has discharged his duty in the premises, and his liability in relation thereto ends. People ex rel. Miller v. Higgins, 69 Colo. 79, 168 P. 740 (1917).

No statute can operate to relieve state treasurer or his sureties from liability upon his official bond. The responsibility of that officer and his sureties for the protection and safety of the public funds while in his hands is irrevocably fixed by the constitutional mandate of this section. In re House Resolution, 12 Colo. 395, 21 P. 486 (1888).

Treasurer is not liable for interest received upon public money. People v. Walsen, 17 Colo. 170, 28 P. 1119, 15 L.R.A. 456 (1892).

Claim that state treasurer alone may invest school fund has no support in constitution. That instrument does not even impliedly authorize him to do so. It makes him the custodian of, and responsible for, such fund, as of other public funds, and authorizes the general assembly to provide by law further regulations for the safekeeping and management thereof. Had the intent been to invest the treasurer with the power of investing the fund, the language of the constitution would, doubtless, have been: "He shall securely and profitably invest the same", etc. People ex rel. Miller v. Higgins, 69 Colo. 79, 168 P. 740 (1917).

Section 13. Making profit on public money - felony. The making of profit, directly or indirectly, out of state, county, city, town or school district money, or using the same for any purpose not authorized by law, by any public officer, shall be deemed a felony, and shall be punished as provided by law.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 59.

ANNOTATION

This section is not self-executing. This section forbidding the making of profit by public officials out of public funds, and classifying the forbidden act as a felony, is not self-executing. In re Breene, 14 Colo.

401, 24 P. 3 (1890).

It recognizes that a profit may be made by the treasurer, although it declares the making thereof a felony to be punished as provided by law. It does not provide that the profit to be made shall enure to the benefit of the state. People v. Walsen, 17 Colo. 170, 28 P. 1119 (1892).

It may be a legislative duty to provide that all interest paid by banks upon public funds shall be placed to the credit of the state. Nor is there any doubt concerning the legislative authority to require periodical reports, under oath, from the treasurer and from bank officials, showing the terms and conditions of the deposits in question, including the rate of interest allowed thereon. Reasonable legislative regulations, in addition to those named by the constitution, looking to the safekeeping and management of public funds, may be a wise precaution; and, if they regulate the control thereof without withdrawing it from the treasurer, we perceive no constitutional objection thereto. In re House Resolution, 12 Colo. 395, 21 P. 486 (1888).

This section does not cover money of water conservancy district. The functions of a water conservancy district, however designated, are in no sense the functions of a state subdivision like counties, towns, cities, or school districts, within the meaning of this section. N. Colo. Water Conservancy Dist. v. Witwer, 108 Colo. 307, 116 P.2d 200 (1941).

Section inapplicable to assemblyman's unrelated business dealings with city. This section does not apply where a member of the general assembly has business dealings with a city which are totally unrelated to his position in the general assembly. McCroskey v. Gustafson, 638 P.2d 51 (Colo. 1981).

Applied in Moulton v. McLean, 5 Colo. App. 454, 39 P. 78 (1895).

Section 14. Private property not taken for public debt. Private property shall not be taken or sold for the payment of the corporate debt of municipal corporations.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 59.

ANNOTATION

Purpose of section. This section is to protect private property from judgment creditors of a city. Allardice v. Adams County, 173 Colo. 133, 476 P.2d 982 (1970).

Meaning of section. This section only means that a creditor of a municipality may not levy upon and sell the private property of individuals within the corporation to pay the debt of the municipality. Allardice v. Adams County, 173 Colo. 133, 476 P.2d 982 (1970).

Applied in People ex rel. Rogers v. Letford, 102 Colo. 284, 79 P.2d 274 (1938).

Section 15. Boards of equalization - duties - property tax administrator. (1) (a) There shall be in each county of the state a county board of equalization, consisting of the board of county commissioners of said county. As may be prescribed by law, the county boards of equalization shall raise, lower, adjust, and equalize valuations for assessment of taxes upon real and personal property located within their respective counties, subject to review and revision by the state board of equalization.

(b) There shall be a state board of equalization, consisting of the governor or his designee, the speaker of the house of representatives or his designee, the president of the senate or his designee, and two members appointed by the governor with the consent of the senate. Each of such appointed members shall be a qualified appraiser or a former county assessor or a person who has knowledge and experience in property taxation. The general assembly shall provide by law for the political composition of such board and for the compensation of its members and, with regard to the appointed members, for terms of office, the filling of vacancies, and removal from office. As may be prescribed by law, the state board of equalization shall review the valuations determined for assessment of taxes upon the various classes of real and personal property located in the several counties of the state and shall, upon a majority vote, raise, lower, and adjust the same to the end that all valuations for assessment of taxes shall be just and equalized; except that said state board of equalization shall have no power of original assessment. Whenever a majority vote of the state board of equalization is prescribed by this constitution or by statute, "majority vote" means an affirmative vote of the majority of the entire membership of such board.

(c) The state board of equalization and the county boards of equalization shall perform such other duties as may be prescribed by law.

(2) The state board of equalization shall appoint, by a majority vote, a property tax administrator who shall serve for a term of five years and until his successor is appointed and qualified unless removed for cause by a majority vote of the state board of equalization. The property tax administrator shall have the duty, as provided by law, of administering the property tax laws and such other duties as may be prescribed by law and shall be subject to the supervision and control of the state board of equalization. The position of property tax administrator shall be exempt from the personnel system of this state.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 59. **L. 13:** Entire section amended, see **L. 15,** p.163. **L. 62:** Entire section amended, see **L. 63,** p. 1059. **L. 82:** Entire section amended, p. 695, effective upon proclamation of the Governor, **L. 83,** p. 1682, December 30, 1982.

Cross references: For county boards of equalization, see also article 8 of title 39; for the state board of equalization, see also article 9 of title 39.

ANNOTATION

I. GENERAL CONSIDERATION.

Law reviews. For article, "Equalization", see 7 Dicta 3 (Nov. 1929). For article, "Some Aspects of Colorado Taxpayers' Remedies", see 23 Rocky Mt. L. Rev. 145 (1950). For article, "Property Tax Assessments in Colorado", see 12 Colo. Law. 563 (1983). For article, "Taxation of Colorado's Sand and Gravel Reserves", see 12 Colo. Law. 927 (1983).

Annotator's note. Cases material to § 15 of art. X, Colo. Const., decided prior to its 1962 amendment have been included in the annotations to § 15 of art. X, Colo. Const.

State board of equalization is constitutional body. People ex rel. State Bd. of Equalization v. Hively, 139 Colo. 49, 336 P.2d 721 (1959).

State board is final arbiter in fixing values upon property which has been originally assessed for the purposes of raising public revenue. People ex rel. State Bd. of Equalization v. Pitcher, 61 Colo. 149, 156 P. 812 (1916); People ex rel. State Bd. of Equalization v. Hively, 139 Colo. 49, 336 P.2d 721 (1959).

Board of equalization is quasi court invested with the duty to ascertain and determine certain facts, and its determination thereof is a judgment. People ex rel. Rollins v. Bd. of Comm'rs, 7 Colo. App. 229, 42 P. 1032 (1883); Bd. of Comm'rs v. Burpee, 24 Colo. 57, 48 P. 539 (1897); People ex rel. State Bd. of Equalization v. Pitcher, 61 Colo. 149, 156 P. 812, 1918D Ann. Cas. 1185 (1916).

Boards of equalization adjust values within their respective jurisdictions. The boards of equalization, both county and state, adjust, equalize, raise or lower values within their respective jurisdictions, county boards being confined to property within the particular county and the state board acts throughout the state, bringing all property of different classes to the same standard of values. Goldsmith v. Standard Chem. Co., 23 F.2d 313 (8th Cir. 1927).

Equalization of assessments by county boards is subject to revision by state board. The duties of the several county boards of equalization, to equalize the assessments in their respective counties as returned by the county assessors, are constitutional duties, but their action in that regard is subject to revision, change and amendment by the state board of equalization. People ex rel. State Bd. of Equalization v. Hively, 139 Colo. 49, 336 P.2d 721 (1959).

Order of state board may affect real or personal property. Union P. R. R. v. Bd. of Comm'rs, 35 F.2d 785 (10th Cir. 1929).

Judgment by state board to make raise constitutes warrant which assessor must obey. If the state board of equalization has jurisdiction, and makes a raise, its judgment constitutes a warrant which an assessor is bound to obey. Thus an assessor has no more standing to question the validity of such action of the board than a lower court has to question the validity of the mandate of a reviewing court. He is obligated to carry out the mandate of the board. It follows that writs of mandamus and prohibition are appropriate. People ex rel. State Bd. of Equalization v. Hively, 139 Colo. 49, 336 P.2d 721 (1959).

But state board cannot compel compliance with orders which are without its jurisdiction and authority, by the law under which it assumed to act. People v. Ames, 27 Colo. 126, 60 P. 346 (1900).

Since the power of the state board of equalization is limited to the equalization of assessed valuation of property, and since the state board is specifically prohibited from making original assessments, the state board exceeded its authority by determining whether to allow a property tax exemption. Telluride Airport Auth. v. Bd. of Equalization, 789 P.2d 201 (Colo. App. 1989).

Duties of auditor. This section makes the auditor a member of the state board of equalization and prescribes certain duties of that board. It is only in this way that the constitution can be said to prescribe any particular duty of the auditor. Am. Bonding Co. v. People, 53 Colo. 512, 127 P. 941 (1912).

Equalization and assessment distinguished. The process of equalization relates to the raising or lowering of the total valuation placed upon a class or subclass of property in the aggregate. Assessment, on the other hand, constitutes the process of placing

a value for tax purposes upon the property of a particular taxpayer. Wenner v. Bd. of Assessment Appeals, 866 P.2d 172 (Colo. App. 1993).

Applied in Bd. of County Comm'rs v. Fifty-First Gen. Ass'y, 198 Colo. 302, 599 P.2d 887 (1979).

II. POWERS AND DUTIES.

Constitution vests state board with certain powers. MacGinnis v. Denver Land Co., 90 Colo. 72, 6 P.2d 919 (1931).

Which can be taken away only by constitutional enactment. Powers of equalization exercised by the state and several county boards of equalization are constitutionally vested, and can be taken away only by constitutional, and not by statutory enactment. In re Opinion of the Justices, 55 Colo. 17, 123 P. 660 (1912).

The constitutional duty imposed upon the state board of equalization is to adjust and equalize the property values among the several counties of the state, and that upon the several county boards, to adjust and equalize such values within their respective counties. These duties having been imposed upon these agencies by the constitution, the general assembly is powerless to take them away, or confer them upon another. People ex rel. State Bd. of Equalization v. Pitcher, 56 Colo. 343, 138 P. 509 (1914), aff'd sub nom. Bi-Metallic Inv. Co. v. State Bd. of Equalization, 239 U.S. 441, 36 S. Ct. 141, 60 L. Ed. 372 (1915).

State board has power of equalization but not assessment. Valuing the property of a particular taxpayer, as a whole, is in its essence assessment of such taxpayer's property. While dealing with, and raising or lowering, the value of classes of property, without reference to ownership, within a designated territorial limit, is in its essence equalization. Assessment is personal, while equalization is impersonal. The board has power of equalization but not assessment. Union P. R. R. v. Bd. of Comm'rs, 35 F.2d 785 (10th Cir. 1929); In re Opinion of the Justices, 55 Colo. 17, 123 P. 660 (1912).

The state board of equalization has no power either to make or supervise the making of assessments of public utility property and that its functions are limited to its constitutional power of equalization. Union P. R. R. v. Bd. of Comm'rs, 35 F.2d 785 (10th Cir. 1929).

The board of equalization has no authority to make original assessments, or order the raising or lowering thereof, or direct the assessor so to do. Bohen v. Bd. of County Comm'rs, 109 Colo. 283, 124 P.2d 606 (1942); Bartlett & Co. v. Bd. of County Comm'rs, 152 Colo. 388, 382 P.2d 193 (1963).

State board cannot examine valuation of individual taxpayer's property. Union P. R. R. v. Bd. of Comm'rs, 35 F.2d 785 (10th Cir. 1929); Bd. of Comm'rs v. Union P. R. R., 89 Colo. 110, 299 P. 1055 (1931); MacGinnis v. Denver Land Co., 90 Colo. 72, 6 P.2d 919 (1931).

In attaining its end, the state board of equalization, by the specific language of the constitution, is enjoined to equalize, not by raising or lowering the total assessment of an individual taxpayer, but by raising or lowering the valuation of the two principal classes of property, namely, real and personal, or the valuation of any class thereof. Union P. R. R. v. Bd. of Comm'rs, 35 F.2d 785 (10th Cir. 1929).

It is a well-recognized and essential rule of constitutional and statutory construction that interpretation leading to absurdities and impossibilities will, if possible, be avoided. If the state board of equalization were charged with the ultimate duty of approving the valuation of every item of property in

the state, and the total assessment of every taxpayer, its five members would have to live long and labor diligently to complete the work of a single year. Bd. of Comm'rs v. Union P. R. R., 89 Colo. 110, 299 P. 1055 (1931).

No provision is made to bring individual assessment before state board. Union P. R. R. v. Bd. of Comm'rs, 35 F.2d 785 (10th Cir. 1929).

Assumption that state board dealt with aggregate values. Under pertinent constitutional provisions and laws it will be assumed that the state board of equalization in passing a resolution lowering the assessed valuations of property was dealing with aggregate values rather than otherwise, and the change cannot be deemed an act of original assessment. MacGinnis v. Denver Land Co., 90 Colo. 72, 6 P.2d 919 (1931).

State board may increase valuations in the aggregate. People ex rel. State Bd. of Equalization v. Hively, 139 Colo. 49, 336 P.2d 721 (1959).

The state tax commission and the board are authorized under the constitution, the statutes, and the decisions of the supreme court, to determine that there should be lump sum or percentage increase in the total valuation of property within a county even though this has the effect of increasing the aggregate valuation of property in that county and in the state as a whole. People ex rel. State Bd. of Equalization v. Pitcher, 56 Colo. 343, 138 P. 509 (1914), aff'd sub nom. Bi-Metallic Inv. Co. v. State Bd. of Equalization, 239 U.S. 441, 36 S. Ct. 141, 60 L. Ed. 372 (1915); People ex rel. State Bd. of Equalization v. Hively, 139 Colo. 49, 336 P.2d 721 (1959).

But board of assessment appeals acts independently of board of equalization. In re Opinion of the Justices, 55 Colo. 17, 123 P. 660 (1912); People ex rel. State Bd. of Equalization v. Pitcher, 56 Colo. 343, 138 P. 509 (1914), aff'd sub nom. Bi-Metallic Inv. Co. v. State Bd. of Equalization, 239 U.S. 441, 36 S. Ct. 141, 60 L. Ed. 372 (1915).

Adjustment and equalization are duties of board of county commissioners. This section makes it the duty of the board of county commissioners, sitting as a board of equalization, to adjust and equalize the valuation of real and personal property within its county. Tarabino Real Estate Co. v. Sandoval, 115 Colo. 336, 173 P.2d 459 (1946).

Board of assessment appeals is subject to approval of state board. Board of assessment appeals' action in raising, lowering or equalizing values is subject to approval of state board. See Goldsmith v. Standard Chem. Co., 23 F.2d 313 (8th Cir. 1927).

III. PROCEDURES.

Board may set own rules of procedure. The state board must be permitted to determine (within limits) its own rules of procedure. People ex rel. State Bd. of Equalization v. Hively, 139 Colo. 49, 336 P.2d 721 (1959).

The statutes are silent as to any method to be used by the state board in the performance of its constitutional duties. MacGinnis v. Denver Land Co., 90 Colo. 72, 6 P.2d 919 (1931).

Full scale hearing before board not contemplated. The constitutional provision creating the state board does not contemplate a full scale hearing similar to that which obtains in a courtroom. People ex rel. State Bd. of Equalization v. Hively, 139 Colo. 49, 336 P.2d 721 (1959).

Actual notice to the individual taxpayer is not required as a condition precedent to action by state boards of equalization, notwithstanding such boards may exercise the power of increasing or decreasing the aggregate valuations as returned from the respective counties. The rule is equally well settled that the only notice

necessary in such cases is the law which fixes the time and place of the holding of the meetings of such boards. People ex rel. State Bd. of Equalization v. Pitcher, 56 Colo. 343, 138 P. 509 (1914), aff'd sub nom. Bi-Metallic Inv. Co. v. State Bd. of Equalization, 239 U.S. 441, 36 S. Ct. 141, 60 L. Ed. 372 (1915).

When the state board is performing its equalization function, it is not required to give a specific notice and hearing. People ex rel. State Bd. of Equalization v. Hively, 139 Colo. 49, 336 P.2d 721 (1959).

Board may consider any type of evidence. In the absence of a statutory mandate, boards of equalization are not required to examine witnesses, or base their action upon any particular kind of evidence, but may proceed in their own way, and on any information satisfactory to them. People ex rel. State Bd. of Equalization v. Pitcher, 56 Colo. 343, 138 P. 509 (1914), aff'd sub nom. Bi-Metallic Inv. Co. v. State Bd. of Equalization, 239 U.S. 441, 36 S. Ct. 141, 60 L. Ed. 372 (1915); First Nat'l Bank v. Patterson, 65 Colo. 166, 176 P. 498 (1918); First Nat'l Bank v. Bd. of Comm'rs, 264 U.S. 450, 44 S. Ct. 385, 68 L. Ed. 784 (1924); Holly Sugar Corp. v. Bd. of Comm'rs, 10 F.2d 506 (D. Colo. 1926).

The state constitution is silent in regard to the evidence or character thereof essential to valid action upon the part of the state board of equalization in the performance of its duties. It may, therefore, resort to any source of information it may desire in reaching its conclusions, even though it be assumed that it may not reach its conclusions from its own knowledge. Where the fundamental law creates an agency and invests it with power, without prescribing the manner in which it may be exercised, the agency is at liberty to adopt its own mode of procedure. People ex rel. State Bd. of Equalization v. Hively, 139 Colo. 49, 336 P.2d 721 (1959).

Where the state board of equalization has before it the sworn abstracts of assessment of several county assessors and also information in a judgment of the state tax commission that a certain raise upon specific classes or property should be made in order to bring the same to the constitutional requirement of full cash value, together with the general knowledge possessed by their own members in their acquaintance with the property contained in the state, the board has jurisdiction, and acts upon the kind of evidence and information which the constitution contemplates. People ex. rel. State Bd. of Equalization v. Hively, 139 Colo. 49, 336 P.2d 721 (1959).

If the state board does not swear and examine witnesses upon a subject, it is immaterial. The constitution does not require it and contemplates no such means of information. People ex rel. State Bd. of Equalization v. Hively, 139 Colo. 49, 336 P.2d 721 (1959).

Presumption as to performance of duty. The presumption is that the state board of equalization in passing a resolution for the reduction of assessed valuations of property discharged its entire duty with reference to an adjustment of assessments. MacGinnis v. Denver Land Co., 90 Colo. 72, 6 P.2d 919 (1931).

Court must uphold resolution of board where possible. If a resolution of the state board of equalization is susceptible of two interpretations, courts must adopt that construction which will support its validity, and provisions of such a resolution are sufficiently certain which can be made certain. MacGinnis v. Denver Land Co., 90 Colo. 72, 6 P.2d 919 (1931).

The courts must give effect to the unambiguous authorization in this section of the constitution, which

empowers the board to increase valuations. People ex rel. State Bd. of Equalization v. Hively, 139 Colo. 49, 336 P.2d 721 (1959).

Section 16. Appropriations not to exceed tax - exceptions. No appropriation shall be made, nor any expenditure authorized by the general assembly, whereby the expenditure of the state, during any fiscal year, shall exceed the total tax then provided for by law and applicable for such appropriation or expenditure, unless the general assembly making such appropriation shall provide for levying a sufficient tax, not exceeding the rates allowed in section eleven of this article, to pay such appropriation or expenditure within such fiscal year. This provision shall not apply to appropriations or expenditures to suppress insurrection, defend the state, or assist in defending the United States in time of war.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 60.

Cross references: For the maximum rate of taxation on property for state purposes, see § 11 of this article.

ANNOTATION

I. GENERAL CONSIDERATION.

Purpose of section. The unquestioned purpose of this section is to prohibit the making of appropriations authorizing expenditures for any fiscal year in excess of the revenue provided for the payment thereof during said period, to the end that indebtedness beyond the current means of discharging the same may be precluded. People ex rel. Colo. State Hosp. v. Armstrong, 104 Colo. 238, 90 P.2d 522 (1939).

Prohibitions of section. This section not only prohibits the general assembly from making excess appropriations, but also forbids officials of the executive department, particularly the auditor and treasurer, from paying or authorizing the payment of any appropriations for a given fiscal year except out of monies which in reality constitute revenue of the same fiscal year and are available for that use. People ex rel. Colo. State Hosp. v. Armstrong, 104 Colo. 238, 90 P.2d 522 (1939).

This section does not provide the governor with authority to transfer funds in order to assure that expenditures do not exceed appropriations. Colo. General Assembly v. Lamm, 700 P.2d 508 (Colo. 1985).

Inhibition of section applies to fiscal year, not general assembly. It clearly was the intention of the people in adopting this constitutional provision that the inhibition should apply to the fiscal year and not to the general assembly which may chance to be in session at that time, so that the power of the Thirty-First and Thirty-Second General Assemblies, with relation to providing revenue within constitutional bounds for appropriations of that fiscal year, would be coextensive. People ex rel. Colo. State Hosp. v. Armstrong, 104 Colo. 238, 90 P.2d 522 (1939).

Applicability of section to ad valorem and excise taxes. This section is clearly applicable to ad valorem taxes and at least of debatable

applicability to excise taxes. But in determining this case, the supreme court did not determine whether the section relates solely to ad valorem taxes. That matter could and should wait for determination until the question was directly involved in an appropriate action. Johnson v. McDonald, 97 Colo. 324, 49 P.2d 1017 (1935).

Section not applicable to creation of debt. The matter of debts is covered by art. XI, Colo. Const. Johnson v. McDonald, 97 Colo. 324, 49 P.2d 1017 (1935).

"Annual tax" includes occupation taxes. The annual tax provided by law, mentioned in this section, is not limited to a tax on property. Such expression "annual tax" may, and does, include occupation taxes as well. Parsons v. People, 32 Colo. 221, 76 P. 666 (1904).

II. APPROPRIATIONS.

A. In General.

Appropriations and expenditures are of two general classes. Under this section appropriations and expenditures which may be made are of two general classes: First, ordinary, which include all kinds of appropriations and expenditures necessary and proper for the support of the government and its institutions in time of peace; second, extraordinary, or such as are necessary "to suppress insurrection, defend the state, or assist in defending the United States in time of war". In re Appropriations, 13 Colo. 316, 22 P. 464 (1889).

Expenditures made to suppress insurrection. In paying the costs of an insurrection, etc., the general assembly is not limited, either as to the amount of the expenditures and appropriations therefor, or in the rate of taxation to pay the same and the interest thereof, whether the debt created for that purpose is in the form of certificates of indebtedness, or warrants, or has been converted into a debt by loan and funded into bonds. The same freedom from constitutional limitations upon the general assembly attends a debt created for this extraordinary purpose, irrespective of the form or evidence of such debt. In re State Bd. of Equalization, 24 Colo. 446, 51 P. 493 (1897).

Power to appropriate can only be exercised subject to provisions of this section, by which appropriations in excess of the revenue are inhibited. In re Continuing Appropriations, 18 Colo. 192, 32 P. 272 (1893).

This section of the constitution must control in determining whether an appropriation is or is not valid. To warrant the issuance of the peremptory writ against the auditor in this proceeding it must clearly appear, either that there were, at the date of the appropriation, "funds in the treasury not otherwise appropriated", that is, revenue "then provided for by law, and applicable for such appropriation" sufficient to pay the said sum, or, that the general assembly making such appropriation did, within constitutional limits, provide for levying a sufficient tax to pay such appropriation within the proper fiscal years. Henderson v. People ex rel. Wingate, 17 Colo. 587, 31 P. 334 (1892).

The general assembly, composed of representatives from all parts of the state, aided by the records and reports of state and county officers for preceding fiscal years, with power to take testimony and send for persons and papers, should be able to make such estimates that, with reasonable economy, all necessary expenditure may be provided for without transcending the constitutional limit. In re Appropriations, 13 Colo. 316, 22 P. 464 (1889).

Expenditures are limited to

taxes raised. People ex rel. Seeley v. May, 9 Colo. 80, 10 P. 641 (1885).

Under this section the general assembly may not make any appropriation or expenditure of its revenue beyond the total tax then provided for by law and applicable to that particular purpose, unless it shall provide for levying a tax sufficient to pay such appropriation or expenditure, and this tax must be within the limit of four mills prescribed in section 11 of this article. In re State Bd. of Equalization, 24 Colo. 446, 51 P. 493 (1897).

To bring an expenditure within the inhibition of this section, as a result of such authorized expenditures the state must be obligated to spend during a fiscal year more revenue than is available for expenditure during such fiscal year. Johnson v. McDonald, 97 Colo. 324, 49 P.2d 1017 (1935).

In fixing the total amount of appropriations for any fiscal year the general assembly, except in certain specified instances, is limited to the revenue that may properly be applied in the payment of the same. The amount of such revenue is almost entirely a matter of calculation. In re Appropriations, 13 Colo. 316, 22 P. 464 (1889).

General assembly may not appropriate in excess of revenue. Thus the general assembly is inhibited from making appropriations or authorizing expenditures in excess of the revenue applicable to such appropriations. Parks v. Commissioners of Soldiers' & Sailors' Home, 22 Colo. 86, 43 P. 542 (1896); In re Loan of Sch. Fund, 18 Colo. 195, 32 P. 273 (1893).

By this section, each and every general assembly is inhibited, in absolute and unqualified terms, from making appropriations or authorizing expenditures of the former class in excess of the total tax then provided by law, and applicable for such appropriation or expenditure, unless such general assembly shall provide for levying a sufficient tax, within constitutional limits, to pay the same within such fiscal year. This language needs no construction. It is plain, simple and unambiguous. It need not be misunderstood. It cannot be evaded. It means that the state cannot be plunged into debt by unauthorized legislation. In re Appropriations, 13 Colo. 316, 22 P. 464 (1889).

All excessive appropriations are void. It is well settled that all excessive appropriations are absolutely void. In fact, the constitution contains such plain and explicit inhibitions against the state being burdened with debts thus created, as to leave no room for construction. In re Priority of Legislative Appropriations, 19 Colo. 58, 34 P. 277 (1893); Parks v. Commissioners of Soldiers' & Sailors' Home, 22 Colo. 86, 43 P. 542 (1896).

If the general assembly passes acts making appropriations or authorizing expenditures in excess of constitutional limits such acts are void. They create no indebtedness against the state, and entail no obligation, legal or moral, upon the people, or upon any future general assembly. People ex rel. Seeley v. May, 9 Colo. 80, 10 P. 641 (1885); In re Appropriations, 13 Colo. 316, 22 P. 464 (1889); Lake County v. Rollins, 130 U.S. 662, 9 S. Ct. 651, 32 L. Ed. 1060 (1889).

Illegal appropriations should be carefully avoided, inasmuch as they seriously damage, though they cannot wreck, the credit of the state; for, while they create no valid indebtedness, yet it cannot be denied that they tarnish the reputation of the government for business integrity and fair dealing, and are greatly injurious to the public welfare. In re Appropriations, 13 Colo. 316, 22 P. 464 (1889).

Excessive appropriations may not be recognized. No state officer can legally recognize legislation making such appropriations. Parks v.

Commissioners of Soldiers' & Sailors' Home, 22 Colo. 86, 43 P. 542 (1896).

Neither the governor, auditor nor treasurer, nor any other officer of the executive department, can in any way legally approve or recognize legislative acts making appropriations in excess of constitutional limits. The unauthorized act of one official is no justification or excuse for a similar act by another. In re Appropriations, 13 Colo. 316, 22 P. 464 (1889).

But must be treated as void. It is the duty of every public officer connected with the administration of the state finances to treat as void each and every appropriation in excess of constitutional limits. In re Appropriations, 13 Colo. 316, 22 P. 464 (1889); Henderson v. People ex rel. Wingate, 17 Colo. 587, 31 P. 334 (1892).

When excessive appropriations are declared void. When the entire revenue of a given fiscal year has been exhausted the legislative appropriations for that year remaining unpaid, or any unpaid portions thereof, are totally void, constitute no debt and impose no obligation, legal or moral, upon the people or upon any future general assembly. People ex rel. Colo. State Hosp. v. Armstrong, 104 Colo. 238, 90 P.2d 522 (1939).

But not prior to expiration of fiscal year. But appropriations cannot be declared void for deficiency of revenue prior to the expiration of the fiscal year. People ex rel. Colo. State Hosp. v. Armstrong, 104 Colo. 238, 90 P.2d 522 (1939).

Appropriations may not be declared void until the total revenues for the fiscal year involved properly shall have been applied to payment of the appropriations, and only after this process is entirely complete do any of the appropriations or any portion thereof become finally void. People ex rel. Colo. State Hosp. v. Armstrong, 104 Colo. 238, 90 P.2d 522 (1939).

There is no absolute criterion by which it can be known in advance whether an appropriation will be in excess of the limit. Neither the auditor's estimates nor the judgment of the general assembly afford any support to such excessive appropriations; but such acts are mere nullities. In re Appropriations, 13 Colo. 316, 22 P. 464 (1889).

Income tax revenues applicable to appropriations. The entire income tax upon incomes returned for the calendar year ending December 31, 1938, and the entire income tax upon incomes returned for taxpayers' fiscal years so ending that the fifteenth day of the fourth month following the close of such taxpayers' fiscal years would fall on a date prior to June 30, 1939, constitute revenue for the fiscal year ending June 30, 1939, and may be applied to the payment of first and second class appropriations for that period, without reference to whether the actual payment is made upon the due date, by subsequent installments, or otherwise. People ex rel. Colo. State Hosp. v. Armstrong, 104 Colo. 238, 90 P.2d 522 (1939).

B. Priority.

Appropriations for executive, legislative, and judicial departments are entitled to preference. Acts of the general assembly making the necessary appropriations to defray the expenses of the executive, legislative, and judicial departments of the state government for each fiscal year, including interest on any valid public debt, are entitled to preference over all other appropriations from the general public revenue of the state, without reference to the date of their passage, and irrespective of emergency clauses. In re Appropriations, 13 Colo. 316, 22 P. 464 (1889); Henderson v. People ex rel. Wingate, 17 Colo. 587, 31 P. 334 (1892); Institute for Educ. of Mute &

Blind v. Henderson, 18 Colo. 98, 31 P. 714 (1892); Goodykoontz v. People ex rel. Sawyer, 20 Colo. 374, 38 P. 473 (1894); Parks v. Commissioners of Soldiers' & Sailors' Home, 22 Colo. 86, 43 P. 542 (1896).

Other appropriations may be made from surplus remaining. Appropriations other than those necessary to defray the expenses of the state government, and to pay the interest on the public debt, and being such as are proper to foster and maintain public institutions and public improvements, may be made by the general assembly to the extent of the surplus over and above the amount required for the necessary appropriations aforesaid; provided, always, that the aggregate of such appropriations, when added to the necessary appropriations aforesaid, do not exceed the limits prescribed by this section. In re Appropriations, 13 Colo. 316, 22 P. 464 (1889).

Priority of effective dates of appropriations acts governs as to surplus. Priority of date of the taking effect of the acts making such appropriations must govern after preferred appropriations are discharged. Within constitutional limits the general assembly may appropriate the public funds of the state as it chooses, but when it has once reached the limit, further appropriations are of no force and effect, for the reason that there is no revenue available to meet such appropriations. People v. State Bd. of Equalization, 20 Colo. 220, 37 P. 964 (1894); Goodykoontz v. People ex rel. Sawyer, 20 Colo. 374, 38 P. 473 (1894); Parks v. Commissioners of Soldiers' & Sailors' Home, 22 Colo. 86, 43 P. 542 (1896).

Since in absence of legislative preference, appropriations for state institutions have no priority. In the absence of a legislative preference, appropriations for the state educational, reformatory or penal institutions have, in case of a deficiency of the revenue, no precedence over other appropriations. Parks v. Commissioners of Soldiers' & Sailors' Home, 22 Colo. 86, 43 P. 542 (1896).

Priority of appropriations of same grade bearing same date. It may be competent for the general assembly to provide that, in case of deficiency, the public funds shall be prorated between claimants of the same grade, but certainly, in the absence of such legislation, the courts cannot require this to be done when the priority in time can be ascertained; consequently, in case of several appropriations of the same grade made by separate bills bearing the same date, and there are funds to pay part, but not sufficient for all, priority should be given as of the time of day of the taking effect of the several acts. Parks v. Commissioners of Soldiers' & Sailors' Home, 22 Colo. 86, 43 P. 542 (1896).

Preference between appropriations cannot be determined in ex parte proceeding. If appropriations do in fact exceed the estimated revenues for certain years, as all cannot be paid, a question of preference between claimants is involved that cannot be determined in an ex parte proceeding in answer to a legislative or executive question. In re Priority of Legislative Appropriations, 19 Colo. 58, 34 P. 277 (1893).

In case appropriations overrun the constitutional limit, the question of preference between conflicting claimants would almost necessarily involve important private and corporate rights, and therefore, should not be decided in an opinion in answer to submitted interrogatories, even though some considerations publici juris may also be involved, but should be left for adjudication in the ordinary course of judicial proceedings. In re Appropriations, 13 Colo. 316, 22 P. 464 (1889).

Section 17. Income tax. The general assembly may levy income taxes, either graduated or proportional, or both graduated and proportional, for the support of the state, or any political subdivision thereof, or for public schools, and may, in the administration of an income tax law, provide for special classified or limited taxation or the exemption of tangible and intangible personal property.

Source: L. 36: Entire section added, see **L. 37,** p. 675.

Cross references: For tax exemptions, see article 3 of title 39; for provisions concerning income tax, see also article 22 of title 39.

ANNOTATION

Law reviews. For article, "The Problem of Tax Exempt Property in Colorado", see 19 Rocky Mt. L. Rev. 22 (1946). For article, "Municipal Income Taxation", see 31 Rocky Mt. L. Rev. 123 (1959). For article, "Municipal Home-Rule in Colorado: Self Determination v. State Supremacy", see 37 Dicta 240 (1960). For note, "Increased Revenues for Colorado Municipalities", see 35 U. Colo. L. Rev. 370 (1963). For article, "Three Sources of Municipal Revenue in Colorado", see 19 Colo. Law. 2065 (1990).

Effect of section. This section substitutes an income tax for all ad valorem taxes on intangible personal property; from and after July 1, 1937, owners of intangible personal property were subject to the income tax, which intangibles were exempt from ad valorem taxation. City & County of Denver v. Tax Research Bureau, 101 Colo. 140, 71 P.2d 809 (1937).

General assembly has exclusive power to levy income taxes. Adoption of this section gave the general assembly the exclusive power to levy graduated or proportional income taxes, which prior to that time could not be done without such a mandate in view of the constitutional provisions requiring uniform application of all laws. City & County of Denver v. Sweet, 138 Colo. 41, 329 P.2d 441 (1958).

The mere fact that the wording is permissive to the state does not make it any less an exclusive power to levy this special type of tax. City & County of Denver v. Sweet, 138 Colo. 41, 329 P.2d 441 (1958).

Such power cannot be delegated. Under the precise wording of this section of the state constitution, conferring upon the general assembly the power to levy an income tax, such power may not be delegated to any other body. City & County of Denver v. Sweet, 138 Colo. 41, 329 P.2d 441 (1958).

The state constitution vests exclusive nondelegable power in the general assembly to levy income taxes. City & County of Denver v. Duffy Storage & Moving Co., 168 Colo. 91, 450 P.2d 339, appeal dismissed, 396 U.S. 2, 90 S. Ct. 23, 24 L. Ed. 2d 1 (1969).

Reason for limiting such power to state. Possibly the fear of permitting a veritable tax jungle of separate city income taxes which could harass and overburden the taxpayers was what prompted the people to determine that such a mode of taxation is to be used only for the state. City & County of Denver v. Sweet, 138 Colo. 41, 329 P.2d 441 (1958).

Thus, power of home rule cities to tax incomes is foreclosed. The adoption of this section preempted the field of income taxation for the general assembly and foreclosed the power of home rule cities to tax incomes. City & County of Denver v. Sweet, 138 Colo. 41, 329 P.2d 441

(1958).

Denver is without power to enact an ordinance imposing an income tax. City & County of Denver v. Duffy Storage & Moving Co., 168 Colo. 91, 450 P.2d 339, appeal dismissed, 396 U.S. 2, 90 S. Ct. 23, 24 L. Ed. 2d 1 (1969); Johnson v. City & County of Denver, 186 Colo. 398, 527 P.2d 883 (1974).

A tax on income is in excess of the powers delegated to Colorado municipalities. Bd. of Trustees v. Foster Lumber Co., 190 Colo. 479, 548 P.2d 1276 (1976).

And injunction is proper to prevent submission of proposal to confer such power on city council. Where a home rule city has no power to levy an income tax, the city council has no authority to call a special election to submit to the electors a proposal to confer such power upon the council, and injunction is the proper remedy to prevent such submission. City & County of Denver v. Sweet, 138 Colo. 41, 329 P.2d 441 (1958).

This section modified all provisions of art. XX, Colo. Const., in conflict therewith. This section, having been adopted after art. XX, Colo. Const., the former has modified all other constitutional provisions in conflict therewith. City & County of Denver v. Sweet, 138 Colo. 41, 329 P.2d 441 (1958).

This section overrides section 7 of this article, by directing that the general assembly may levy this tax for any political subdivision, which includes home rule cities among others. The fact that the general assembly has not seen fit so to do is immaterial. City & County of Denver v. Sweet, 138 Colo. 41, 329 P.2d 441 (1958).

It is a legislative and not a judicial function to provide the means by which local governments may raise greater revenues. Bd. of Trustees v. Foster Lumber Co., 190 Colo. 479, 548 P.2d 1276 (1976).

Income tax must be graduated or proportional or it is illegal. Johnson v. City & County of Denver, 186 Colo. 398, 527 P.2d 883 (1974).

The power to tax income is plain and extends to gross income. Whether and to what extent deductions shall be allowed depends upon legislative grace; and only as there is clear provision therefor can any particular deduction be allowed. California Co. v. State, 141 Colo. 288, 348 P.2d 382 (1959), appeal dismissed, 364 U.S. 285, 81 S. Ct. 42, 5 L. Ed. 2d 37, reh'g denied, 364 U.S. 897, 81 S. Ct. 219, 5 L. Ed. 2d 191 (1960).

No distinction between gross income and net income tax. There is no legal or practical significance to a distinction between gross income and net income tax. California Co. v. State, 141 Colo. 288, 348 P.2d 382 (1959), appeal dismissed, 364 U.S. 285, 81 S. Ct. 42, 5 L. Ed. 2d 37, reh'g denied, 364 U.S. 897, 81 S. Ct. 219, 5 L. Ed. 2d 191 (1960).

The imposition of taxes on gross and net incomes is not an ad valorem tax. California Co. v. State, 141 Colo. 288, 348 P.2d 382 (1959), appeal dismissed, 364 U.S. 285, 81 S. Ct. 42, 5 L. Ed. 2d 37, reh'g denied, 364 U.S. 897, 81 S. Ct. 219, 5 L. Ed. 2d 191 (1960).

A true business or occupational tax is not an income tax nor a tax on real property. The fact that the business necessarily involves and concerns realty does not change the nature of the tax. City of Englewood v. Wright, 147 Colo. 537, 364 P.2d 569 (1961).

City tax limited to employee engaged in occupation is not income tax. A tax, limited to an employee engaged in an occupation, i.e., one who is performing such service for an employer, as defined, within Denver for any period of time in the calendar month upon compensation, is not a flat income tax. City & County of Denver v. Duffy Storage & Moving Co., 168

Colo. 91, 450 P.2d 339, appeal dismissed, 396 U.S. 2, 90 S. Ct. 23, 24 L. Ed. 2d 1 (1969).

Imposition of user fee by airport authority upon rental car company which is based upon portion of gross revenues of company attributable to passengers picked up at airport does not constitute an illegal income tax. Westrac, Inc. v. Walker Field, 812 P.2d 714 (Colo. App. 1991).

Sales and use tax ordinance imposed on companies engaged in business of servicing coin-operated machines functioned as a constitutionally permissible sales tax and not as an income tax where the incidence of the tax fell on the customers of a retail business, notwithstanding companies' claim that tax burden unavoidably fell on them rather than purchasers, and where the companies qualified as retailers or vendors under the ordinance even though the users of the machines were customers of the location owners and not of the companies. Apollo Stereo Music v. City of Aurora, 871 P.2d 1206 (Colo. 1994).

Distinction between fee and tax based upon nature and function of the charge rather than by its label. Fees charged for use of public facility owned by municipal corporation are not taxes if purpose is to defray expenses for operating and improving facility and if fees are only imposed on users of facility. Taxes are not based on amount of use and the proceeds thereof are used to defray general municipal expenses. Westrac, Inc. v. Walker Field, 812 P.2d 714 (Colo. App. 1991).

Applied in Rountree v. City & County of Denver, 197 Colo. 497, 596 P.2d 739 (1979).

Section 18. License fees and excise taxes - use of. On and after July 1, 1935, the proceeds from the imposition of any license, registration fee, or other charge with respect to the operation of any motor vehicle upon any public highway in this state and the proceeds from the imposition of any excise tax on gasoline or other liquid motor fuel except aviation fuel used for aviation purposes shall, except costs of administration, be used exclusively for the construction, maintenance, and supervision of the public highways of this state. Any taxes imposed upon aviation fuel shall be used exclusively for aviation purposes.

Source: Initiated 34: Entire section added, see **L. 35,** p. 328. **L. 74:** Entire section amended, p. 459, effective July 1, 1975.

Editor's note: The Governor's proclamation date in 1974 was December 20, 1974.

ANNOTATION

The roads of the state are, in effect, made the producers of a special fund, for the gasoline tax is a tax on motor fuel used in propelling vehicles along the highways. It amounts to an indirect tax for the use of the highway by motor vehicles. See Johnson v. McDonald, 97 Colo. 324, 49 P.2d 1017 (1935).

This special fund is not available for general purposes. See Johnson v. McDonald, 97 Colo. 324, 49 P.2d 1017 (1935).

This section removes excise taxes on motor fuel from availability for general state purposes. City of Trinidad v. Haxby, 136 Colo. 168, 315 P.2d 204 (1957).

No appropriation for road purposes necessary. Since this section

sets aside and fixes the amount--the whole of the revenues from the taxes mentioned--as applicable to road purposes, no appropriation by the general assembly is necessary. Johnson v. McDonald, 97 Colo. 324, 49 P.2d 1017 (1935).

General assembly's power over funds realized is limited to authorizing their expenditure, and determining the policy of road construction, maintenance and supervision, within the constitutional limitations as to the use of such funds. Johnson v. McDonald, 97 Colo. 324, 49 P.2d 1017 (1935).

Privilege and access fees based upon access to an airport and charged to a car rental company do not violate this section. Thrifty Rent-A-Car v. Denver, 833 P.2d 852 (Colo. App. 1992).

Applied in Watrous v. Golden Chamber of Commerce, 121 Colo. 521, 218 P.2d 498 (1950).

Section 19. State income tax laws by reference to United States tax laws. The general assembly may by law define the income upon which income taxes may be levied under section 17 of this article by reference to provisions of the laws of the United States in effect from time to time, whether retrospective or prospective in their operation, and shall in any such law provide the dollar amount of personal exemptions to be allowed to the taxpayer as a deduction. The general assembly may in any such law provide for other exceptions or modifications to any of such provisions of the laws of the United States and for retrospective exceptions or modifications to those provisions which are retrospective.

Source: L. 62: Entire section added, see **L. 63,** p. 1061.

Section 20. The Taxpayer's Bill of Rights.(1) General provisions. This section takes effect December 31, 1992 or as stated. Its preferred interpretation shall reasonably restrain most the growth of government. All provisions are self-executing and severable and supersede conflicting state constitutional, state statutory, charter, or other state or local provisions. Other limits on district revenue, spending, and debt may be weakened only by future voter approval. Individual or class action enforcement suits may be filed and shall have the highest civil priority of resolution. Successful plaintiffs are allowed costs and reasonable attorney fees, but a district is not unless a suit against it be ruled frivolous. Revenue collected, kept, or spent illegally since four full fiscal years before a suit is filed shall be refunded with 10% annual simple interest from the initial conduct. Subject to judicial review, districts may use any reasonable method for refunds under this section, including temporary tax credits or rate reductions. Refunds need not be proportional when prior payments are impractical to identify or return. When annual district revenue is less than annual payments on general obligation bonds, pensions, and final court judgments, (4) (a) and (7) shall be suspended to provide for the deficiency.

(2) Term definitions. Within this section:

(a) "Ballot issue" means a non-recall petition or referred measure in an election.

(b) "District" means the state or any local government, excluding

enterprises.

(c) "Emergency" excludes economic conditions, revenue shortfalls, or district salary or fringe benefit increases.

(d) "Enterprise" means a government-owned business authorized to issue its own revenue bonds and receiving under 10% of annual revenue in grants from all Colorado state and local governments combined.

(e) "Fiscal year spending" means all district expenditures and reserve increases except, as to both, those for refunds made in the current or next fiscal year or those from gifts, federal funds, collections for another government, pension contributions by employees and pension fund earnings, reserve transfers or expenditures, damage awards, or property sales.

(f) "Inflation" means the percentage change in the United States Bureau of Labor Statistics Consumer Price Index for Denver-Boulder, all items, all urban consumers, or its successor index.

(g) "Local growth" for a non-school district means a net percentage change in actual value of all real property in a district from construction of taxable real property improvements, minus destruction of similar improvements, and additions to, minus deletions from, taxable real property. For a school district, it means the percentage change in its student enrollment.

(3) Election provisions. (a) Ballot issues shall be decided in a state general election, biennial local district election, or on the first Tuesday in November of odd-numbered years. Except for petitions, bonded debt, or charter or constitutional provisions, districts may consolidate ballot issues and voters may approve a delay of up to four years in voting on ballot issues. District actions taken during such a delay shall not extend beyond that period.

(b) At least 30 days before a ballot issue election, districts shall mail at the least cost, and as a package where districts with ballot issues overlap, a titled notice or set of notices addressed to "All Registered Voters" at each address of one or more active registered electors. The districts may coordinate the mailing required by this paragraph (b) with the distribution of the ballot information booklet required by section 1 (7.5) of article V of this constitution in order to save mailing costs. Titles shall have this order of preference: **"NOTICE OF ELECTION TO INCREASE TAXES/TO INCREASE DEBT/ON A CITIZEN PETITION/ON A REFERRED MEASURE."** Except for district voter-approved additions, notices shall include only:

(i) The election date, hours, ballot title, text, and local election office address and telephone number.

(ii) For proposed district tax or bonded debt increases, the estimated or actual total of district fiscal year spending for the current year and each of the past four years, and the overall percentage and dollar change.

(iii) For the first full fiscal year of each proposed district tax increase, district estimates of the maximum dollar amount of each increase and of district fiscal year spending without the increase.

(iv) For proposed district bonded debt, its principal amount and maximum annual and total district repayment cost, and the principal balance of total current district bonded debt and its maximum annual and remaining total

district repayment cost.

(v) Two summaries, up to 500 words each, one for and one against the proposal, of written comments filed with the election officer by 45 days before the election. No summary shall mention names of persons or private groups, nor any endorsements of or resolutions against the proposal. Petition representatives following these rules shall write this summary for their petition. The election officer shall maintain and accurately summarize all other relevant written comments. The provisions of this subparagraph (v) do not apply to a statewide ballot issue, which is subject to the provisions of section 1 (7.5) of article V of this constitution.

(c) Except by later voter approval, if a tax increase or fiscal year spending exceeds any estimate in (b) (iii) for the same fiscal year, the tax increase is thereafter reduced up to 100% in proportion to the combined dollar excess, and the combined excess revenue refunded in the next fiscal year. District bonded debt shall not issue on terms that could exceed its share of its maximum repayment costs in (b) (iv). Ballot titles for tax or bonded debt increases shall begin, **"SHALL (DISTRICT) TAXES BE INCREASED (first, or if phased in, final, full fiscal year dollar increase) ANNUALLY...?" or "SHALL (DISTRICT) DEBT BE INCREASED (principal amount), WITH A REPAYMENT COST OF (maximum total district cost), ...?"**

(4) Required elections. Starting November 4, 1992, districts must have voter approval in advance for:

(a) Unless (1) or (6) applies, any new tax, tax rate increase, mill levy above that for the prior year, valuation for assessment ratio increase for a property class, or extension of an expiring tax, or a tax policy change directly causing a net tax revenue gain to any district.

(b) Except for refinancing district bonded debt at a lower interest rate or adding new employees to existing district pension plans, creation of any multiple-fiscal year direct or indirect district debt or other financial obligation whatsoever without adequate present cash reserves pledged irrevocably and held for payments in all future fiscal years.

(5) Emergency reserves. To use for declared emergencies only, each district shall reserve for 1993 1% or more, for 1994 2% or more, and for all later years 3% or more of its fiscal year spending excluding bonded debt service. Unused reserves apply to the next year's reserve.

(6) Emergency taxes. This subsection grants no new taxing power. Emergency property taxes are prohibited. Emergency tax revenue is excluded for purposes of (3) (c) and (7), even if later ratified by voters. Emergency taxes shall also meet all of the following conditions:

(a) A 2/3 majority of the members of each house of the general assembly or of a local district board declares the emergency and imposes the tax by separate recorded roll call votes.

(b) Emergency tax revenue shall be spent only after emergency reserves are depleted, and shall be refunded within 180 days after the emergency ends if not spent on the emergency.

(c) A tax not approved on the next election date 60 days or more after

the declaration shall end with that election month.

(7) Spending limits. (a) The maximum annual percentage change in state fiscal year spending equals inflation plus the percentage change in state population in the prior calendar year, adjusted for revenue changes approved by voters after 1991. Population shall be determined by annual federal census estimates and such number shall be adjusted every decade to match the federal census.

(b) The maximum annual percentage change in each local district's fiscal year spending equals inflation in the prior calendar year plus annual local growth, adjusted for revenue changes approved by voters after 1991 and (8) (b) and (9) reductions.

(c) The maximum annual percentage change in each district's property tax revenue equals inflation in the prior calendar year plus annual local growth, adjusted for property tax revenue changes approved by voters after 1991 and (8) (b) and (9) reductions.

(d) If revenue from sources not excluded from fiscal year spending exceeds these limits in dollars for that fiscal year, the excess shall be refunded in the next fiscal year unless voters approve a revenue change as an offset. Initial district bases are current fiscal year spending and 1991 property tax collected in 1992. Qualification or disqualification as an enterprise shall change district bases and future year limits. Future creation of district bonded debt shall increase, and retiring or refinancing district bonded debt shall lower, fiscal year spending and property tax revenue by the annual debt service so funded. Debt service changes, reductions, (1) and (3) (c) refunds, and voter-approved revenue changes are dollar amounts that are exceptions to, and not part of, any district base. Voter-approved revenue changes do not require a tax rate change.

(8) Revenue limits. (a) New or increased transfer tax rates on real property are prohibited. No new state real property tax or local district income tax shall be imposed. Neither an income tax rate increase nor a new state definition of taxable income shall apply before the next tax year. Any income tax law change after July 1, 1992 shall also require all taxable net income to be taxed at one rate, excluding refund tax credits or voter-approved tax credits, with no added tax or surcharge.

(b) Each district may enact cumulative uniform exemptions and credits to reduce or end business personal property taxes.

(c) Regardless of reassessment frequency, valuation notices shall be mailed annually and may be appealed annually, with no presumption in favor of any pending valuation. Past or future sales by a lender or government shall also be considered as comparable market sales and their sales prices kept as public records. Actual value shall be stated on all property tax bills and valuation notices and, for residential real property, determined solely by the market approach to appraisal.

(9) State mandates. Except for public education through grade 12 or as required of a local district by federal law, a local district may reduce or end its subsidy to any program delegated to it by the general assembly for administration. For current programs, the state may require 90 days notice and

that the adjustment occur in a maximum of three equal annual installments.

Source: Initiated 92: Entire section added, effective December 31, 1992, see **L. 93,** p. 2165. **L. 94:** (3)(b)(v) amended, p. 2851, effective upon proclamation of the Governor, **L. 95,** p. 1431, January 19, 1995. **L. 95:** IP(3)(b) and (3)(b)(v) amended, p. 1425, effective upon proclamation of the Governor, **L. 97,** p. 2393, December 26, 1996.

Editor's note: (1) Prior to the TABOR initiative in 1992, this section was originally enacted in 1972 and contained provisions relating to the 1976 Winter Olympics and was repealed, effective January 3, 1989. (See L. 1989, p. 1657.)

(2) (a) The Governor's proclamation date for the 1992 initiated measure (TABOR) was January 14, 1993.

(b) Subsection (4) of this section provides that the provisions of this section apply to required elections of state and local governments conducted on or after November 4, 1992.

Cross references: For statutory provisions implementing this section, see article 77 of title 24 (state fiscal policies); §§ 1-1-102, 1-40-125, 1-41-101 to 1-41-103, 29-2-102, and 32-1-803.5 (elections); §§ 29-1-304.7 and 29-1-304.8 (turnback of programs delegated to local governments by the general assembly); §§ 43-1-112.5, 43-1-113, 43-4-611, 43-4-612, 43-4-705, 43-4-707, and 43-10-109 (department of transportation revenue and spending limits); §§ 23-1-104 and 23-1-105 (higher education revenue and spending limits); §§ 24-30-202, 24-82-703, 24-82-705, and 24-82-801 (multiple fiscal-year obligations); §§ 8-46-101, 8-46-202, 8-77-101, 24-75-302, and 43-4-201 (provisions relating to individual funds and programs); and § 39-5-121 (property tax valuation notices); and, concerning the establishment of enterprises, §§ 23-1-106, 23-3.1-103.5, 23-3.1-104.5, 23-5-101.5, 23-5-101.7, 23-5-102, 23-5-103, 23-70-107, 23-70-108, and 23-70-112 (higher education, auxiliary facilities), part 2 of article 35 of title 24 (state lottery), part 3 of article 3 of title 25 (county hospitals), §§ 26-12-110 and 26-12-113 (state nursing homes), article 45.1 of title 37 (water activities), § 43-4-502 (public highway authorities), and § 43-4-805 (state bridge enterprise).

ANNOTATION

I. GENERAL CONSIDERATION.

Law reviews. For article, "Amendment One: Government by Plebiscite", see 22 Colo. Law. 293 (1993). For article, "Use of the Nonprofit Supporting Foundation to Assist Governmental Districts After Amendment 1", see 22 Colo. Law. 685 (1993). For article, "Enterprises Under Article X, § 20 of the Colorado Constitution - Part I", see 27 Colo. Law. 55 (April 1998). For article, "Enterprises Under Article X, § 20 of the Colorado Constitution - Part II", see 27 Colo. Law. 65 (May 1998). For article, "Taming TABOR by Working from Within", see 32 Colo. Law. 101 (July 2003). For article, "The Colorado Constitution in the New Century", see 78 U. Colo. L. Rev. 1265 (2007). For comment, "Dismantling the Trojan Horse: Mesa County Board of County Commissioners v. State", see 82 U. Colo. L. Rev. 259 (2011).

Interpretation of a constitutional provision is a question of law and an appellate court is not required to accord deference to a trial court's ruling in that regard. Cerveny v.

City of Wheat Ridge, 888 P.2d 339 (Colo. App. 1994), rev'd on other grounds, 913 P.2d 1110 (Colo. 1996).

In interpreting a constitutional amendment that was adopted by popular vote, courts must determine what the people believed the language of the amendment meant when they voted it into law. To do so, courts must give the language the natural and popular meaning usually understood by the voters. Cerveny v. City of Wheat Ridge, 888 P.2d 339 (Colo. App. 1994), rev'd on other grounds, 913 P.2d 1110 (Colo. 1996); Havens v. Bd. of County Comm'rs, 924 P.2d 517 (Colo. 1996).

In interpreting a constitutional provision, the court should ascertain and give effect to the intent of those who adopted it. In the case of this section, it is the court's responsibility to ensure that it gives effect to what the voters believed the amendment to mean when they accepted it as their fundamental law, considering the natural and popular meaning of the words used. City of Wheat Ridge v. Cerveny, 913 P.2d 1110 (Colo. 1996).

A court will not assume that all legislative drafting principles apply when interpreting an initiated constitutional amendment but will apply generally accepted principles such as according words their plain or common meaning in order to enact the intent of the voter in the same manner as it would otherwise seek to enact the intent of the legislature. Bruce v. City of Colo. Springs, 129 P.3d 988 (Colo. 2006).

The language in subsection (1) stating that the preferred interpretation of this section "shall reasonably restrain most the growth of government" is an interpretative guideline that a reviewing court may employ when it finds two separately plausible interpretations of the text of this section. It is not a refutation of the beyond a reasonable doubt standard. As the presumption of constitutionality applies to a statute challenged under this section, the beyond a reasonable doubt showing is necessary to overcome that presumption. Mesa County Bd. of County Comm'rs v. State, 203 P.3d 519 (Colo. 2009).

Where multiple interpretations of a provision of this section are equally supported by the text of that section, a court should choose that interpretation which it concludes would create the greatest restraint on the growth of government; however, the proponent of an interpretation has the burden of establishing that its proposed construction of this section would reasonably restrain the growth of government more than any other competing interpretation. Bickel v. City of Boulder, 885 P.2d 215 (Colo. 1994), cert. denied, 513 U.S. 1155, 115 S. Ct. 1112, 130 L. Ed. 2d 1076 (1995); Nicholl v. E-470 Pub. Hwy. Auth., 896 P.2d 859 (Colo. 1995); HCA-Healthone, LLC v. City of Lone Tree, 197 P.3d 236 (Colo. App. 2008).

A court should require a significant financial burden on the state only if the text of this section leaves no other choice. Courts have consistently rejected readings that would hinder basic government functions or cripple the government's ability to provide services. Barber v. Ritter, 196 P.3d 238 (Colo. 2008).

Amendment's objective is to prevent governmental entities from enacting taxing and spending increases above its limits without voter approval. Campbell v. Orchard Mesa Irr. Dist., 972 P.2d 1037 (Colo. 1998).

This section requires voter approval for certain state and local government tax increases and restricts property, income, and other taxes. Submission of Interrogatories on Senate Bill 93-74, 852 P.2d 1 (Colo. 1993).

And acts to limit the

discretion of government officials to take certain actions pertaining to taxing, revenue, and spending in the absence of voter approval. Prop. Tax Adjustment Specialists, Inc. v. Mesa County Bd. of Comm'rs, 956 P.2d 1277 (Colo. App. 1998).

This section operates to impose a limitation on the power of the people's elected representatives, and while this section circumscribes the revenue, spending, and debt powers of state and local governments, creating a series of procedural requirements, it does not create any fundamental rights. Havens v. Bd. of County Comm'rs, 924 P.2d 517 (Colo. 1996).

Districts may seek present authorization for future tax rate increases where such rate increases may be necessary to repay a specific, voter-approved debt. Any rate change ultimately implemented by a district pursuant to the "without limitation as to rate" clause in the ballot title must be consistent with the district's state estimate of the final fiscal year dollar amount of the increase. Bickel v. City of Boulder, 885 P.2d 215 (Colo. 1994), cert. denied, 513 U.S. 1155, 115 S. Ct. 1112, 130 L. Ed. 2d 1076 (1995).

This section and article XXVII of the Colorado Constitution are not in irreconcilable, material, and direct conflict, since this section does not authorize what article XXVII forbids or forbid what article XXVII authorizes. Submission of Interrogatories on Senate Bill 93-74, 852 P.2d 1 (Colo. 1993).

Since the inclusion of all net lottery proceeds in the calculation of state fiscal year spending creates an implicit conflict between this section and article XXVII, legislation exempting net lottery proceeds dedicated by article XXVII to great outdoors Colorado purposes from this section and subjecting such proceeds dedicated to the capital construction fund and the excess that spill over into the general fund to this section represented a reasonable resolution of that implicit conflict. Submission of Interrogatories on Senate Bill 93-74, 852 P.2d 1 (Colo. 1993).

This section and § 9 of article XVIII of the Colorado Constitution are not in direct conflict. Submission of Interrogatories on Senate Bill 93-74, 852 P.2d 1 (Colo. 1993).

This section and § 3 of this article reconciled. In order to reconcile the requirement of subsection (8)(c) of this section that residential property be valued "solely by the market approach to appraisal" with the equalization requirement of article X, § 3, the actual value of residential property must be determined using means and methods applied impartially to all the members of each class. Podoll v. Arapahoe County Bd. of Equaliz., 920 P.2d 861 (Colo. App. 1995), rev'd on other grounds, 935 P.2d 14 (Colo. 1997).

This section does not conflict with § 1-11-203.5, which governs ballot title contests. Since the limited period for filing ballot title contests specified in § 1-11-203.5 also is not "manifestly so limited as to amount to a denial of justice", § 1-11-203.5 is constitutional. Cacioppo v. Eagle County Sch. Dist. RE-50J, 92 P.3d 453 (Colo. 2004).

Amendment relates back. Although under art. V, § 1(4), this section took effect January 14, 1993, once effective, its terms could and did relate back to conduct occurring the day after the 1992 election. Bolt v. Arapahoe County Sch. Dist. No. 6, 898 P.2d 525 (Colo. 1995).

Dispute under election provisions reviewed under a "substantial compliance" standard. City of Aurora v. Acosta, 892 P.2d 264 (Colo. 1995).

Substantial compliance found. District in mail ballot election found to have substantially complied with section when purposes of the ballot disclosure provisions are not

undermined and all required information was in the election notices if not the ballot title. City of Aurora v. Acosta, 892 P.2d 264 (Colo. 1995).

Voter approval of dollar amounts not required. This section does not require voter approval of a dollar amount when the revenue change is not a district tax increase. City of Aurora v. Acosta, 892 P.2d 264 (Colo. 1995).

The Taxpayer's Bill of Rights does not grant governmental entities the right to file enforcement suits or class action suits. Boulder County Bd. of Comm'rs v. City of Broomfield, 7 P.3d 1033 (Colo. App. 1999).

Plaintiff had standing, as expressly provided under this section, to bring action as an individual taxpayer to determine whether E-470 authority was subject to this section's regulation. Nicholl v. E-470 Pub. Hwy. Auth., 896 P.2d 859 (Colo. 1995).

Petitioners have taxpayer standing to challenge the constitutionality of transfers of money from special funds to the general fund and the concomitant expenditure of that money to defray general governmental expenses. Barber v. Ritter, 196 P.3d 238 (Colo. 2008).

The four-year time limitation for individual or class action suits under this section applies to enforcement of the specific requirements of this constitutional provision, but does not affect the statute of limitations set forth in the statutory provisions regarding taxes that were levied erroneously or illegally. Prop. Tax Adjustment Specialists, Inc. v. Mesa County Bd. of Comm'rs, 956 P.2d 1277 (Colo. App. 1998).

Provisions for collecting and spending revenues entered into by the E-470 public highway authority were not subject to the election provisions of this section where bond contracts entered into prior to passage of this section required that the revenues would be received and spent by the highway authority for the purpose of operating the highway and repaying the indebtedness. Bd. of County Comm'rs v. E-470 Pub. Hwy., 881 P.2d 412 (Colo. App. 1994), aff'd in part and rev'd in part sub nom. Nicholl v. E-470 Pub. Hwy. Auth., 896 P.2d 859 (Colo. 1995).

The phrase "multiple-fiscal year direct or indirect district debt or other financial obligation whatsoever" in § 20 of article X is necessarily broader than the phrase "debt by loan in any form" as defined by this section. Submission of Interrogatories on House Bill 99-1325, 979 P.2d 549 (Colo. 1999) (overruling Boulder v. Dougherty, Dawkins, 890 P.2d 199 (Colo. App. 1994)).

However, the scope of the phrase is not without bounds. The voters could not have intended an absurd result such as requiring voter approval for a multiple year lease-purchase agreement for equipment such as copy machines or computers. Submission of Interrogatories on House Bill 99-1325, 979 P.2d 549 (Colo. 1999).

County's equipment lease-purchase agreement did not create any multiple-fiscal year direct or indirect district debt or other financial obligation under this section where the county was free to terminate the agreement without penalty by failing to appropriate funds to pay the rent in any lease year. Boulder v. Dougherty, Dawkins, 890 P.2d 199 (Colo. App. 1994).

This section does not supersede prior case authority permitting lease purchase agreements. This section is analyzed in light of the existing well-established constitutional law in existence at the time of this section's adoption. Boulder v. Dougherty, Dawkins, 890 P.2d 199 (Colo. App. 1994).

Tax status. Whether the interest income derived from a county's equipment lease agreement or any similar transaction is tax free has no impact on the court's interpretation of the Colorado Constitution. Boulder v. Dougherty, Dawkins, 890 P.2d 199 (Colo. App. 1994).

This section creates a series of procedural requirements and nothing more. This section circumscribes the revenue, spending, and debt powers of state and local governments, it does not create any fundamental rights. With respect to the attorney fee provision of subsection (1), a holding that a victorious plaintiff must recover attorney fees as of right is antithetical to the overarching goal of the section to limit government spending. City of Wheat Ridge v. Cerveny, 913 P.2d 1110 (Colo. 1996).

This section does not provide an exemption from any obligation under the Colorado Open Records Act. Whether an institution is an "enterprise" does not have a bearing on whether it is free from the requirements of the Act. Freedom Newspapers, Inc. v. Tollefson, 961 P.2d 1150 (Colo. App. 1998).

Charges imposed on cable subscribers and for city street light service are fees, not taxes, and, therefore, are not subject to the ballot title and information and voter approval requirements of this section. Bruce v. City of Colorado Springs, 131 P.3d 1187 (Colo. App. 2005).

Passage of this section directly modified the powers of home rule cities, and a home rule city's ordinance is invalid to the extent that it conflicts with this section's requirements. HCA-Healthone, LLC v. City of Lone Tree, 197 P.3d 236 Colo. App. 2008).

II. DEFINITIONS.

E-470 authority is a district subject to the voter approval provisions of this section since the power to unilaterally impose taxes, with no direct relation to services provided, is inconsistent with the characteristics of a business as the term is commonly used, nor is it consistent with the definition of "enterprise" read as a whole. Nicholl v. E-470 Pub. Hwy. Auth., 896 P.2d 859 (Colo. 1995).

The attorney fee provisions of this section authorize an award of fees but do not require such an award. The fee-shifting phrase "successful plaintiffs are allowed costs and reasonable attorney fees" set forth in subsection (1) is plain and unambiguous. It allows a court to make an award of attorney fees but does not require the court to do so. City of Wheat Ridge v. Cerveny, 913 P.2d 1110 (Colo. 1996).

In assessing whether to award attorney fees under this section, the court must consider a number of factors and reach its conclusion based on the totality of the circumstances. Most importantly, the court must evaluate the significance of the litigation, and its outcome, in furthering the goals of this section. This evaluation must also include the nature of the claims raised, the significance of the issues on which the plaintiff prevailed in comparison to the litigation as a whole, the quantum of financial risk undertaken by the plaintiff, and the factors the court would weigh in determining what "reasonable" attorney fees would be. The court may also consider the nature of the fee agreement between the plaintiff and plaintiff's attorney. Where the plaintiff has had only partial success, the court must exclude the time and effort expended on losing issues if it chooses to award attorney fees. City of Wheat Ridge v. Cerveny, 913 P.2d 1110 (Colo. 1996).

The appropriateness of awarding attorney fees is diminished where the named plaintiff bears no risk

and the benefit of an award of attorney fees will accrue to others. In addition, deficiencies in the attorney fee agreement, including deviation from rule requirements or professional standards, may adversely impact the quality of the representation or cause the court to find that the attorney's conduct does not merit an award regardless of a successful outcome. City of Wheat Ridge v. Cerveny, 913 P.2d 1110 (Colo. 1996).

The fact that the plaintiffs are not the real parties in interest does not necessarily preclude an award of attorney fees under this section. The fact that the real parties in interest were not parties to the litigation does not disqualify nominal plaintiffs from being considered successful plaintiffs who are eligible for attorney fees under this section. City of Wheat Ridge v. Cerveny, 913 P.2d 1110 (Colo. 1996).

The amendment's provision for attorney fees and costs in favor of successful plaintiffs does not contravene the constitutional requirement for equal protection by denying similar treatment to successful governmental defendants. The scheme set out in the amendment bears a rational relationship to a permissible governmental purpose; the facilitation of taxpayer suits to enforce compliance with the purpose of restraining governmental growth. Cerveny v. City of Wheat Ridge, 888 P.2d 339 (Colo. App. 1994), rev'd on other grounds, 913 P.2d 1110 (Colo. 1996).

The sale of lottery tickets does not constitute a "property sale" under this section. Submission of Interrogatories on Senate Bill 93-74, 852 P.2d 1 (Colo. 1993).

This section does not use the terms "gift" and "grant" synonymously. "Gifts" are exempt from fiscal year spending; however, if an entity receives more than ten percent of its revenues in "grants," the entity is disqualified as an enterprise. Submission of Interrogatories on Senate Bill 93-74, 852 P.2d 1 (Colo. 1993).

Net lottery proceeds are not to be excluded from state fiscal year spending as "gifts". Submission of Interrogatories on Senate Bill 93-74, 852 P.2d 1 (Colo. 1993).

It is erroneous to exclude net lottery proceeds from the purview of this section on the basis of a characterization of the great outdoors Colorado trust fund board created under article XXVII of the Colorado Constitution as a "district" or "non-district". Submission of Interrogatories on Senate Bill 93-74, 852 P.2d 1 (Colo. 1993).

By its terms, this section also limits the growth of state revenues, usually met by tax increases, by restricting the increase of fiscal year spending to the rate of inflation plus population increase, unless voter approval for an increase in spending is obtained. Submission of Interrogatories on Senate Bill 93-74, 852 P.2d 1 (Colo. 1993).

If the revenues of the state or a local government increase beyond the allowed limits on fiscal year spending, any excess above the allowed limit or voter-approved increase must be refunded to the taxpayers. Submission of Interrogatories on Senate Bill 93-74, 852 P.2d 1 (Colo. 1993).

Board of county commissioners was acting pursuant to express grants of constitutional and statutory authority in creating the Eagle county air terminal corporation as an enterprise and empowering it to act on county's behalf in constructing and operating a new commercial passenger terminal. Bd. of Comm'rs v. Fixed Base Operators, 939 P.2d 464 (Colo. App. 1997).

Trial court properly determined that the Eagle county air terminal corporation was an enterprise rather than a district.

Corporation was a government-owned and controlled non-profit corporation authorized to issue its own revenue bonds and it received no revenue in the form of grants from state and local governments. Bd. of Comm'rs v. Fixed Base Operators, 939 P.2d 464 (Colo. App. 1997).

An irrigation district is not a local government within the meaning of the amendment's taxing and spending election requirements. The private character of a 1921 Act irrigation district differs in essential respects from that of a public governmental entity exercising taxing authority contemplated by the amendment. An irrigation district exists to serve the interests of landowners not the general public. Rather than being a local government agency, a 1921 Act irrigation district is a public corporation endowed by the state with the powers necessary to perform its predominately private objective. Campbell v. Orchard Mesa Irr. Dist., 972 P.2d 1037 (Colo. 1998).

Trial court properly concluded that urban renewal authority is not subject to the requirements of this section. Urban renewal authority at issue has no authority to levy taxes or assessments of any kind and there is no provision for authority to conduct elections of any kind. Based upon these factors, urban renewal authority is not a "local government" and, therefore, not a "district" within the meaning of this section. Olson v. City of Golden, 53 P.3d 747 (Colo. App. 2002).

III. REQUIREMENT OF ADVANCE VOTER APPROVAL.

Definition of "ballot issue," for purposes of subsection (3)(a) regarding scheduling of elections, is limited to fiscal matters. Zaner v. City of Brighton, 899 P.2d 263 (Colo. App. 1994), aff'd, 917 P.2d 280 (Colo. 1996).

Language in subsection (3)(a) that allows voters to "approve a delay of up to four years in voting on ballot issues" does not mean that voters' waiver of revenue and spending limits must be limited in duration to four years. Havens v. Bd. of County Comm'rs, 58 P.3d 1165 (Colo. App. 2002).

A substantial compliance standard is the proper measure when reviewing claims brought to enforce the election provisions of this section. In determining whether a district has substantially complied with a particular provision of this section, courts should consider factors, including: (1) The extent of the district's noncompliance; (2) the purpose of the provision violated and whether the purpose is substantially achieved despite the district's noncompliance; and (3) whether it can reasonably be inferred that the district made a good faith effort to comply or whether the district's noncompliance is more properly viewed as the product of an intent to mislead the electorate. Bickel v. City of Boulder, 885 P.2d 215 (Colo. 1994), cert. denied, 513 U.S. 1155, 115 S. Ct. 1112, 130 L. Ed. 2d 1076 (1995); Bruce v. City of Colo. Springs, 129 P.3d 988 (Colo. 2006).

A plaintiff suing under this section's enforcement clause need not set forth in the complaint facts showing that the claimed violations affected the election results. A requirement that a plaintiff allege facts that the election results would have been different had the claimed violations not occurred would make enforcement of the provisions of this section effectively impossible in most elections. Bickel v. City of Boulder, 885 P.2d 215 (Colo. 1994), cert. denied, 513 U.S. 1155, 115 S. Ct. 1112, 130 L. Ed. 2d 1076 (1995).

The incurrence of a debt and the adoption of taxes as the means with which to repay that debt are properly viewed as a single

subject when presented together in one ballot issue. Bickel v. City of Boulder, 885 P.2d 215 (Colo. 1994), cert. denied, 513 U.S. 1155, 115 S. Ct. 1112, 130 L. Ed. 2d 1076 (1995).

Ballot title is not a ballot title for tax or bonded debt increases and the city is not required to begin the measure with the language "Shall city taxes be increased by up to 8 million dollars?". The primary purpose and effect of the measure is to grant a franchise to a public utility to furnish gas and electricity to the city and its residents, although the ballot title also seeks authorization for a contingent tax increase of up to $8,000,000 to be implemented only in the highly unlikely event that the city were unable to collect from the public utility. Bickel v. City of Boulder, 885 P.2d 215 (Colo. 1994), cert. denied, 513 U.S. 1155, 115 S. Ct. 1112, 130 L. Ed. 2d 1076 (1995).

A ballot issue to extend an existing tax is not a tax increase for purposes of subsection (3)(c), and the title of such a ballot issue, therefore, need not include the mandatory language for ballot issues to increase taxes specified in subsection (3)(c). Bruce v. City of Colo. Springs, 129 P.3d 988 (Colo. 2006).

Ballot title violates subsection (3)(c) by failing to include an estimate of the full fiscal year dollar increase in ad valorem property taxes. All that is required is a good faith estimate of the dollar increase. To create an exemption from the requirements of subsection (3)(c) any time a district has difficulties estimating its proposed tax increases would undermine the primary purpose of the disclosure provisions of this section. Bickel v. City of Boulder, 885 P.2d 215 (Colo. 1994), cert. denied, 513 U.S. 1155, 115 S. Ct. 1112, 130 L. Ed. 2d 1076 (1995).

A claim that a ballot issue proposed a "phased-in" tax increase and that a ballot title that disclosed only the first rather than the final full fiscal year dollar increase was, therefore, improper under subsection (3)(c) involved only the form and content of the ballot title, could be resolved by the type of summary adjudication contemplated by the applicable ballot title contest statute, and was subject to and time-barred by the statutory five-day filing limit set forth in § 1-11-203.5 (2). Cacioppo v. Eagle County Sch. Dist. RE-50J, 92 P.3d 453 (Colo. 2004).

The purpose of the disclosure requirements regarding the dollar estimate of a tax increase is to permit the voters to make informed choices at the ballot. That purpose was not substantially achieved in the case of the proposed ad valorem property tax increase because the ballot title failed to give any indication of the potential magnitude of the tax increase. Bickel v. City of Boulder, 885 P.2d 215 (Colo. 1994), cert. denied, 513 U.S. 1155, 115 S. Ct. 1112, 130 L. Ed. 2d 1076 (1995).

The only portion of the ballot measure that should be invalidated for failure to provide estimate of the tax increase is the authorization for the city to increase ad valorem property taxes "in an amount sufficient to pay the principal and interest on" the open space bonds. The first portion of the measure, which authorizes the city to issue bonds, does not violate this section and need not be stricken from the measure. Bickel v. City of Boulder, 885 P.2d 215 (Colo. 1994), cert. denied, 513 U.S. 1155, 115 S. Ct. 1112, 130 L. Ed. 2d 1076 (1995).

Requirement in subsection (3)(b)(V) that election official summarize relevant written comments does not lend itself to imposing a requirement upon election officials to examine the motives or good faith of voters submitting the comments. Such an examination, moreover, would present significant freedom of speech concerns with respect to the voter's right to submit

comments and could deprive the electorate of comments to make an intelligent decision on a proposal. The plaintiff, accordingly, was not entitled to a declaratory judgment. Gresh v. Balink, 148 P.3d 419 (Colo. App. 2006).

The calculation method employed to calculate fiscal year spending is not prohibited by the plain language of this section. It is entirely unclear whether the city's cash reserves are properly viewed as a reserve increase, a reserve transfer, or a reserve expenditure for purposes of subsection (2)(e). Plaintiffs' claim that the city's calculation of its fiscal year spending data may have misled the voters is without foundation because the city clearly disclosed in its election notice that fiscal year spending included the accrual of the cash reserves. Bickel v. City of Boulder, 885 P.2d 215 (Colo. 1994), cert. denied, 513 U.S. 1155, 115 S. Ct. 1112, 130 L. Ed. 2d 1076 (1995).

Failure of election notice to include the overall percentage change in fiscal year spending over a five-year period is not significant. All of the information relevant to calculating the overall percentage change was provided by the city in its chart. On the whole, the election notice substantially complies with the disclosure requirements set forth in subsection (3)(b). Bickel v. City of Boulder, 885 P.2d 215 (Colo. 1994), cert. denied, 513 U.S. 1155, 115 S. Ct. 1112, 130 L. Ed. 2d 1076 (1995).

Where there is a discrepancy between the total debt repayment cost stated in the election notice and the amount stated in the ballot title, the district should be bound by the lower figure. The electorate did not receive any advance warning of the higher debt repayment cost stated in the ballot title. Bickel v. City of Boulder, 885 P.2d 215 (Colo. 1994), cert. denied, 513 U.S. 1155, 115 S. Ct. 1112, 130 L. Ed. 2d 1076 (1995).

The absence of the district's submission resolution from the election notice did not make the election notice insufficient or misleading in any way. This section does not require districts to include in their election notices the ministerial acts, orders, or directions of the governing body authorizing submission of a particular initiative to the electorate where to do so would be duplicative and potentially confusing and would not add any substantive information to the election notice that was not already disclosed in the ballot title. Bickel v. City of Boulder, 885 P.2d 215 (Colo. 1994), cert. denied, 513 U.S. 1155, 115 S. Ct. 1112, 130 L. Ed. 2d 1076 (1995).

Transportation revenue anticipation notes issued in accordance with § 43-4-705, constitute a "multiple fiscal year direct or indirect district debt or other financial obligation whatsoever" that requires voter approval. It is evident that the state is receiving money in the form of a loan from investors. Because the notes are negotiable instruments, it can be implied that the notes contain an unconditional promise of payment. It is apparent that the payment obligations are likely to extend into multiple years because the state must make a pledge of its credit for the notes to be marketable. Given the amount of notes issued in comparison to the annual budget of the department of transportation, it is reasonable for the voters to have expected that the notes would be submitted to them for their consideration. Submission of Interrogatories on House Bill 99-1325, 979 P.2d 549 (Colo. 1999).

Economic incentive development agreements do not create a "multiple-fiscal year direct or indirect district debt or other financial obligation" requiring voter approval. The language of the agreement leaves the decision to make

reimbursement payments to the discretion of the city council. Moreover, the agreements are not contingent on borrowing of funds, the extension of the city's credit, or any payments for which funds are unavailable. City of Golden v. Parker, 138 P.3d 285 (Colo. 2006).

Lease-purchase agreements authorized by House Bill 03-1256 did not constitute a "multiple fiscal year direct or indirect district debt or other financial obligation whatsoever" that requires voter approval. The lease-purchase agreements authorized do not pledge the credit of the state or require the borrowing of funds, and lease payment obligations of the state are subject to discretionary annual appropriations. Colo. Crim. Justice Reform Coalition v. Ortiz, 121 P.3d 288 (Colo. App. 2005).

Transfers from cash funds to the general fund do not constitute a tax policy change directly causing a net tax revenue gain. The transfers involve fees and not taxes, and consequently, they cannot involve a net revenue gain. Moreover, transfers are a redistribution of revenue rather than an increase in overall revenue. Barber v. Ritter, 196 P.3d 238 (Colo. 2008).

Nor do they constitute a new tax or a tax rate increase. Barber v. Ritter, 196 P.3d 238 (Colo. 2008).

A charge is a fee and not a tax when the express language of its enabling legislation explicitly contemplates that its primary purpose is to defray the cost of services provided to those charged. When determining whether a charge is a fee or a tax, courts must look to the primary or principal purpose for which the money was raised, not the manner it which it was ultimately spent. Barber v. Ritter, 196 P.3d 238 (Colo. 2008).

Leases containing nonappropriation clauses do not create multiple-fiscal year obligations requiring voter approval in advance, and a lease that includes an initial 20-month period before its nonappropriation clause takes effect also does not require voter approval in advance because the district had adequate present cash reserves pledged for the first 20 months of lease payments. Bruce v. Pikes Peak Library Dist., 155 P.3d 630 (Colo. App. 2007).

Subsection (4)(a) does not require a school district to obtain voter approval for every tax or mill levy, but only for those taxes that are either new or represent increases from the previous year. To the extent that the school district's 1992 mill levy was the same as the previous year, subsection (4)(a) did not apply. Bolt v. Arapahoe County Sch. Dist. No. 6, 898 P.2d 525 (Colo. 1995).

Subsection (4)(a) does not require a second election at either the local or state level for legislation directing how revenue received as a result of a waiver election should be used. Such legislation is not a policy change, but an implementation of the waiver election. Mesa County Bd. of County Comm'rs v. State, 203 P.3d 519 (Colo. 2009).

A pre-TABOR election can serve as "voter approval in advance" for a post-TABOR mill levy increase. Bruce v. Pikes Peak Library Dist., 155 P.3d 630 (Colo. App. 2007).

Advance voter approval requirement held satisfied by 1984 approval of issuance of general obligation bonds. The incurment of debt and the repayment of that debt are issues that are so intertwined that they may properly be submitted to the voters as a single subject. Bolt v. Arapahoe County Sch. Dist. No. 6, 898 P.2d 525 (Colo. 1995).

Voters may give present approval for future increases in taxes under this section when the increase might be necessary to repay a specific, voter-approved debt. Bolt v. Arapahoe County Sch. Dist. No. 6, 898 P.2d 525 (Colo. 1995).

The voter-approval

requirement in subsection (4)(a) applies only to applicable tax changes enacted after this section. The requirement leaves previously enacted legislative measures in place unless superseded by this section, even if the implementation of the measure occurs after the effective date of this section. Huber v. Colo. Mining Ass'n, 264 P.3d 884 (Colo. 2011).

Prior voter approval is not required for the tax rate increase on the severance of coal. The increase results from the department applying an adjustment factor to the coal tax that was enacted prior to the constitutional requirement for prior voter approval. Accordingly, the rate change is a nondiscretionary, ministerial function of the department and not a tax increase. Huber v. Colo. Mining Ass'n, 264 P.3d 884 (Colo. 2011).

Abatements and refunds levy, designed to recoup tax revenue lost because of an error in assessment, is not subject to subsection (4)(a). But for the error, such revenue would have been collected, and the total dollar amount of taxes imposed does not increase although the mill levy rate may change. Bolt v. Arapahoe County Sch. Dist. No. 6, 898 P.2d 525 (Colo. 1995).

District levy for purposes of meeting federal requirements predated this section, hence was exempt, in view of statutory budgeting process that gives no discretion to board of county commissioners to alter budget fixed earlier in the year. Bolt v. Arapahoe County Sch. Dist. No. 6, 898 P.2d 525 (Colo. 1995).

While authority's bonds constituted a financial obligation under this section, the remarketing of the bonds nevertheless was not subject to subsection (4)(b), since the bond remarketing scheme does not create any new obligation, it merely remarketed debt that was authorized before the enactment of this section under the terms of a financing plan adopted at the time the debt was issued. Bd. of County Comm'rs v. E-470 Pub. Hwy. Auth., 881 P.2d 412 (Colo. App. 1994), aff'd in part and rev'd in part sub nom. Nicholl v. E-470 Pub. Hwy. Auth., 896 P.2d 859 (Colo. 1995).

Intergovernmental loan repayment was a new multi-year fiscal obligation to which subsection (4)(b) applied and authority must obtain voter approval before incurring this debt. Nicholl v. E-470 Pub. Hwy. Auth., 896 P.2d 859 (Colo. 1995).

A broadly worded, voter-approved waiver of revenue limits, authorizing school districts to collect and retain all revenues notwithstanding the limitations of this section does just that, with no restrictions or language requirements. There are no specific language requirements for this type of waiver election. Mesa County Bd. of County Comm'rs v. State, 203 P.3d 519 (Colo. 2009).

Expansion of local use tax base to include all tangible personal property rather than only construction or building materials constituted a new tax and required voter approval in advance under subsection (4)(a). HCA-Healthone, LLC v. City of Lone Tree, 197 P.3d 236 Colo. App. 2008).

The delayed voting provision of subsection (3)(a) does not authorize retroactive voter approval of new taxes or other revenue generating measures requiring voter approval in advance under subsection (4)(a). In adopting this section, the voters intended that approval of a tax must occur before it is imposed, not afterward, and an interpretation of this section that prohibits retroactive approval reasonably restrains government more than a contrary interpretation. HCA-Healthone, LLC v. City of Lone Tree, 197 P.3d 236 Colo. App. 2008).

IV. SPENDING AND REVENUE

LIMITS.

Strict compliance with the revenue and spending limitations of this section is required. While a substantial compliance standard of review applies to the election provisions of this section in order to ensure that the voting franchise is not unduly restricted and prevent a court from lightly setting aside election results, this section contains no "de minimis" or "substantial compliance" exception to its revenue and spending provisions. Bruce v. Pikes Peak Library Dist., 155 P.3d 630 (Colo. App. 2007).

The school finance act incorporated by reference the property tax revenue limit and each district's corresponding ability to waive that limit pursuant to subsection (7)(c). The property tax revenue "limit" imposed by the school finance act is a reference to the subsection (7)(c) limit and not an "other limit" as contemplated by subsection (1). Mesa County Bd. of County Comm'rs v. State, 203 P.3d 519 (Colo. 2009).

The electorate of a governmental entity may authorize retention and expenditure of the excess collection without forcing a corresponding revenue reduction. Havens v. Bd. of County Comm'rs, 924 P.2d 517 (Colo. 1996).

Although the great outdoors Colorado trust fund board is not a local government, private entity, agency of the state, or enterprise under this section, it is essentially governmental in nature and the best reading of this section is to exclude from state fiscal year spending limits only those entities that are non-governmental since this interpretation is the interpretation that reasonably restrains most the growth of government. Submission of Interrogatories on Senate Bill 93-74, 852 P.2d 1 (Colo. 1993).

Section 9 of article XVIII of the Colorado Constitution prohibits the general assembly from enacting limitations on revenues collected by the Colorado limited gaming commission in order to comply with this section, and insofar as revenues generated by limited gaming might tend in a given year to violate the spending limits imposed by this section, the general assembly may comply with this section by decreasing revenues collected elsewhere, or if that is impossible after the fact, the general assembly may comply with this section by refunding the surplus to taxpayers. Submission of Interrogatories on Senate Bill 93-74, 852 P.2d 1 (Colo. 1993).

The party seeking to invoke the "preferred interpretation" has the burden of establishing that its proposed construction of this section would reasonably restrain the growth of government more than any other competing interpretation. The mere assertion by a party that its interpretation would "reasonably restrain most the growth of government" is not dispositive. Bickel v. City of Boulder, 885 P.2d 215 (Colo. 1994), cert. denied, 513 U.S. 1155, 115 S. Ct. 1112, 130 L. Ed. 2d 1076 (1995).

"Offset" is not a term of art defined by this section or utilized in a compensatory financial sense in the applicable provision; rather, read in context, the reasonable meaning of the operating phrase "revenue change as an offset" in subsection (7)(d) is that voter approval for the excess revenue retention constitutes the required offset to the refund requirement which otherwise would apply. Havens v. Bd. of County Comm'rs, 924 P.2d 517 (Colo. 1996).

The electorate's approval for retention of the excess revenues as a "revenue change" is the required "offset" to the governmental entity's otherwise applicable refund obligation: "[T]he excess shall be refunded in the next fiscal year unless

voters approve a revenue change as an offset." Havens v. Bd. of County Comm'rs, 924 P.2d 517 (Colo. 1996).

Remarketing of revenue bonds does not constitute creation of debt requiring voter approval under this section because the remarketing does not create any new debt, impose any tax, or expose taxpayers to any new liability or obligation. Bd. of County Comm'rs v. E-470 Pub. Hwy., 881 P.2d 412 (Colo. App. 1994), aff'd in part and rev'd in part sub nom. Nicholl v. E-470 Pub. Hwy. Auth., 896 P.2d 859 (Colo. 1995).

Under this section, bonded debt increases annual fiscal spending only by the amount of the debt service, not by the amount of the borrowed funds expended; thus, the expenditure of the escrowed bond proceeds for further construction and the operation of E-470 highway does not impact annual fiscal spending, and is not subject to the voter approval requirements of subsection (7)(d). Bd. of County Comm'rs v. E-470 Pub. Hwy. Auth., 881 P.2d 412 (Colo. App. 1994), aff'd in part and rev'd in part sub nom. Nicholl v. E-470 Pub. Hwy. Auth., 896 P.2d 859 (Colo. 1995).

The collection and expenditure of Authority revenues for service on bonds are "changes in debt service," to which the provisions of subsection (7)(b) do not apply under the plain language of this section. Bd. of County Comm'rs v. E-470 Pub. Hwy. Auth., 881 P.2d 412 (Colo. App. 1994), aff'd in part and rev'd in part sub nom. Nicholl v. E-470 Pub. Hwy. Auth., 896 P.2d 859 (Colo. 1995).

It is incorrect to interpret the phrase "revenue change as an offset" in subsection (7)(d) to require that offsetting revenue reductions must be paired with the retained excess revenues for the following reasons: (1) Such a construction would restrict the electorate's franchise in a manner inconsistent with the evident purpose of this section, which is to limit the discretion of governmental officials to take certain taxing, revenue, and spending actions in the absence of voter approval; (2) such a construction does not accord with legitimate voter expectations that this section, if adopted, would defer to citizen approval or disapproval certain proposed tax, revenue, and spending measures that varied from this section's limitations; (3) the general assembly has construed this section as including the approval of revenue changes, under subsection (7) by means of measures referred to the voters by local government; (4) such a construction conflicts with the clear pattern of this section deferring to voter choice in the waiver of otherwise applicable limitations; and (5) the court has declined to adopt a rigid interpretation of this section which would have the effect of working a reduction in government services. Havens v. Bd. of County Comm'rs, 924 P.2d 517 (Colo. 1996).

Subsection (8)(c) prohibits a presumption in favor of any pending valuation in order to put a taxpayer on equal footing with a county in property tax valuation proceedings but does not address or modify a taxpayer's burden of proof at a board of assessment appeals proceeding. A taxpayer thus must prove by a preponderance of the evidence only that an assessment is incorrect to prevail at a board of assessment appeals proceeding and is not required to establish an appropriate basis for an alternative reduced valuation for the property at issue. Bd. of Assessment Appeals v. Sampson, 105 P.3d 198 (Colo. 2005).

The language "tax policy change" cannot be applied to any policy modifications that may have a de minimis impact on a district's revenues. In some cases, the cost of the election to authorize a tax policy change could exceed the additional revenue obtained, which would be an

unreasonable result that the voters could not have intended when they passed this section. Mesa County Bd. of County Comm'rs v. State, 203 P.3d 519 (Colo. 2009).

A "tax policy change directly causing a net revenue gain" only requires voter approval when the revenue gain exceeds the limits dictated by subsection (7). To find that a tax policy change resulting in a net tax revenue gain that does not violate subsection (7) revenue limits requires voter approval would eliminate the need for the detailed revenue limits entirely. Mesa County Bd. of County Comm'rs v. State, 203 P.3d 519 (Colo. 2009).

V. STATE MANDATES.

"Subsidy" of state by county is legally impossible. Attempted turnback by county of its responsibilities under human services code pursuant to subsection (9) was invalid because when a county (itself a political subdivision of the state) attempts to subsidize the state, the state, through the county, contributes to itself. Therefore, county's contribution to cost of social services program is not a "subsidy" and subsection (9) does not apply. Romer v. Bd. of County Comm'rs, Weld County, 897 P.2d 779 (Colo. 1995).

This section did not change the mixed state and local character of social services. Romer v. Bd. of County Comm'rs, Weld County, 897 P.2d 779 (Colo. 1995).

A county's duties to the state court system, including security, may not be reduced or ended pursuant to subsection (9). State v. Bd. of County Comm'rs, Mesa County, 897 P.2d 788 (Colo. 1995).

Section 21. Tobacco Taxes for Health Related Purposes. (1) The people of the state of Colorado hereby find that tobacco addiction is the leading cause of preventable death in Colorado, that Colorado should deter children and youth from starting smoking, that cigarette and tobacco taxes are effective at preventing and reducing tobacco use among children and youth, and that tobacco tax revenues will be used to expand health care for children and low income populations, tobacco education programs and the prevention and treatment of cancer and heart and lung disease.

(2) There are hereby imposed the following additional cigarette and tobacco taxes:

(a) Statewide cigarette tax, on the sale of cigarettes by wholesalers, at the rate of three and two-tenths cents per cigarette (64 cents per pack of twenty); and

(b) A statewide tobacco products tax, on the sale, use, consumption, handling, or distribution of tobacco products by distributors, at the rate of twenty percent of the manufacturer's list price.

(3) The cigarette and tobacco taxes imposed by this section shall be in addition to any other cigarette and tobacco taxes existing as of the effective date of this section on the sale or use of cigarettes by wholesalers and on the sale, use, consumption, handling, or distribution of tobacco products by distributors. Such existing taxes and their distribution shall not be repealed or reduced by the general assembly.

(4) All revenues received by operation of subsection (2) shall be excluded from fiscal year spending, as that term is defined in section 20 of

article X of this constitution, and the corresponding spending limits upon state government and all local governments receiving such revenues.

(5) The revenues generated by operation of subsection (2) shall be appropriated annually by the general assembly only in the following proportions and for the following health related purposes:

(a) Forty-six percent (46%) of such revenues shall be appropriated to increase the number of children and pregnant women enrolled in the children's basic health plan above the average enrollment for state fiscal year 2004, add the parents of enrolled children, and expand eligibility of low income adults and children who receive medical care through the "Children's Basic Health Plan Act", article 19 of title 26, Colorado Revised Statutes, or any successor act, or through the "Colorado Medical Assistance Act", article 4 of title 26, Colorado Revised Statutes, or any successor act.

(b) Nineteen percent (19%) of such revenues shall be appropriated to fund comprehensive primary care through any Colorado qualified provider, as defined in the "Colorado Medical Assistance Act," article 4 of title 26, Colorado Revised Statutes, or any successor act, that meets either of the following criteria:

(I) Is a community health center as defined in section 330 of the U.S. public health services act, or any successor act; or

(II) At least 50% of the patients served by the qualified provider are uninsured or medically indigent as defined in the "Colorado Medical Assistance Act," article 4 of title 26, Colorado Revised Statutes, or any successor act, or are enrolled in the children's basic health plan or the Colorado medical assistance program, or successor programs.

Such revenues shall be appropriated to the Colorado department of health care policy and financing, or successor agency, and shall be distributed annually to all eligible qualified providers throughout the state proportionate to the number of uninsured or medically indigent patients served.

(c) Sixteen percent (16%) of such revenues shall be appropriated for school and community-based and statewide tobacco education programs designed to reduce initiation of tobacco use by children and youth, promote cessation of tobacco use among youth and adults, and reduce exposure to second-hand smoke. Such revenues shall be appropriated through the "Tobacco Education, Prevention and Cessation Act", part 8 of article 3.5 of title 25, Colorado Revised Statutes, or any successor act.

(d) Sixteen percent (16%) of such revenues shall be appropriated for the prevention, early detection, and treatment of cancer and cardiovascular and pulmonary diseases. Such revenues shall be appropriated to the prevention services division of the Colorado department of public health and environment, or successor agency, and shall be distributed statewide with oversight and accountability by the Colorado state board of health created by article 1 of title 25, Colorado Revised Statutes.

(e) Three percent (3%) of such revenues shall be appropriated for health related purposes to provide revenue for the state's general fund, old age pension fund, and municipal and county governments to compensate proportionately for tax revenue reductions attributable to lower cigarette and

tobacco sales resulting from the implementation of this tax.

(6) Revenues appropriated pursuant to paragraphs (a), (b), and (d) of subsection (5) shall be used to supplement revenues that are appropriated by the general assembly for health related purposes on the effective date of this section, and shall not be used to supplant those appropriated revenues.

(7) Notwithstanding any other provision of law, the general assembly may use revenue generated under this section for any health related purpose and to serve populations enrolled in the children's basic health plan and the Colorado medical assistance program at their respective levels of enrollment on the effective date of this section. Such use of revenue must be preceded by a declaration of a state fiscal emergency, which shall be adopted only by a joint resolution, approved by a two-thirds majority vote of the members of both houses of the general assembly and the governor. Such declaration shall apply only to a single fiscal year.

(8) Revenues appropriated pursuant to subsections (5) and (7) of this section shall not be subject to the statutory limitation on general fund appropriations growth or any other spending limitation existing in law.

(9) This section is effective January 1, 2005.

Source: Initiated 2004: Entire section added, effective January 1, 2005, see **L. 2005,** p. 2335.

Editor's note: (1) For the proclamation of the governor, December 1, 2004, see L. 2005, p. 2335.

(2) The "Colorado Medical Assistance Act" and the "Children's Basic Health Plan Act" referenced in subsection (5) were relocated by Senate Bill 06-219 to articles 4 and 8 of title 25.5.

ANNOTATION

Bill that eliminated appropriations for health-related purposes in effect on January 1, 2005 does not conflict with this section. The plain language of this section clearly and unambiguously provides that the general assembly is responsible for setting spending levels for health-related purposes from sources of revenue other than the taxes imposed by this section, and nothing in this section mandates that a certain level of funding for health-related purposes from such other sources of revenue exist on January 1, 2005. Colo. Cmty. Health Network v. Colo. Gen. Assembly, 166 P.3d 280 (Colo. App. 2007).

ARTICLE XI
Public Indebtedness

Law reviews: For article, "The Colorado Constitution in the New Century", see 78 U. Colo. L. Rev. 1265 (2007).

Section 1. Pledging credit of state, county, city, town or school district forbidden. Neither the state, nor any county, city, town, township or school district shall lend or pledge the credit or faith thereof, directly or indirectly, in any manner to, or in aid of, any person, company or corporation, public or private, for any amount, or for any purpose whatever; or become

responsible for any debt, contract or liability of any person, company or corporation, public or private, in or out of the state.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 60.

ANNOTATION

Law reviews. For article, "The Moffat Tunnel", see 8 Dicta 3 (Feb. 1931). For article, "One Year Review of Municipal Law", see 33 Dicta 51 (1956). For article, "Scenic Easements in the Highway Beautification Program", see 45 Den. L.J. 168 (1968). For note, "State Constitutional Provisions Prohibiting the Loaning of Credit to Private Enterprise -- A Suggested Analysis", see 41 U. Colo. L. Rev. 135 (1969). For article, "The Harm in Hold Harmless Clauses", see 19 Colo. Law. 1081 (1990).

This section and following section are broader in scope, and more specific in the matter of restriction, than any similar constitutional provision considered or brought to the attention of the supreme court. Lord v. City & County of Denver, 58 Colo. 1, 143 P. 284 (1914).

The language of this section and the following section could not make plainer the intent of the framers of the constitution, to utterly prohibit the mingling of public moneys with those of private persons, either directly or indirectly, or in any manner whatsoever. Lord v. City & County of Denver, 58 Colo. 1, 143 P. 284 (1914); McNichols v. City & County of Denver, 101 Colo. 316, 74 P.2d 99 (1937); In re Colorado State Senate, 193 Colo. 298, 566 P.2d 350 (1977).

Construction of section. This section is to be construed as prohibiting a town or city by its own voluntary corporate act from pledging its credit to, or becoming responsible for, any debt, contract or liability in aid of a third party. Mayor of Valverde v. Shattuck, 19 Colo. 104, 34 P. 947 (1893).

This section cannot be so construed as to prevent the state or any subdivision thereof from pledging its own credit for its own debts or obligations as may be permitted by law and as determined by the legislative body in its discretion. Bradfield v. City of Pueblo, 143 Colo. 559, 354 P.2d 612 (1960).

Applicability of section. This and the next section have no applicability to bonds issued to acquire lands for donation to the United States government to be used as sites for an aeronautical school and bombing field, as the United States is not a "corporation" in the sense in which that word is used in the sections. McNichols v. City & County of Denver, 101 Colo. 316, 74 P.2d 99 (1937).

Obligations incurred for public purpose. This constitutional proscription is inapplicable where a city's obligations are incurred for a public purpose. Gude v. City of Lakewood, 636 P.2d 691 (Colo. 1981).

"Township", as used in this and the following section, gives no indication of what shall constitute a township or its proper functions. County Court v. Schwarz, 13 Colo. 291, 22 P. 783 (1889).

Functions of water conservancy district, however designated, are in no sense functions of a state subdivision like counties, towns, cities, or school districts, within the meaning of this section. People ex rel. Rogers v. Letford, 102 Colo. 284, 79 P.2d 274 (1938); Northern Colo. Water Conservancy Dist. v. Witwer, 108 Colo. 307, 116 P.2d 200 (1941).

Improvement district not person, company, or corporation

within meaning of section. An improvement district created under the charter of the city and county of Denver is not a "person, company, or corporation, public or private", within the meaning of this section. It has no legal existence as a separate entity, and cannot sue or be sued. It is merely a geographical division created by the municipality for convenience in the construction of public improvements. Montgomery v. City & County of Denver, 102 Colo. 427, 80 P.2d 434 (1938).

Section 48 of the Denver city charter, authorizing payments by the city of the balance of special improvement district bonds in which 80 percent of the outstanding bonds have been redeemed does not transgress this section. Montgomery v. City & County of Denver, 102 Colo. 427, 80 P.2d 434 (1938).

State cannot, by statute, make county liable for debts of person or corporation. If neither state nor county can become responsible for the debts of any person or corporation, it follows that the state cannot by statute make a county liable, either absolutely or contingently, for such debt, or any part thereof. Leddy v. People ex rel. Farrar, 59 Colo. 120, 147 P. 365 (1915); Bd. of County Comm'rs v. Humes, 144 Colo. 434, 356 P.2d 910 (1960).

As county may not be guarantor. This section of the constitution has been interpreted by the supreme court as preventing the county from standing in the position of a guarantor for the debts of an individual. Bd. of County Comm'rs v. Humes, 144 Colo. 434, 356 P.2d 910 (1960).

Public revenue bonds do not create debt, if there is no pledge of public property. Allardice v. Adams County, 173 Colo. 133, 476 P.2d 982 (1970).

And no credit pledged where bonds show city will not be liable for payment. There is no pledge of the credit of Denver on bonds for the purchase and improvement of a sports stadium and no debt of Denver is created where the bonds themselves clearly show that Denver shall in no event be looked to for payment or be liable therefor. Ginsberg v. City & County of Denver, 164 Colo. 572, 436 P.2d 685 (1968).

When no debt or obligation of the state is created, the state cannot be said to have lent its credit in violation of this section. In re Colorado State Senate, 193 Colo. 298, 566 P.2d 350 (1977).

Essentially cash transaction did not violate section. In a transaction in which the city and county held an option to purchase a certain tract from an investment company for $537,810, which was to be exchanged with a railroad company for one of its tracts, and for which the railroad company agreed to pay $30,000, leaving a net cost to the city of $507,810, which was also the appraised value of the railroad company's land, it was held that the contemplated transaction did not violate this section, since the transaction was essentially a cash transaction, involving not deferred payments, but the contemporaneous deeding of the railroad company's property to the city, and of the investment company's property to the railroad, and the payment of cash to the investment company; whereas the process of lending or pledging one's credit as prohibited by this section contemplates a period of time over which the credit is lent or pledged. Chitwood v. City & County of Denver, 119 Colo. 165, 201 P.2d 605 (1948).

Nor city's lease of land before lessor obtained title. Where a lease of land by a city was executed before title to the land in question was obtained by the lessor, a private corporation, but the obligation of the city under the lease was limited to the payment of rent and was contingent on the lessor's securing the property, the

city neither assumed, secured, guaranteed, underwrote or pledged its credit, directly or indirectly, for any indebtedness or obligation of the lessor. McCray v. City of Boulder, 165 Colo. 383, 439 P.2d 350 (1968).

Nor proposed appropriation. A proposed house bill appropriation to be deposited in a capital reserve fund which secures obligations of the housing finance authority did not constitute a pledge of the state's credit in violation of this section. In re Colorado State Senate, 193 Colo. 298, 566 P.2d 350 (1977).

Section 31-25-107 (9) constitutional. Section 31-25-107 (9), relating to approval of urban renewal plans by local governing body, does not violate this section. Denver Urban Renewal Auth. v. Byrne, 618 P.2d 1374 (Colo. 1980).

Ordinance for refund of license fees does not violate this section. Peterson v. McNichols, 128 Colo. 137, 260 P.2d 938 (1953).

Where the contractual obligation is that of a private company and not the city, it is not an unconstitutional pledge of the city's credit. Witcher v. Canon City, 716 P.2d 445 (Colo. 1986).

Applied in People ex rel. Miller v. Higgins, 69 Colo. 79, 168 P. 740 (1917); Milheim v. Moffat Tunnel Imp. Dist., 72 Colo. 268, 211 P. 649 (1922); Moffat Tunnel Imp. Dist. v. Denver & S. L. Ry., 45 F.2d 715 (10th Cir. 1930); McNichols v. City & County of Denver, 131 Colo. 246, 280 P.2d 1096 (1955).

Section 2. No aid to corporations - no joint ownership by state, county, city, town, or school district. Neither the state, nor any county, city, town, township, or school district shall make any donation or grant to, or in aid of, or become a subscriber to, or shareholder in any corporation or company or a joint owner with any person, company, or corporation, public or private, in or out of the state, except as to such ownership as may accrue to the state by escheat, or by forfeiture, by operation or provision of law; and except as to such ownership as may accrue to the state, or to any county, city, town, township, or school district, or to either or any of them, jointly with any person, company, or corporation, by forfeiture or sale of real estate for nonpayment of taxes, or by donation or devise for public use, or by purchase by or on behalf of any or either of them, jointly with any or either of them, under execution in cases of fines, penalties, or forfeiture of recognizance, breach of condition of official bond, or of bond to secure public moneys, or the performance of any contract in which they or any of them may be jointly or severally interested. Nothing in this section shall be construed to prohibit any city or town from becoming a subscriber or shareholder in any corporation or company, public or private, or a joint owner with any person, company, or corporation, public or private, in order to effect the development of energy resources after discovery, or production, transportation, or transmission of energy in whole or in part for the benefit of the inhabitants of such city or town.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 60. **L. 74:** Entire section amended, p. 455, effective upon proclamation of the Governor, December 20, 1974.

Law reviews. For article, "The Moffat Tunnel", see 8 Dicta 3 (Feb. 1931). For article, "One Year Review of Municipal Law", see 33 Dicta 51 (1956). For article, "Current Trends in Business Real Estate Transactions", see 35 U. Colo. L. Rev. 556 (1963). For article, "Scenic Easements in the Highway Beautification Program", see 45 Den. L.J. 168 (1968). For note, "State Constitutional Provisions Prohibiting the Loaning of Credit to Private Enterprise -- A Suggested Analysis", see 41 U. Colo. L. Rev. 135 (1969).

This section does not prohibit grant from state to subdivision of itself; the provision only prohibits grants to private corporations. In re Colo. State Senate, 193 Colo. 298, 566 P.2d 350 (1977).

Public aid to railroad companies prohibited. It was undoubtedly the intention of the framers of the constitution, whether wisely or not, to prohibit, by the fundamental law of the new state, all public aid to railroad companies, whether by donation, grant or subscription, no matter what might be the public benefit and advantages flowing from the construction of such roads. Colo. Cent. R. R. v. Lea, 5 Colo. 192 (1879); McNichols v. Police Protective Ass'n, 121 Colo. 45, 215 P.2d 303 (1949).

The significance of the inhibition of this section is read in the evil which it was intended to remedy. Common was the practice, theretofore, of issuing municipal bonds to aid in the construction of railroads. The practice was felt to be evil, stimulating unnecessary railroad enterprises, and injuriously affecting the interests of the taxpayer. The universal method of railroad enterprises was through private corporations. The possibility of other methods was unknown, or not seriously contemplated. So, when the people by their constitution prohibited public aid to private corporations, obviously the thought was that all public assistance to the building of railroads was prohibited. Lord v. City & County of Denver, 58 Colo. 1, 143 P. 284 (1914).

And sale of municipal property for inadequate price repugnant to section. A municipality cannot ordinarily lawfully sell its property for a grossly inadequate price, since such a transaction is in effect a gift of public funds and repugnant to this section of the constitution. Tamblyn v. City & County of Denver, 118 Colo. 191, 194 P.2d 299 (1948).

But purchase of tract from investment company to be exchanged for tract of railroad company did not violate section. In a transaction in which the city and county held an option to purchase a certain tract from an investment company for $537,810, which was to be exchanged with a railroad company for one of its tracts, and for which the railroad company agreed to pay $30,000, leaving a net cost to the city of $507,810, which was also the appraised value of the railroad company's land, it was held that the contemplated transaction did not violate this section, since the city clearly does not make any donation or grant to any other corporation or company, and is obtaining exactly the same property and paying the same amount of cash as it would have paid if it had dealt solely with the railroad company, and as if the investment company had not been a party to the transaction. Chitwood v. City & County of Denver, 119 Colo. 165, 201 P.2d 605 (1948).

Nor police pensions and payments in lieu of sick leave. An amendment to the charter of the city and county of Denver, providing for police pensions and authorizing the payment of a lump sum in lieu of sick leave to those members of the department who, upon retirement, have exhausted none or only a portion of

their sick leave allowance, does not violate the provisions of this section of the constitution, since this section refers primarily to aid to private corporations. McNichols v. Police Protective Ass'n, 121 Colo. 45, 215 P.2d 303 (1949), overruled on another point, Police Pension & Relief Bd. v. Behnke, 136 Colo. 288, 316 P.2d 1025 (1957).

Nor ordinance creating retirement plan. A city ordinance creating a retirement plan for city employees and providing that upon termination of such plan, all funds remaining in the trust were to be distributed to employees in proportion to their respective service records, did not offend against the provisions of this section and section 1 of this article, since such funds constitute a part of the compensation of such employees for services rendered to the city. McNichols v. City & County of Denver, 131 Colo. 246, 280 P.2d 1096 (1955).

Nor proposed appropriation. A proposed house bill appropriation to be deposited in a capital reserve fund which secures obligation of the housing finance authority did not violate this section. In re Colo. State Senate, 193 Colo. 298, 566 P.2d 350 (1977).

Notwithstanding the apparent absolute prohibition of this section, a "public purpose" exception has evolved. In re House Bill 91S-1005, 814 P.2d 875 (Colo. 1991).

Statute, on its face, does not violate this section if it provides for appropriations from a designated state fund to a political subdivision which may benefit a private corporation but does not require a grant or donation from the state to a private corporation or company. In re House Bill 91S-1005, 814 P.2d 875 (Colo. 1991).

Payment of relocation benefits to persons displaced by urban renewal not unconstitutional. The payment of relocation benefits to persons displaced by an urban renewal project does not constitute an unconstitutional expenditure of public funds in the aid of private persons. Denver Urban Renewal Auth. v. Byrne, 618 P.2d 1374 (Colo. 1980).

State ownership of shares in a mutual ditch company not prohibited. In view of mutual ditch companies' special treatment in the constitution and statutes, an appropriation may be made by the general assembly for the sole purpose that the division of wildlife purchase water shares; and, since a line of Colorado court cases hold that mutual ditch companies are not "true" corporations but merely vehicles for individual ownership of water rights, it is clear that stock ownership in a mutual ditch company constitutes ownership of a real property interest in water rights rather than a personal property interest in corporate stock. Therefore, the constitutional provision prohibiting state ownership of corporate stock was never intended to prohibit state ownership of shares in a mutual ditch company. S.E. Colo. Water Cons. v. Ft. Lyon Canal Co., 720 P.2d 133 (Colo. 1986).

Rule requiring a municipality-utility customer to pay a portion of the cost of new utility facilities does not violate this section where municipality received consideration for its payments, placing ownership of the facilities in the utility enhances the utility's ability to perform its duties, and the expenditure by the municipality serves a valid public purpose. City of Aurora v. P.U.C., 785 P.2d 1280 (Colo. 1990).

State statute that regulates a matter of statewide concern in a way that restricts a political subdivision from levying a tax or enacting a fee for the mere use of public rights-of-way across its boundaries does not constitute an unlawful donation or grant to a private corporation under this

section. Permitting telecommunications providers to occupy and use the public rights-of-way without acquiring and paying for authorization from every political subdivision in the state furthers a valid public purpose by encouraging competition and ensuring that consumers benefit from it. City & County of Denver v. Qwest Corp., 18 P.3d 748 (Colo. 2001).

Functions of water conservancy district, however designated, are in no sense functions of state subdivision like counties, towns, cities, or school districts, within the meaning of this section. Northern Colo. Water Conservancy Dist. v. Witwer, 108 Colo. 307, 116 P.2d 200 (1941).

Trial court erred in dismissing claim that economic development agreement violated this section where the agreement required a city to acquire and renovate a facility and to lease the facility to the corporation for no more than one dollar per year. Applicability of public purpose exception in circumstances in which a facility upon which public funds are to be expended is to be conveyed to a private corporation for negligible consideration is an issue of first impression for Colorado appellate courts, and resolution of the claim and city's defense that the public purpose exception made the agreement permissible likely involves resolution of disputed issues of fact. Fischer v. City of Colo. Springs, 260 P.3d 331 (Colo. App. 2010).

Applied in Moffat Tunnel Imp. Dist. v. Denver & S.L. Ry., 45 F.2d 715 (10th Cir. 1930); Allardice v. Adams County, 173 Colo. 133, 476 P.2d 982 (1970); Perl-Mack Enterprises Co. v. City & County of Denver, 194 Colo. 4, 568 P.2d 468 (1977); Witcher v. Canon City, 716 P.2d 445 (Colo. 1986).

Section 2a. Student loan program. The general assembly may by law provide for a student loan program to assist students enrolled in educational institutions.

Source: L. 72: Entire section added, p. 643, effective upon proclamation of the Governor, January 11, 1973.

Section 3. Public debt of state – limitations. The state shall not contract any debt by loan in any form, except to provide for casual deficiencies of revenue, erect public buildings for the use of the state, suppress insurrection, defend the state, or, in time of war, assist in defending the United States; and the amount of debt contracted in any one year to provide for deficiencies of revenue shall not exceed one-fourth of a mill on each dollar of valuation of taxable property within the state, and the aggregate amount of such debt shall not at any time exceed three-fourths of a mill on each dollar of said valuation, until the valuation shall equal one hundred millions of dollars, and thereafter such debt shall not exceed one hundred thousand dollars; and the debt incurred in any one year for erection of public buildings shall not exceed one-half mill on each dollar of said valuation; and the aggregate amount of such debt shall never at any time exceed the sum of fifty thousand dollars (except as provided in section 5 of this article), and in all cases the valuation in this section mentioned shall be that of the assessment last preceding the creation of said debt.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 61.

L. 1887: Entire section amended, p. 26. **L. 09:** Entire section amended, p. 317. **L. 20:** Entire section amended, effective December 4, 1920, see **L. 21,** p. 181. **Initiated 22:** Entire section amended, see **L. 23,** p. 234, effective December 21, 1922. **L. 92:** Entire section amended, p. 2317, effective upon proclamation of the Governor, **L. 93:** p. 2163, January 14, 1993.

Cross references: For unlimited appropriations for suppression of insurrections to be raised by direct unlimited tax without intervention of a loan, see § 16 of article X of this constitution.

ANNOTATION

I. GENERAL CONSIDERATION.

Law reviews. For comment on Johnson v. McDonald appearing below, see 8 Rocky Mt. L. Rev. 152 (1936).

Annotator's note. L. 19, ch. 161, referred to in next to the last paragraph of this section, was repealed by L. 31, ch. 122, § 147. For present provisions regulating the registration of motor vehicles and providing for the fees therefor, see § 42-3-101 et seq.

The purpose of this section is to prevent the pledging of state revenue for future years or the creation of obligations that would require future revenues from a tax otherwise available for general purposes. Submission of Interrogatories on House Bill 99-1325, 979 P.2d 549 (Colo. 1999).

Purpose of people in adopting this section was to keep the state substantially on a cash basis, prohibit the pledge of future fixed revenues, forbid the contracting of debts which must be paid therefrom, and to make certain that one general assembly shall not paralyze the next by devouring the available revenues of both. In re Senate Resolution No. 2, 94 Colo. 101, 31 P.2d 325 (1933); In re Colo. State Senate, 193 Colo. 298, 566 P.2d 350 (1977).

To constitute debt in constitutional sense, one general assembly, in effect, must obligate a future general assembly to appropriate funds to discharge the debt created by the first general assembly. In re Colo. State Senate, 193 Colo. 298, 566 P.2d 350 (1977).

Some of the indications of a debt in the constitutional sense are that the obligation pledges revenues of future years, that it requires use of revenue from a tax otherwise available for general purposes, that it is a legally enforceable obligation against the state in future years, or that appropriation by future general assemblies of moneys in payment of the obligation is nondiscretionary. Glennon Heights, Inc. v. Central Bank & Trust, 658 P.2d 872 (Colo. 1983); Submission of Interrogatories on House Bill 99-1325, 979 P.2d 549 (Colo. 1999).

"Year", in this section, means "fiscal year", and in this state the fiscal year shall be deemed to commence on the 1st day of December and end on the 30th day of November in each year. In re Contracting of State Debt by Loan, 21 Colo. 399, 41 P. 1110 (1895).

Definitions of "debt" depend on context in which used. The definitions of the word "debt" are many, and depend on the context and the general subject with reference to which it is used. Its meaning in the sections of the constitution and statutes in question must be determined by their purpose, which was to prevent the overburdening of the public, and bankruptcy of the municipality. Clearly the revenue bonds are not within that purpose. The public can never be overburdened by that which it is under no obligation to discharge, nor can the

city become bankrupt by what it does not have to pay. Johnson v. McDonald, 97 Colo. 324, 49 P.2d 1017 (1935).

Debt limitation is exceeded as of time bonds are issued. Karsh v. City & County of Denver, 176 Colo. 406, 490 P.2d 936 (1971).

Discretionary or contingent obligations are not a constitutional debt. Gude v. City of Lakewood, 636 P.2d 691 (Colo. 1981); Colo. Crim. Justice Reform Coalition v. Ortiz, 121 P.3d 288 (Colo. App. 2005).

Financing devices which have been upheld by the court include: (1) Special fund cases in which the borrowed funds are repaid from the revenue generated by the improvement; (2) cases in which the entity borrowing money is a public entity independent of the state; and (3) cases in which the state enters into lease/purchase agreements for a building or other improvement and in which the parties are not bound to renew the lease at the end of the year. Colo. Ass'n of Pub. Employees v. Bd. of Regents, 804 P.2d 138 (Colo. 1991).

Test of whether financing device violates this section is applied in In re House Bill 91S-1005, 814 P.2d 875 (Colo. 1991).

Requisites that must exist in order that statute not violate this section. (a) If a statute creates a debt; (b) if it creates a fund to pay it; (c) if that fund would not be available for general purposes if not used to pay the debt; (d) (conclusion) the statute is not prohibited by this section because the purpose of this section is to prevent the pledging of future revenues. What revenues? Clearly the revenues that create the fund referred to -- the fund to pay the debt -- a fund that would not be available for general purposes. The words used clearly mean this and can mean nothing else. Johnson v. McDonald, 97 Colo. 324, 49 P.2d 1017 (1935).

Since the purpose of this section is to prevent the pledging of revenues of future years, a statute which at the same time it creates a debt, creates the fund to pay it, and which fund would not be otherwise available for general purposes, is clearly outside the constitutional prohibition. In re Senate Resolution No. 2, 94 Colo. 101, 31 P.2d 325 (1933).

Statute, on its face, does not violate this section if it neither pledges future state revenues nor imposes obligations that would require future revenues from a tax otherwise available for general purposes. In re House Bill 91S-1005, 814 P.2d 875 (Colo. 1991).

So statute creating debt and "special fund" to pay it outside prohibition. Since the purpose of this section is to prevent the pledging of revenues of future years, a statute which at the same time it creates a debt creates the fund to pay it, which fund would not be otherwise available for general purposes, is clearly outside the constitutional prohibition. Johnson v. McDonald, 97 Colo. 324, 49 P.2d 1017 (1935); Watrous v. Golden Chamber of Commerce, 121 Colo. 521, 218 P.2d 498 (1950); City of Trinidad v. Haxby, 136 Colo. 168, 315 P.2d 204 (1957).

"Special fund" doctrine not extendable beyond well-defined scope. The "special fund" doctrine as recognized by this court cannot be extended beyond its well-defined scope. The courts cannot sanction a resort to "special funds" and "revenue bonds" in order to accomplish a purpose which the constitution declares to be against public policy, and which it expressly forbids. City of Trinidad v. Haxby, 136 Colo. 168, 315 P.2d 204 (1957).

Applied in In re Loan of Sch. Fund, 18 Colo. 195, 32 P. 273 (1893); In re Casual Deficiency, 21 Colo. 403, 42 P. 669 (1895); Post Printing & Publishing Co. v. Shafroth, 53 Colo. 129, 124 P. 176, appeal dismissed for want of jurisdiction, 226 U.S. 602, 33 S. Ct. 115, 57 L. Ed. 377 (1912); In re Colo. State Senate, 193 Colo. 298, 566

P.2d 350 (1977); Lujan of Colo. State Bd. v. Educ., 649 P.2d 1005 (Colo. 1982).

II. APPLICATIONS.

Section authorizes contracting debt by loan to provide for appropriations to suppress insurrection. This section gives to the general assembly power to contract a debt by loan, which may be evidenced by bonds, to provide for appropriations made to suppress an insurrection. As might be expected, no limit in this section is fixed to the amount of the debt so evidenced by bonds, and in this respect there is preserved entire harmony with § 16 of art. X, Colo. Const., which authorizes unlimited appropriations to suppress insurrections to be raised by direct unlimited tax without the intervention of a loan. In re State Bd. of Equaliz., 24 Colo. 446, 51 P. 493 (1911).

This section gives to the state the power to contract a debt, by loan, to provide for the payment of expenses incurred to suppress insurrection, subject to no limitation as to the amount. In re Contracting of State Debt by Loan, 21 Colo. 399, 41 P. 1110 (1895).

Debts to provide for casual deficiencies of revenue cannot be contracted by state in excess of limit prescribed in this section. A casual deficiency of the revenue is one that happens by chance or accident, and without design or intention to evade the constitutional inhibition. In re Appropriations by Gen. Ass'y, 13 Colo. 316, 22 P. 464 (1889); In re Contracting of State Debt by Loan, 21 Colo. 399, 41 P. 1110 (1895).

Any obligation paid out of tax levy fund deemed debt. Any obligation paid or contracted to be paid, out of a fund that is the product of a tax levy is a debt within the purpose of the constitutional limitation. City of Trinidad v. Haxby, 136 Colo. 168, 315 P.2d 204 (1957).

Issuance of bonds to secure payment of state indebtedness void under section. If an indebtedness represented by a proposed bond issue is construed to be an obligation of the state of Colorado, the issuance of bonds to secure the payment thereof would be null and void under the provisions of this section and sections 4 and 5 of this article. Lewis v. State Bd. of Agric., 138 Colo. 540, 335 P.2d 546 (1959).

Transportation revenue anticipation notes do not constitute a debt by loan in any form that is prohibited by this section because: (1) They do not pledge state revenues for future years because they are subject to annual allocation by the transportation commission; (2) repayment does not require the use of revenues available for general purposes; (3) note holders may not look to other state revenues for payment; and (4) payment is subject to annual appropriation, which does not bind future legislatures. Submission of Interrogatories on House Bill 99-1325, 979 P.2d 549 (Colo. 1999).

Revenue anticipation warrants to be paid out of taxes imposed upon motor fuel are valid obligations, which do not create a "debt" of the state within the constitutional limitations upon the power of the general assembly to incur indebtedness. City of Trinidad v. Haxby, 136 Colo. 168, 315 P.2d 204 (1957).

But issuance of securities where principal and interest to be paid exclusively from gasoline excise taxes prohibited. A proposed issuance of securities to finance highways where the principal and interest of the debentures are to be paid exclusively from excise taxes on gasoline, is prohibited by this section and section 4 of this article. City of Trinidad v. Haxby, 136 Colo. 168, 315 P.2d 204 (1957).

Issuance of bonds to acquire land to be donated to U.S.

government not within prohibition of section. By art. XX, Colo. Const., the city and county of Denver is given exclusive power to act on local and municipal subjects including the issuance or authorization of bonds for the purpose of acquiring lands to be donated to the United States government as sites for an aeronautical school and bombing field; such being a local municipal purpose, it does not come within the inhibition of this section. McNichols v. City & County of Denver, 101 Colo. 316, 74 P.2d 99 (1937).

Transfer of cash funds to general fund did not create "debt" within the meaning of this section. Barber v. Ritter, 170 P.3d 763 (Colo. App. 2007).

Even if those cash funds are public trusts. Even if cash funds are public trusts, they are not irrevocable trusts, and the legislature has the authority to amend them to allow for the transfer of monies to the general fund. Barber v. Ritter, 196 P.3d 238 (Colo. 2008).

Debt financing provisions applicable to reorganized university hospital held unconstitutional under this section where premised upon allegedly "private" status of hospital which in fact remained a public entity. Colo. Ass'n of Pub. Employees v. Bd. of Regents, 804 P.2d 138 (Colo. 1990) (decided prior to the 1991 repeal of § 23-21-401 et seq.).

Severability clause could not preserve remainder of statutory scheme where debt financing provisions were inextricably intertwined with invalid provisions for reorganization and continued operation of public hospital as "private" entity. Colo. Ass'n of Pub. Employees v. Bd. of Regents, 804 P.2d 138 (Colo. 1990) (decided prior to the 1991 repeal of § 23-21-401 et seq.).

Section 4. Law creating debt. In no case shall any debt above mentioned in this article be created except by a law which shall be irrepealable, until the indebtedness therein provided for shall have been fully paid or discharged; such law shall specify the purposes to which the funds so raised shall be applied, and provide for the levy of a tax sufficient to pay the interest on and extinguish the principal of such debt within the time limited by such law for the payment thereof, which in the case of debts contracted for the erection of public buildings and supplying deficiencies of revenue shall not be less than ten nor more than fifteen years, and the funds arising from the collection of any such tax shall not be applied to any other purpose than that provided in the law levying the same, and when the debt thereby created shall be paid or discharged, such tax shall cease and the balance, if any, to the credit of the fund shall immediately be placed to the credit of the general fund of the state.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 61.

ANNOTATION

Law reviews. For article, "Legality of the Denver Housing Authority", see 12 Rocky Mt. L. Rev. 30 (1939).

Issuance of bonds to secure payment of state indebtedness void under section. If an indebtedness represented by a proposed bond issue is construed to be an obligation of the state of Colorado, the issuance of bonds to secure the payment thereof would be null and void under the provisions of this section and sections 3 and 5 of this article. Lewis v. State Bd. of Agriculture, 138 Colo. 540, 335 P.2d 546 (1959).

Proposed issuance of securities to finance highways, where the principal and interest of the debentures are to be paid exclusively from excise taxes on gasoline, is prohibited by this section and section 3 of this article. City of Trinidad v. Haxby, 136 Colo. 168, 315 P.2d 204 (1957).

Discretionary or contingent obligations are not a constitutional debt. Gude v. City of Lakewood, 636 P.2d 691 (Colo. 1981).

Transfer of cash funds to general fund did not create "debt" within the meaning of this section. Barber v. Ritter, 170 P.3d 763 (Colo. App. 2007).

Even if cash funds are public trusts, they are not irrevocable trusts, and the legislature has the authority to amend those funds' enabling statutes to allow for the transfer of monies to the general fund. Barber v. Ritter, 196 P.3d 238 (Colo. 2008).

Applied in In re State Bd. of Equalization, 24 Colo. 446, 51 P. 493 (1898); In re Colorado State Senate, 193 Colo. 298, 566 P.2d 350 (1977).

Section 5. Debt for public buildings - how created. A debt for the purpose of erecting public buildings may be created by law as provided for in section four of this article, not exceeding in the aggregate three mills on each dollar of said valuation; provided, that before going into effect, such law shall be ratified by the vote of a majority of such qualified electors of the state as shall vote thereon at a general election under such regulations as the general assembly may prescribe.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 62.
Cross references: For limitation on public debt, see § 3 of this article.

ANNOTATION

Law reviews. For article, "Legality of the Denver Housing Authority", see 12 Rocky Mt. L. Rev. 30 (1939).

Issuance of bonds to secure payment of state indebtedness void under section. If an indebtedness represented by a proposed bond issue is construed to be an obligation of the state of Colorado, the issuance of bonds to secure the payment thereof would be null and void under the provisions of this section and sections 3 and 4 of this article. Lewis v. State Bd. of Agriculture, 138 Colo. 540, 335 P.2d 546 (1959).

Applied in Mayor of Valverde v. Shattuck, 19 Colo. 104, 34 P. 947, 41 Am. St. R. 208 (1893); Lujan v. Colo. State Bd. of Educ., 649 P.2d 1005 (Colo. 1982).

Section 6. Local government debt. (1) No political subdivision of the state shall contract any general obligation debt by loan in any form, whether individually or by contract pursuant to article XIV, section 18 (2) (a) of this constitution except by adoption of a legislative measure which shall be irrepealable until the indebtedness therein provided for shall have been fully paid or discharged, specifying the purposes to which the funds to be raised shall be applied and providing for the levy of a tax which together with such other revenue, assets, or funds as may be pledged shall be sufficient to pay the interest and principal of such debt. Except as may be otherwise provided by the charter

of a home rule city and county, city, or town for debt incurred by such city and county, city, or town, no such debt shall be created unless the question of incurring the same be submitted to and approved by a majority of the qualified taxpaying electors voting thereon, as the term "qualified taxpaying elector" shall be defined by statute.

(2) Except as may be otherwise provided by the charter of a home rule city and county, city, or town, the general assembly shall establish by statute limitations on the authority of any political subdivision to incur general obligation indebtedness in any form whether individually or by contract pursuant to article XIV, section 18 (2) (a) of this constitution.

(3) Debts contracted by a home rule city and county, city, or town, statutory city or town or service authority for the purposes of supplying water shall be excepted from the operation of this section.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 62. **L. 1887:** Entire section amended, p. 27. **L. 69:** Entire section R&RE, p. 1251, effective January 1, 1972.

Editor's note: The United States Supreme Court in Kramer v. Union Free School District, 395 U.S. 621, 89 S. Ct. 1886, 23 L. Ed. 2d 583 (1969), Cipriano v. Houma, 395 U.S. 701, 89 S. Ct. 1897, 23 L. Ed. 2d 647 (1969), and City of Phoenix v. Kolodziejski, 399 U.S. 204, 90 S. Ct. 1990, 26 L. Ed. 2d 523 (1970) held that it is a violation of the equal protection clause to limit the right of franchise unless there is a compelling interest to be protected. The Phoenix case held that elections to authorize general obligation bonds may not be limited to taxpaying electors only.

ANNOTATION

I. GENERAL CONSIDERATION.

Law reviews. For article, "Legality of the Denver Housing Authority", see 12 Rocky Mt. L. Rev. 30 (1939).

Annotator's note. Since former § 8 of art. XI, Colo. Const., is similar to this section, relevant cases construing that former section have been included in the annotations to this section.

This section is specific provision dealing with power of local governments to incur indebtedness. City & County of Denver v. Mewborn, 143 Colo. 407, 354 P.2d 155 (1960).

Purpose of this section is to place a limitation upon the power of local governments to contract debts in the construction of projects and facilities. People ex rel. Seeley v. May, 9 Colo. 80, 10 P. 641 (1885); People ex rel. Seeley v. May, 9 Colo. 404, 12 P. 838 (1886); Rollins v. Lake County, 34 F. 845 (D. Colo. 1888), rev'd on other grounds, 130 U.S. 662, 9 S. Ct. 651, 32 L. Ed. 1060 (1889); Aggers v. People ex rel. Town of Montclair, 20 Colo. 348, 38 P. 386 (1894); City of Trinidad v. Haxby, 136 Colo. 168, 315 P.2d 204 (1957); Deti v. City of Durango, 136 Colo. 272, 316 P.2d 579 (1957); Allardice v. Adams County, 173 Colo. 133, 476 P.2d 982 (1970).

The phrase "multiple-fiscal year direct or indirect district debt or other financial obligation whatsoever" in § 20 of article X is necessarily broader than the phrase "debt by loan in any form" as defined by this section. Submission of Interrogatories on House Bill 99-1325, 979 P.2d 549 (Colo. 1999) (overruling Boulder v. Dougherty, Dawkins, 890 P.2d 199 (Colo. App. 1994)).

"Debt by loan in any form". The phrase "multiple-fiscal year direct or indirect district debt or other financial obligation whatsoever" contained in article X, section 20, of the Colorado Constitution is not any broader and does not require a result different from the phrase "debt by loan in any form" contained in this section. Boulder v. Dougherty, Dawkins, 890 P.2d 199 (Colo. App. 1994), overruled in Submission of Interrogatories on House Bill 99-1325, 979 P.2d 549 (Colo. 1999).

Section not authorization of indebtedness. This section is restrictive in its effect and operation, and does not by its terms authorize any local government to incur any form of indebtedness for any purpose. Dudley v. Bd. of Comm'rs, 80 F. 672 (8th Cir. 1897), rev'd on other grounds, 173 U.S. 243, 19 S. Ct. 398, 43 L. Ed. 684 (1899).

Sections 3 and 4 of this article impose limitations similar to this section, except that they apply to debts of the state rather than to those of local government. City of Trinidad v. Haxby, 136 Colo. 168, 315 P.2d 204 (1957); In re Senate Resolution No. 2, 94 Colo. 101, 31 P.2d 325 (1933).

Appropriation ordinance, providing for payment of machinery purchased under contract, and adopted at the time of the execution of the contract and supplemental thereto, held not to comply with this section. Reimer v. Town of Holyoke, 93 Colo. 571, 27 P.2d 1032 (1933).

Discretionary or contingent obligations are not a constitutional debt. Gude v. City of Lakewood, 636 P.2d 691 (Colo. 1981).

Even where practical circumstances would exert substantial social or political pressure on a future city council to appropriate money to repay such contingent or discretionary obligations. Fischer v. City of Colo. Springs, 260 P.3d 331 (Colo. App. 2010).

As to duty of purchaser of bonds to ascertain limitation, see Rollins v. Lake County, 34 F. 845 (D. Colo. 1888), rev'd on other grounds, 130 U.S. 662, 9 S. Ct. 651, 32 L. Ed. 1060 (1889); Lake County v. Graham, 130 U.S. 674, 9 S. Ct. 654, 32 L. Ed. 1065 (1889); Chaffee County v. Potter, 142 U.S. 355, 12 S. Ct. 216, 35 L. Ed. 1040 (1892); Bd. of Comm'rs v. Platt, 79 F. 567 (8th Cir. 1897); Dudley v. Bd. of Comm'rs, 80 F. 672 (8th Cir. 1897); Gunnison County Comm'rs v. Rollins, 173 U.S. 255, 19 S. Ct. 390, 43 L. Ed. 689 (1899); Bd. of Comm'rs v. Sutliff, 97 F. 270 (8th Cir. 1899); Geer v. Bd. of Comm'rs, 97 F. 435 (8th Cir. 1899).

Rental obligations for future years. Where there is no showing that current revenues will be insufficient to meet all current expenses, including rentals as they become due, a city's rental obligations for future years do not constitute debt in contravention of this section. Gude v. City of Lakewood, 636 P.2d 691 (Colo. 1981).

A master lease between a special district and a limited partnership violates the constitutional prohibition against governmental debt by loan and was ultra vires and consequently void because the lease contained no provision for cancellation by the special district during the five-year term, appropriation of the monies by the district to meet the rental obligation was nondiscretionary, and the district was obligated to meet the rental

obligation whether or not it could sublease the building and thus derive revenues, possibly requiring use of tax revenues otherwise available for general purposes. Black v. First Fed. Sav. and Loan Assoc., 830 P.2d 1103 (Colo. App. 1992).

A district that acted as both a special district and as a limited partner could not maintain its position as a limited partner and also protect itself from becoming a party to an ultra vires contract, therefore, the district's participation in the limited partnership was void and consequently the district was not liable for debts and obligations incurred by the limited partnership. Black v. First Fed. Sav. and Loan Assoc., 830 P.2d 1103 (Colo. App. 1992).

Separate building authority. The implementation of a proposed financing plan which involves a separate building authority will not create a general obligation debt where neither fraud nor injustice is present in the proposed financing plan, which is an essential basis for disregarding the separate corporate existence of the building authority. Gude v. City of Lakewood, 636 P.2d 691 (Colo. 1981).

A city's agreement to pay the costs incurred by a building authority if a project is abandoned does not necessarily make it an insurer of the authority's bonds. Gude v. City of Lakewood, 636 P.2d 691 (Colo. 1981).

Remedy for unduly restrictive constitutional provision lies with the people. Where a constitutional provision is considered unduly restrictive in limiting the amount of debt that may be contracted by a local government, the remedy lies with the people who have the power to repeal such provision. City of Trinidad v. Haxby, 136 Colo. 168, 315 P.2d 204 (1957).

Liability of annexed territory for payment of preexisting indebtedness. Linke v. Bd. of County Comm'rs, 129 Colo. 165, 268 P.2d 416 (1954).

Applied in Wilder v. Bd. of County Comm'rs, 41 F. 512 (D. Colo. 1890); People ex rel. Austin v. Graham, 70 Colo. 509, 203 P. 277 (1921); People ex rel. Setters v. Lee, 72 Colo. 598, 213 P. 583 (1923); Colo. Cent. Power Co. v. Municipal Power Dev. Co., 1 F. Supp. 961 (D. Colo. 1932); Reimer v. Town of Holyoke, 93 Colo. 571, 27 P.2d 1032 (1933); People ex rel. Rogers v. Letford, 102 Colo. 284, 79 P.2d 274 (1938); Hiatt v. City of Manitou, 154 Colo. 525, 392 P.2d 282 (1964); Lujan v. Colo. State Bd. of Educ., 649 P.2d 1005 (Colo. 1982); Glennon Heights, Inc. v. Central Bank & Trust, 658 P.2d 872 (Colo. 1983).

II. GENERAL OBLIGATION DEBT BY LOAN.

This section is limitation upon power of local government to contract any and all indebtedness. Lake County v. Rollins, 130 U.S. 662, 9 S. Ct. 651, 32 L. Ed. 1060 (1889); Lake County v. Graham, 130 U.S. 674, 9 S. Ct. 654, 32 L. Ed. 1065 (1889).

And limitation of this section is applicable to all debts, irrespective of their form. People ex rel. Seeley v. May, 9 Colo. 80, 10 P. 641 (1885); Rollins v. Lake County, 34 F. 845 (D. Colo. 1888), rev'd on other grounds, 130 U.S. 662, 9 S. Ct. 651, 32 L. Ed. 1060 (1889).

Definitions of "debt" depend on context in which used. The definitions of the word "debt" are many, and depend on the context and the general subject with reference to which it is used. Its meaning in the sections of the constitution and statutes in question must be determined by their purpose, which was to prevent the overburdening of the public, and bankruptcy of the local government. Perl-Mack Civic Ass'n v. Bd. of Dirs. of Baker Metro. & San. Dist., 140 Colo. 371, 344 P.2d 685 (1959).

No debt where no pledge of

credit. Where there is no pledge of the credit of the local government for the payment of revenue bonds, no "debt" is thereby created. Consequently, the issuance of such bonds has no effect whatsoever on the debt limitations prescribed in this section. Allardice v. Adams County, 173 Colo. 133, 476 P.2d 982 (1970).

Issuance of funding bonds in exchange for valid warrants not creation of debt. The issuance of funding bonds, in exchange for valid warrants, is in no sense the creation of a debt. It is but the substitution of new evidence for a preexisting debt. It changes form, but does not increase the indebtedness. Bd. of County Comm'rs v. Standley, 24 Colo. 1, 49 P. 23 (1897).

Nor leasing of building for local government purposes for a monthly rental of $670 for a term of 25 years is not a creation of indebtedness for the aggregate amount of the rentals, within the meaning of this section. Heberer v. Bd. of Comm'rs, 88 Colo. 159, 293 P. 349 (1930).

Nor section 48 of the charter of the city of Denver, in authorizing payment by the city of deficiencies in bond payments does not create a debt within the meaning of that word as used in this section and hence is not violative of this section because of the fact that such payments have not been approved by the taxpaying electorate. Montgomery v. City & County of Denver, 102 Colo. 427, 80 P.2d 434 (1938).

Where local government debts held not to constitute "debt by loan in any form". A contention that the term "debt by loan in any form" includes indebtedness incurred by the local government for expenses and evidenced by warrants, and further that where one provides supplies, etc., or renders service to a local government and does not receive payment at the time, it is, in effect, a loan of those supplies and of those services was refuted by the court, and the local government was held liable on warrants issued to cover current indebtedness. Georgetown v. Bank of Idaho Springs, 99 Colo. 519, 64 P.2d 132 (1936).

Or ordinance providing for issuance of bonds to fund special improvement district, which provided for the local government to take over bond payments by advancing the funds therefor, if four-fifths of the outstanding bonds have been paid and cancelled and if the remaining assets are delinquent in payments and there is no paid-in surplus, arose only on a contingency and was not an obligation as such, because the contingency might never arise. Fladung v. City of Boulder, 165 Colo. 244, 438 P.2d 688 (1968).

But any impairment of general local government revenues deemed debt. An impairment of the general local government revenues and any obligation paid or contracted to be paid out of a fund that is the product of a tax levy is a debt within the purpose of the constitutional limitation. City of Trinidad v. Haxby, 136 Colo. 168, 315 P.2d 204 (1957).

Having reached the limit of indebtedness, a local government cannot create a debt to be paid directly or indirectly, in whole or in part, from funds raised by taxation, or from a fund which must be replenished by funds raised by taxation. City of Trinidad v. Haxby, 136 Colo. 168, 315 P.2d 204 (1957).

When local government mortgages its property to secure bonded indebtedness, debt has been created. Allardice v. Adams County, 173 Colo. 133, 476 P.2d 982 (1970).

And ordinance which pledged local government revenues for rental and discharge of bonds to cover the cost and maintenance of a community building, created a "debt" within the meaning of the constitution. Deti v. City of Durango, 136 Colo. 272, 316 P.2d 579 (1957).

Off-street parking bonds increase outstanding indebtedness of local government. Off-street parking bonds, unlike bonds relying solely upon revenues for their payment, do in fact increase the outstanding indebtedness of the local government. Allardice v. Adams County, 173 Colo. 133, 476 P.2d 982 (1970).

A master lease between a special district and a limited partnership violates the constitutional prohibition against governmental debt by loan and was ultra vires and consequently void because the lease contained no provision for cancellation by the special district during the five-year term, appropriation of the monies by the district to meet the rental obligation was nondiscretionary, and the district was obligated to meet the rental obligation whether or not it could sublease the building and thus derive revenues, possibly requiring use of tax revenues otherwise available for general purposes. Black v. First Fed. Sav. and Loan Assoc., 830 P.2d 1103 (Colo. App. 1992).

But statute creating both debt and fund to pay it held outside prohibition. A statute which at the same time it creates a debt, creates the fund to pay it, and which fund would not be otherwise available for general purposes, is clearly outside the constitutional prohibition. City of Trinidad v. Haxby, 136 Colo. 168, 315 P.2d 204 (1957).

"Special fund" doctrine. If the project or facility to be created produces all the revenue to be used in discharging the bonds issued to create the project, without recourse on the part of the bondholder to other revenues of the local government, then the "special fund" doctrine is applicable, and the obligations evidenced by the revenue bonds are outside of the constitutional limitation, and do not constitute a "debt" within the meaning thereof. City of Trinidad v. Haxby, 136 Colo. 168, 315 P.2d 204 (1957).

The special fund doctrine authorizes the issuance of bonds by local governments without being limited by this section of the constitution where the obligations created by the bonds are payable only out of revenues derived from the improvement built with the funds thus borrowed. Perl-Mack Civic Ass'n v. Bd. of Dirs. of Baker Metro. & San. Dist., 140 Colo. 371, 344 P.2d 685 (1959); Gude v. City of Lakewood, 636 P.2d 691 (Colo. 1981).

Bonds issued for financing the building of a local government's electric light and power plant, which are to be paid off exclusively from the income obtained from the plant to be built, do not create a "debt" within the meaning of this section. Shields v. City of Loveland, 74 Colo. 27, 218 P. 913 (1923); Franklin Trust Co. v. City of Loveland, 3 F.2d 114 (8th Cir. 1924); Heberer v. Bd. of Comm'rs, 88 Colo. 159, 293 P. 349 (1930).

The pledging of future revenue to be derived from the operation of an electric light plant then owned by a local government for the purpose of permitting the local government to make additions and betterments to the existing plant and facilities is not subject to the limitation on debts. Searle v. Town of Haxtun, 84 Colo. 494, 271 P. 629 (1928).

Under the special fund doctrine, net revenue bonds do not create a "debt" or indebtedness under this section of the constitution. Ginsberg v. City & County of Denver, 164 Colo. 572, 436 P.2d 685 (1968).

But "special fund" doctrine does not permit local government to create unlimited obligations payable out of local government's revenues so long as those revenues are derived from a source other than ad valorem taxes. Such determination would deprive the taxpayer of any semblance of the protection afforded by the constitutional limitations placed upon

the power of local governments to contract indebtedness. City of Trinidad v. Haxby, 136 Colo. 168, 315 P.2d 204 (1957).

Where the payment sources have extended beyond the revenue from the facility to be constructed or enlarged and have involved commitment of moneys otherwise available for general governmental purposes, there is a violation of constitutional provisions restricting debt financing. Gude v. City of Lakewood, 636 P.2d 691 (Colo. 1981).

Doctrine not extendable beyond well-defined scope. The "special fund" doctrine as recognized by this court cannot be extended beyond its well-defined scope. The courts cannot sanction a resort to "special funds" and "revenue bonds" in order to accomplish a purpose which the constitution declares to be against public policy, and which it expressly forbids. City of Trinidad v. Haxby, 136 Colo. 168, 315 P.2d 204 (1957).

And does not apply where funds derived from other tax sources to be allocated to special fund. Where bonds are issued by a local government for the construction of a facility and are payable exclusively out of the net revenues to be derived from the operation of such facility, the "special fund" doctrine is applicable, but it does not apply where it is proposed to allocate funds derived from other tax sources to a special fund for the payment of such bonds. City of Trinidad v. Haxby, 136 Colo. 168, 315 P.2d 204 (1957).

Where a local government proposed to issue bonds for the erection of a hospital and to pledge for the redemption thereof all net revenues from the operation of such hospital, together with cigarette taxes, parking meter fees, and the unpledged revenue from a local government's power system, such proposal would create a "debt" of the local government. City of Trinidad v. Haxby, 136 Colo. 168, 315 P.2d 204 (1957).

Doctrine inapposite where bonds secured by property lien. If revenue bonds are secured by a lien on governmental property, the "special fund" doctrine is inapposite. Gude v. City of Lakewood, 636 P.2d 691 (Colo. 1981).

A master lease which contains no provision for cancellation during the term of the lease amounts to a debt by loan and is therefore unconstitutional. Black v. First Fed. Sav. and Loan Assoc., 830 P.2d 1103 (Colo. App. 1992).

III. ALLOWABLE DEBTS.

A. In General.

Section deals with indebtedness that is reasonably anticipated as result of voluntary action by the general assembly or local government authorities -- such indebtedness as springs from express or implied contracts. Involuntary liability, arising ex delicto, is a subject that is not contemplated by the provision. People ex rel. Seeley v. May, 9 Colo. 404, 12 P. 838 (1886).

"Indebtedness" is used in general sense. In re Funding of County Indebtedness, 15 Colo. 421, 24 P. 877 (1890).

"Such debt", refers obviously to debt that is contemplated, and not one that may be imagined. Rollins v. Lake County, 34 F. 845 (D. Colo. 1888), rev'd on other grounds, 130 U.S. 662, 9 S. Ct. 651, 32 L. Ed. 1060 (1889).

This section does not in express terms authorize refunding, but refunding is not thereby prohibited. A refunding is merely a funding again or anew. Manly v. Bd. of Comm'rs, 46 Colo. 491, 104 P. 1045 (1909).

Legal local governmental indebtedness which existed prior to the adoption of the amendment to this

section in 1888 might have been funded as the original law then stood and in accordance with its limitations, although the constitution did not expressly authorize the act of funding. If such indebtedness could be funded under the constitution as it existed before 1888, it could also be refunded. Manly v. Bd. of Comm'rs, 46 Colo. 491, 104 P. 1045 (1909).

Bond issuance by urban renewal authority constitutional. A proposed bond issuance by the Denver urban renewal authority of tax-allocation bonds pursuant to § 31-25-107 (9) did not violate the constitutional debt limitation provision of this section or conflict with Denver's charter debt limitation provision A6.17. Denver Urban Renewal Auth. v. Byrne, 618 P.2d 1374 (Colo. 1980).

Expenditures that do not materially depart from the purpose of a bond measure and necessary expenditures incidental to an authorized purpose are properly within a municipality's discretion and, therefore, permissible. Busse v. City of Golden, 73 P.3d 660 (Colo. 2003).

B. Approval by Electors.

"Taxpaying electors". Whenever the term "taxpaying electors" appears in the Colorado constitution and in the Denver charter, it is construed to mean merely "electors". Karsh v. City & County of Denver, 176 Colo. 406, 490 P.2d 936 (1971).

As to restriction of electors to those paying property tax within preceding year under former § 8 of art. XI, Colo. Const., see Deti v. City of Durango, 136 Colo. 272, 316 P.2d 579 (1957).

Purposes for which indebtedness to be created should be submitted separately to voters. City of Denver v. Hayes, 28 Colo. 110, 63 P. 311 (1900); City & County of Denver v. Hallett, 34 Colo. 393, 83 P. 1066 (1905).

School bond election may relate to acquisition, construction, and equipping of separate facilities without offending the requirement that the submission of such matters to the voters be limited to a single proposition or purpose. Abts v. Bd. of Educ., 622 P.2d 518 (Colo. 1980).

Test to determine validity of bond issue having more than one object or funding more than one structure is whether there exists a natural relationship between the various structures or objects united in one proposition so that they form but one rounded whole. Abts v. Bd. of Educ., 622 P.2d 518 (Colo. 1980).

Advance voter approval requirement held satisfied by 1984 approval of issuance of general obligation bonds. The incurment of debt and the repayment of that debt are issues that are so intertwined that they may properly be submitted to the voters as a single subject. Bolt v. Arapahoe County Sch. Dist. No. 6, 898 P.2d 525 (Colo. 1995).

There is no conflict between this section and art. X, § 20. Bolt v. Arapahoe County Sch. Dist. No. 6, 898 P.2d 525 (Colo. 1995).

IV. WATER SUPPLY EXCEPTION.

Section excepts debts created for supplying water. By this section special exception to the prohibition against the lending of credit by a local government, expressed in section 1 of this article, is made in favor of the power of local governments to create debts for supplying themselves with water for irrigation, for suppressing fires, and for domestic use; and there seems to be no limit to the extent of the debts which may be incurred for such purposes. Nat'l Bank v. Town of Granada, 41 F. 87, reh'g granted on other grounds, 44 F. 262 (D. Colo. 1890).

Although section does not prevent general assembly from prescribing conditions as to water supply exemptions. While this section of the constitution exempts debts incurred for supplying water to a local government from the special limitations therein, it does not prevent the general assembly from otherwise prescribing conditions. City of Aurora v. Krauss, 99 Colo. 12, 59 P.2d 79 (1936).

Section 1 of art. XX, Colo. Const., did not repeal the exception as to debts contracted for supplying water. Section 1 of art. XX, Colo. Const., providing that a self-chartered city shall have certain powers including power to construct waterworks and that "it shall have power to issue bonds upon the vote of the taxpaying electors in any amount necessary to carry out said powers or purposes as may by the charter be provided" does not repeal the exception in this section as to debts contracted for supplying water. Newton v. City of Ft. Collins, 78 Colo. 380, 241 P. 1114 (1925).

Section 7. State and political subdivisions may give assistance to any political subdivision. No provision of this constitution shall be construed to prevent the state or any political subdivision from giving direct or indirect financial support to any political subdivision as may be authorized by general statute.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 62. **L. 69:** Entire section R&RE, p. 1251, effective January 1, 1972.

Section 8. City indebtedness; ordinance, tax, water obligations excepted. (Repealed)

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 62. **L. 69:** Entire section repealed, p. 1251, effective January 1, 1972.

Section 9. This article not to affect prior obligations. (Repealed)

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 63. **L. 69:** Entire section repealed, p. 1251, effective January 1, 1972.

Section 10. 1976 Winter Olympics. (Deleted by amendment)

Source: Initiated 72: Entire section was added, effective upon proclamation of the Governor, January 11, 1973, but does not appear in the session laws. **L. 90:** Entire section amended, p. 1861, effective upon proclamation of the Governor, **L. 91,** p. 2033, January 3, 1991.

Editor's note: The Governor's proclamation date for the 1972 initiated measure was January 11, 1973.

ARTICLE XII
Officers

Section 1. When office expires - suspension by law. Every person holding any civil office under the state or any municipality therein, shall, unless

removed according to law, exercise the duties of such office until his successor is duly qualified; but this shall not apply to members of the general assembly, nor to members of any board or assembly, two or more of whom are elected at the same time. The general assembly may, by law, provide for suspending any officer in his functions pending impeachment or prosecution for misconduct in office.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 63.

ANNOTATION

Language of this section is as clear and definite as human language can be. People ex rel. Lamb v. Shaffer, 90 Colo. 432, 9 P.2d 612 (1932).

"According to law", in this section, can have no other construction than that such officers shall be removed as provided by the constitution or statute law. Trimble v. People ex rel. Phelps, 19 Colo. 187, 34 P. 981 (1893); Burkholder v. People ex rel. Nazarene, 59 Colo. 99, 147 P. 347 (1915).

Meaning of "exercise the duties". The provision of this section that the officer shall "exercise the duties" is a qualification of the common-law rule that an incumbent shall hold over until his successor is appointed and qualified, if the words "hold over" mean " "continue to hold the office". That this provision was intended as such qualification gains some support from the language of § 6 of art. IV, Colo. Const., which provides that, in case of vacancy, the governor shall appoint a fit person to "discharge the duties" of the office. Here it is plain that the words "discharge the duties" are used in contradistinction to the words "fill the office". People ex rel. Griffith v. Scott, 52 Colo. 59, 120 P. 126 (1911); Walsh v. People ex rel. McClenahan, 72 Colo. 406, 211 P. 646 (1922); People ex rel. Lamm v. Banta, 189 Colo. 474, 542 P.2d 377 (1975).

Section guards against vacancy in public office. The evident purpose of the provision that a civil officer shall exercise the duties of his office until his successor is duly qualified is to prevent the interruption in public business which results from a vacancy in office. Clark v. Duvall, 61 Colo. 76, 156 P. 144 (1916).

And vacancy occurs when term of office expires. Because the language of this section defines an officer who holds over as a mere "locum tenens" or, in other words, a de facto officer, based on this definition, a vacancy occurs when the term of office expires. People ex rel. Lamm v. Banta, 189 Colo. 474, 542 P.2d 377 (1975).

Expiration of incumbent's term creates vacancy, within the meaning of § 6 of art. IV, Colo. Const., notwithstanding this section. Walsh v. People ex rel. McClenahan, 72 Colo. 406, 211 P. 646 (1922).

Section applicable to mayor of municipal corporation. This section recognizes the mayor of a municipal corporation as an officer who is entitled, unless removed according to law, to exercise the duties of his office until his successor is duly qualified. Londoner v. People ex rel. Barton, 15 Colo. 557, 26 P. 135 (1890); Bd. of Trustees v. People ex rel. Keith, 13 Colo. App. 553, 59 P. 72 (1899).

And to county judges. This section authorizes the incumbent of the office of county judge and other civil offices, to exercise the duties of such office until his successor is duly qualified. People v. Boughton, 5 Colo. 487 (1880).

But not to board of directors of municipal library. Under this section, members of the board of directors of a municipal library whose

terms of office have expired do not hold over until their successors have qualified. People ex rel. Lamb v. Shaffer, 90 Colo. 432, 9 P.2d 612 (1932).

Official acts of county commissioner whose term of office has expired, but whose successor has not qualified, are valid. People ex rel. Williams v. Reid, 11 Colo. 138, 17 P. 302 (1887).

Applied in Carlile v. Henderson, 17 Colo. 532, 31 P. 117 (1892); People ex rel. Ralston v. Herring, 30 Colo. 445, 71 P. 413 (1902); People ex rel. Callaway v. DeGuelle, 47 Colo. 13, 105 P. 1110 (1909); Shinn v. People ex rel. Rush, 59 Colo. 509, 149 P. 623 (1915); Gibbs v. People ex rel. Watts, 66 Colo. 414, 182 P. 894 (1919); People ex rel. Beach v. Chew, 67 Colo. 394, 179 P. 812 (1919).

Section 2. Personal attention required. No person shall hold any office or employment of trust or profit, under the laws of the state or any ordinance of any municipality therein, without devoting his personal attention to the duties of the same.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 64.

ANNOTATION

Judge was held not to have abandoned his office because he was out of his district often on the advice of physicians. People ex rel. Past v. Owers, 29 Colo. 535, 69 P. 515 (1902).

Applied in People ex rel. Flanders v. Neary, 113 Colo. 12, 154 P.2d 48 (1944).

Section 3. Defaulting collector disqualified from office. No person who is now or hereafter may become a collector or receiver of public money, or the deputy or assistant of such collector or receiver, and who shall have become a defaulter in his office, shall be eligible to or assume the duties of any office of trust or profit in this state, under the laws thereof, or of any municipality therein, until he shall have accounted for and paid over all public money for which he may be accountable.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 64.

Section 4. Disqualifications from holding office of trust or profit. No person hereafter convicted of embezzlement of public moneys, bribery, perjury, solicitation of bribery, or subornation of perjury, shall be eligible to the general assembly, or capable of holding any office of trust or profit in this state.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 64.

ANNOTATION

Applied in People ex rel. Losavio v. Gentry, 199 Colo. 153, 606 P.2d 856 (1980).

Section 5. Investigation of state and county treasurers. The district court of each county shall, at each term thereof, specially give in charge to the

grand jury, if there be one, the laws regulating the accountability of the county treasurer, and shall appoint a committee of such grand jury, or of other reputable persons not exceeding five, to investigate the official accounts and affairs of the treasurer of such county, and report to the court the condition thereof. The judge of the district court may appoint a like committee in vacation at any time, but not oftener than once in every three months. The district court of the county wherein the seat of government may be shall have the like power to appoint committees to investigate the official accounts and affairs of the state treasurer and the auditor of state.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 64.

Section 6. Bribery of officers defined. Any civil officer or member of the general assembly who shall solicit, demand or receive, or consent to receive, directly or indirectly, for himself or for another, from any company, corporation or person, any money, office, appointment, employment, testimonial, reward, thing of value or enjoyment or of personal advantage or promise thereof, for his vote, official influence or action, or for withholding the same, or with an understanding that his official influence or action shall be in any way influenced thereby, or who shall solicit or demand any such money or advantage, matter or thing aforesaid for another, as the consideration of his vote, official influence or action, or for withholding the same, or shall give or withhold his vote, official influence or action, in consideration of the payment or promise of such money, advantage, matter or thing to another, shall be held guilty of bribery, or solicitation of bribery, as the case may be, within the meaning of this constitution, and shall incur the disabilities provided thereby for such offense, and such additional punishment as is or shall be prescribed by law.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 64.
Cross references: For the crime of bribery, see part 3 of article 8 of title 18.

Section 7. Bribery - corrupt solicitation. (1) Any person who directly or indirectly offers, gives, or promises any money or thing of value or privilege to any member of the general assembly or to any other public officer in the executive or judicial department of the state government to influence him in the performance of any of his public or official powers or duties is guilty of bribery and subject to such punishment therefor as may be prescribed by law.

(2) The offense of corrupt solicitation of members of the general assembly or of public officers of the state or of any political subdivision thereof and any occupation or practice of solicitation of such members or officers to influence their official action shall be defined by law and shall be punished by fine, imprisonment, or both.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 65. **L. 74:** Entire section R&RE, p. 452, effective January 1, 1975.

Editor's note: The Governor's proclamation date in 1974 was December 20, 1974.

Section 8. Oath of civil officers. Every civil officer, except members of the general assembly and such inferior officers as may be by law exempted, shall, before he enters upon the duties of his office, take and subscribe an oath or affirmation to support the constitution of the United States and of the state of Colorado, and to faithfully perform the duties of the office upon which he shall be about to enter.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 65.

ANNOTATION

Medical commissioners not required to take oath of office. Isham v. People, 82 Colo. 550, 262 P. 89 (1927).

Nor hearing officer. A hearing officer possesses no independent power of his own, and therefore his position is that of an employee and not that of a civil officer and there is no requirement that an employee take an oath of office before entering upon his duties. Campbell v. State, 176 Colo. 202, 491 P.2d 1385 (1971).

Applicability to executive officers. With respect to executive officers, this section applies only to those elected officials named in § 1 of art. IV, Colo. Const. Hedstrom v. Motor Vehicle Div., 662 P.2d 173 (Colo. 1983).

Applied in People v. Western Union Tel. Co., 70 Colo. 90, 198 P. 146 (1921); Bd. of County Comm'rs v. Fifty-First Gen. Ass'y, 198 Colo. 302, 599 P.2d 887 (1979).

Section 9. Oaths - where filed. Officers of the executive department and judges of the supreme and district courts, and district attorneys, shall file their oaths of office with the secretary of state; every other officer shall file his oath of office with the county clerk of the county wherein he shall have been elected.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 65.

ANNOTATION

Failure to file paperwork for oath with secretary of state in a timely fashion does not create a permanent vacancy. No permanent vacancy is created if an elected district attorney misses the deadline to timely file the necessary paperwork for his or her oath and bond requirements with the secretary of state. Therefore, the elected district attorney is authorized to prosecute defendants during a period of a temporary defect. The district attorney acts as a de facto officer whose acts performed in the discharge of his official duties were valid and binding. People v. Scott, 116 P.3d 1231 (Colo. App. 2004).

Deputy district attorneys are not "every other officer" for purposes of art. XII, § 9, because they are appointed not elected; thus, § 20-1-201 (3) controls. Section 20-1-201 (3) requires that deputy districts attorneys must file their oath with the secretary of state. Leske v. Golder, 124 P.3d 863 (Colo. App. 2005).

Applied in Isham v. People, 82 Colo. 550, 262 P. 89 (1927).

Section 10. Refusal to qualify - vacancy. If any person elected or

appointed to any office shall refuse or neglect to qualify therein within the time prescribed by law, such office shall be deemed vacant.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 65.

Cross references: For how vacancies in county offices are filled, see § 9 of article XIV of this constitution.

ANNOTATION

Law reviews. For note, "One Year Review of Constitutional Law", see 41 Den. L. Ctr. J. 77 (1964).

This section and § 9 of art. XIV, Colo. Const., must be read and construed together. People v. Quimby, 152 Colo. 231, 381 P.2d 275 (1963).

Provisions of § 9 of art. XIV, Colo. Const., are limited by this and following section. People ex rel. Callaway v. DeGuelle, 47 Colo. 13, 105 P. 1110 (1909).

"Vacancy" relates to term of office as well as to office itself, either or both, according to the facts of the particular case. People ex rel. Bentley v. Le Fevre, 21 Colo. 218, 40 P. 882 (1895); Gibbs v. People ex rel. Watts, 66 Colo. 414, 182 P. 894 (1919); People v. Quimby, 152 Colo. 231, 381 P.2d 275 (1963).

The word "vacancy", as used in modern times, relates not only to the office which is to be filled, but to the term for which the appointment is to be made. It is constantly used in statutes and constitutions with reference to both office and tenure, and the proper interpretation of the word, when power is given to an executive or a board to fill a vacancy, is a power to fill the office designated for the unexpired term which may remain after the death, removal, or resignation of the antecedent incumbent. When the incumbent dies, is removed, or resigns, there is a vacancy not only in the office, but in the term, for which he was appointed, if that was for a definite period. Monash v. Rhodes, 11 Colo. App. 404, 53 P. 236 (1898), aff'd, 27 Colo. 235, 60 P. 569 (1900); People ex rel. Callaway v. DeGuelle, 47 Colo. 13, 105 P. 1110 (1909).

Right to office contingent upon qualifying. When a person is elected to a term, under the constitution, a contingent or inchoate right to the office is vested in him, which becomes absolute upon his qualification. He is elected to the term and no one else can enter therein until he is ousted therefrom, which can never be until the commencement of the term. When he does not qualify, the contingent right is gone. There is no one legally entitled to the term, and when the date of the term arrives there is a vacancy under the constitution, though there be some one actually and legally performing the duties of the office. People ex rel. Callaway v. DeGuelle, 47 Colo. 13, 105 P. 1110 (1909).

A person chosen to fill a term of office is not permitted to assume the duties of the office until he files a bond and oath of office, which must be done before the commencement of the term, or the office shall be deemed vacant. People v. Quimby, 152 Colo. 231, 381 P.2d 275 (1963).

And vacancy occurs whether failure to qualify comes through wilful neglect, refusal, or impossibility because of death. Gibbs v. People ex rel. Watts, 66 Colo. 414, 182 P. 894 (1919).

If one entitled to a new term on the arrival of the term does not appear and qualify, though the reason thereof be death, there is a vacancy in the office for the term. People v. Quimby, 152 Colo. 231, 381 P.2d 275 (1963).

Section recognizes legal vacancy although incumbent continues to perform duties of office. This section recognizes a legal vacancy that will authorize the appointment of a successor, even though nothing has happened to the real incumbent, and he is continuing to perform the duties of the office. People ex rel. Callaway v. DeGuelle, 47 Colo. 13, 105 P. 1110 (1909); People v. Quimby, 152 Colo. 231, 381 P. 2d 275 (1963).

Incumbent of previous term holds over where there is a vacancy in an office, until an appointment is made. People v. Quimby, 152 Colo. 231, 381 P.2d 275 (1963).

Vacancy exists when one term expires and new term of office begins. People v. Quimby, 152 Colo. 231, 381 P.2d 275 (1963).

Failure to file paperwork for oath with secretary of state in a timely fashion does not create a permanent vacancy. No permanent vacancy is created if an elected district attorney misses the deadline to timely file the necessary paperwork for his or her oath and bond requirements with the secretary of state. Therefore, the elected district attorney is authorized to prosecute defendants during a period of a temporary defect. The district attorney acts as a de facto officer whose acts performed in the discharge of his official duties were valid and binding. People v. Scott, 116 P.3d 1231 (Colo. App. 2004).

Section 11. Elected public officers - term - salary - vacancy. No law shall extend the term of any elected public officer after his election or appointment nor shall the salary of any elected public officer be increased or decreased during the term of office for which he was elected. The term of office of any officer elected to fill a vacancy shall terminate at the expiration of the term during which the vacancy occurred.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 65. **L. 74:** Entire section amended, p. 453, effective January 1, 1975.

Editor's note: The Governor's proclamation date in 1974 was December 20, 1974.

ANNOTATION

Appointment of qualified person ends previous term. When an appointment to fill a vacancy is made and the appointee qualifies, the previous term and the rights of the incumbent to the office are ended. People v. Quimby, 152 Colo. 231, 381 P.2d 275 (1963).

Appointee holds office until next general election, if no new term intervenes between the time of his appointment and the time of such election. People v. Quimby, 152 Colo. 231, 381 P.2d 275 (1963).

And has same power as predecessor. A person elected or appointed to fill a vacancy in an unexpired term of a public office, such as sheriff, holds precisely as his predecessor would have held had he continued in office, and in no other way; and has the same rights, and none other, that such predecessor would have had. People ex rel. Callaway v. DeGuelle, 47 Colo. 13, 105 P. 1110 (1909); People v. Quimby, 152 Colo. 231, 381 P.2d 275 (1963).

District attorney is a state public officer. Tisdel v. Bd. of County Comm'rs, 621 P.2d 1357 (Colo. 1980).

Prohibition against modifying public officer's salary intended to deter appropriative body's influence. The prohibition against modifying an elected public officer's salary during his term of office

is intended to deter the appropriative body from influencing a public officer by threat or promise of salary change and to discourage the officer from himself seeking increased compensation. Tisdel v. Bd. of County Comm'rs, 621 P.2d 1357 (Colo. 1980).

Applied in Kallenberger v. Buchanan, 649 P.2d 314 (Colo. 1982).

Section 12. Duel - disqualifies for office. (Deleted by amendment)

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 65. **L. 90:** Entire section amended, p. 1861, effective upon proclamation of the Governor, **L. 91,** p. 2033, January 3, 1991.

Section 13. State personnel system - merit system. (1) Appointments and promotions to offices and employments in the state personnel system shall be made according to merit and fitness, to be ascertained by a comparative analysis of candidates based on objective criteria without regard to race, creed, color, or political affiliation. A numerical or nonnumerical method may be used for the comparative analysis of candidates.

(2) (a) The state personnel system shall comprise all appointive public officers and employees of the state, except the following:

(I) Members of the public utilities commission, the industrial commission of Colorado, the state board of land commissioners, the Colorado tax commission, the state parole board, and the state personnel board;

(II) Members of any board or commission serving without compensation except for per diem allowances provided by law and reimbursement of expenses;

(III) The employees in the offices of the governor and the lieutenant governor whose functions are confined to such offices and whose duties are concerned only with the administration thereof;

(IV) Appointees to fill vacancies in elective offices;

(V) One deputy of each elective officer other than the governor and lieutenant governor specified in section 1 of article IV of this constitution;

(VI) Officers otherwise specified in this constitution;

(VII) Faculty members of educational institutions and departments not reformatory or charitable in character, and such administrators thereof as may be exempt by law;

(VIII) Students and inmates in state educational or other institutions employed therein;

(IX) Attorneys at law serving as assistant attorneys general;

(X) Members, officers, and employees of the legislative and judicial departments of the state, unless otherwise specifically provided in this constitution;

(XI) Subject to the approval of the state personnel director, the following persons from each principal department: Deputy department heads, chief financial officers, public information officers, legislative liaisons, human resource directors, and executive assistants to the department heads; and

(XII) Subject to the approval of the state personnel director, senior

executive service employees.

(b) The total number of employees exempted from the state personnel system pursuant to subparagraphs (XI) and (XII) of paragraph (a) of this subsection (2) shall not exceed an amount equal to one percent of the total number of persons in the state personnel system.

(3) Officers and employees within the judicial department, other than judges and justices, may be included within the personnel system of the state upon determination by the supreme court, sitting en banc, that such would be in the best interests of the state.

(4) Where authorized by law, any political subdivision of this state may contract with the state personnel board for personnel services.

(5) The person to be appointed to any position under the state personnel system shall be one of the six persons ranking highest on the eligible list for such position, or such lesser number as qualify, as determined from the comparative analysis process, subject to limitations set forth in rules of the state personnel board applicable to multiple appointments from any such list.

(6) (a) Except as set forth in paragraph (b) of this subsection (6), all appointees shall reside in the state, but applications need not be limited to residents of the state as to those positions the state personnel board or the state personnel director determines cannot be readily filled from among residents of this state.

(b) If a position is for work that is to be performed primarily at a location that is within thirty miles of the state border:

(I) Applications for the position are not limited to residents of the state; and

(II) An appointee to the position is not required to be a resident of the state.

(7) The head of each principal department shall be the appointing authority for the employees of his office and for heads of divisions, within the personnel system, ranking next below the head of such department. Heads of such divisions shall be the appointing authorities for all positions in the personnel system within their respective divisions. Nothing in this subsection shall be construed to affect the supreme executive powers of the governor prescribed in section 2 of article IV of this constitution.

(8) Persons in the personnel system of the state shall hold their respective positions during efficient service or until reaching retirement age, as provided by law. They shall be graded and compensated according to standards of efficient service which shall be the same for all persons having like duties. A person certified to any class or position in the personnel system may be dismissed, suspended, or otherwise disciplined by the appointing authority upon written findings of failure to comply with standards of efficient service or competence, or for willful misconduct, willful failure or inability to perform his duties, or final conviction of a felony or any other offense which involves moral turpitude, or written charges thereof may be filed by any person with the appointing authority, which shall be promptly determined. Any action of the appointing authority taken under this subsection shall be subject to appeal to the

state personnel board, with the right to be heard thereby in person or by counsel, or both.

(9) (a) The state personnel director may authorize the temporary employment of persons, not to exceed nine months, during which time an eligible list shall be provided for permanent positions. No other temporary or emergency employment shall be permitted under the state personnel system.

(b) Nothing in paragraph (a) of this subsection (9) shall be construed as permitting the appointment of a temporary employee for the purpose of eliminating a permanent position from the state personnel system.

(10) The state personnel board shall establish probationary periods for all persons initially appointed, but not to exceed twelve months for any class or position. After satisfactory completion of any such period, the person shall be certified to such class or position within the personnel system, but unsatisfactory performance shall be grounds for dismissal by the appointing authority during such period without right of appeal.

(11) Persons certified to classes and positions under the classified civil service of the state immediately prior to July 1, 1971, persons having served for six months or more as provisional or acting provisional employees in such positions immediately prior to such date, and all persons having served six months or more in positions not within the classified civil service immediately prior to such date but included in the personnel system by this section, shall be certified to comparable positions, and grades and classifications, under the personnel system, and shall not be subject to probationary periods of employment. All other persons in positions under the personnel system shall be subject to the provisions of this section concerning initial appointment on or after such date.

Source: Initiated 18: Entire section added, see **L. 19,** p. 341. **L. 69:** Entire section R&RE, p. 1252, effective July 1, 1971. **L. 2012:** (1), (2), (5), (6), and (9) amended, effective upon proclamation of the Governor, **L. 2013,** p. , January 1, 2013.

Editor's note: The "Colorado tax commission", referred to in subsection (2) of this section, on and after July 1, 1971, is known as the "board of assessment appeals".

ANNOTATION

I. GENERAL CONSIDERATION.

Law reviews. For article, "Some Legal Aspects of the Colorado Coal Strike", see 4 Den. B. Ass'n Rec. 22 (Dec. 1927). For note, "Colorado's Ombudsman Office", see 45 Den. L. J. 93 (1969).

Purpose of state personnel system legislation is to protect employees from arbitrary and capricious political action and to insure employment during good behavior. Such protection applies during authorized service. Tenure, however, is not meant to guarantee duration of employment for any number of set years or over any particular period of time. Coopersmith v. City & County of Denver, 156 Colo. 469, 399 P.2d 943 (1965).

This section and state personnel system act, § 24-50-101 et seq., are liberally construed so as to

accomplish their purpose, which is to promote efficiency in the state personnel system by appointing or employing those only who, upon examination, have shown their qualification for the office or position. Shinn v. People ex rel. Rush, 59 Colo. 509, 149 P. 623 (1915); Roberts v. People ex rel. Dunbar, 81 Colo. 338, 255 P. 461 (1927).

This section is not repugnant to § 9 of art. IX, Colo. Const., relating to the terms of the state board of land commissioners. People ex rel. Murphy v. Field, 66 Colo. 367, 181 P. 526 (1919).

And not applicable to judicial branch employees. The provisions of this section as to the terms and conditions of employment of the employees of the executive branch of Colorado's government do not apply to those who work in the judicial department. Hamm v. Scott, 426 F. Supp. 950 (D. Colo. 1977).

Amendment to this section in 1970 replaced "rule of one" with "rule of three" so that appointments are to be filled by one of three top ranked persons on the eligible list rather than automatically by the top ranked person. Haines v. Colo. State Pers. Bd., 39 Colo. App. 459, 566 P.2d 1088 (1977).

Personnel rule adopted for filling multiple vacancies valid. Rule 4-7-2(b) of the Colorado state personnel system, adopted for filling multiple vacancies, whereby the Colorado state personnel board added another individual to the eligible list as each position was filled, thereby providing a list of three applicants for each of the positions, was not in conflict with subsection (5) of this section, and was valid. Haines v. Colo. State Pers. Bd., 39 Colo. App. 459, 566 P.2d 1088 (1977).

Department heads make determination as to what is needed and the state personnel board cannot substitute its judgment for that of other departmental heads as to what positions should be filled. Vessa v. Johnson, 135 Colo. 284, 310 P.2d 564 (1957).

If request from proper officials is made, the state personnel board fills such position from an eligible list if such exists; if such list does not exist, it then holds a competitive examination for the position, and in the meantime, may make a provisional appointment until the results of the examination are obtained. Vessa v. Johnson, 135 Colo. 284, 310 P.2d 564 (1957).

Promotions result only from competitive examinations. This section makes it imperative that promotions shall result only from competitive examinations and shall be according to seniority. Schmidt v. Hurst, 109 Colo. 207, 124 P.2d 235 (1942).

Under this section a promotion is invalid without a competitive test, in which the person ascertained to be the most fit and of the highest excellence is entitled to appointment, notwithstanding any rule to the contrary. Schmidt v. Hurst, 109 Colo. 207, 124 P.2d 235 (1942).

And may not be made under name of transfers. Attempts to make promotions under the name of transfers are in conflict with the state personnel regulations. Transfers, without any requirements as to examinations, can only be made when they do not in fact constitute promotions. Schmidt v. Hurst, 109 Colo. 207, 124 P.2d 235 (1942).

Mode of examination discretionary. The fact that a hearing officer was appointed on the basis of an oral examination does not invalidate his appointment, because the mode of examination is discretionary with the state personnel board. Campbell v. State, 176 Colo. 202, 491 P.2d 1385 (1971).

Close familial relationship between an employment applicant and a prospective supervisor

properly relates to that applicant's fitness for the position. Butero v. Dept. of Hwys., 772 P.2d 633 (Colo. App. 1988).

General assembly may not avoid this section by abolishing office and creating new one with duties substantially the same, to which new officers are appointed. People ex rel. Kelly v. Milliken, 74 Colo. 456, 223 P. 40 (1924); Colo. State Civil Serv. Employees Ass'n v. Love, 167 Colo. 436, 448 P.2d 624 (1968).

A certified position may not be abolished and the incumbent employee terminated if a new position is created with substantially the same duties and responsibilities as the old position but filled by another employee. Bardsley v. Dept. of Pub. Safety, 870 P.2d 641 (Colo. App. 1994).

And change in nomenclature from "officer" to "commissioner" does not change essence of position nor thereby destroy the validity of the person's qualification or appointment. Campbell v. State, 176 Colo. 202, 491 P.2d 1385 (1971).

But subsection (8) does not prohibit payment of identical salaries to persons performing dissimilar functions. The requirement that state employees performing "like" or similar services be graded and compensated according to the same standard neither expressly nor impliedly prohibits identical compensation to state employees performing unlike or dissimilar services. Dempsy v. Romer, 825 P.2d 44 (Colo. 1992).

Personnel provisions relating to university of Colorado's university hospital held unconstitutional under this section where employees could keep their jobs at reorganized hospital only by giving up rights and guarantees of state personnel system. Colo. Ass'n of Pub. Employees v. Bd. of Regents, 804 P.2d 138 (Colo. 1990) (decided prior to the 1991 repeal of § 23-21-401 et seq.).

Substantially equivalent employment. In determining if the university's unconditional offer to re-employ a former public safety sergeant who was laid off due to reorganization as a public officer is substantially equivalent employment, a comparison must be made between the unarmed guard position he would have occupied if there had been no contracting out and the public safety position that was offered. Sutton v. Univ. of S. Colo., 870 P.2d 650 (Colo. App. 1994).

Agreement between office of youth services and metropolitan state college (Metro) to provide educational services at a juvenile corrections facility does not violate this section because the teachers are fundamentally employees of Metro and because no classified employees were separated involuntarily from their protected positions. Each teacher was given the option of remaining within the classified system with no adverse impact on pay, status, seniority, or benefits. Every former teacher at the facility could have remained within the civil service system. Those who decided to remain were transferred--a step wholly within the administrative authority of the department of human services. Dept. of Human Servs. v. May, 1 P.3d 159 (Colo. 2000).

Temporary appointment ceases upon certification of permanent appointment. A temporary appointment to office under the state personnel system ceases on the date upon which the board certifies to the appointing power a person for permanent appointment upon completion of an eligible list. Roberts v. People ex rel. Dunbar, 81 Colo. 338, 255 P. 461 (1927).

Section 24-50-114 (2), which provides for temporary appointments in its entirety, is constitutional. Temporary appointment for a period of time exceeding six months was not unconstitutional under subsections (7)

and (9) of this section. Neoplan USA Corp. v. Indus. Claim Appeals Office, 778 P.2d 312 (Colo. App. 1989).

Section 24-50-115 (6) establishing probationary periods for new employees, those transferred to different positions at their request, and those reallocated to a higher pay grade is constitutional and consistent with subsection (10) of this section, which mandates probationary periods for newly appointed employees. Colo. Ass'n of Pub. Employees v. Lamm, 677 P.2d 1350 (Colo. 1984) (decided prior to 1984 amendment to § 24-50-115 (6)).

Exception in subsection (9) permitting temporary appointments of up to six months cannot be given a strained construction, and § 24-50-114 (2) is unconstitutional to the extent that it purports to allow employment beyond six months when the employee works no more than 1040 hours, the number of hours an employee working full time for six months would work. Colo. Ass'n of Pub. Employees v. Lamm, 677 P.2d 1350 (Colo. 1984).

Secretary of state did not violate subsection (9) in hiring temporary workers to examine a large number of ballot petitions. The secretary of state's actions were justified because she was inundated with a large number of petitions that her office was statutorily required to review in a limited number of days. McClellan v. Meyer, 900 P.2d 24 (Colo. 1995).

Section 24-50-128, is not in conflict with the constitution. Neoplan USA Corp. v. Indus. Claim Appeals Office, 778 P.2d 312 (Colo. App. 1989).

Contracts with private sector vendors for services pursuant to § 24-50-128 violate this section which sets forth the state personnel system structure, including provision for terminating positions historically performed by state employees. Colo. Ass'n of Pub. Emp. v. Dept. of Hwys., 809 P.2d 988 (Colo. 1991).

Hiring of private contractors to obtain services previously performed by classified state employees implicates this section. An agency's attempt thereby to circumvent the protections accorded state personnel system employees, in the absence of applicable statutory or regulatory standards, is invalid. Colo. Ass'n of Pub. Employees v. Dept. of Hwys., 809 P.2d 988 (Colo. 1991); Horrell v. Dept. of Admin., 861 P.2d 1194 (Colo. 1993).

The decision to eliminate a public safety sergeant position and to replace armed public safety officers with unarmed guards on a university police force had an adverse effect on complainants' working conditions, but the layoffs were due to the overall reorganization, not the decision to contract out some of the police work. Therefore, the complainants' injuries are not measured by the pay and benefits they would have received in the same positions but by the pay and benefits they would have received if they had continued employment in the available positions. Sutton v. Univ. of S. Colo., 870 P.2d 650 (Colo. App. 1994).

Public safety sergeant who is laid off from a university police force due to a reorganization is not entitled to reinstatement to the position of public safety officer, unless complainant shows that had there been no contracting out, complainant reasonably could have expected to be advanced to the position of public safety officer. Sutton v. Univ. of S. Colo., 870 P.2d 650 (Colo. App. 1994).

Conditions of state employment, or election to state office, are to be limited to those either prescribed in the constitution, enumerated in applicable statutes, or implemented, where applicable, by the state personnel board. Hamilton v. City & County of Denver, 176 Colo. 6, 490 P.2d 1289 (1971).

But imposition of tax upon state employees does not interfere with or add additional qualifications for state employment, for payment of the tax is not a prerequisite to being appointed or elected, nor does continuation to the state position depend on payment of the tax. Hamilton v. City & County of Denver, 176 Colo. 6, 490 P.2d 1289 (1971).

Power to fix compensation remains in general assembly. The power to fix compensation within the classified state personnel system still abides in the general assembly. Vivian v. Bloom, 115 Colo. 579, 177 P.2d 541 (1947); Dempsy v. Romer, 825 P.2d 44 (Colo. 1992).

But power is limited by this section. While authority of the assembly to fix compensation has not been transferred by the amendment from the assembly to the board, its authority has been limited thereby. Under this amendment the assembly can no longer fix the salary of an individual employee, but only the salary of each class and grade as established by the state personnel board. Thus equal salaries for all persons having like classification are assured. Vivian v. Bloom, 115 Colo. 579, 177 P.2d 541 (1947); Dempsy v. Romer, 825 P.2d 44 (Colo. 1992).

Thus assembly has no authority to discriminate in regard to salaries between members of any class and grade as established by the state personnel board. Vivian v. Bloom, 115 Colo. 579, 177 P.2d 541 (1947); Dempsy v. Romer, 825 P.2d 44 (Colo. 1992).

Authority under this section and § 14 of the state personnel director to classify state employees does not deprive the general assembly of the ultimate authority for establishing maximum monthly salary levels for employees. Dempsy v. Romer, 825 P.2d 44 (Colo. 1992).

To accord status of certified state employee to surgeon acting as chief of surgery at state hospital while receiving compensation exceeding that authorized by law would violate an express requirement of the constitution under subsection (8) of this section. This would thwart mandate that state employees performing similar duties receive the same compensation. Fogel v. Colo. State Hospital, 778 P.2d 318 (Colo. App. 1989).

Although authority may be delegated. In the fixing of salaries the assembly has the power of delegation of its authority, but to whomever the authority may be delegated, it is still subject to the limitation imposed by this amendment. Vivian v. Bloom, 115 Colo. 579, 177 P.2d 541 (1947).

Constitutionality of § 24-50-104 (3) (g). State personnel director's authority under § 24-50-104 (3)(f) and (3)(g), regarding allocation of individual positions, derives from director's duty under section 14 of this article to administer day-to-day activities of state personnel system and is distinctly separate from personnel board's authority under this section to hear appeals from disciplinary decisions. Therefore, paragraph (g) does not intrude upon the board's exclusive jurisdiction. Renteria v. State Dept. of Pers., 811 P.2d 797 (Colo. 1991).

Order of dismissal where funds are insufficient to be based on seniority. In case of failure of the assembly to appropriate sufficient funds for the account of any department for payment of the employees at the rate to which they are legally entitled for a full biennium, the proper salary shall nevertheless be paid to all who are employed so long as funds are available and employees shall be dismissed, on failure of appropriations, in accordance with the assembly's restrictions on its appropriation, and the order of seniority rights. Vivian v. Bloom, 115 Colo. 579, 177 P.2d 541 (1947).

State personnel are entitled to longevity pay based on time spent

in state service rather than in a particular grade. Colo. Ass'n of Pub. Employees v. Colo. Civil Serv. Comm'n, 31 Colo. App. 369, 505 P.2d 54 (1972).

City of Denver has authority to determine term or tenure of service of its employees, agents and officers, and it follows that it may establish a mandatory retirement age for its firemen without contravening provisions of state personnel system legislation requiring that firemen can only be removed for cause and then only after following the requisite procedure of giving notice and holding a hearing. Coopersmith v. City & County of Denver, 156 Colo. 469, 399 P.2d 943 (1965).

One holding office unlawfully was not retained upon adoption of merit system. People ex rel. Beach v. Chew, 68 Colo. 158, 187 P. 513 (1920).

The failure of hearing officer to take oath of office is not fatal to the effective performance of his duties. Campbell v. State, 176 Colo. 202, 491 P.2d 1385 (1971).

Constitutionality of § 24-50-101 (3)(a). Statute elaborates the constitutional requirement that employment decisions be based on merit and fitness as established by competitive tests and as such cleaves to the constitutional standard for state employee selection. Colo. Ass'n of Pub. Employees v. Lamm, 677 P.2d 1350 (Colo. 1984).

Section 24-50-104 (3)(g) unconstitutional under subsection (1) of this section because the statute's wording of "upward allocation of a position" read together with "movement of the incumbent employee with his position" is nothing but a euphemistic description of a promotion and as such must comply with the requirements of this section for competitive tests, etc. Colo. Ass'n of Pub. Employees v. Lamm, 677 P.2d 1350 (Colo. 1984) (decided prior to 1984 repeal and reenactment of § 24-50-104 (3)(g)).

For review of historical background relative to appointment of state personnel, see Haines v. Colo. State Pers. Bd., 39 Colo. App. 459, 566 P.2d 1088 (1977).

Applied in People ex rel. Clay v. Bradley, 66 Colo. 186, 179 P. 871 (1919); People ex rel. Beach v. Chew, 68 Colo. 158, 187 P. 513 (1920); Lee v. Morley, 79 Colo. 481, 247 P. 178 (1926); Bratton v. Dice, 93 Colo. 593, 27 P.2d 1028 (1933); Getty v. Gaffy, 96 Colo. 454, 44 P.2d 506 (1935); Raymond v. Colo. Civil Serv. Comm'n, 104 Colo. 458, 92 P.2d 331 (1939); Aspgren v. Burress, 160 Colo. 302, 417 P.2d 782 (1966); MacManus v. Love, C.A. no. C-24520 (D.C. Denver, Colo., filed Nov. 24, 1971); Paris v. Civil Serv. Comm'n, 32 Colo. App. 21, 510 P.2d 910 (1973); State Pers. Bd. v. District Court, 637 P.2d 333 (Colo. 1981); Dept. of Labor & Emp. v. State Pers. Bd., 625 P.2d 1036 (Colo. App. 1981).

II. OFFICERS TO WHOM SECTION APPLICABLE.

Merit system in government is generally limited so as to exclude from its operation certain classes of public officers and employees; such as those made by law subject to confirmation by legislative bodies, heads of departments, professional experts, positions of a confidential nature, and those involving the exercise of judgment and discretion in important matters, as well as judges, their clerks and confidential employees. Bd. of Educ. v. Spurlin, 141 Colo. 508, 349 P.2d 357 (1960).

This section applies only to officers and employees of state, the word "state" being used in the sense of employer, or the entity for whom the service is performed, rather than as a territorial limitation. People ex rel. Walker v. Higgins, 67 Colo. 441, 184

P. 365 (1919); People ex rel. Riordan v. Hersey, 69 Colo. 492, 196 P. 180 (1921).

This section embraces officers and employees of the state only. Although legislative officers are constitutional officers, they are not state officers. Officers of the court are not state officers. This section applies only to officers and employees of the executive branch of state government. Colo. State Civil Serv. Employees Ass'n v. Love, 167 Colo. 436, 448 P.2d 624 (1968).

Officers and employees of court are not within terms of this section, unless the supreme court so directs. People ex rel. Riordan v. Hersey, 69 Colo. 492, 196 P. 180 (1921); In re Interrogatory of the Governor, 162 Colo. 188, 425 P.2d 31 (1967).

Clerk of court and his deputies are not state officers and are not under the state personnel system. People ex rel. Fisher v. Luxford, 71 Colo. 442, 207 P. 477 (1922).

Jury commissioner is not state officer. He is an officer of the court, exercising judicial functions. People ex rel. Riordan v. Hersey, 69 Colo. 492, 196 P. 180 (1921).

Court bailiffs are officers of court, not state officers and are not within the terms of this section. People ex rel. Clifford v. Morley, 67 Colo. 331, 184 P. 386 (1919).

Public trustee is not appointive state officer and is not subject to the provisions of the state personnel system contained in this section. Chambers v. People ex rel. Storer, 70 Colo. 496, 202 P. 1081 (1921).

Employees in county departments of public welfare are not state employees in the classified state personnel system as provided by this section. However, the state department of public welfare may provide for the selection, retention, and promotion of all such employees on a basis of merit and fitness. In re Employees in County Welfare Dep'ts, 106 Colo. 475, 106 P.2d 464 (1940).

Also educators excluded. It was the intention in adopting this section to exclude from the classified state personnel system all educators except those who teach in institutions reformatory or charitable in character. The officials of the department of education involved are trained educators. They are teachers by training and although they do not practice their profession in classrooms but are for the most part engaged in research, planning and promulgation of plans, it is impossible to draw a distinction between them and teachers whose activities are devoted directly to the classroom. Bd. of Educ. v. Spurlin, 141 Colo. 508, 349 P.2d 357 (1960).

"Educational institution" is subject to both narrow and broad interpretation and its particular meaning depends not alone on definitions but also on the history of the amendment as a whole, including the intent of the framers, the context in which it appears, together with the applicable facts. Bd. of Educ. v. Spurlin, 141 Colo. 508, 349 P.2d 357 (1960).

But commissioner of insurance is within this section. He is a state officer, and is not appointed to perform judicial functions, and is within the personnel system of the state. Wilson v. People ex rel. Cochrane, 71 Colo. 456, 208 P. 479 (1922).

And water commissioner. Considering that the water commissioner is a peace officer, authorized by statute to arrest and take before the magistrate, anyone interfering with him in his duties, or disobeying his orders; that his duties concern the whole state; that he is part of the system prescribed by the statute for the distribution of water for irrigation -- one principal purpose of which is the preservation of the public

peace -- and is controlled only by state authority, held that he is an officer of the state. People ex rel. Walker v. Higgins, 67 Colo. 441, 184 P. 365 (1919).

And chief inspector of coal mines. From the time of the passage of this section a chief inspector of coal mines, theretofore appointed for a four-year term, held his office thereunder and not under his original appointment. His salary having been thereafter increased by legislative enactment, and that increase approved by the state personnel board, the presumption is that it was so increased "according to standards of efficient service", and there is no constitutional prohibition barring him from receiving the benefit thereof. People ex rel. Dalrymple v. Stong, 67 Colo. 599, 189 P. 27 (1920).

And office of state bank commissioner is under classified state personnel system. People ex rel. Beardsley v. Harl, 109 Colo. 223, 124 P.2d 233 (1942).

And chief of Colorado state patrol is to be appointed by the head of the state department of highways and the appointment must be made from a list of three persons ranking highest on the eligible list for such position as determined from a competitive test of competence administered by the Colorado state personnel board. Schippers v. Colo. State Pers. Bd., 178 Colo. 154, 496 P.2d 307 (1972).

III. POWER OF REMOVAL.

Employee of state who is within this section cannot be discharged without hearing on the charges preferred against him. Bd. of Capitol Managers v. Rusan, 72 Colo. 197, 210 P. 328 (1922).

But provisional employee not entitled to such hearing. A provisional employee in the service of the state, who has not been appointed according to merit and fitness as ascertained by competitive examination, is not in the classified service, and is not entitled to a hearing before removal. Wilson v. People ex rel. Cochrane, 71 Colo. 456, 208 P. 479 (1922); Getty v. Witter, 107 Colo. 302, 111 P.2d 636 (1941).

A provisional appointee is not entitled either to notice or a hearing as a condition precedent to removal. State Civil Serv. Comm'n v. Cummings, 83 Colo. 379, 265 P. 687 (1928).

Public employee entitled to fair process for determining employment violations. A public employee is entitled to fair process for determining whether he or she violated the substantive conditions of their employment. Chiappe v. State Pers. Bd., 622 P.2d 527 (Colo. 1981).

But he cannot redefine the substance of rules which the public agency adopts in order to accomplish its legitimate objectives. Chiappe v. State Pers. Bd., 622 P.2d 527 (Colo. 1981).

State personnel board has power to remove employees upon charges of inefficiency being filed and after a hearing, if the evidence supports the charge. State Civil Serv. Comm'n v. Hoag, 88 Colo. 169, 293 P. 338 (1922).

And courts cannot interfere if evidence sufficient. If the evidence at any hearing is sufficient to justify the state personnel board in the exercise of its discretionary power of removal, the courts are powerless to interfere with such exercise of discretion. State Civil Serv. Comm'n v. Hoag, 88 Colo. 169, 293 P. 338 (1922); State Civil Serv. Comm'n v. Hazlett, 119 Colo. 173, 201 P.2d 616 (1948).

The scope of review in certiorari proceedings, and the authority of courts to interfere with the findings of tribunals vested with exclusive jurisdictions to determine particular issues, have been judicially defined. The supreme court cannot

consider herein whether the board's findings are right or wrong, substitute its judgment for that of the board, or interfere in any manner with the board's findings if there is any competent evidence to support the same. State Civil Serv. Comm'n v. Hazlett, 119 Colo. 173, 201 P.2d 616 (1948).

In absence of abuse of personnel board's discretion the supreme court cannot interfere with the judgment of the board. Meredith v. Smith, 166 Colo. 256, 443 P.2d 975 (1968).

However, in some instances courts have power of review. Where a complaint has been made that no sufficient evidence was introduced to support the charges made, the court undoubtedly has the jurisdiction and power to review such proceedings. State Civil Serv. Comm'n v. Hoag, 88 Colo. 169, 293 P. 338 (1930).

Employee given sufficient notice by letter that informed the employee that he would have to defend himself against incidents which occasioned corrective action, in addition to more recent conduct, at meeting to determine final disposition of corrective action taken against employee. McLaughlin v. Levine, 727 P.2d 410 (Colo. App. 1986).

Prior conduct of public employee which was subject of prior corrective action can be considered to determine penalty to be imposed upon determination that disciplinary action was warranted, where prior corrective action letter warned employee that corrective action remained in effect until specific date, and that disciplinary action would be taken in event another serious violation occurred. McLaughlin v. Levine, 727 P.2d 410 (Colo. App. 1986).

Once a person becomes a state employee, he is presumed to be member of classified personnel system with a right to the benefits of that system and a right to be notified and given an opportunity for a hearing before any determination that he is exempt from that system. Salas v. State Pers. Bd., 775 P.2d 57 (Colo. App. 1988).

Probationary employees entitled to predisciplinary meeting regarding unsatisfactory job performance. Where the state promulgates a regulation that imposes on government departments a more stringent standard than that required by the constitution or statutes, due process of law requires that departments adhere to the standard in discharging employees. Dept. of Health v. Donahue, 690 P.2d 243 (Colo. 1984).

But probationary employee of state has no constitutional or statutory right to appeal a dismissal from employment for unsatisfactory performance. Williams v. Colo. Dept. of Corr., 926 P.2d 110 (Colo. App. 1996).

Maximum 12-month probationary period may be extended for the length of time an employee is off the payroll for any reason. Zurek v. Dept. of State, 754 P.2d 390 (Colo. App. 1987).

Liberty of public employee may be subjected to comprehensive and substantial governmental restrictions. The liberty of the public employee -- as distinguished from that of the ordinary citizen -- may, under some circumstances, be subjected to comprehensive and substantial governmental restrictions which impede activities at the very core of specifically guaranteed constitutional rights. Chiappe v. State Pers. Bd., 622 P.2d 527 (Colo. 1981).

And public agency decisions presumed regular and constitutional. A presumption of administrative regularity and constitutionality attaches to the multitude of personnel decisions made daily by public agencies. Chiappe v. State Pers. Bd., 622 P.2d 527 (Colo. 1981).

Liberty interest in personal

appearance asserted by public employee is not constitutional right. Chiappe v. State Pers. Bd., 622 P.2d 527 (Colo. 1981).

University of Colorado did not act arbitrarily in enforcing a no-beard policy and in making it a condition of continued employment. Chiappe v. State Pers. Bd., 622 P.2d 527 (Colo. 1981).

Probationary employee is entitled to a hearing on an appeal to the board of a dismissal for any disciplinary grounds other than unsatisfactory job performance. Where employee was discharged for making false or deceptive statements on his employment application regarding both his reasons for leaving his previous employment and his criminal record and for failing to report having been charged with the same crime after beginning employment with the department and the employee appealed his discharge, the employee is entitled to a full evidentiary hearing on the merits of his appeal. Maurello v. Dept. of Corrs., 804 P.2d 280 (Colo. App. 1990).

Willful misconduct is not limited only to the violation of written or stated agency rules and no error was made by the state board of personnel in affirming state employee's termination. Bishop v. Dept. of Insts., 831 P.2d 506 (Colo. App. 1992).

Section 14. State personnel board - state personnel director. (1) There is hereby created a state personnel board to consist of five members, three of whom shall be appointed by the governor with the consent of the senate, and two of whom shall be elected by persons certified to classes and positions in the state personnel system in the manner prescribed by law. Each member appointed or elected prior to January 1, 2013, shall serve for a term of five years. Each member appointed or elected on or after January 1, 2013, shall serve for a term of three years. No member shall serve more than two terms of office, regardless of whether a term is a full term or a partial term filling a vacancy. Each member of the board shall be a qualified elector of the state, but shall not be otherwise an officer or employee of the state or of any state employee organization, and shall receive such compensation as shall be fixed by law.

(2) (a) Two of the appointed members of the state personnel board serve at the pleasure of the governor. Both elected members of the board and the appointed member specified in paragraph (b) of this subsection (2) may be removed by the governor for willful misconduct in office, willful failure or inability to perform his or her duties, final conviction of a felony or of any other offense involving moral turpitude, or by reason of permanent disability interfering with the performance of his or her duties, which removal shall be subject to judicial review. Any vacancy in office shall be filled in the same manner as the selection of the person vacating the office, and for the unexpired term.

(b) The member of the board who is appointed for a term commencing on July 1, 2013, and the successors to that position do not serve at the pleasure of the governor.

(3) The state personnel board shall adopt, and may from time to time amend or repeal, rules to implement the provisions of this section and sections 13 and 15 of this article, as amended, and laws enacted pursuant thereto, including but not limited to rules concerning standardization of positions,

determination of grades of positions, standards of efficient and competent service, grievance procedures, appeals from actions by appointing authorities, and conduct of hearings by hearing officers where authorized by law.

(4) There is hereby created the department of personnel, which shall be one of the principal departments of the executive department, the head of which shall be the state personnel director, who shall be appointed under qualifications established by law. The state personnel director shall be responsible for the administration of the personnel system of the state under this constitution and laws enacted pursuant thereto and the rules adopted thereunder by the state personnel board.

(5) Adequate appropriations shall be made to carry out the purposes of this section and section 13 of this article.

Source: Initiated 44: Entire section added, see **L. 45,** p. 265. **L. 69:** Entire section R&RE, p. 1254, effective July 1, 1971. **L. 2012:** (1) to (3) amended, effective upon proclamation of the Governor, **L. 2013,** p. , January 1, 2013.

ANNOTATION

Annotator's note. Since this section is similar to former § 13 of art. XII, Colo. Const., as it existed prior to its 1970 amendment, relevant cases construing that former section have been included in the annotations to this section. The provisions of former § 13 of art. XII, Colo. Const., dealt with the civil service commission, the predecessor of the state personnel board.

State personnel board has power to adopt standards of efficient service. State Civil Serv. Comm'n v. Hoag, 88 Colo. 169, 293 P. 338 (1930).

In making rules, state personnel board is merely exercising one of its constitutional functions. In re Interrogatories by Governor, 111 Colo. 406, 141 P.2d 899 (1943).

But rules inconsistent with constitutional provisions void. Rules of the state personnel board which are inconsistent with the express provisions of the sections in the constitution dealing with the state personnel system are void and of no effect. Schmidt v. Hurst, 109 Colo. 207, 124 P.2d 235 (1942).

State personnel board and the state department of personnel are distinct entities with separate powers and responsibilities. Spahn v. State Dept. of Pers., 44 Colo. App. 446, 615 P.2d 66 (1980); Colo. Ass'n of Pub. Employees v. Lamm, 677 P.2d 1350 (Colo. 1984).

State department of personnel does not oversee the state personnel board's activities. Rather, the board reviews the actions of the head of the personnel department. Spahn v. State Dept. of Pers., 44 Colo. App. 446, 615 P.2d 66 (1980).

State personnel director's authority under § 24-50-104 (3)(f) and (g), regarding allocation of individual positions, derives from director's duty under this section to administer day-to-day activities of state personnel system and is distinctly separate from personnel board's authority under section 13 of this article to hear appeals from disciplinary decisions. Therefore, paragraph (g) does not intrude upon the board's exclusive jurisdiction. Renteria v. State Dept. of Pers., 811 P.2d 797 (Colo. 1991).

Constitutional for state personnel director to establish administrative procedures under §§ 24-50-101 (3)(c) and (3)(d), 24-50-112 (3), 24-50-113, and 24-50-118 (1) and

(2) to carry into effect rules promulgated by the state personnel board. Colo. Ass'n of Pub. Employees v. Lamm, 677 P.2d 1350 (Colo. 1984) (decided prior to 1984 amendments to §§ 24-50-101 (3)(c) and 24-50-112 (3)).

Authority of hearing officer with respect to hearing procedures is established by the State Administrative Procedures Act in accordance with this section. Weiss v. Dept. of Pub. Safety, 847 P.2d 197 (Colo. App. 1992).

Exclusive grant of authority under subsection (3) to state personnel director to classify state employees does not expressly or impliedly give the director the authority to establish levels of compensation for state employees during a fiscal year and there is no express limitations on the general assembly to appropriate funds for the purpose of compensating state employees. Dempsy v. Romer, 825 P.2d 44 (Colo. 1992).

Applied in People ex rel. Clay v. Bradley, 66 Colo. 186, 179 P. 871 (1919); People ex rel. Dalrymple v. Stong, 67 Colo. 599, 189 P. 27 (1920); State Civil Serv. Comm'n v. Hazlett, 119 Colo. 173, 201 P.2d 616 (1948); MacManus v. Love, C.A. no. C-24520 (D.C. Denver, Colo., filed Nov. 24, 1971); State Pers. Bd. v. District Court, 637 P.2d 333 (Colo. 1981); Zurek v. Dept. of State, 754 P.2d 390 (Colo. App. 1987).

Section 15. Veterans' preference. (1) (a) (I) The minimum requirements for a candidate to be placed on an eligible list for a position shall be the same for each candidate for appointment or employment in the state personnel system or in any comparable civil service or merit system of any agency or political subdivision of the state, including any municipality chartered or to be chartered under article XX of this constitution.

(II) If a numerical method is used for the comparative analysis based on objective criteria, applicants entitled to preference under this section shall be given preference in accordance with paragraphs (b) to (e) of this subsection (1). If a nonnumerical method is used, applicants entitled to preference under this section shall be added to the interview eligible list.

(b) Five points shall be added to the comparative analysis score of each candidate who is separated under honorable conditions and who, other than for training purposes, (i) served in any branch of the armed forces of the United States during any period of any declared war or any undeclared war or other armed hostilities against an armed foreign enemy, or (ii) served on active duty in any such branch in any campaign or expedition for which a campaign badge is authorized.

(c) Ten points shall be added to the comparative analysis score of any candidate who has so served, other than for training purposes, and who, because of disability incurred in the line of duty, is receiving monetary compensation or disability retired benefits by reason of public laws administered by the department of defense or the veterans administration, or any successor thereto.

(d) Five points shall be added to the comparative analysis score of any candidate who is the surviving spouse of any person who was or would have been entitled to additional points under paragraph (b) or (c) of this subsection (1) or of any person who died during such service or as a result of service-connected cause while on active duty in any such branch, other than for

training purposes.

(e) No more than a total of ten points shall be added to the comparative analysis score of any such candidate pursuant to this subsection (1).

(2) The certificate of the department of defense or of the veterans administration, or any successor thereto, shall be conclusive proof of service under honorable conditions or of disability or death incurred in the line of duty during such service.

(3) (a) When a reduction in the work force of the state or any such political subdivision thereof becomes necessary because of lack of work or curtailment of funds, employees not eligible for preference under subsection (1) of this section shall be separated before those so entitled who have the same or more service in the employment of the state or such political subdivision, counting both military service for which such preference is given and such employment with the state or such political subdivision, as the case may be, from which the employee is to be separated.

(b) In the case of such a person eligible for preference who has completed twenty or more years of active military service, no military service shall be counted in determining length of service in respect to such retention rights. In the case of such a person who has completed less than twenty years of such military service, no more than ten years of service under subsection (1) (b) (i) and (ii) shall be counted in determining such length of service for such retention rights.

(4) The state personnel board and each comparable supervisory or administrative board of any such civil service or merit system of any agency of the state or any such political subdivision thereof shall implement the provisions of this section to assure that all persons entitled to preference in a comparative analysis and retention shall enjoy their full privileges and rights granted by this section.

(5) No person shall receive preference pursuant to this section with respect to a promotional opportunity. Any promotional opportunity that is also open to persons other than employees for whom such appointment would be a promotion, shall be considered a promotional opportunity for the purposes of this section.

(6) Repealed.

(7) This section shall be in full force and effect on and after July 1, 1971, and shall grant veterans' preference to all persons who have served in the armed forces of the United States in any declared or undeclared war, conflict, engagement, expedition, or campaign for which a campaign badge has been authorized, and who meet the requirements of service or disability, or both, as provided in this section. This section shall apply to all public employment opportunities, except as set forth in subsection (5) of this section, conducted on or after such date, and it shall be in all respects self-executing.

Source: L. 69: Entire section added, p. 1254, effective July 1, 1971. **L. 90:** (7) amended, p. 1862, effective upon proclamation of the Governor, **L. 91,** p. 2033, January 3, 1991. **L. 92:** (1)(d) amended, p. 2319, effective upon proclamation of the Governor, **L. 93,** p. 2163, January 14, 1993. **L. 2012:** (1), (3) to (5), and (7) amended and (6)

repealed, effective upon proclamation of the Governor, **L. 2013,** p. , January 1, 2013.

ANNOTATION

Annotator's note. Since this section is substantially the same as former § 14 of art. XII, Colo. Const., as it existed prior to its amendment in 1970, relevant cases construing that former section have been included in the annotations to this section.

Purpose of this section is manifest, and that purpose was to add five points to the passing grade of any honorably discharged veteran as provided, and the section should be so construed as to give it that effect without assault on the words employed. Perry v. O'Farrell, 120 Colo. 561, 212 P.2d 848 (1949).

And this section should be liberally construed. Perry v. O'Farrell, 120 Colo. 561, 212 P.2d 848 (1949).

There is no distinction between enlistees and draftees expressed in this section. Hanebuth v. Patton, 115 Colo. 166, 170 P.2d 526 (1946).

Manner of claiming preference. Where an applicant for a state personnel examination listed his military service on the application form and submitted his honorable discharge with his application, it was evident that the applicant was claiming his veterans' preference. People ex rel. Metzger v. Watrous, 121 Colo. 282, 215 P.2d 344 (1950).

Demand made prior to appointment of other persons deemed timely. An honorably discharged veteran, whose name was on an existing promotional eligibility list, does not waive the veterans' preference, as provided in this section, if he makes no specific demand for such preference prior to the certification of others upon such list, but does make such demand prior to the appointment of the other persons certified. Perry v. O'Farrell, 120 Colo. 561, 212 P.2d 848 (1949).

Where preference not waived in application. Where the form provided an applicant to answer questions in connection with a state personnel examination was arranged so that all of the questions relating to service with the armed forces could not be answered, the applicant could not be deemed to have waived his veterans' preference by reason of his manner of filling in the form. People ex rel. Metzger v. Watrous, 121 Colo. 282, 215 P.2d 344 (1950).

Certificate of service conclusive. A certificate from the United States veterans administration or from the department of defense that certifies certain facts with reference to that candidate's service is conclusive. Bingham v. Bach, 151 Colo. 332, 377 P.2d 741 (1963).

This section contains no language limiting its application to percentage of disability. Bingham v. Bach, 151 Colo. 332, 377 P.2d 741 (1963).

Constitutionality of state personnel director's authority to separate certified employees for lack of work according to procedures set by the director under § 24-50-124 (1) is upheld; however, the veterans' preference provision of this section is read into the statute as an implied limitation. Colo. Ass'n of Pub. Employees v. Lamm, 677 P.2d 1350 (Colo. 1984) (decided prior to 1984 amendment to § 24-50-124 (1)).

Where the status of the plaintiff's position with the county is at issue in regards to veteran's preference, and the issue cannot be decided as a matter of law, the granting of summary judgment is inappropriate. Kennedy v. Bd. of County Comm'rs, 776 P.2d 1159 (Colo. App. 1989).

Because the Colorado constitution's grant of preference points is premised on federal military service, the definition of qualifying

service in the federal veterans' preference statute is the most persuasive authority in construing this constitutional provision. Arthur v. City & County of Denver, 198 P.3d 1285 (Colo. App. 2008).

"Veterans" as defined in 5 U.S.C. § 2108(1)(D) are construed to be among those who were intended to benefit from the veterans' preference and therefore those persons are construed to include those who fought in a period of undeclared war or other armed hostilities, within the meaning of this section. Arthur v. City & County of Denver, 198 P.3d 1285 (Colo. App. 2008).

The veterans' preference is intended to be flexibly interpreted to give veterans of future armed conflicts a hiring preference as a reward for their service. Arthur v. City & County of Denver, 198 P.3d 1285 (Colo. App. 2008).

Applied in Freed v. Baldi, 166 Colo. 344, 443 P.2d 716 (1968); MacManus v. Love, C.A. no. C-24520 (D.C. Denver, Colo., filed Nov. 24, 1971).

ARTICLE XIII
Impeachments

Section 1. House impeach - senate try - conviction - when chief justice presides. The house of representatives shall have the sole power of impeachment. The concurrence of a majority of all the members shall be necessary to an impeachment. All impeachments shall be tried by the senate, and when sitting for that purpose, the senators shall be upon oath or affirmation to do justice according to law and evidence. When the governor or lieutenant-governor is on trial, the chief justice of the supreme court shall preside. No person shall be convicted without a concurrence of two-thirds of the senators elected.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 66.

ANNOTATION

Law reviews. For note, "Impeachment of a State Official", see 8 Rocky Mt. L. Rev. 50 (1935).

Senate sits as court in impeachment trials. In impeachment trials under this section and the two following sections, the senate sits as a court and, of course, exercises judicial powers. People v. Swena, 88 Colo. 337, 296 P. 271 (1931); Groditsky v. Pinckney, 661 P.2d 279 (Colo. 1983).

Section 2. Who liable to impeachment - judgment - no bar to prosecution. The governor and other state and judicial officers, shall be liable to impeachment for high crimes or misdemeanors or malfeasance in office, but judgment in such cases shall only extend to removal from office and disqualification to hold any office of honor, trust or profit in the state. The party, whether convicted or acquitted, shall, nevertheless, be liable to prosecution, trial, judgment and punishment according to law.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 66. **L. 90:** Entire section amended, p. 1862, effective upon proclamation of the Governor,

L. 91, p. 2033, January 3, 1991.

ANNOTATION

Law reviews. For note, "Impeachment of State Official", see 8 Rocky Mt. L. Rev. 50 (1935). For article, "Colorado and Minimum Judicial Standards", see 28 Dicta 1 (1951).

This section is plain and unambiguous and speaks for itself. Roberts v. People ex rel. Hicks, 77 Colo. 281, 235 P. 1069 (1925).

State personnel director subject to removal only by impeachment. The governor has no authority to remove a state personnel director, such an officer being subject to removal only by impeachment under this section. Roberts v. People ex rel. Hicks, 77 Colo. 281, 235 P. 1069 (1925).

But speaker of house of representatives not liable to such removal. The speaker of the house of representatives is not a state officer, and is not liable to removal by impeachment. In re Speakership of House of Representatives, 15 Colo. 520, 25 P. 707 (1890).

Provisions of sections 2 and 3 of this article are mutually exclusive: the contention that a state officer can be impeached under this section or, in the alternative, can be removed according to the provisions of a legislative statute contradicts the specific language of section 3 and is inconsistent with the plain and unambiguous language of the article. People ex rel. Losavio v. Gentry, 199 Colo. 212, 606 P.2d 856 (1980).

Applied in Groditsky v. Pinckney, 661 P.2d 279 (Colo. 1983).

Section 3. Officers not subject to impeachment subject to removal. All officers not liable to impeachment shall be subject to removal for misconduct or malfeasance in office in such manner as may be provided by law.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 66.

ANNOTATION

Law reviews. For note, "Impeachment of a State Official", see 8 Rocky Mt. L. Rev. 50 (1935).

"As may be provided by law", when applied to an elective officer whose term of office is definitely fixed, can have no other reference than to constitutional or statutory law. Trimble v. People ex rel. Phelps, 19 Colo. 187, 34 P. 981 (1893); Burkholder v. People ex rel. Nazarene, 59 Colo. 99, 147 P. 347 (1915).

It is obvious that the words "as may be provided by law" must be held to include something more than statutory law, or else some limit must be placed upon the words "all other officers", as used in this section, for, the house of representatives is authorized to choose its other officers as well as the speaker; and it certainly cannot be maintained that the subordinate officers of the house, having once been chosen, and not being liable to impeachment, cannot be removed, however unworthy or unfit they may be, simply because no statute has been provided for their removal. In re Speakership of House of Representatives, 15 Colo. 520, 25 P. 707 (1890).

Speaker of house of representatives is not included in "officers", as used in this section, and hence the power of removal can in no way be affected thereby. In re Speakership of House of Representatives, 15 Colo. 520, 25 P.

707 (1890).

But he is removable at will and pleasure of house. Conceding that the speaker is included in this section, nevertheless, the common parliamentary law, as it existed in this country at the time of the adoption of this constitution, provided that the speaker might be removed at the will and pleasure of the house; and such law, not having been repealed or superseded by any constitutional or statutory enactment, still exists as an adequate provision for the removal of the speaker in conformity to this section. In re Speakership of House of Representatives, 15 Colo. 520, 25 P. 707 (1890).

Police commissioner may be removed under this section, if a statute provides the basis for such action. Trimble v. People ex rel. Phelps, 19 Colo. 187, 34 P. 981 (1893).

Mayor can be removed only for grounds specified in constitution. In re Speakership of House of Representatives, 15 Colo. 520, 25 P. 707 (1890); Trimble v. People ex rel. Phelps, 19 Colo. 187, 34 P. 981 (1893); Bd. of Trustees v. People ex rel. Keith, 13 Colo. App. 553, 59 P. 72 (1899).

Provisions of sections 2 and 3 of this article are mutually exclusive: the contention that a state officer can be impeached under section 2 or, in the alternative, can be removed according to the provisions of a legislative statute contradicts the specific language of this section and is inconsistent with the plain and unambiguous language of the article. People ex rel. Losavio v. Gentry, 199 Colo. 212, 606 P.2d 856 (1980).

Power of recall is cumulative to power of removal. The power to remove public officials pursuant to this article and the power of recall under art. XXI, Colo. Const., are cumulative and concurrent rather than exclusive remedies available to the people. Groditsky v. Pinckney, 661 P.2d 279 (Colo. 1983).

ARTICLE XIV
Counties

Section 1. Counties of state. The several counties of the territory of Colorado as they now exist, are hereby declared to be counties of the state.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 66.
Cross references: For counties generally, see title 30.

ANNOTATION

A county is a political subdivision of the state but cannot be characterized as a division of the state in the same manner as is an administrative department of the executive branch of state government as the two have separate and distinct functions. Nat. Advertising Co. v. Dept. of Highways, 718 P.2d 1038 (Colo. 1986).

Municipalities and counties exist for convenient administration of government and are merely instruments of the state, created to carry out the will of the state. Bd. of County Comm'rs v. City & County of Denver, 150 Colo. 198, 372 P.2d 152 (1962), appeal dismissed, 372 U.S. 226, 83 S. Ct. 679, 9 L. Ed. 2d 714 (1963).

And are not protected against state action by fourteenth amendment. The equal protection clause of the fourteenth amendment of the United States constitution was not designed to protect state instrumentalities such as municipalities and counties against state action, much less against the constitutional right of

the people to alter and abolish their constitution and form of government whenever they may deem it necessary to their safety and happiness. Bd. of County Comm'rs v. City & County of Denver, 150 Colo. 198, 372 P.2d 152 (1962), appeal dismissed, 372 U.S. 226, 83 S. Ct. 679, 9 L. Ed. 2d 714 (1963).

A municipal corporation, created by a state for the better ordering of government, has no privileges or immunities under the federal constitution which it may invoke in opposition to the will of its creator. Bd. of County Comm'rs v. City & County of Denver, 150 Colo. 198, 372 P.2d 152 (1962), appeal dismissed, 372 U.S. 226, 83 S. Ct. 679, 9 L. Ed. 2d 714 (1963).

Counties have only such powers as are delegated to them. Skidmore v. O'Rourke, 152 Colo. 470, 383 P.2d 473 (1963).

Applied in Dixon v. People ex rel. Elliott, 53 Colo. 527, 127 P. 930 (1912).

Section 2. Removal of county seats. The general assembly shall have no power to remove the county seat of any county, but the removal of county seats shall be provided for by general law, and no county seat shall be removed unless a majority of the registered electors of the county, voting on the proposition at a general election vote therefor; and no such proposition shall be submitted oftener than once in four years, and no person shall vote on such proposition who shall not have resided in the county six months and in the election precinct ninety days next preceding such election.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 66. **L. 84:** Entire section amended, p. 1144, effective upon proclamation of the Governor, **L. 85,** p. 1791, January 14, 1985.

Cross references: For location and removal of county seats, see article 8 of title 30.

ANNOTATION

This section requires passage of general law on the subject, the evident purpose of the requirement being that such law shall provide the regulations and prescribe the qualifications and requirements necessary and proper for the exercise of the right under consideration. Alexander v. People ex rel. Schoolfield, 7 Colo. 155, 2 P. 894 (1883).

But limits power of general assembly in respect to such law. The plain, common sense import of the language used in this section indicates an intention to restrict or limit the power of the general assembly in respect to the general law which it was required to pass on the subject. Alexander v. People ex rel. Schoolfield, 7 Colo. 155, 2 P. 894 (1883).

There are four principal limitations upon power of general assembly over the subject of removal of county seats: First, the power to remove a county seat without a vote of the people is taken away. Second, the minimum vote necessary to effect a removal is prescribed. Third, a minimum limit is fixed as to the number of years that must elapse between successive submissions of the question. Fourth, the power of the general assembly is limited as to the qualifications of the voters. Alexander v. People ex rel. Schoolfield, 7 Colo. 155, 2 P. 894 (1883).

Rule as to residence in location of county seat question for general assembly. Whether the same rule as to residence should be adopted in elections for the location of a county seat as in one for the removal of a

county seat is a question for the general assembly. Town of Sugar City v. Bd. of Comm'rs, 57 Colo. 432, 140 P. 809 (1914).

The clause, "The general assembly shall have no power to remove a county seat of any county", has not the remotest relation to the question whether the general assembly may fix the vote, or whether it has been unalterably fixed in the constitution. Its effect is to prohibit the general assembly from removing a county seat without submitting the matter to a vote of the citizens interested. Alexander v. People ex rel. Schoolfield, 7 Colo. 155, 2 P. 894 (1883).

"Qualified electors". Without any accompanying explanation or limitation the term "qualified electors" means those qualified to vote at elections for public officers. Bd. of Comm'rs v. People ex rel. Love, 26 Colo. 297, 57 P. 1080 (1899).

Applied in Bd. of Comm'rs v. People ex rel. Love, 26 Colo. 297, 57 P. 1080 (1899); People ex rel. Roberg v. Bd. of Comm'rs, 86 Colo. 249, 281 P. 117 (1929).

Section 3. Striking off territory - vote. Except as otherwise provided by statute, no part of the territory of any county shall be stricken off and added to an adjoining county, without first submitting the question to the registered electors of the county from which the territory is proposed to be stricken off; nor unless a majority of all the registered electors of said county voting on the question shall vote therefor.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 66. **Initiatied 74:** Entire section was amended, effective upon proclamation of the Governor, December 20, 1974, but does not appear in the session laws. **L. 84:** Entire section amended, p. 1144, effective upon proclamation of the Governor, **L. 85,** p. 1791, January 14, 1985.

Cross references: For annexation of part of a county to an adjoining county, see §§ 30-6-105 to 30-6-109.7.

ANNOTATION

This section does not restrict power of general assembly to create new counties from territory embraced in one or more existing counties. Frost v. Pfeiffer, 26 Colo. 338, 58 P. 147 (1899).

And there is no vested right in existence of a county. Parties claiming to be aggrieved by the detachment of land from a county are not denied due process or equal protection of the law under the federal constitution, since they have no vested right in the existence of the county, which, being an adjunct of the state for administrative purposes, may be increased or diminished in size by the people by constitutional amendment, or under this section of the Colorado constitution. City & County of Denver v. Miller, 151 Colo. 444, 379 P.2d 169 (1963).

The people of the entire state have been and are free to increase or decrease the size of a county, or abolish it altogether by a constitutional amendment or proper legislative act consistent with this section. City & County of Denver v. Miller, 151 Colo. 444, 379 P.2d 169 (1963).

This section is modified and limited by art. XX, Colo. Const. People ex rel. Simon v. Anderson, 112 Colo. 558, 151 P.2d 972 (1944).

Section 1 of art. XX, Colo. Const., modifies and limits this section, insofar as a proposed annexation of territory to the city and county of

Denver is concerned, and such annexation can be effected without the consenting vote of a majority of qualified voters of the county from which the annexed territory is detached. Bd. of County Comm'rs v. City & County of Denver, 150 Colo. 198, 372 P.2d 152 (1962), appeal dismissed, 372 U.S. 226, 83 S. Ct. 679, 9 L. Ed. 2d 714 (1963).

Even if there existed some constitutional restraint in the maintenance of county boundaries, the fact that the annexation provisions of § 1 of art. XX, Colo. Const., apply to the city and county of Denver to the exclusion of other counties would not, on that basis alone, constitute a denial of equal protection of the laws to the people of a neighboring county. Bd. of County Comm'rs v. City & County of Denver, 150 Colo. 198, 372 P.2d 152 (1962), appeal dismissed, 372 U.S. 226, 83 S. Ct. 679, 9 L. Ed. 2d 714 (1963).

Proceedings for annexation of city to city and county of Denver are not governed by this section. Simon v. Arapahoe County, 80 Colo. 445, 252 P. 811 (1927).

Applied in Bd. of County Comm'rs v. City and County of Denver, 714 P.2d 1352 (Colo. App. 1986).

Section 4. New county shall pay proportion of debt. In all cases of the establishment of any new county, the new county shall be held to pay its ratable proportion of all then existing liabilities, of the county or counties from which such new county shall be formed.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 67.

ANNOTATION

Distinction between this and following section. While this and the following section relate to a common subject, viz., the pro rata payment of existing liabilities upon a subdivision of a county or counties, yet they relate to this subject under wholly different circumstances and conditions. A distinct and different rule is likewise provided for each case. This section refers to the liabilities of a new county created out of a part or parts of one or more existing counties. Section 5 has no reference to the formation of a new county, but to the division of an existing county, whereby a portion of its territory is stricken off and added to another existing county. In the first case, the new county, as a distinct organization, is "held to pay its ratable proportion of all then existing liabilities of the county or counties from which such new county shall be formed"; in the second, the original liability of the part stricken off is continued. In re Senate Resolution, 9 Colo. 639, 21 P. 478 (1886).

This construction of this section and the following section is not inconsistent with § 25 of art. II, Colo. Const., and the provisions of this section, being special provisions for specified objects, are not affected by § 12 of art. XV, Colo. Const. In re Senate Resolution, 9 Colo. 639, 21 P. 478 (1886).

General assembly may delegate determination of ratable proportion of existing liability. The general assembly may, should it see fit so to do, "ascertain or determine" the ratable proportion of existing liability to be assumed by the new county. But such ascertainment or determination involves a careful and thorough investigation of the various matters necessarily relating to the subject. And while the general assembly may enter into such investigation, it is eminently proper to remit the same to the

appropriate local authorities under suitable legislation. In re House Bill No. 231, 9 Colo. 624, 21 P. 472 (1886).

There is no provision as to distribution of assets of old county. This section contains a provision requiring that each new county, upon the establishment thereof, shall be made responsible for a ratable proportion of the "then existing liabilities of the county or counties from which such new county shall be formed", but is wholly silent as to the distribution of the assets belonging to the old corporation. Washington County v. Weld County, 12 Colo. 152, 20 P. 273 (1882).

New county not entitled to part of surplus funds of old county. This section requires that each new county, on its establishment, shall be made responsible for a ratable proportion of the "then existing liabilities of the county or counties from which such new county shall be formed". Two counties were carved out of an old one, under acts providing for the enforcement of this mandate, and that "all county records and other property" theretofore belonging to the old county should remain its property. They further provided for a tribunal to adjust and settle all matters of revenue proper to be done on account of the formation of the new county, and to apportion the indebtedness of the old county. Held, that the new counties were not entitled to any part of the surplus funds of the old county. Washington County v. Weld County, 12 Colo. 152, 20 P. 273 (1888).

In the absence of restrictive constitutional or statutory provision, a new county carved from an existing county receives none of the assets and assumes none of the burdens of the parent county. Washington County v. Weld County, 12 Colo. 152, 20 P. 273 (1888).

Section 5. Part stricken off - pay proportion of debt. When any part of a county is stricken off and attached to another county, the part stricken off shall be held to pay its ratable proportion of all then existing liabilities of the county from which it is taken.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 67.

COUNTY OFFICERS

Section 6. County commissioners - election - term. In each county having a population of less than seventy thousand there shall be elected, for a term of four years each, three county commissioners who shall hold sessions for the transaction of county business as provided by law; any two of whom shall constitute a quorum for the transaction of business. Two of said commissioners shall be elected at the general election in the year nineteen hundred and four, and at the general election every four years thereafter; and the other one of said commissioners shall be elected at the general election in the year nineteen hundred and six, and at the general election every four years thereafter; provided, that when the population of any county shall equal or exceed seventy thousand, the board of county commissioners may consist of five members, any three of whom shall constitute a quorum for the transaction of business. Three of said commissioners in said county shall be elected at the general election in the year nineteen hundred and four, and at the general election every four years

thereafter; and the other two of said commissioners in such county shall be elected at the general election in the year nineteen hundred and six and every four years thereafter; and all of such commissioners shall be elected for the term of four years.

This section shall govern, except as hereafter otherwise expressly directed or permitted by constitutional enactment.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 67. **L. 01:** Entire section amended, p. 112. **L. 2000:** Entire section amended, p. 2776, effective upon proclamation of the Governor, **L. 2001,** p. 2391, December 28, 2000.

Cross references: For number of county commissioners in counties having a population of 70,000 or more, see § 1-4-205 (3); for county commissioners, see part 3 of article 10 of title 30; for powers of board of county commissioners, see § 30-11-107.

ANNOTATION

Law reviews. For comment, "Maximum Utilization Collides With Prior Appropriation in A-B Cattle Co. v. United States, 196 Colo. 539, 589 P.2d 57 (1978)", see 57 Den. L.J. 103 (1979).

This section is mandatory as to number of commissioners of counties of less than 70,000. Uzzell v. Anderson, 38 Colo. 32, 89 P. 785 (1906).

The provision of this section adopted at the general election in 1902, by which the number of commissioners in counties of less than 70,000 population was limited to three, did not operate to prevent commissioners elected at that election in counties of less than 70,000, having five commissioners, from qualifying and serving out their terms. Such commissioners were entitled to serve out their terms which by the amendment were extended so as to expire January, 1907, instead of January, 1906. People ex rel. Lankford v. Long, 32 Colo. 486, 77 P. 251 (1904); Long v. People ex rel. Low, 33 Colo. 159, 79 P. 1132 (1905).

But optional as to counties exceeding 70,000. This section, while mandatory as to the number of county commissioners of counties of less than 70,000, by the use of the word "may", when the population of any county shall exceed 70,000, leaves it optional with such counties to have three or five commissioners. Uzzell v. Anderson, 38 Colo. 32, 89 P. 785 (1906).

Language in section is sufficient to provide for county officers named. The language in this section and sections 8 and 11 of this article has been recognized (since its adoption in 1876) as sufficient to provide for the county officers named. Thrush v. People ex rel. Elliott, 53 Colo. 544, 127 P. 937 (1912).

Powers and duties of county commissioners are statutory. County commissioners are constitutional officers. Their duties and powers as a board, are statutory. The board possesses only such powers as are by the constitution and statutes expressly conferred upon it, and, in addition, such implied powers as are reasonably necessary to the proper execution of its express powers. Robbins v. Hoover, 50 Colo. 610, 115 P. 526 (1911); Skidmore v. O'Rourke, 152 Colo. 470, 383 P.2d 473 (1963).

The well-established rule of law is that county commissioners are officers with only delegated powers. Skidmore v. O'Rourke, 152 Colo. 470, 383 P.2d 473 (1963).

Broader powers must be conferred by proper authority. If broader powers are desirable for county officers, they must be conferred by the proper authority. They cannot be

merely assumed by administrative officers; nor can they be created by the courts in the proper exercise of their judicial functions. Skidmore v. O'Rourke, 152 Colo. 470, 383 P.2d 473 (1963).

No consideration of public policy can properly induce a court to reject the statutory definition of the powers of a county officer. Skidmore v. O'Rourke, 152 Colo. 470, 383 P.2d 473 (1963).

County judge is not county officer. The proposal and adoption of this section and sections 8 and 11 of this article, art. XX, Colo. Const., dealing with the city and county of Denver, and §§ 21 and 22 of art. VI, Colo. Const., dealing with district attorneys and county judges, as they now stand, evidence a legislative intent to exclude from the operation of art. XX, Colo. Const., as a county officer, that of county judge. Dixon v. People ex rel. Elliott, 53 Colo. 527, 127 P. 930 (1912).

Sections providing for election of county officers do not apply to city and county of Denver. This section and sections 8 and 11 of this article provide, in effect, that they shall not apply to the city and county of Denver, as the power is therein granted to the people of the city and county of Denver to designate the agencies to perform such functions within that territory. Dixon v. People ex rel. Elliott, 53 Colo. 527, 127 P. 930 (1912).

Applied in People ex rel. Stidger v. Horan, 34 Colo. 304, 86 P. 252 (1905); Sherlock v. District Court, 39 Colo. 41, 88 P. 396 (1906).

Section 7. Officers compensation. (Repealed)

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 67. **L. 68:** Entire section repealed p. 260.

Section 8. County officers - election - term - salary. There shall be elected in each county, at the same time at which members of the general assembly are elected, commencing in the year nineteen hundred and fifty-four, and every four years thereafter, one county clerk, who shall be ex officio recorder of deeds and clerk of the board of county commissioners; one sheriff; one coroner; one treasurer who shall be collector of taxes; one county surveyor; one county assessor; and one county attorney who may be elected or appointed, as shall be provided by law; and such officers shall be paid such salary or compensation, either from the fees, perquisites and emoluments of their respective offices, or from the general county fund, as may be provided by law. The term of office of all such officials shall be four years, and they shall take office on the second Tuesday in January next following their election, or at such other time as may be provided by law.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 67. **L. 01:** Entire section amended, p. 113. **Initiated 55:** Entire section amended, p. 247. **L. 2000:** Entire section amended, p. 2776, effective upon proclamation of the Governor, **L. 2001,** p. 2391, December 28, 2000.

Cross references: For county officers, see article 10 of title 30; for the county attorney, see § 30-11-118.

ANNOTATION

Law reviews. For article, "County Sheriffs in Colorado: Beyond

the Myth", see 38 Colo. Law. 19 (February 2009).

Courts may not confer or limit powers of county officers. In general, the powers and duties of county officers such as the treasurer, are prescribed by the constitution or by statute, or both, and they are measured by the terms and necessary implication of the grant, and must be executed in the manner directed and by the officers specified. If broader powers are desirable, they must be conferred by the proper authority. They cannot be merely assumed by administrative officers; nor can they be created by the courts in the proper exercise of their judicial functions. Skidmore v. O'Rourke, 152 Colo. 470, 383 P.2d 473 (1963).

No consideration of public policy can properly induce a court to reject the statutory definition of the powers of a county officer. Skidmore v. O'Rourke, 152 Colo. 470, 383 P.2d 473 (1963).

It is not a proper function of the judiciary to add to, detract from, or impose other conditions governing actions of treasurers. Skidmore v. O'Rourke, 152 Colo. 470, 383 P.2d 473 (1963).

County treasurers are constitutional officers. Skidmore v. O'Rourke, 152 Colo. 470, 383 P.2d 473 (1963).

But they have no constitutional duties to perform or constitutional authority to do any particular act such as commencing a suit. Skidmore v. O'Rourke, 152 Colo. 470, 383 P.2d 473 (1963).

Their authority is limited to that expressly delegated by general assembly. County treasurers being only administrative agents of the state, their authority is limited to that expressly delegated by the general assembly. Skidmore v. O'Rourke, 152 Colo. 470, 383 P.2d 473 (1963).

County treasurers do not have inherent power to sue taxpayers. Enactments of the general assembly relating to taxation negate any suggestion that county treasurers have inherent, implied or general powers to sue taxpayers for delinquent real estate taxes. Skidmore v. O'Rourke, 152 Colo. 470, 383 P.2d 473 (1963).

County treasurer is collector of taxes. The election of a county assessor and a county treasurer in each county is provided for by this section, and the treasurer is thereby expressly made the collector of taxes. Chase v. Bd. of Comm'rs, 37 Colo. 268, 86 P. 1011 (1906).

The general assembly is without authority to specify qualifications for the office of county assessor in addition to those specified in section 10 of this article. Thus, §§ 12-61-706 and 12-61-714, C.R.S., requiring county assessors to obtain a real estate appraisers license, are unconstitutional. Reale v. Bd. of Real Estate Appraisers, 880 P.2d 1205 (Colo. 1994).

This section does not prescribe duties of county assessors. The constitution creates many offices, the duties of which it does not prescribe, but places no limitation upon the creation of others. Among the former is that of county assessor. State Bd. of Equalization v. Bimetallic Inv. Co., 56 Colo. 512, 138 P. 1010 (1914), aff'd, 239 U.S. 441, 36 S. Ct. 141, 60 L. Ed. 372 (1915).

Under this section, a county assessor is a constitutional officer, and though his duties are left unprescribed, the essential duties of an assessor must be presumed to have been contemplated. People v. Lothrop, 3 Colo. 428 (1877).

Such duties are prescribed by legislative acts. The office of county assessor in each county is created by the constitution, but the duties thereof are prescribed by legislative acts. Weidenhaft v. Bd. of County Comm'rs, 131 Colo. 432, 283

P.2d 164 (1955); Bartlett & Co. v. Bd. of County Comm'rs, 152 Colo. 388, 382 P.2d 193 (1963).

The general assembly may adopt a plan whereby the work of assessors may be corrected, supplemented, added to or changed. Weidenhaft v. Bd. of County Comm'rs, 131 Colo. 432, 283 P.2d 164 (1955).

Duties of county assessors. It not only is the duty of the assessor to see to it that all property within his county is returned for tax assessment, and to finally fix the valuation upon each item for that purpose, but he further is obligated to undertake, so far as within his power and judgment, to see to it that taxes shall be uniformly assessed within his county. Bartlett & Co. v. Bd. of County Comm'rs, 152 Colo. 388, 382 P.2d 193 (1963).

No authority is conferred by the constitution upon assessors to perform duties other than the duties of county assessors. These duties he must perform within his county, and must assess all of the taxable property in his county, unless that power is taken away and lodged elsewhere by virtue of some legislation enacted under express authority of the constitution. The only power so conferred is that which authorizes the state and county boards of equalization to perform such other duties as may be prescribed by law. No authority whatever is found in the constitution empowering an assessor to perform the duties of his office outside of the county for which he was elected. The general assembly was wholly without power or authority to clothe the assessors of the state as a body with the right to select and appoint 13 of their number to do an act which they could not do by virtue of their office as county assessors under the provisions of the constitution. Union P. R. R. v. Alexander, 113 F. 347 (D. Colo. 1901).

Control of property valuation may not be taken from assessors. In view of this provision and of other constitutional limitations it may be gravely doubted whether it is competent for the legislative authority to take from county assessors the substantial control of valuations of property for state taxation, and vest it in a central authority. People v. Lothrop, 3 Colo. 428 (1877).

The duty of listing and valuing all taxable property devolves upon the assessor, and him alone. Bartlett & Co. v. Bd. of County Comm'rs, 152 Colo. 388, 382 P.2d 193 (1963).

But railroad property may be assessed by board other than county assessor. This section in merely providing for the election of county assessors in each county does not inhibit the general assembly from passing a law authorizing the assessment of railroad property by some other tribunal or board if, in its wisdom, it determines that thereby a just valuation of this class of property may best be secured, and if the act on its face is not palpably ineffectual to accomplish that object. Ames v. People ex rel. Temple, 26 Colo. 83, 56 P. 656 (1899); Chase v. Bd. of Comm'rs, 37 Colo. 268, 86 P. 1011 (1906).

And tax commission may assess certain classes of property. The tax commission has authority to make original assessment of certain classes of property and can require the proper officials to make like assessments of all other property. Weidenhaft v. Bd. of County Comm'rs, 131 Colo. 432, 283 P.2d 164 (1955).

The constitutionality of the statutes pursuant to which the tax commission functions have been established with respect to this section. Weidenhaft v. Bd. of County Comm'rs, 131 Colo. 432, 283 P.2d 164 (1955).

Because assessor does not have sole authority to assess property. While the office of assessor is stipulated by the constitution, the general assembly is not inhibited from passing a law placing the fixing of valuation for assessment of certain

properties under another authority. Generally, control of matters of taxation is plenary to the legislative branch of the government, unless restricted by some constitutional provision; this section is not such a limitation, and the assessor is not thereby clothed with the sole authority of assessing property. Weidenhaft v. Bd. of County Comm'rs, 131 Colo. 432, 283 P.2d 164 (1955).

Section does not make office of county attorney either elective or appointive. This section created the office of county attorney, but it did not determine whether it was to be an elective or an appointive office, the purpose being simply to provide for the time of the election, if the general assembly made it an elective office. There is no act of the general assembly upon the subject, and, in the absence of legislation, there is no means provided for filling the office. Therefore, there is, until the general assembly determines whether the office is elective or appointive, in effect no such office as that of county attorney proper, and the statute which authorizes county commissioners to employ counsel has not been superseded by this section. People v. Lindsley, 37 Colo. 476, 86 P. 352 (1906).

Issuance of permits for concealed weapons not within police chief's inherent powers. The issuance of permits for concealed weapons does not fall within the category of inherent powers of a police chief or a sheriff, who can fully perform his functions without this power. Douglass v. Kelton, 199 Colo. 446, 610 P.2d 1067 (1980).

Deputy sheriff is not a county officer but a county employee serving under the sheriff. Soeley v. Bd. of Co. Comm's, 654 F. Supp. 1309 (D. Colo. 1987).

When the general assembly enacted the original sheriff training statute in 1990, § 30-10-101.5, it lacked authority to impose any qualifications on the constitutionally created office of county sheriff. Jackson v. State, 966 P.2d 1046 (Colo. 1998).

Because the original sheriff training statute sought to impose qualifications for the job of sheriff in the form of certification requirements, it was unconstitutional. Jackson v. State, 966 P.2d 1046 (Colo. 1998).

The training and certification requirements contained in the reenacted sheriff training statute passed by the general assembly in 1996 could not be applied to county sheriff during a term of office that began before the effective date of the new requirements. Jackson v. State, 966 P.2d 1046 (Colo. 1998).

Applied in Mannix v. Selbach, 3l Colo. 502, 74 P. 460 (1903); People ex rel. Stidger v. Horan, 34 Colo. 304, 86 P. 252 (1905); People ex rel. Smith v. Crissman, 41 Colo. 450, 92 P. 949 (1907); City & County of Denver v. Pitcher, 54 Colo. 203, 129 P. 1015 (1913); People ex rel. State Bd. of Equalization v. Pitcher, 56 Colo. 343, 138 P. 509 (1914); Goldsmith v. Standard Chem. Co., 23 F.2d 313 (8th Cir. 1927); Allardice v. Adams County, 173 Colo. 133, 476 P.2d 982 (1970).

Section 8.5. Sheriff - qualifications. The general assembly shall have the authority to establish by law qualifications for the office of county sheriff, including but not limited to training and certification requirements.

Source: L. 96: Entire section added, p. 1889, effective upon proclamation of the Governor, **L. 97,** p. 2392, December 26, 1996.

ANNOTATION

Law reviews. For article, "County Sheriffs in Colorado: Beyond the Myth", see 38 Colo. Law. 19 (February 2009).

When the general assembly enacted the original sheriff training statute in 1990, § 30-10-101.5, it lacked authority to impose any qualifications on the constitutionally created office of county sheriff. Jackson v. State, 966 P.2d 1046 (Colo. 1998).

Because the original sheriff training statute sought to impose qualifications for the job of sheriff in the form of certification requirements, it was unconstitutional. Jackson v. State, 966 P.2d 1046 (Colo. 1998).

The training and certification requirements contained in the reenacted sheriff training statute passed by the general assembly in 1996 could not be applied to county sheriff during a term of office that began before the effective date of the new requirements. Jackson v. State, 966 P.2d 1046 (Colo. 1998).

Section 8.7. Coroner - qualifications. The general assembly shall have the authority to establish by law qualifications for the office of county coroner, including but not limited to training and certification requirements.

Source: L. 2002: Entire section added, p. 3093, effective upon proclamation of the Governor, **L. 2003,** p. 3610, December 20, 2002.

Section 9. Vacancies - how filled. In case of a vacancy occurring in the office of county commissioner a vacancy committee of the same political party as the vacating commissioner constituted as provided by law shall, by a majority vote, fill the vacancy by appointment within ten days after occurrence of the vacancy. If the vacancy committee fails to fill the vacancy within ten days after occurrence of the vacancy, the governor shall fill the same by appointment within fifteen days after occurrence of the vacancy. The person appointed to fill a vacancy in the office of county commissioner shall be a member of the same political party, if any, as the vacating commissioner. In case of a vacancy in any other county office, or in any precinct office, the board of county commissioners shall fill the same by appointment. Any person appointed pursuant to this section shall hold the office until the next general election, or until the vacancy is filled by election according to law.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 67. **L. 78:** Entire section amended, p. 527, effective upon proclamation of the Governor, **L. 79,** p. 1671, December 29, 1978.

Cross references: For vacancies in office due to refusal or neglect to qualify for such office, see § 10 of article XII of this constitution.

ANNOTATION

This section refers only to elected officers. Walsh v. People ex rel. McClenahan, 72 Colo. 406, 211 P. 646 (1922).

It is self-executing. This section empowers the governor to make designated appointments in case of vacancies, which appointees, in turn, are authorized to fill all others in county and precinct offices, a provision

which is self-executing, and can be resorted to independent of any statutory provision. Frost v. Pfeiffer, 26 Colo. 338, 58 P. 147 (1899).

It applies to county treasurers. The power to fill a vacancy in the office of county treasurers is lodged in the board of county commissioners by this section. In re House Bill No. 38, 9 Colo. 631, 21 P. 474 (1886).

And to assessors and coroners. This section provides, in effect, that in case of a vacancy in the office of assessor or coroner, the board of county commissioners shall fill such vacancy by appointment, and that the persons so appointed shall hold office until the next "general election", when, according to the plain intendment of the law, the terms of such appointees expire and their successors must be elected. Mannix v. Selbach, 31 Colo. 502, 74 P. 460 (1903).

Vacancy applies to term or office or both. Vacancy applies not to the incumbent, but to the term, or to the office, or both, whether to the term, or to the office, or both, depending generally upon the context. People v. Quimby, 152 Colo. 231, 381 P.2d 275 (1963).

A new vacancy exists when one term expires and new term of office begins. People v. Quimby, 152 Colo. 231, 381 P.2d 275 (1963).

Appointee holds until next general election if no new term intervenes. An appointee to fill a vacancy under this section holds until the next general election, if no new term intervenes between the time of his appointment and the time of such election. People ex rel. Callaway v. DeGuelle, 47 Colo. 13, 105 P. 1110 (1909); People v. Quimby, 152 Colo. 231, 381 P.2d 275 (1963).

But if new term commences during interval, term of appointee ends. If a new term commences during the interval between the time of appointment to fill a vacancy and the time of the next general election the term of the appointee ends and the one entitled to the new term has a right thereto. People ex rel. Callaway v. DeGuelle, 47 Colo. 13, 105 P. 1110 (1909); People v. Quimby, 152 Colo. 231, 381 P.2d 275 (1963).

Term of appointee does not extend beyond term in which vacancy occurred. Where a county commissioner is re-elected to a new four-year term and dies following his election, an appointment by the governor to fill the vacancy "until the next general election" does not extend beyond the term in which the vacancy occurred. People v. Quimby, 152 Colo. 231, 381 P.2d 275 (1963).

Death before qualification of one entitled to new term leaves vacancy. If one entitled to the new term on the arrival of the term does not appear and qualify, though the reason thereof be death, there is a vacancy in the office for the term. People ex rel. Callaway v. DeGuelle, 47 Colo. 13, 105 P. 1110 (1909); People v. Quimby, 152 Colo. 231, 381 P.2d 275 (1963).

The county clerk elect, dying before qualification, a vacancy in the office occurs on the expiration of the term of the then incumbent, to be filled by appointment of the county commissioners. Gibbs v. People ex rel. Watts, 66 Colo. 414, 182 P. 894 (1919).

Until appointment is made, incumbent of previous term holds over. Where there is a vacancy in an office for the term, until an appointment is made, the incumbent of the previous term holds over. People ex rel. Callaway v. DeGuelle, 47 Colo. 13, 105 P. 1110 (1909); People v. Quimby, 152 Colo. 231, 381 P.2d 275 (1963).

But when appointment is made and appointee qualifies, rights of incumbent are ended. When an appointment is made, and the appointee qualifies, the previous term, and the rights of the incumbent to the office, are ended. People ex rel. Callaway v. DeGuelle, 47 Colo. 13, 105 P. 1110

(1909); People v. Quimby, 152 Colo. 231, 381 P.2d 275 (1963).

Right to office is contingent upon qualifying. Considering together this section and § 10 of art. XII, Colo. Const., and giving to each the meaning which the language necessarily implies, it is clear that when a person is elected to a term, under the constitution, a contingent or inchoate right to the office is vested in him, which becomes absolute upon his qualification. He is elected to the term and no one else can enter therein until he is ousted therefrom, which can never be until the commencement of the term. When he does not qualify, the contingent right is gone. People v. Quimby, 152 Colo. 231, 381 P.2d 275 (1963)

There is no one legally entitled to a term, and when the date of the term arrives there is a vacancy under the Colorado constitution, though there be some one actually and legally performing the duties of the office. People v. Quimby, 152 Colo. 231, 381 P.2d 275 (1963).

Appointee has same rights as predecessor. A person elected or appointed to fill a vacancy in an unexpired term of a public office, such as sheriff, holds precisely as his predecessor would have held had he continued in office, and in no other way; and has the same rights, and none other, that such predecessor would have had. People v. Quimby, 152 Colo. 231, 381 P.2d 275 (1963).

Applied in People v. Rucker, 5 Colo. 455 (1877); People v. Wright, 6 Colo. 92 (1881).

Section 10. Elector only eligible to county office. No person shall be eligible to any county office unless he shall be a qualified elector; nor unless he shall have resided in the county one year preceding his election.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 68.

ANNOTATION

"Eligible" refers to capacity of holding office. The word "eligible" as used in constitutions and statutes has reference to the capacity not of being elected to office, but of holding office, and that, therefore, if qualified at the time of commencement of the term or induction into office, disqualification of the candidate at the time of election or appointment is immaterial. Cox v. Starkweather, 128 Colo. 89, 260 P.2d 587 (1953).

The general assembly is without authority to specify qualifications for the office of county assessor in addition to those specified in this section. Thus, §§ 12-61-706 and 12-61-714, C.R.S., requiring county assessors to obtain a real estate appraisers license, are unconstitutional. Reale v. Bd. of Real Estate Appraisers, 880 P.2d 1205 (Colo. 1994).

Notary public is county officer within meaning of section. This section makes ineligible to hold any county office every person who is not a qualified elector. A notary public, while holding his office by the appointment of the governor, can exercise the functions thereof only in the county for which he is appointed. In this sense he is a county officer. In re House Bill No. 166, 9 Colo. 628, 21 P. 473 (1895).

When the general assembly enacted the original sheriff training statute in 1990, § 30-10-101.5, it lacked authority to impose any qualifications on the constitutionally created office of county sheriff. Jackson v. State, 966 P.2d 1046 (Colo. 1998).

Because the original sheriff training statute sought to impose

qualifications for the job of sheriff in the form of certification requirements, it was unconstitutional. Jackson v. State, 966 P.2d 1046 (Colo. 1998).

The training and certification requirements contained in the reenacted sheriff training statute passed by the general assembly in 1996 could not be applied to county sheriff during a term of office that began before the effective date of the new requirements. Jackson v. State, 966 P.2d 1046 (Colo. 1998).

Section 11. Justices of the peace - constables. (Repealed)

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 68. **L. 01:** Entire section amended, p. 114. **L. 62:** Entire section repealed, effective January 12, 1965, see **L. 63,** p. 1055.

Section 12. Other officers. The general assembly shall provide for the election or appointment of such other county officers and such municipal officers of statutory cities and towns as public convenience may require; and their terms of office shall be as prescribed by statute.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 68. **L. 69:** Entire section R&RE, p. 1250, effective January 1, 1972.

ANNOTATION

Powers and duties of county officers are prescribed by constitution or by statute, or both, and they are measured by the terms and necessary implication of the grant, and must be executed in the manner directed and by the officer specified. Skidmore v. O'Rourke, 152 Colo. 470, 383 P.2d 473 (1963).

Broader powers must be conferred by proper authority. If broader powers are desirable for county officers, they must be conferred by the proper authority. They cannot be merely assumed by administrative officers; nor can they be created by the courts in the proper exercise of their judicial functions. Skidmore v. O'Rourke, 152 Colo. 470, 383 P.2d 473 (1963).

No consideration of public policy can properly induce a court to reject the statutory definition of the powers of a county officer. Skidmore v. O'Rourke, 152 Colo. 470, 383 P.2d 473 (1963).

General assembly has plenary power to create municipal offices. Municipal corporations are created by law, partly as the agents of the state, but chiefly to administer the local affairs of the territory incorporated; and the general assembly, in the absence of constitutional limitations, has plenary power to adopt for their government such measures as, in its judgment, best accomplish the purpose for which they are created, including the creation and manner of filling municipal offices, as provided by this section. People ex rel. Johnson v. Earl, 42 Colo. 238, 94 P. 294 (1908).

There is no constitutional provision expressly withholding from the general assembly power to authorize the appointment by the governor of such municipal officers as are contemplated by an act providing for the creation of a board of public works for the city of Denver. In re Senate Bill, 12 Colo. 188, 21 P. 481 (1888).

"Municipal", as used in this section, is not confined to counties, townships and the like. In re Senate Bill, 12 Colo. 188, 21 P. 481 (1888).

"Corporate authorities". Under the provisions of this section, the term "corporate authorities" includes appointees to municipal offices. Milheim v. Moffat Tunnel Imp. Dist., 72 Colo. 268, P. 649 (1922), aff'd 262 U.S. 710, 43 S. Ct. 694, 67 L. Ed. 1194 (1923).

Public trustee is county officer since the powers and duties of public trustees are all the same and are performed within his county and relate solely to property situated therein. Dixon v. People ex rel. Elliott, 53 Colo. 527, 127 P. 930 (1912); Walsh v. People ex rel. McClenahan, 72 Colo. 406, 211 P. 646 (1922); People ex rel. Fairall v. Sabin, 75 Colo. 545, 227 P. 565 (1924).

Applied in Union P. R. R. v. Alexander, 113 F. 347 (D. Colo. 1901); People ex rel. Smith v. Crissman, 41 Colo. 450, 92 P. 949 (1907); Chambers v. People ex rel. Starer, 70 Colo. 496, 202 P. 1081 (1921); People ex rel. Rogers v. Letford, 102 Colo. 284, 79 P.2d (1938).

Section 13. Classification of cities and towns. The general assembly shall provide, by general laws, for the organization and classification of cities and towns. The number of such classes shall not exceed four; and the powers of each class shall be defined by general laws, so that all municipal corporations of the same class shall possess the same powers and be subject to the same restrictions.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 68.
Cross references: For classification of municipalities, see § 31-1-201.

ANNOTATION

Law reviews. For article, "Annexation in Colorado", see 37 Dicta 259 (1960).

Intent of section. This section indicates intent to preserve state sovereignty over cities and towns. City & County of Denver v. Sweet, 138 Colo. 41, 329 P.2d 441 (1958).

The object to be attained by this section was to prevent the granting by the general assembly of any special charters to cities and towns, to provide for a classification of all existing cities and towns, and to provide a uniform municipal code of laws for the government of all such corporations of the same class. People ex rel. Johnson v. Earl, 42 Colo. 238, 94 P. 294 (1908).

"Powers" and "restrictions". The "powers" and "restrictions" contemplated by this section are manifestly such powers and restrictions as relate to subjects pertaining to local self-government, such as may be designated as strictly corporate municipal subjects, as distinguished from such subjects as involve the relations of the citizens or the cities and towns to the state. People ex rel. Johnson v. Earl, 42 Colo. 238, 94 P. 294 (1908).

General assembly may exercise almost plenary power over cities and towns. By this and the following section the whole subject of towns and cities is, with two slight limitations, relegated to the general assembly. In connection with such municipal corporations, that body is, by these provisions, left to exercise almost plenary power. It determines the mode of organization, and provides for all matters pertaining to government, including the number and kind of officers, their election or appointment, and duties. It may or may not, at its option, create the office of mayor. People ex rel. Barton v. Londoner, 13 Colo. 303, 22 P. 764 (1889).

Statutory cities and towns

derive their sole powers from constitutional authority which must be defined by general law. City of Aurora v. Bogue, 176 Colo. 198, 489 P.2d 1295 (1971).

As do incorporated towns. Incorporated towns derive their sole powers from constitutional authority, and these must be defined by general laws. Eckley v. Meyers, 116 Colo. 536, 181 P.2d 1014 (1947); Town of Eaton v. Bouslog, 133 Colo. 130, 292 P.2d 343 (1956).

Statutes granting powers to cities and towns must be strictly construed and no powers may be exercised except those which are expressly conferred, or which exist by necessary implication. City of Aurora v. Bogue, 176 Colo. 198, 489 P.2d 1295 (1971); City of Sheridan v. City of Englewood, 199 Colo. 348, 609 P.2d 108 (1980).

If a doubt exists as to a municipality's power, that doubt must be resolved against the municipality. City of Aurora v. Bogue, 176 Colo. 198, 489 P.2d 1295 (1971).

Cities and towns classified. The general assembly, pursuant to this provision, classified cities and towns into cities of the first and second class and incorporated towns; cities of the first class having a population of 15,000 inhabitants and upwards; cities of the second class having a population exceeding 2,000 and less than 15,000; and incorporated towns having less than 2,000 population. People ex rel. Johnson v. Earl, 42 Colo. 238, 94 P. 294 (1908).

Different powers and restrictions may be granted to different classes of municipal cities. And there is clear constitutional authority for bestowing upon one class, within certain limits, exclusive legislative control over a given subject pertaining to local self-government, while another class is allowed only concurrent power in connection therewith. Rogers v. People, 9 Colo. 450, 12 P. 843 (1886).

General assembly cannot fix municipal boundaries by general law. The general assembly cannot, by general law, fix the boundaries of towns and cities that may be thereafter incorporated under it. The operation of such general law must necessarily be made to depend upon contingencies, and the power to take the initiative steps to bring the law into operation upon the happening of the contingent event must be delegated to some body or persons. This power arises under the general rule that when a constitution gives a general power, or enjoins a duty, it also gives, by implication, every particular power necessary for the exercise of the one or the performance of the other. People ex rel. Rhodes v. Fleming, 10 Colo. 553, 16 P. 298 (1887).

The passing of a general law is the limit of the power expressly conferred upon the general assembly for the organization of cities and towns, and, in passing such law, it has exercised all the legislative authority it can exercise at that time; but, in providing for the means for carrying the law into effect, it must of necessity confer upon some bodies or individuals the power to do such acts as could not be done by it. The fixing of the boundaries of such cities and towns is among the acts that must be performed by and through such conferred power. People ex rel. Rhodes v. Fleming, 10 Colo. 553, 16 P. 298 (1887).

The power to fix boundaries conferred upon the petitioners and the county court, and the clerk of said court, and upon the electors of the territory within the limits of the proposed city or town, is not a delegation of legislative authority, because it can in no sense be said to confer upon such individuals the power to make laws, in that it does not confer upon them the power to do that which the constitution requires of the general assembly to do. People ex rel. Rhodes

v. Fleming, 10 Colo. 553, 16 P. 298 (1887).

Special laws as to organization of towns and cities are prohibited. By virtue of this section it is determined by the sovereign power that a general law for the organization of cities and towns can be made applicable, and it necessarily follows that all special laws upon that subject are prohibited. People ex rel. Rhodes v. Fleming, 10 Colo. 553, 16 P. 298 (1887).

It is apparent from this and the following section and the inhibition against special laws, § 25 of art. V, Colo. Const., first, that the general assembly is prohibited from granting a special charter to any city or town; second, it is required to provide by general law for the incorporation of cities and towns. In re Constitutionality of Senate Bill No. 293, 21 Colo. 38, 39 P. 522 (1895).

Unless city not subject to general law relating to corporations. This and the folowing section do not prohibit the passing of a special act to amend a city charter, granted by a local act passed prior to the adoption of the constitution, where such city has not elected to become subject to, and to be governed by, the general law relating to corporations. Carpenter v. People ex rel. Tilford, 8 Colo. 116, 5 P. 828 (1884).

In view of this section it was no doubt the intention of the framers of the constitution that cities and towns, organized after its adoption, should be organized under general and not special laws. But that it was not intended to interfere with the city of Denver, and other cities and towns acting under special charters previously granted by the territorial legislature, is apparent from the following section. Brown v. City of Denver, 7 Colo. 305, 3 P. 455 (1884).

This section does not prohibit dissolution of towns and cities organized by any appropriate exercise of legislative power. Mayor of Valverde v. Shattuck, 19 Colo. 104, 34 P. 947 (1893).

The object being to free all towns and cities from local or special legislation, it is clear that the inhibition of this section must be held to extend to the disincorporation, as well as the incorporation of such cities and towns. In re Extension of Boundaries, 18 Colo. 288, 32 P. 615 (1893).

Applied in McInerney v. City of Denver, 17 Colo. 302, 29 P. 516 (1892); City of Denver v. Coulehan, 20 Colo. 471, 39 P. 425 (1894); Kirkpatrick v. People ex rel. Stanley, 66 Colo. 100, 179 P. 338 (1919); Milheim v. Moffat Tunnel Imp. Dist., 72 Colo. 268, 211 P. 649 (1922), aff'd, 262 U.S. 710, 43 S. Ct. 694, 67 L. Ed. 1194 (1923); Georgetown v. Bank of Idaho Springs, 99 Colo. 519, 64 P.2d 132 (1936); People ex rel. Rogers v. Letford, 102 Colo. 284, 79 P.2d 274 (1938).

Section 14. Existing cities and towns may come under general law. The general assembly shall also make provision, by general law, whereby any city, town or village, incorporated by any special or local law, may elect to become subject to and be governed by the general law relating to such corporations.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 68.

Cross references: For the reorganization of cities or towns incorporated by special charter, see § 31-2-301.

ANNOTATION

General assembly may exercise almost plenary power over

cities and towns. By this and the preceding section the whole subject of towns and cities is, with two slight limitations, relegated to the general assembly. In connection with such municipal corporations, that body is, by these provisions, left to exercise almost plenary power. It determines the mode of organization, and provides for all matters pertaining to government, including the number and kind of officers, their election or appointment, and duties. It may or may not, at its option, create the office of mayor. People ex rel. Barton v. Londoner, 13 Colo. 303, 22 P. 764 (1889).

The classification and powers of incorporated towns are governed by general laws. Town of Eaton v. Bouslog, 133 Colo. 130, 292 P.2d 343 (1956).

Town not under general law limited to charter powers. Where a town does not elect to become subject to laws passed under section 13 of this article, its original charter is the sole measure of its powers, rights and liabilities except insofar as the charter has been amended or is in conflict with the constitution. Georgetown v. Bank of Idaho Springs, 99 Colo. 519, 64 P.2d 132 (1936).

This section neither abrogates special charters nor exempts them from amendments. The city of Denver was organized and existing under and by virtue of a special charter long before and at the time of the adoption of our state constitution. The constitution did not abrogate such charters, nor does it exempt them from legislative amendments. Brown v. City of Denver, 7 Colo. 305, 3 P. 455 (1884); City of Denver v. Coulehan, 20 Colo. 471, 39 P. 425 (1894).

This section has been construed as an express constitutional recognition of the right to amend as well as to retain existing special charters. Brown v. City of Denver, 7 Colo. 305, 3 P. 455 (1884); Carpenter v. People ex rel. Tilford, 8 Colo. 116, 5 P. 828 (1884); Darrow v. People ex rel. Norris, 8 Colo. 426, 8 P. 924 (1885); People ex rel. Barton v. Londoner, 13 Colo. 303, 22 P. 764 (1889); In re Extension of Boundaries, 18 Colo. 288, 32 P. 615 (1893).

Applied in People ex rel. Johnson v. Earl, 42 Colo. 238, 94 P. 294 (1908); Kirkpatrick v. People ex rel. Stanley, 66 Colo. 100, 179 P. 338 (1919); People ex rel. Rogers v. Letford, 102 Colo. 284, 79 P.2d 274 (1938).

Section 15. Compensation and fees of county officers. The general assembly shall fix the compensation of county officers in this state by law, and shall establish scales of fees to be charged and collected by such county officers. All such fees shall be paid into the county general fund.

When fixing the compensation of county officers, the general assembly shall give due consideration to county variations, including population; the number of persons residing in unincorporated areas; assessed valuation; motor vehicle registrations; building permits; military installations; and such other factors as may be necessary to prepare compensation schedules that reflect variations in the workloads and responsibilities of county officers and in the tax resources of the several counties.

The compensation of any county officer shall be increased or decreased only when the compensation of all county officers within the same county, or when the compensation for the same county officer within the several counties of the state, is increased or decreased.

County officers shall not have their compensation increased or

decreased during the terms of office to which they have been elected or appointed.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 68. **L. 68:** Entire section R&RE, p. 260. **L. 2000:** Entire section amended, p. 2777, effective upon proclamation of the Governor, **L. 2001,** p. 2391, December 28, 2000.

Cross references: For compensation of county and other officers, see article 2 of title 30.

ANNOTATION

Law reviews. For article, "Colorado Constitutional Amendments: An Analysis", see 3 Den. B. Ass'n Rec. 4 (Nov. 1926).

Annotator's note. Cases relevant to § 15 of art. XIV, Colo. Const., decided prior to its amendment in 1968 have been included in the annotations to § 15 of art. XIV, Colo. Const.

"Law". The word "law", as used in this section, is not synonymous with "act". The "law" means here law in a general sense -- whatever has been enacted by the general assembly, whether it is embodied in one act or in any number of acts; and so far as the use of the term "law" in this section is concerned, it cannot be construed as compelling the general assembly to embody in one act provisions for fees and salaries. Airy v. People, 21 Colo. 144, 40 P. 362 (1895).

Authority to fix compensation for county officers is vested exclusively in general assembly. Van Cleave v. Bd. of County Comm'rs, 33 Colo. App. 227, 518 P.2d 1371 (1973).

Any attempt to alter a sheriff's salary during his or her term of office contravenes the mandate of the Colorado Constitution. Jackson v. State, 966 P.2d 1046 (Colo. 1998).

This section is not self-executing. Legislation was required to give it effect. Glaister v. Bd. of County Comm'rs, 22 Colo. App. 326, 123 P. 955 (1912).

Elimination of illegal housing allowance not violative of section. Because housing allowance paid to sheriff-jailer was unauthorized and illegal, its elimination did not violate constitutional prohibitions against salary or compensation reduction during the term of office of a public official. Van Cleave v. Bd. of County Comm'rs, 33 Colo. App. 227, 518 P.2d 1371 (1973).

Judge of county court is liable to account to county for fees received by him under the authority of the acts of congress, for oaths administered, affidavits taken, and proofs made before him, in his official capacity, relating to the entry of public lands, even though such services could not have been compelled, nor the officer required to exact or collect the fee. That the fee prescribed by the act of congress is less than that prescribed by the statute of the state is not material. Glaister v. Bd. of County Comm'rs, 22 Colo. App. 326, 123 P. 955 (1912).

Section 16. County home rule. (1) Notwithstanding the provisions of sections 6, 8, 9, 10, 12, and 15 of this article, the registered electors of each county of the state are hereby vested with the power to adopt a home rule charter establishing the organization and structure of county government consistent with this article and statutes enacted pursuant hereto.

(2) The general assembly shall provide by statute procedures under

which the registered electors of any county may adopt, amend, and repeal a county home rule charter. Action to initiate home rule may be by petition, signed by not less than five percent of the registered electors of the county in which home rule is sought, or by any other procedure authorized by statute. No county home rule charter, amendment thereto, or repeal thereof, shall become effective until approved by a majority of the registered electors of such county voting thereon.

(3) A home rule county shall provide all mandatory county functions, services, and facilities and shall exercise all mandatory powers as may be required by statute.

(4) A home rule county shall be empowered to provide such permissive functions, services, and facilities and to exercise such permissive powers as may be authorized by statute applicable to all home rule counties, except as may be otherwise prohibited or limited by charter or this constitution.

(5) The provisions of sections 6, 8, 9, 10, 12, and 15 of article XIV of this constitution shall apply to counties adopting a home rule charter only to such extent as may be provided in said charter.

Source: L. 69: Entire section added, p. 1247, effective January 1, 1972. **L. 84:** (1) and (2) amended, p. 1144, effective upon proclamation of the Governor, **L. 85,** p. 1791, January 14, 1985.

Section 17. Service authorities. (1) (a) The general assembly shall provide by statute for the organization, structure, functions, services, facilities, and powers of service authorities pursuant to the following requirements:

(b) A service authority may be formed only upon the approval of a majority of the registered electors voting thereon in the territory to be included.

(c) The territory within a service authority may include all or part of one county or home rule county or all or part of two or more adjoining counties or home rule counties, but shall not include only a part of any city and county, home rule city or town, or statutory city or town at the time of formation of the service authority. No more than one service authority shall be established in any territory and, in no event, shall a service authority be formed in the metropolitan area composed of the city and county of Denver, and Adams, Arapahoe, and Jefferson counties which does not include all of the city and county of Denver and all or portions of Adams, Arapahoe, and Jefferson counties.

(d) The boundaries of any service authority shall not be such as to create any enclave.

(e) No territory shall be included within the boundaries of more than one service authority.

(2) (a) The general assembly shall also provide by statute for:

(b) The inclusion and exclusion of territory in or from a service authority;

(c) The dissolution of a service authority;

(d) The merger of all or a part of two or more adjacent service authorities, except that such merger shall require the approval of a majority of the registered electors voting thereon in each of the affected service authorities;

and,

(e) The boundaries of any service authority or any special taxing districts therein or the method by which such boundaries are to be determined or changed; and

(f) The method for payment of any election expenses.

(3) (a) The general assembly shall designate by statute the functions, services, and facilities which may be provided by a service authority, and the manner in which the members of the governing body of any service authority shall be elected from compact districts of approximately equal population by the registered electors of the authority, including the terms and qualifications of such members. The general assembly may provide that members of the governing body may be elected by a vote of each compact district or by an at-large vote or combination thereof. Notwithstanding any provision in this constitution or the charter of any home rule city and county, city, town, or county to the contrary, mayors, councilmen, trustees, and county commissioners may additionally hold elective office with a service authority and serve therein either with or without compensation, as provided by statute.

(b) A service authority shall provide any function, service, or facility designated by statute and authorized as provided in paragraphs (c) and (d) of this subsection.

(c) All propositions to provide functions, services, or facilities shall be submitted, either individually or jointly, to the registered electors in the manner and form prescribed by law.

(d) Each such function, service, or facility shall be authorized if approved by a majority of the registered electors of the authority voting thereon; but if the service authority includes territory in more than one county, approval shall also require a majority of the registered electors of the authority voting thereon in those included portions of each of the affected counties.

(e) Notwithstanding the provisions of paragraphs (b), (c), and (d) of this subsection, where, upon formation of a service authority, any function, service, or facility is already being provided in at least four counties or portions thereof by a single special district, regional planning commission or metropolitan council, or an association of political subdivisions, the general assembly may provide, without a vote of the registered electors, for assumption by one or more service authorities of such function, service, or facility.

(f) Notwithstanding the provisions of paragraphs (b), (c), and (d) of this subsection, a service authority may contract with any other political subdivision to provide or receive any function, service, or facility designated by statute; but a service authority shall not be invested with any taxing power as a consequence of such contract.

(4) (a) A service authority shall be a body corporate and a political subdivision of the state.

(b) Any other provision of this constitution to the contrary notwithstanding, any service authority formed under this article and the statutes pursuant thereto may exercise such powers to accomplish the purposes and to provide the authorized functions, services, and facilities of such authority as the

general assembly may provide by statute.

(c) Notwithstanding the provisions of article XX of this constitution, any authorized function, service, or facility may be provided exclusively by the authority or concurrently with other jurisdictions as may be prescribed by statute, subject to the provisions of subsections (3) (c), (3) (d), (3) (e), and (3) (f) of this section.

Source: L. 69: Entire section added, p. 1247, effective January 1, 1972. **L. 84:** (1)(b), (2)(d), (3)(a), and (3)(c) to (3)(e) amended, p. 1144, effective upon upon proclamation of the Governor, **L. 85,** p. 1791, January 14, 1985. **L. 2000:** (3)(a) amended, p. 2777, effective upon proclamation of the Governor, **L. 2001,** p. 2391, December 28, 2000.

ANNOTATION

Power to create service authority originates in this section. In re Reg'l Serv. Auth. v. Bd. of County Comm'rs, 199 Colo. 501, 618 P.2d 1105 (1980).

Method of creation of service authority decision of general assembly. The method by which the creation of a service authority is to be accomplished is a decision within the discretion of the general assembly, subject only to constitutional restrictions and limitations. In re Reg'l Serv. Auth. v. Bd. of County Comm'rs, 199 Colo. 501, 618 P.2d 1105 (1980).

Section 18. Intergovernmental relationships. (1) (a) Any other provisions of this constitution to the contrary notwithstanding:

(b) The general assembly may provide by statute for the terms and conditions under which one or more service authorities may succeed to the rights, properties, and other assets and assume the obligations of any other political subdivision included partially or entirely within such authority, incident to the powers vested in, and the functions, services, and facilities authorized to be provided by the service authority, whether vested and authorized at the time of the formation of the service authority or subsequent thereto; and,

(c) The general assembly may provide by statute for the terms and conditions under which a county, home rule county, city and county, home rule city or town, statutory city or town, or quasi-municipal corporation, or any combination thereof may succeed to the rights, properties, and other assets and assume the obligations of any quasi-municipal corporation located partially or entirely within its boundaries.

(d) The general assembly may provide by statute procedures whereby any county, home rule county, city and county, home rule city or town, statutory city or town, or service authority may establish special taxing districts.

(2) (a) Nothing in this constitution shall be construed to prohibit the state or any of its political subdivisions from cooperating or contracting with one another or with the government of the United States to provide any function, service, or facility lawfully authorized to each of the cooperating or contracting units, including the sharing of costs, the imposition of taxes, or the incurring of debt.

(b) Nothing in this constitution shall be construed to prohibit the

authorization by statute of a separate governmental entity as an instrument to be used through voluntary participation by cooperating or contracting political subdivisions.

(c) Nothing in this constitution shall be construed to prohibit any political subdivision of the state from contracting with private persons, associations, or corporations for the provision of any legally authorized functions, services, or facilities within or without its boundaries.

(d) Nothing in this constitution shall be construed to prohibit the general assembly from providing by statute for state imposed and collected taxes to be shared with and distributed to political subdivisions of the state except that this provision shall not in any way limit the powers of home rule cities and towns.

Source: L. 69: Entire section added, p. 1249, effective January 1, 1972.

ANNOTATION

Law reviews. For comment, "Regionalism or Parochialism: The Land Use Planner's Dilemma", see 48 U. Colo. L. Rev. 575 (1977). For article, "The IGA: A Smart Approach For Local Governments", see 29 Colo. Law. 73 (June 2000). For article, "Cooperative Management of Urban Growth Areas Through IGAs", see 29 Colo. Law. 85 (November 2000).

The phrase "lawfully authorized to each" in subsection (2)(a) held to mean only that each entity must have the authority to perform the subject activity within its own boundaries. Durango Transp., Inc. v. City of Durango, 824 P.2d 48 (Colo. App. 1991).

A municipal corporation has no privileges or immunities under the state constitution. Bd. of County Comm'rs v. E-470 Pub. Hwy., 881 P.2d 412 (Colo. App. 1994), aff'd in part and rev'd in part sub nom. Nicholl v. E-470 Pub. Hwy. Auth., 896 P.2d 859 (Colo. 1995).

Since neither the general assembly nor the constitution has delegated to a municipality the right to be free from legislation that impairs the obligations of contracts, such a right does not exist. Bd. of County Comm'rs v. E-470 Pub. Hwy., 881 P.2d 412 (Colo. App. 1994), aff'd in part and rev'd in part sub nom. Nicholl v. E-470 Pub. Hwy. Auth., 896 P.2d 859 (Colo. 1995).

ARTICLE XV
Corporations

Section 1. Unused charters or grants of privilege. (Repealed)

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 69. **L. 2000:** Entire section repealed, p. 2778, effective upon proclamation of the Governor, **L. 2001,** p. 2391, December 28, 2000.

Section 2. Corporate charters created by general law. No charter of incorporation shall be granted, extended, changed or amended by special law, except for such municipal, charitable, educational, penal or reformatory corporations as are or may be under the control of the state; but the general

assembly shall provide by general laws for the organization of corporations hereafter to be created.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 69.

Cross references: For prohibition of special laws, see § 25 of article V of this constitution.

ANNOTATION

Law reviews. For note, "The Constitutionality of Industrial Development Acts", see 35 U. Colo. L. Rev. 556 (1963).

Subject matter of this article relates to private corporations. The reference to municipal and other corporations named in this section was for the purpose of excepting them from the operation of the provision respecting special legislation. Carpenter v. People ex rel. Tilford, 8 Colo. 116, 5 P. 828 (1885).

But power to create municipal corporations by special charters is clearly given by this section, and absolute control over them, extending to the right to alter, revoke, or annul any charter, is given by section 3 of this article. Which powers may be granted and which withheld, and what restrictions shall be imposed in the exercise of the powers granted are clearly within legislative control, and the right to limit and circumscribe granted powers by repeal of former grants is unquestionably with the general assembly. Johnson v. People, 6 Colo. App. 163, 40 P. 576 (1895).

And general assembly may create public quasi-corporation. And also under this section and § 35 of art. V, Colo. Const., it is within the power of the general assembly to create a public quasi-corporation, which has for its object the discharge of the specific public, or municipal, duty of supplying water, as a part of the municipal machinery, even for municipal corporations. Donahue v. Morgan, 24 Colo. 389, 50 P. 1038 (1897).

Distinction between municipal and quasi-municipal corporation. There is a broad distinction between the legal signification of the term municipal corporation, employed in this section, and the term quasi-municipal corporation. A municipal corporation, such as a city or incorporated town, is created by the consent of the people composing it, for their advantage and convenience, and is invested with the power of local self-government. Quasi-corporations, on the other hand, rank low down in the scale of corporate existence, are endowed with but few corporate functions, and are merely auxiliaries of the state. Carpenter v. People ex rel. Tilford, 8 Colo. 116, 5 P. 828 (1884).

Corporations enumerated in this section include both classes, according to the primary import and natural signification of the words employed. The substitution of the words, "quasi-municipal corporation" for the words "municipal corporations", excludes from the section a whole class of corporations specifically named therein. There is no necessity whatever for such a construction. Both classes are "under the control of the state" -- that is, under its legislative control, which is a broader and more natural signification of the words employed than ministerial control. The former is applicable to all the classes named in the section, while the latter is not, it being conceded that municipal corporations proper are not under the ministerial control of the state. Carpenter v. People ex rel. Tilford, 8 Colo. 116, 5 P. 828 (1885).

This section does not abrogate previously existing special charters. The city of Denver was organized and existing under and by virtue of a special charter long before and at the time of the adoption of our state constitution. The constitution did not abrogate such charters, nor does it exempt them from legislative amendments. City of Denver v. Coulehan, 20 Colo. 471, 39 P. 425 (1894).

Applied in In re Constitutionality of Senate Bill No. 69, 15 Colo. 601, 26 P. 157 (1890); Milheim v. Moffat Tunnel Imp. Dist., 72 Colo. 268, 211 P. 649 (1922).

Section 3. Power to revoke, alter or annul charter. The general assembly shall have the power to alter, revoke or annul any charter of incorporation now existing and revocable at the adoption of this constitution, or any that may hereafter be created, whenever in their opinion it may be injurious to the citizens of the state, in such manner, however, that no injustice shall be done to the corporators.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 69.

ANNOTATION

Law reviews. For article, "Highlights of the 1955 Legislative Session -- Corporations", see 28 Rocky Mt. L. Rev. 60 (1955).

Section does not control exercise of police power in regulating transaction of corporate business. This section recognizes a legislative right to alter, revoke, or annul upon condition just to the corporation, any part or all of the corporate charter; but it does not control the exercise of the police power in regulating the transaction of corporate business. Platte & Denver Canal & Milling Co. v. Dowell, 17 Colo. 376, 30 P. 68 (1892), appeal dismissed, 154 U.S. 512, 14 S. Ct. 1150, 38 L. Ed. 1079 (1893).

Applied in Johnson v. People, 6 Colo. App. 163, 40 P. 576 (1882); Colo. & S. Ry. v. State Rd. Comm'n, 54 Colo. 64, 129 P. 506 (1912); Colo. & S. Ry. v. People, 61 Colo. 230, 156 P. 1095 (1916).

Section 4. Railroads - common carriers - construction - intersection. All railroads shall be public highways, and all railroad companies shall be common carriers. Any association or corporation organized for the purpose, shall have the right to construct and operate a railroad between any designated points within this state, and to connect at the state line with railroads of other states and territories. Every railroad company shall have the right with its road to intersect, connect with or cross any other railroad.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 69.

Cross references: For provisions regulating railroads, see part 1 of article 20 of title 40.

ANNOTATION

Right of road to join onto another declared for protection of public. The regulations of the constitution respecting railroad corporations are, in general, limitations of the powers of those corporations for the protection of the public interests, and to facilitate the transportation

business of the country. The right of a road to join onto another is declared, certainly, for the protection of the public rather than to enable corporations to perform their agreement. To say that it is an enabling act only, is to divest it of any useful purpose. It is more reasonable to believe that by the union of tracks it was intended to make the roads practically continuous for all that may come in the usual course of business between companies friendly to each other; that the companies are to be brought into harmony when they fail or refuse to agree in the due and proper exercise of their public function as common carriers. Denver & N. O. R. R. v. Atchison, T. & S. F. R. R., 13 F. 546 (D. Colo. 1882).

With due regard for rights of interested corporations. The constitution requiring that railroad tracks shall be connected, it follows necessarily that some use is to be made of the roads so united, and this we interpret to be such as is usual and customary with connecting lines throughout the country, and may be said to stand with the public convenience and a due regard for the rights of the corporations interested. Denver & N. O. R. R. v. Atchison, T. & S. F. R. R., 13 F. 546 (D. Colo. 1882).

Roads to be connected physically, as distinguished from business connection always existing between roads which have approximate termini. It is a union of tracks admitting of the passage of cars from one road to the other, and not a mere meeting of roads which may admit of continuous traffic in some form. Denver & N. O. R. R. v. Atchison, T. & S. F. R. R., 13 F. 546 (D. Colo. 1882).

As constitutional right to connect railroad with railroad does not itself imply right of connecting business with business. The railroad companies are not to be connected, but their roads. A connection of roads may make a connection in business convenient and desirable, but the one does not necessarily carry with it the other. The language of the constitution is that railroads may "intersect, connect with, or cross" each other. This clearly applies to the road as a physical structure, not to the corporation or its business. Atchison, T. & S. F. R. R. v. Denver & N. O. R. R., 110 U.S. 667, 4 S. Ct. 185, 28 L. Ed. 291 (1884).

"Designated points". As to where one of the "designated points" is within the corporate limits of some city or town, see Denver & S. F. R. R. v. Domke, 11 Colo. 247, 17 P. 777 (1888).

Character of railroad may be determined in condemnation proceeding. This section does not prohibit the determining of the character of a railroad in a proceeding by it to condemn land under § 15 of art. II, Colo. Const. Denver R. R. Land & Coal Co. v. Union Pac. Ry., 34 F. 386 (D. Colo. 1888).

Moffat tunnel not road or highway within meaning of section. The nearest the Moffat tunnel will come to being a railroad is that one of the uses to which it will be put, not the only use, is that of a right of way for a railroad. Even if it can be said that the tunnel, when completed, will be a road, highway, or railroad, it will not be such a "road or highway" as is contemplated by this constitutional provision. Milheim v. Moffat Tunnel Imp. Dist., 72 Colo. 268, 211 P. 649 (1922), aff'd, 262 U.S. 710, 43 S. Ct. 694, 67 L. Ed. 1194 (1923).

Applied in Colo. & S. Ry. v. State Rd. Comm'n, 54 Colo. 64, 129 P. 506 (1912).

Section 5. Consolidation of parallel lines forbidden. No railroad corporation, or the lessees or managers thereof, shall consolidate its stock,

property or franchises with any other railroad corporation owning or having under its control a parallel or competing line.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 69.

Section 6. Equal rights of public to transportation. All individuals, associations and corporations shall have equal rights to have persons and property transported over any railroad in this state, and no undue or unreasonable discrimination shall be made in charges or in facilities for transportation of freight or passengers within the state, and no railroad company, nor any lessee, manager or employee thereof, shall give any preference to individuals, associations or corporations in furnishing cars or motive power.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 69.
Cross references: For prohibition against discrimination by public utilities, see also §§ 40-3-105 to 40-3-111.

ANNOTATION

This section is but declaration of common law. Bayles v. Kansas Pac. Ry., 13 Colo. 181, 22 P. 341 (1889).

And section imposes no greater obligations upon company than common law would have. Every common carrier must carry for all to the extent of his capacity, without undue or unreasonable discrimination either in charges or facilities. The constitution has taken from the general assembly the power of abolishing this rule as applied to railroad companies. Atchison, T. & S. F. R. R. v. Denver & N. O. R. R., 110 U.S. 667, 4 S. Ct. 185, 28 L. Ed. 291 (1884).

By this provision railway companies are left at liberty to regulate rates of transportation, and are not answerable for their conduct, in this respect, unless such charges are unreasonable, and by "undue and unjust" discrimination tend to create exclusive privileges, to the detriment of other shippers or the public-at-large. Bayles v. Kansas Pac. Ry., 13 Colo. 181, 22 P. 341 (1889).

And may discriminate if not unduly or unjustly. By fair intendment it is clear that railway companies, under this provision, may discriminate, so long as such discrimination is neither "undue nor unjust". Bayles v. Kansas Pac. Ry., 13 Colo. 181, 22 P. 341 (1889); Denver & R. G. R. R. v. Whan, 39 Colo. 230, 89 P. 39 (1907).

Applied in Colo. & S. Ry. v. State Rd. Comm'n, 54 Colo. 64, 129 P. 506 (1912).

Section 7. Existing railroads to file acceptance of constitution. (Repealed)

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 69. **L. 2000:** Entire section repealed, p. 2778, effective upon proclamation of the Governor, **L. 2001,** p. 2391, December 28, 2000.

Section 8. Eminent domain - police power - not to be abridged. The right of eminent domain shall never be abridged nor so construed as to prevent

the general assembly from taking the property and franchises of incorporated companies, and subjecting them to public use, the same as the property of individuals; and the police power of the state shall never be abridged or so construed as to permit corporations to conduct their business in such manner as to infringe the equal rights of individuals or the general well-being of the state.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 70.

ANNOTATION

Colorado has recognized broad power of general assembly in area of police power. People ex rel. Dunbar v. Gym of Am., Inc., 177 Colo. 97, 493 P.2d 660 (1972).

But legislative regulations must bear reasonable relationship to public health, safety, etc. In the exercise of the police powers, legislative regulations, restraints and proscriptions must bear a reasonable relation to the public health, safety, morals and welfare. People ex rel. Orcutt v. Instantwhip Denver, Inc., 176 Colo. 396, 490 P.2d 940 (1971).

And legislation must have real and substantial relation to accomplishment of objectives which form the basis of the police regulation. People ex rel. Orcutt v. Instantwhip Denver, Inc., 176 Colo. 396, 490 P.2d 940 (1971).

Governmental purpose may not be achieved by unnecessarily broad means. A governmental purpose to control or prevent certain activities, which may be constitutionally subject to state or municipal regulation under the police power, may not be achieved by means which sweep unnecessarily broadly. People v. Von Tersch, 180 Colo. 295, 505 P.2d 5 (1973).

Police power of regulation does not include absolute prohibition of trade in useful and harmless articles of commerce; where prohibitory, the act must be declared to be invalid. People ex rel. Orcutt v. Instantwhip Denver, Inc., 176 Colo. 396, 490 P.2d 940 (1971).

Police power relates to public physical, mental, and financial safety. Police power relates not only to the public's physical or mental health and safety, but also to public financial safety. People ex rel. Dunbar v. Gym of Am., Inc., 177 Colo. 97, 493 P.2d 660 (1972).

Power to take property already devoted to public use. This section does not change or modify the general rule that property already devoted to public use cannot be taken for another in such manner or to such extent that the use to which it is devoted is wholly defeated or superseded, unless the power to so take be granted expressly or by necessary implication. Denver Power & Irrigation Co. v. Denver & R. G. R. R., 30 Colo. 204, 69 P. 568 (1902).

Particular business, etc., practices may be subject to state control. If the power to regulate activities which are affected with a public interest is a legitimate function of the police power, it follows that if particular business, commercial, or trade practices affect the public interest, they in turn may be subject to state control. People ex rel. Orcutt v. Instantwhip Denver, Inc., 176 Colo. 396, 490 P.2d 940 (1971); People ex rel. Dunbar v. Gym of Am., Inc., 177 Colo. 97, 493 P.2d 660 (1972); Dixon v. Zick, 179 Colo. 278, 500 P.2d 130 (1972).

Applied in City & County of Denver v. Stenger, 277 F. 865 (8th Cir. 1921); Pub. Serv. Co. v. City of Loveland, 79 Colo. 216, 245 P. 493 (1926); Union Rural Elec. Ass'n v. Town of Frederick, 629 P.2d 1093 (Colo. App. 1981).

Section 9. Fictitious stock, bonds - increase of stock. No corporation shall issue stocks or bonds, except for labor done, service performed, or money or property actually received, and all fictitious increase of stock or indebtedness shall be void. The stock of corporations shall not be increased except in pursuance of general law, nor without the consent of the persons holding a majority of the stock, first obtained at a meeting held after at least thirty days' notice given in pursuance of law.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 70.

ANNOTATION

Law reviews. For note, "Consideration for Stock Under the Colorado Constitution and Cases", see 29 Rocky Mt. L. Rev. 112 (1956). For article, "The New Colorado Corporation Act", see 35 Dicta 317 (1958). For note, "Discount, Bonus and Watered Stock in Colorado", see 33 Rocky Mt. L. Rev. 197 (1961). For comment on Burch v. Exploration Data Consultants, Inc. appearing below, see 46 U. Colo. L. Rev. 125 (1974).

"Issuance" determined upon substance of transaction. In determining whether an "issuance" occurred, a court will look to the substance of the transaction rather than its technical form. Burch v. Exploration Data Consultants, Inc., 33 Colo. App. 155, 518 P.2d 288 (1973).

Shares not "issued" within meaning of this section. See Burch v. Exploration Data Consultants, Inc., 33 Colo. App. 155, 518 P.2d 288 (1973).

Both this section and § 7-4-105 aim at preventing watering of corporate stock. Their purpose is to prevent corporations from issuing stock without receiving full value, and so to prevent the diluting of the holdings of innocent stockholders, and the reliance by creditors on false or nonexistent capital resulting from the issuance of watered stock. Haselbush v. Alsco of Colo., Inc., 161 Colo. 138, 421 P.2d 113 (1966).

Policy behind § 7-4-105 (2) and this section is to protect other stockholders of the corporation, creditors, and good faith future stockholders from the dilution of their investment by "watered" stock. Burch v. Exploration Data Consultants, Inc., 33 Colo. App. 155, 518 P.2d 288 (1973).

Stock issued in violation of this section and former § 7-4-105 is ipso facto invalid. Arkansas River Land Co. v. Farmers' Loan Co., 13 Colo. 587, 22 P. 954 (1889); In re Dreiling, 233 Bankr. 848 (Bankr. D. Colo. 1999).

Section not available as defense in action brought on promissory note given for stock of corporation. If a corporation is prohibited by this section from delivering its stock in return for promissory notes, it would constitute no defense to an action on the notes where the transaction was consummated in good faith. Boldt v. Motor Sec. Co., 74 Colo. 55, 218 P. 743 (1923); Haselbush v. Alsco of Colo., Inc., 161 Colo. 138, 421 P.2d 113 (1966).

The purpose of this section and § 7-4-105 would not be served by holding that these provisions may be used to defeat an action by the corporation seeking to enforce payment on a promissory note given for the issuance of stock when the transaction has been made in good faith. Haselbush v. Alsco of Colo., Inc., 161 Colo. 138, 421 P.2d 113 (1966).

As shares bought with promissory notes not void. The fact

that this section and § 7-4-105 (2) may prohibit execution and delivery of share certificates in exchange for promissory notes does not render the shares void. Burch v. Exploration Data Consultants, Inc., 33 Colo. App. 155, 518 P.2d 288 (1973).

Applied in Lilylands Canal & Reservoir Co. v. Wood, 56 Colo. 130, 136 P. 1026 (1913); Pueblo Foundry & Mach. Co. v. Lannon, 68 Colo. 131, 187 P. 1031 (1920).

Section 10. Foreign corporations - place - agent. No foreign corporation shall do any business in this state without having one or more known places of business, and an authorized agent or agents in the same, upon whom process may be served.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 70.

Section 11. Street railroads - consent of municipality. No street railroad shall be constructed within any city, town, or incorporated village, without the consent of the local authorities having the control of the street or highway proposed to be occupied by such street railroad.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 70.

Cross references: For electric and street railroads, see also article 24 of title 40.

ANNOTATION

Section intended as restraint on power of general assembly. In the absence of constitutional restraint, the general assembly of the state could have granted directly the authority to construct, maintain, and operate street railroads within cities, towns, or incorporated villages, upon such terms as the general assembly might impose, without reference to the wish or consent of the inhabitants of such city, town, or incorporated village. This section was intended simply as a restraint upon the power of the general assembly in this respect, that the general assembly could not directly grant authority for the construction, maintenance, or operation of a street railroad in such municipalities, without the consent of the municipality. It did not, however, withhold from the general assembly the power to prohibit municipalities from granting to street railroads authority to occupy the public streets of the municipality except on terms which the general assembly should see fit to impose, but it gave to municipalities authority to impose other and additional terms from those prescribed by the general assembly, or to withhold consent entirely. City of Denver v. Mercantile Trust Co., 201 F. 790 (8th Cir. 1912).

Section 12. Retrospective laws not to be passed. The general assembly shall pass no law for the benefit of a railroad or other corporation, or any individual or association of individuals, retrospective in its operation, or which imposes on the people of any county or municipal subdivision of the state, a new liability in respect to transactions or considerations already past.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 70.

Cross references: For ex post facto laws, see § 11 of article II of this constitution.

ANNOTATION

Section does not affect § 4 of art. XIV, Colo. Const. The provisions of § 4 of art. XIV, Colo. Const., being special provisions for specified objects, they are not affected by this section. In re House Bill No. 122, 9 Colo. 639, 21 P. 478 (1886).

Act authorizing annexation not retrospective. A legislative act whereby one municipal corporation becomes annexed to another, forming one consolidated town or city, the surviving municipality assuming all the corporate debts and taking all the corporate property of the annexed municipality, together with the authority to levy and collect taxes throughout the enlarged municipality, is not an act retrospect in its operation; nor does it impose on the people of either municipality a new liability in respect to transactions or considerations already past. The benefit accruing to the people of the surviving city is a present and prospective consideration, and is based upon a present and not upon a past transaction. So, too, there is a present consideration accruing to the people of the annexed territory; they receive and enjoy the greater privileges and protection which the larger municipality affords, and at the same time are relieved from the burdens of an independent municipal government. Mayor of Valverde v. Shattuck, 19 Colo. 104, 34 P. 947 (1893).

Procedural or remedial change not retroactive. Application of a statute to a subsisting claim for relief does not violate the prohibition of retroactive legislation where the statute effects a change that is only procedural or remedial in nature. Continental Title Co. v. District Court, 645 P.2d 1310 (Colo. 1982); Davis v. Bd. of Psychologist Exam'rs, 791 P.2d 1198 (Colo. App. 1989).

Application of a statute is not rendered retroactive and unlawful merely because the facts upon which it operates occurred before adoption of the statute. Continental Title Co. v. District Court, 645 P.2d 1310 (Colo. 1982).

Pension reform act unconstitutionally imposes on cities a "new liability", to the extent that the act requires cities to contribute an amount in excess of that which could be collected based on an assessment of one mill for any year up to January 1, 1979. City of Colo. Springs v. State, 626 P.2d 1122 (Colo. 1980).

Section 40-3-106 (4) does not impermissibly impose a new liability upon a city's residents in violation of this constitutional provision as the statute does not require that municipal customers be surcharged for the amount surcharged to and paid by rural customers for franchise fees prior to adoption of the statute, and an increase in surcharges after statutory enactment is not a new liability within the meaning of this provision. City of Montrose v. Pub. Utils. Comm'n, 732 P.2d 1181 (Colo. 1987).

Municipality may create own liability. Charter amendment providing for police pensions and payments in lieu of sick leave. An amendment to the charter of the city and county of Denver, providing for police pensions and authorizing the payment of a lump sum in lieu of sick leave to those members of the department who, upon retirement, have exhausted none or only a portion of their sick leave allowance, does not violate this section of the constitution, since this section does not prevent a municipality from creating its own liability. McNichols v. Police Protective Ass'n, 121 Colo. 45, 215

P.2d 303 (1949).

The provisions of this section do not apply to municipal corporations or governmental subdivisions of the state or county. Bd. of County Comm'rs v. E-470 Pub. Hwy., 881 P.2d 412 (Colo. App. 1994), aff'd in part and rev'd in part sub nom. Nicholl v. E-470 Pub. Hwy. Auth., 896 P.2d 859 (Colo. 1995).

Applied in Sch. Dist. No. 1 v. Sch. Dist. No. 7, 33 Colo. 43, 78 P. 690 (1904); Colo. Fuel & Iron Corp. v. Indus. Comm'n, 148 Colo. 557, 367 P.2d 597 (1961); Cox v. District Court, 160 Colo. 437, 417 P.2d 792 (1966); Jackson v. Colo., 294 F. Supp. 1065 (D. Colo. 1968).

Section 13. Telegraph lines - consolidation. Any association or corporation, or the lessees or managers thereof, organized for the purpose, or any individual, shall have the right to construct and maintain lines of telegraph within this state, and to connect the same with other lines, and the general assembly shall, by general law, of uniform operation, provide reasonable regulations to give full effect to this section. No telegraph company shall consolidate with, or hold a controlling interest in, the stock or bonds of any other telegraph company owning or having the control of a competing line, or acquire, by purchase or otherwise, any other competing line of telegraph.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 70.
Cross references: For regulation of rates and charges, see article 3 of title 40.

ANNOTATION

Applied in Mountain States Tel. & Tel. Co. v. People ex rel. Wilson, 68 Colo. 487, 190 P. 513 (1920).

Section 14. Railroad or telegraph companies - consolidating with foreign companies. If any railroad, telegraph, express or other corporation organized under any of the laws of this state, shall consolidate, by sale or otherwise, with any railroad, telegraph, express or other corporation organized under any laws of any other state or territory or of the United States, the same shall not thereby become a foreign corporation, but the courts of this state shall retain jurisdiction over that part of the corporate property within the limits of the state in all matters which may arise, as if said consolidation had not taken place.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 71.

ANNOTATION

Only effect of this section is to retain in Colorado the citizenship of a corporation originally organized under its laws, which enters into a consolidation, and to retain jurisdiction over the property which it has in that state, for the purpose of securing the rights of its creditors and stockholders. The provision of this section is that the corporation originally organized under the laws of Colorado shall not become a foreign corporation, and not that its successor, organized under the laws of another state, or any other foreign corporation, shall become a corporation of Colorado. Rust v. United Waterworks Co., 70 F. 129 (8th Cir. 1895).

Section 15. Contracts with employees releasing from liability -

void. It shall be unlawful for any person, company or corporation to require of its servants or employees, as a condition of their employment or otherwise, any contract or agreement, whereby such person, company or corporation shall be released or discharged from liability or responsibility on account of personal injuries received by such servants or employees while in the service of such person, company or corporation, by reason of the negligence of such person, company or corporation, or the agents or employees thereof, and such contracts shall be absolutely null and void.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 71.

ANNOTATION

This section indicates public policy of this state as to contracts of this nature. Denver Pub. Whse. Co. v. Munger, 20 Colo. App. 56, 77 P. 5 (1894).

Conductor in charge of sleeping car, hauled by a railroad company under a contract with a sleeping car company, which includes the transportation of such employee, is not a passenger; and the limitation, by the terms of such contract, of the railroad company's liability for injuries to him, is not void as against public policy, nor as being in contravention of this section. Denver & R. G. R. R. v. Whan, 39 Colo. 230, 89 P. 39 (1931).

Applied in Ferrara v. Auric Mining Co., 43 Colo. 496, 95 P. 952 (1934).

ARTICLE XVI
Mining and Irrigation

MINING

Section 1. Commissioner of mines. There shall be established and maintained the office of commissioner of mines, the duties and salaries of which shall be prescribed by law. When said office shall be established, the governor shall, with the advice and consent of the senate, appoint thereto a person known to be competent, whose term of office shall be four years.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 71.

Cross references: For the designation of the executive director of the department of natural resources as the commissioner of mines, see § 24-1-124 (1).

ANNOTATION

Mining commissioner deemed member of government. The office of mining commissioner was created in pursuance of this section, and when a party is appointed he becomes, by virtue of this section, a member of one of the three departments of the government, and as such is entitled to have his salary, and those of his assistants, paid by the state, as part of the expenses of such departments, without reference to the date at which the act took effect. Parks v. Commissioners of Soldiers' & Sailors' Home, 22 Colo. 86, 43 P. 542 (1896).

Section 2. Ventilation - employment of children. The general

assembly shall provide by law for the proper ventilation of mines, the construction of escapement shafts, and such other appliances as may be necessary to protect the health and secure the safety of the workmen therein; and shall prohibit the employment in the mines of children under twelve years of age.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 71.
Cross references: For provisions regulating mines, see also articles 20 to 25 of title 34; for wages generally, see article 4 of title 8; for wage equality regardless of sex, see § 8-5-102; for minimum wages of workers, see article 6 of title 8; for the state youth employment opportunity act, see article 12 of title 8; for eight-hour maximum work day, see article 13 of title 8.

ANNOTATION

Regulations in section secure end in view. The regulations set forth in this section manifestly embrace only such reasonably necessary mechanical appliances as will secure the end in view and do not include other kinds of health regulations. In re Morgan, 26 Colo. 415, 58 P. 1071, 77 Am. St. R. 269 (1899).

Applied in Victor Coal Co. v. Muir, 20 Colo. 320, 38 P. 378, 46 Am. St. R. 299 (1894); Dalrymple v. Sevcik, 80 Colo. 297, 251 P. 134 (1926).

Section 3. Drainage. The general assembly may make such regulations from time to time, as may be necessary for the proper and equitable drainage of mines.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 71.
Cross references: For mine drainage districts, see also article 51 of title 34.

Section 4. Mining, metallurgy, in public institutions. The general assembly may provide that the science of mining and metallurgy be taught in one or more of the institutions of learning under the patronage of the state.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 71.
Cross references: For the Colorado school of mines, see article 41 of title 23.

IRRIGATION

Section 5. Water of streams public property. The water of every natural stream, not heretofore appropriated, within the state of Colorado, is hereby declared to be the property of the public, and the same is dedicated to the use of the people of the state, subject to appropriation as hereinafter provided.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 72.
Cross references: For taking property for public use, see § 15 of article II of this constitution.

ANNOTATION

Law reviews. For article, "Legal Background of the Colorado

River Controversy", see 1 Rocky Mt. L. Rev. 1 (1929). For article, "From Prior Appropriation to Economic Distribution of Water by the State -- Via Irrigation Administration", see 1 Rocky Mt. L. Rev. 161, 248 (1929); 2 Rocky Mt. L. Rev. 35 (1929). For article, "Transmountain Water Diversions", see 14 Dicta 185 (1937). For article, "Irrigation Law in Colorado", see 10 Rocky Mt. L. Rev. 87, 178 (1938). For article, "State Control of Water Vital to Irrigated-Land States", see 15 Dicta 65 (1938). For article, "Federal Claims to Unappropriated Waters", see 16 Dicta 177 (1939). For article, "Federal Versus State Control of Water", see 12 Rocky Mt. L. Rev. 69 (1940). For article, "The Law of Underground Water", see 13 Rocky Mt. L. Rev. 1 (1940). For article, "Irrigation and Wild Animals", see 18 Dicta 305 (1941). For article, "Some Elements of Colorado Water Law", see 22 Rocky Mt. L. Rev. 343 (1950). For article, "Legal Problems in City Water Supply", see 22 Rocky Mt. L. Rev. 356 (1950). For article, "Flood Control Projects and River Compacts", see 22 Rocky Mt. L. Rev. 462 (1950). For article, "Seepage Rights in Foreign Waters", see 22 Rocky Mt. L. Rev. 407 (1950). For note, "Constitutionality of Colorado Statutes Providing for Trans-Mountain Water Diversions", see 25 Rocky Mt. L. Rev. 363 (1953). For note, "The Recurring Problem of Colorado's Underground Water", see 28 Rocky Mt. L. Rev. 371 (1956). For article, "Water Administration in Colorado -- Higher-ority or Priority?", see 30 Rocky Mt. L. Rev. 293 (1958). For article, "Colorado Ground Water Act of 1957 -- Is Ground Water Property of the Public?", see 31 Rocky Mt. L. Rev. 165 (1959). For article, "New Water Law Problems and Old Public Law Principles", see 32 Rocky Mt. L. Rev. 437 (1960). For article, "Irrigation Corporations", see 32 Rocky Mt. L. Rev. 527 (1960). For article, "Foreign Water in Colorado -- The City's Right to Recapture and Re-Use Its Transmountain Diversion", see 42 Den. L. Ctr. J. 116 (1965). For article, "Water for Recreation: A Plea for Recognition", see 44 Den. L. J. 288 (1967). For note, "A Survey of Colorado Water Law", see 47 Den. L. J. 226 (1970). For note, "Adjudication of Federal Reserved Water Rights", see 42 U. Colo. L. Rev. 161 (1970). For article, "The Groundwater -- Surface Water Conflict and Recent Colorado Water Legislation", see 43 U. Colo. L. Rev. 1 (1971). For article, "Colorado Water Law Problems", see 50 Den. L. J. 293 (1973). For comment on determining the priority of federal reserved rights relative to the water rights of state appropriators, see 48 U. Colo. L. Rev. 547 (1977). For comment, "Maximum Utilization Collides With Prior Appropriation in A-B Cattle Co. v. United States, 196 Colo. 539, 589 P.2d 57 (1978)", see 57 Den. L.J. 103 (1979). For comment, "People v. Emmert: A Step Backward for Recreational Water Use in Colorado", see 52 U. Colo. L. Rev. 247 (1981). For article, "Recent Developments in Colorado Groundwater Law", see 58 Den. L.J. 801 (1981). For comment, "Bubb v. Christensen: The Rights of the Private Landowner Yield to the Rights of the Water Appropriator Under the Colorado Doctrine", see 58 Den. L.J. 825 (1981). For comment, "Town of De Beque v. Enewold: Conditional Water Rights and Statutory Water Law", see 58 Den. L.J. 837 (1981). For article, "The Emerging Relationship Between Environmental Regulations and Colorado Water Law", see 53 U. Colo. L. Rev. 597 (1982). For article, "Plans and Studies: The Recent Quest for a Utopia in the Utilization of Colorado's Water Resources", see 55 U. Colo. L. Rev. 391 (1984). For casenote, "Nontributary, Nondesignated Ground Water: The Huston Decision", see 56 U. Colo. L.

Rev. 135 (1984). For article, "Principles & Law of Colorado's Nontributary Ground Water", see 62 Den. U.L. Rev. 809 (1985). For article, "Water Rights Protection In Water Quality Law", see 60 U. Colo. L. Rev. 841 (1990). For comment, "The Case For Private Instream Appropriations in Colorado", see 60 U. Colo. L. Rev. 1087 (1990). For article, "The Constitution, Property Rights and the Future of Water Law", see 61 U. Colo. L. Rev. 257 (1990). For article, "Transaction Costs as Determinants of Water Transfers", see 61 U. Colo. L. Rev. 393 (1990). For article, "Water Rights Title and Conveyancing", see 28 Colo. Law. 69 (May 1999). For comment, "Safeguarding Colorado's Water Supply: The New Confluence of Title Insurance and Water Rights Conveyances", see 77 U. Colo. L. Rev. 491 (2006). For note, "The Right to Float: The Need for the Colorado Legislature to Clarify River Access Rights", see 83 U. Colo. L. Rev. 845 (2012). For article, "Reviving the Public Ownership, Antispeculation, and Beneficial Use Moorings of Prior Appropriation Water Law", see 84 U. Colo. L. Rev. 97 (2013).

This section and three following sections comprise all of constitution that deals with subject of water rights, a subject second to none in its importance and intricacy. In re Senate Resolution, 9 Colo. 620, 21 P. 470 (1886); Archuleta v. Boulder & Weld County Ditch Co., 118 Colo. 43, 192 P.2d 891 (1948).

This section guarantees right to appropriate, not a right to speculate, and the right to appropriate is for use, not merely for profit. Colo. River Water Conservation Dist. v. Vidler Tunnel Water Co., 197 Colo. 413, 594 P.2d 566 (1979).

And this section was intended to preserve historical appropriation system of water rights upon which the irrigation economy in Colorado was founded, rather than to assure public access to waters for purposes other than appropriation. People v. Emmert, 198 Colo. 137, 597 P.2d 1025 (1979).

As rights of water appropriation are reserved to the people. Central Colo. Water Conservancy Dist. v. Colo. River Water Conservation Dist., 186 Colo. 193, 526 P.2d 302 (1974).

The rivers and streams and the right to appropriate the waters therefrom belong to the people. Central Colo. Water Conservancy Dist. v. Colo. River Water Conservation Dist., 186 Colo. 193, 526 P.2d 302 (1974).

State justified in asserting ownership of all natural streams. The natural streams of Colorado are nonnavigable. Their entire volume is made up of the rains and snow which fall upon its surface. The state was therefore justified in asserting by virtue of this section its ownership of all these natural streams. Congress in the enabling act, and the president in proclaiming the admission of the state must be assumed to have been aware of the situation, and to have consented to the assertion of title so made by the state. Stockman v. Leddy, 55 Colo. 24, 129 P. 220 (1912).

To the extent that Stockman v. Leddy conflicts with the determination of the existence of federal reserved water rights, it is overruled by United States v. City & County of Denver, 656 P.2d 1 (Colo. 1982).

And general assembly has power and is charged with duty to protect interest of state in natural streams. The public moneys may be appropriated for the protection and defense of the rights of the state, and its citizens, in these waters. Stockman v. Leddy, 55 Colo. 24, 129 P. 220 (1912).

So it is highly questionable whether general assembly can give town permission to befoul and contaminate public streams by discharging raw and unpurified sewage

therein. Mack v. Town of Craig, 68 Colo. 337, 191 P. 101 (1920).

"Not heretofore appropriated", in this section, is a mere recognition of the rights acquired by appropriations then already existing. Colo. Milling & Elevator Co. v. Larimer & Weld Irrigation Co., 26 Colo. 47, 56 P. 185 (1899); Fort Collins Milling & Elevator Co. v. Larimer & Weld Irrigation Co., 61 Colo. 45, 156 P. 140 (1916).

The use of the words "not heretofore appropriated", in this section, and "unappropriated waters", in section 6 of this article, clearly indicates an intention to limit the application of these provisions to the future. Strickler v. City of Colo. Springs, 16 Colo. 61, 26 P. 313 (1891).

"Public" and "people" in this section are synonymous, and the declaration that the unappropriated waters are "the property of the public", and "dedicated to the use of the people of the state, subject to appropriation", does not mean that the ownership of water should remain inalienable in the public, but that it should pass to the people by the first appropriation to a beneficial use. Wyatt v. Larimer & Weld Irrigation Co., 1 Colo. App. 480, 29 P. 906 (1892), rev'd on other grounds, 18 Colo. 298, 33 P. 144 (1893).

Public interest in preserving water resources. Under the inferences in this section and under the many cases of the supreme court, the public has a vital interest in preserving the water resources of this state and adhering to correct rules for the allotment and administration of water. In re Wadsworth, 193 Colo. 95, 562 P.2d 1114 (1977).

Waters of natural streams of Colorado are, under constitution, property of public, not any segment thereof or any geographical portion of the state, and the right to appropriate water and put it to beneficial use at any place in the state is no longer open to question. Metro. Sub. Water Users Ass'n v. Colo. River Water Conservation Dist., 148 Colo. 173, 365 P.2d 273 (1961).

Water administration provisions provide framework for diverting unappropriated waters. The Water Right Determination and Administration Act of 1969, §§ 37-92-101 to 37-92-602, provides the statutory framework for implementing the constitutional right to divert the unappropriated waters of any natural stream to beneficial uses. State ex rel. Danielson v. Vickroy, 627 P.2d 752 (Colo. 1981).

And title to unappropriated waters is vested in public, with perpetual right to its use in the people. Wheeler v. Northern Colo. Irrigation Co., 10 Colo. 582, 17 P. 487 (1887); Strickler v. City of Colo. Springs, 16 Colo. 61, 26 P. 313 (1891).

Such waters subject to appropriation as private property. By this and the following section the people of Colorado dedicated to the public all unappropriated waters of every natural stream within its borders, and made them subject to appropriation as private property. Cascade Town Co. v. Empire Water & Power Co., 181 F. 1011 (D. Colo. 1910), rev'd on other grounds, 205 F. 123 (8th Cir. 1913); People ex rel. Park Reservoir Co. v. Hinderlider, 98 Colo. 505, 57 P.2d 894 (1936); Metro. Sub. Water Users Ass'n v. Colo. River Water Conservation Dist., 148 Colo. 173, 365 P.2d 273 (1961).

All unappropriated waters in the streams belong to the state, the public, the people. Any person wishing to divert (appropriate) any unappropriated water for a beneficial use has a constitutional right to do so that cannot be denied. Wyatt v. Larimer & Weld Irrigation Co., 1 Colo. App. 480, 29 P. 906 (1892), rev'd on other grounds, 18 Colo. 298, 33 P. 144 (1893).

And appropriators are

owners of use of such waters. The title, right, property, and ownership to unappropriated water remains in the state, in the public generally, until some person diverts it, appropriates it, segregates it from the volume of the stream and applies it to a beneficial use by some legal method. The title of the state, of the public, as to the water so appropriated, is then divested. The appropriator becomes the proprietor of the water or the use of the water -- it is immaterial which term is used, they are in effect the same -- and he remains the proprietor, owner of the use, so long as the beneficial use to which it was appropriated is continued. While it so remains it is the subject of exclusive ownership and control, the property of the appropriator in every legal aspect. Wyatt v. Larimer & Weld Irrigation Co., 1 Colo. App. 480, 29 P. 906 (1892), rev'd on other grounds, 18 Colo. 298, 33 P. 144 (1893); Gossard Breeding Estates, Inc. v. Texas Co., 76 F. Supp. 20 (D. Colo. 1946), rev'd and remanded pursuant to stipulation, 166 F.2d 571 (10th Cir. 1948).

Right to appropriate and divert water is not absolute. City & County of Denver v. Bergland, 517 F. Supp. 155 (D. Colo. 1981), aff'd in part and rev'd on other grounds, 695 F.2d 465 (10th Cir. 1982).

Decree of abandonment terminates the water right and divests the owner of any interest in it, thereby rendering the water once again subject to appropriation by the public under this section. Gardner v. State, 200 Colo. 221, 614 P.2d 357 (1980).

Consent to use stream necessary from property owner. Individuals do not have a right under this section to float and fish on a nonnavigable natural stream as it flows through, across and within the boundaries of privately owned property without first obtaining the consent of the property owner. People v. Emmert, 198 Colo. 137, 597 P.2d 1025 (1979).

Vested rights to water may be acquired. Under this section and §§ 6 to 8 of this article, and the legislation enacted pursuant thereto, vested rights to waters in natural streams may be acquired. Archuleta v. Boulder & Weld County Ditch Co., 118 Colo. 43, 192 P.2d 891 (1948).

But appropriation applies only to water in natural streams. This and the following section recognize the doctrine of appropriation as applicable only to the water in "natural streams". Whitten v. Coit, 153 Colo. 157, 385 P.2d 131 (1963).

Only that portion of underground water which supplies a natural stream is subject to the doctrine of appropriation in like manner as surface waters. Whitten v. Coit, 153 Colo. 157, 385 P.2d 131 (1963).

"Natural stream" used in its broadest sense. Considering that from the beginning of settlement in Colorado irrigation has been the declared public policy; that the precipitation is small, and that many natural streams always have been dry during a portion of every year, held that the phrase "natural stream", in this and the following section was used in the broadest sense and intended to include all tributaries, and the streams draining into other streams. In re German Ditch Reservoir Co., 56 Colo. 252, 139 P. 2 (1914).

Including ground water. Ground water, in Colorado's century of water use development is regarded as property of the public, except in such instances where it is not tributary to a natural stream. Whitten v. Coit, 153 Colo. 157, 385 P.2d 131 (1963).

If ground water is in motion so as to be tributary to a natural stream, or part of the stream water table, it has always been subject to priorities of appropriation on the natural stream. But unless it is tributary to the natural stream, it is not subject to the law of appropriation. Whitten v. Coit, 153 Colo. 157, 385 P.2d 131 (1963).

Act regarding the

obtainment of well permits and augmentation plans by owners and operators of sand and gravel pits does not violate this section. While the provisions of the act alter the manner in which senior and junior water right appropriators may obtain relief from injury, they do not create a new class of water rights not subject to the principles of appropriation. Central Colo. Water v. Simpson, 877 P.2d 335 (Colo. 1994).

Such as underground flowing, seepage, and percolation waters. All underground waters which by flowage, seepage, or percolation will eventually, if not intercepted, reach and become a part of some natural stream either on or beneath the surface, are governed and controlled by the terms of the constitution and statutes relative to appropriation, the same as the surface waters of such stream. City of Colo. Springs v. Bender, 148 Colo. 458, 366 P.2d 552 (1961).

Tributary underground waters are public waters; they are subject to appropriation because they belong to the river and therefore to the people of the state by this section. Whitten v. Coit, 153 Colo. 157, 385 P.2d 131 (1963).

Since seepage and percolation waters belong to the river they belong to the people of the state by virtue of this section. Nevius v. Smith, 86 Colo. 178, 279 P. 44 (1929).

Reservoir seepage which would be tributary to a natural stream, if allowed to flow unarrested, is a part of that natural stream and thus the property of the people of the state of Colorado under this section, subject to decreed priorities. This water is subject to appropriation in the same manner as other water in a natural stream; it is not the property of the reservoir and is distinguishable from irrigation waste water or natural seepage. Lamont v. Riverside Irrigation Dist., 179 Colo. 134, 498 P.2d 1150 (1972).

And spring waters. Once spring waters have been established as tributary to a stream, they cannot be interrupted in their course and diverted from the stream; they belong to the creek, which in turn belongs to the people of the state by this section. Cline v. Whitten, 150 Colo. 179, 372 P.2d 145 (1962).

Nontributary ground water is not subject to appropriation under this section and § 6 of this article. State, Dept. of Natural Res. v. Southwestern Colo. Water Conservation Dist., 671 P.2d 1294 (Colo. 1983), cert. denied, 466 U.S. 944, 104 S. Ct. 1929, 80 L. Ed. 2d 474 (1984).

An importer of foreign water is not required to meet the requirements for appropriation, including intent and beneficial use, to acquire a right of reuse. City of Thornton v. Bijou Irrigation Co., 926 P.2d 1 (Colo. 1996).

There is presumption that all water is tributary to some natural stream. Whitten v. Coit, 153 Colo. 157, 385 P.2d 131 (1963).

The natural presumption is that all flowing water finds its way to a stream. Cresson Consol. Gold Mining & Milling Co. v. Whitten, 139 Colo. 273, 338 P.2d 278 (1959).

But that presumption is prima facie only and is therefore rebuttable. Whitten v. Coit, 153 Colo. 157, 385 P.2d 131 (1963).

Burden of proof on issue of whether water is or is not tributary to a stream is upon the party asserting it is not tributary, not upon the one asserting that it is. Cresson Consol. Gold Mining & Milling Co. v. Whitten, 139 Colo. 273, 338 P.2d 278 (1959).

Reduction of consumptive use of tributary water cannot provide basis for water right that is independent of the system of priorities on the stream. R.J.A., Inc. v. Water Users Ass'n of Dist. 6, 690 P.2d 823 (Colo. 1984).

Streams independently appropriated remain independent

under doctrine of prior appropriation unless the water of those streams becomes subject to equitable apportionment by compact, in which case the streams must be administered as mandated by the compact or statutory provisions for priority administration of water rights. Alamosa-La Jara Water Users Prot. Ass'n v. Gould, 674 P.2d 914 (Colo. 1983).

State engineer's authority to apply tributary rule of compact abolished. A compact requiring administration of the Rio Grande mainstem and Conejos river according to delivery schedules that did not include the contributions of three creeks as significant to the delivery obligation did away with the state engineer's authority to apply the tributary rule of the compact to the three creeks. Alamosa-La Jara Water Users Prot. Ass'n v. Gould, 674 P.2d 914 (Colo. 1983).

Ground water management act is not unconstitutional in violation of this section and section 6 of this article insofar as said act applies to tributary ground water. Kuiper v. Lundvall, 187 Colo. 40, 529 P.2d 1328 (1974), appeal dismissed, 421 U.S. 996, 95 S. Ct. 2391, 44 L. Ed. 2d 663 (1975).

This section abolishes common-law doctrine of continuous flow. The common-law doctrine of continuous flow of a natural stream is inapplicable to conditions in this state, and, by necessary construction of our local customs, statutes and constitution, it is abolished. Sternberger v. Seaton Mt. Elec. Light, Heat & Power Co., 45 Colo. 401, 102 P. 168 (1909).

Colorado has rule of priority of appropriation as distinguished from the rule of riparian rights. Nebraska v. Wyoming, 325 U.S. 589, 65 S. Ct. 1332, 89 L. Ed. 1815 (1945).

Colorado applies the doctrine of prior appropriation in establishing rights to the use of water. Colo. River Water Conservation Dist. v. United States, 424 U.S. 800, 96 S. Ct. 1236, 47 L. Ed. 2d 483 (1976).

Under the doctrine of prior appropriation, one acquires a right to water by diverting it from its natural source and applying it to some beneficial use. Continued beneficial use of the water is required in order to maintain the right. In periods of shortage, priority among confirmed rights is determined according to the date of initial diversion. Colo. River Water Conservation Dist. v. United States, 424 U.S. 800, 96 S. Ct. 1236, 47 L. Ed. 2d 483 (1976).

Evidence insufficient to demonstrate intent to put water to beneficial use. Colo. River Water Conservation Dist. v. Vidler Tunnel Water Co., 197 Colo. 413, 594 P.2d 566 (1979).

Time provisions for appropriations not limit on constitutional right. The ground water management act's time provisions, including the portions which authorize extensions upon good cause shown, do not prohibit nor impermissibly limit the constitutional right to appropriate the unappropriated waters of this state's natural streams, but rather, regulate the manner of effecting an appropriation in the designated ground water context. Kuiper v. Warren, 195 Colo. 541, 580 P.2d 32 (1978).

And right of appropriators to use in perpetuity. Contract between a water district to sell and deliver water to a city outside the district's boundaries in perpetuity was not null and void since the state grants the right to appropriators to the use of water in perpetuity. Cherokee Water Dist. v. Colo. Springs, 184 Colo. 161, 519 P.2d 339 (1974).

Appropriations of water prior to adoption of constitution stand upon same footing as appropriations subsequently made. They are tested by the same principles,

and controlled by the same rules and regulations, save as affected by the classification made in the constitution. Fort Collins Milling & Elevator Co. v. Larimer & Weld Irrigation Co., 61 Colo. 45, 156 P. 140 (1916).

But this and following section do not authorize interference with rights of prior appropriators for irrigating purposes, whose rights vested before the adoption of the constitution, in order to supply later comers with water for domestic uses. Armstrong v. Larimer County Ditch Co., 1 Colo. App. 49, 27 P. 235 (1891).

Thus owners of prior vested rights entitled to compensation. This and the following section were not intended to affect, and do not affect, prior vested rights, but all owners of such rights are entitled to compensation therefor before the same can be taken or injuriously affected. Strickler v. City of Colo. Springs, 16 Colo. 61, 26 P. 313 (1891).

This section and following section are self-executing. People ex rel. Park Reservoir Co. v. Hinderlider, 98 Colo. 505, 57 P.2d 894 (1936).

This and following section are so plain that no construction whatever is needed. Wyatt v. Larimer & Weld Irrigation Co., 1 Colo. App. 480, 29 P. 906 (1892), rev'd on other grounds, 18 Colo. 298, 33 P. 144 (1893).

This section and following section must be construed so as to harmonize with § 15 of art. II, Colo. Const. The right to the use of water secured by legal appropriation is property, and a proper construction of this and the following section harmonizes these provisions with the declaration of § 15 of art. II, Colo. Const., "that private property shall not be taken or damaged for public or private use without just compensation". Armstrong v. Larimer County Ditch Co., 1 Colo. App. 49, 27 P. 235 (1891).

As neither public waters nor beds or channels of public streams can be condemned and taken under eminent domain. Mack v. Town of Craig, 68 Colo. 337, 191 P. 101 (1920).

And section not to subvert bed owner's exclusive control of surface use. Constitutional provisions historically concerned with appropriation such as this section should not be applied to subvert a riparian bed owner's common-law right to the exclusive surface use of waters bounded by his lands. Without permission, the public cannot use such waters for recreation. People v. Emmert, 198 Colo. 137, 597 P.2d 1025 (1979).

Adjudication of federal reserved water rights. Whatever rights the United States has to water can be recognized and adjudicated by the federal district courts just as adequately as in any other forum. No adequate reason exists to withhold reserved rights from adjudication. United States v. District Court, 169 Colo. 555, 458 P.2d 760 (1969), aff'd, 401 U.S. 520, 91 S. Ct. 998, 28 L. Ed. 2d (1971).

Congress in the McCarran amendment, 43 U.S.C. § 666 (1970), intended to include the water adjudicative procedure of Colorado among the suits in which sovereign immunity of the United States would be waived. United States v. District Court, 169 Colo. 555, 458 P.2d 760 (1969), aff'd, 401 U.S. 520, 91 S. Ct. 998, 28 L. Ed. 2d 278 (1971).

Priorities with respect to water rights are decreed under state laws, but any water rights of the United States in Colorado remain largely uncatalogued and unrelated to decreed water rights. This creates an undesirable, impractical and chaotic situation which the McCarran amendment, 43 U.S.C. § 666 (1970), was designed to remedy. United States v. District Court, 169 Colo. 555, 458 P.2d 760 (1969), aff'd, 401 U.S. 520, 91 S. Ct. 998, 28 L. Ed. 2d 278 (1971).

States' disputes over use of interstate stream governed by equitable apportionment. Equitable apportionment is the doctrine of federal common law that governs disputes between states concerning their rights to use the water of an interstate stream. Colo. v. New Mexico, 459 U.S. 176, 103 S. Ct. 539, 74 L. Ed. 2d 348 (1982), reh'g denied, 459 U.S. 1229, 103 S. Ct. 1418, 75 L. Ed. 2d 471 (1983).

Each state through which rivers pass has a right to the benefit of the water, but it is for the United States supreme court, as a matter of discretion, to measure their relative rights and obligations and to apportion the available water equitably. Colo. v. New Mexico, 459 U.S. 176, 103 S. Ct. 539, 74 L. Ed. 2d 348 (1982) (concurring opinion), reh'g denied, 459 U.S. 1229, 103 S. Ct. 1418, 75 L. Ed. 2d 471 (1983).

Equitable apportionment is a flexible doctrine which calls for the exercise of an informed judgment on a consideration of many factors to secure a just and equitable allocation. Colo. v. New Mexico, 459 U.S. 176, 103 S. Ct. 539, 74 L. Ed. 2d 348 (1982), reh'g denied, 459 U.S. 1229, 103 S. Ct. 1418, 75 L. Ed. 2d 471 (1983).

In an equitable apportionment of interstate waters, it is proper to weigh the harms and benefits to competing states. Colo. v. New Mexico, 459 U.S. 176, 103 S. Ct. 539, 74 L. Ed. 2d 348 (1982), reh'g denied, 459 U.S. 1229, 103 S. Ct. 1418, 75 L. Ed. 2d 471 (1983).

Applied in Farmers' High Line Canal & Reservoir Co. v. Southworth, 13 Colo. 111, 21 P. 1028 (1889); Combs v. Agricultural Ditch Co., 17 Colo. 146, 28 P. 966 (1892); Lamborn v. Bell, 18 Colo. 346, 32 P. 989 (1893); Belknap Sav. Bank v. Lamar Land & Canal Co., 28 Colo. 326, 64 P. 212 (1901); Mohl v. Lamar Canal Co., 128 F. 776 (D. Colo. 1904); Fort Lyon Canal Co. v. Arkansas Valley Sugar Beet & Irrigated Land Co., 39 Colo. 332, 90 P. 1023 (1907); Model Land & Irrigation Co. v. Baca Irrigating Ditch Co., 83 Colo. 131, 262 P. 517 (1927); La Plata River & Irrigation Ditch Co. v. Hinderlider, 93 Colo. 128, 25 P.2d 187 (1933); In re A-B Cattle Co. v. United States, 196 Colo. 539, 589 P.2d 57 (1978).

Section 6. Diverting unappropriated water - priority preferred uses. The right to divert the unappropriated waters of any natural stream to beneficial uses shall never be denied. Priority of appropriation shall give the better right as between those using the water for the same purpose; but when the waters of any natural stream are not sufficient for the service of all those desiring the use of the same, those using the water for domestic purposes shall have the preference over those claiming for any other purpose, and those using the water for agricultural purposes shall have preference over those using the same for manufacturing purposes.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 72.

Cross references: For appropriation and use of water, see also article 82 of title 37; for taking property for public use, see § 15 of article II of this constitution; for public ownership of natural stream waters, see § 5 of this article; for diversion of waters from the state, see article 81 of title 37.

ANNOTATION

I. General Consideration.

II. Appropriation.

A. In General.
B. Acts Necessary.
C. Priorities.
D. Preference for Domestic Purposes.

I. GENERAL CONSIDERATION.

Law reviews. For article, "From Prior Appropriation to Economic Distribution of Water by the State -- Via Irrigation Administration", see 1 Rocky Mt. L. Rev. 161, 248 (1929); 2 Rocky Mt. L. Rev. 35 (1929). For article, "Transmountain Water Diversions", see 14 Dicta 185 (1937). For article, "Irrigation Law in Colorado", see 10 Rocky Mt. L. Rev. 87, 178 (1938). For article, "State Control of Water Vital to Irrigated-Land States", see 15 Dicta 65 (1938). For article, "Federal Claims to Unappropriated Waters", see 16 Dicta 177 (1939). For article, "The Law of Underground Water", see 13 Rocky Mt. L. Rev. 1 (1940). For article, "Federal Versus State Control of Water", see 12 Rocky Mt. L. Rev. 69 (1940). For article, "Extraterritorial Service of Municipally Owned Water Works in Colorado", see 21 Rocky Mt. L. Rev. 56 (1948). For article, "Appropriations of Water for a Preferred Purpose", see 22 Rocky Mt. L. Rev. 422 (1950). For article, "Seepage Rights in Foreign Waters", see 22 Rocky Mt. L. Rev. 407 (1950). For article, "Legal Problems in City Water Supply", see 22 Rocky Mt. L. Rev. 356 (1950). For article, "Some Elements of Colorado Water Law", see 22 Rocky Mt. L. Rev. 343 (1950). For note, "Constitutionality of Colorado Statutes Providing for Trans-Mountain Water Diversions", see 25 Rocky Mt. L. Rev. 363 (1953). For article, "Who Has the Better Right to Non-Tributary Ground Waters in Colorado -- Landowner or Appropriator?", see 31 Dicta 20 (1954). For article, "Preferences as to the Use of Water", see 27 Rocky Mt. L. Rev. 133 (1955). For note, "The Recurring Problem of Colorado's Underground Water", see 28 Rocky Mt. L. Rev. 371 (1956). For article, "Water Administration in Colorado -- Higher-ority or Priority?", see 30 Rocky Mt. L. Rev. 293 (1958). For article, "Colorado Ground Water Act of 1957 -- Is Ground Water Property of the Public?", see 31 Rocky Mt. L. Rev. 165 (1959). For note, "Developments in Colorado Water Law of Appropriation in the Last Ten Years", see 35 U. Colo. L. Rev. 493 (1963). For article, "Problems of Federalism in Reclamation Law", see 37 U. Colo. L. Rev. 49 (1964). For article, "Foreign Water in Colorado -- The City's Right to Recapture and Re-Use Its Transmountain Diversion", see 42 Den. L. Ctr. J. 116 (1965). For article, "Water for Recreation: A Plea for Recognition", see 44 Den. L.J. 288 (1967). For note, "A Survey of Colorado Water Law", see 47 Den. L.J. 226 (1970). For article, "The Groundwater -- Surface Water Conflict and Recent Colorado Water Legislation", see 43 U. Colo. L. Rev. 1 (1971); For article, "Colorado Water Law Problems", see 50 Den. L.J. 293 (1973). For comment on determining the priority of federal reserved rights relative to the water rights of state appropriators, see 48 U. Colo. L. Rev. 547 (1977). For case note, "Water Use Regulation in Colorado: The Constitutional Limitations", see 49 U. Colo. L. Rev. 493 (1978). For comment, "Colorado River Water Conservation Dist. v. Colorado Water Conservation Bd., 197 Colo. 469, 594 P.2d 570 (1979): Diversion as an Element of Appropriation", see 57 Den. L.J. 661 (1980). For comment, "People v. Emmert, 198 Colo. 137, 597 P.2d 1025 (1979): A Step Backward for Recreational Water Use in Colorado", see 52 U. Colo. L. Rev. 247 (1981). For article, "Oil Shale and Water Quality: The Colorado Prospectus Under Federal, State, and International Law",

see 58 Den. L.J. 715 (1981). For article, "The Effect of Water Law on the Development of Oil Shale", see 58 Den. L.J. 751 (1981). For article, "Recent Developments in Colorado Groundwater Law", see 58 Den. L.J. 801 (1981). For comment, "Bubb v. Christensen: The Rights of the Private Landowner Yield to the Rights of the Water Appropriator Under the Colorado Doctrine", see 58 Den. L.J. 825 (1981). For comment, "United States Supreme Court Review of Tenth Circuit Decisions", see 59 Den. L.J. 397 (1982). For article, "The Emerging Relationship Between Environmental Regulations and Colorado Water Law", see 53 U. Colo. L. Rev. 597 (1982). For article, "Sporhase v. Nebraska ex rel. Douglas: Does the Dormant Commerce Clause Really Limit the Power of a State to Forbid (1) the Export of Water and (2) the Creation of a Water Right for Use in Another State?", see 54 U. Colo. L. Rev. 393 (1983). For article, "Plans and Studies: The Recent Quest for a Utopia in the Utilization of Colorado's Water Resources", see 55 U. Colo. L. Rev. 391 (1984). For casenote, "Nontributary, Nondesignated Ground Water: The Huston Decision", see 56 U. Colo. L. Rev. 135 (1984). For article, "Principles & Law of Colorado's Nontributary Ground Water", see 62 Den. U.L. Rev. 809 (1985). For article, "Constitutional Limits on Police Power Regulation Affecting the Exercise of Water Rights", see 16 Colo. Law. 1626 (1987). For article, "Water Rights Protection In Water Quality Law", see 60 U. Colo. L. Rev. 841 (1990). For comment, "The Case For Private Instream Appropriations in Colorado", see 60 U. Colo. L. Rev. 1087 (1990). For comment, "Colorado's Foreign Water Doctrine: License To Speculate", see 60 U. Colo. L. Rev. 1113 (1990). For article, "The Constitution, Property Rights and the Future of Water Law", see 61 U. Colo. L. Rev. 257 (1990). For article, "Transaction Costs as Determinants of Water Transfers", see 61 U. Colo. L. Rev. 393 (1990). For article, "Historical Water Use and the Protection of Vested Rights: A Challenge for Colorado Water Law", see 69 U. Colo. L. Rev. 503 (1998). For comment, "Safeguarding Colorado's Water Supply: The New Confluence of Title Insurance and Water Rights Conveyances", see 77 U. Colo. L. Rev. 491 (2006). For note, "The Right to Float: The Need for the Colorado Legislature to Clarify River Access Rights", see 83 U. Colo. L. Rev. 845 (2012). For article, "Reviving the Public Ownership, Antispeculation, and Beneficial Use Moorings of Prior Appropriation Water Law", see 84 U. Colo. L. Rev. 97 (2013).

Purpose of this article is to maintain and establish the wise principle of appropriation and continual use, which was fully understood by the makers of the constitution. Schwab v. Beam, 86 F. 41 (D. Colo. 1898).

This section was designed to prevent waste of a most valuable but limited natural resource, and to confine the use to needs. Empire Water & Power Co. v. Cascade Town Co., 205 F. 123 (8th Cir. 1913).

Maximum utilization of state water implicit in section. It is implicit in this section that, along with vested rights, there shall be maximum utilization of the water of this state. Fellhauer v. People, 167 Colo. 320, 447 P.2d 986 (1968); Kuiper v. Well Owners Conservation Ass'n, 176 Colo. 119, 490 P.2d 268 (1971); In re A-B Cattle Co. v. United States, 196 Colo. 539, 589 P.2d 57 (1978); Denver v. Consolidated Ditches Co., 807 P.2d 23 (Colo. 1991).

But right to water does not give right to waste it. Kuiper v. Well Owners Conservation Ass'n, 176 Colo. 119, 490 P.2d 268 (1971).

Common law of diversion unchanged. Nothing in the constitution or in the law relating to irrigation in any way modifies or changes the rules

of the common law in respect to the diversion of streams for manufacturing, mining, or mechanical purposes. In Colorado, as elsewhere in the United States, the law is now, as it has been at all times, that for such purposes each riparian owner may use the waters of running streams on his own premises, allowing such waters to go down to subjacent owners in their natural channel. Schwab v. Beam, 86 F. 41 (D. Colo. 1898).

As section rejects common law of riparian ownership. By rejecting the common law of riparian this section denies the right of the landowner to have the stream run in its natural way without diminution. He cannot hold to all the water for the scant vegetation which lines the banks but must make the most efficient use by applying it to his land. Empire Water & Power Co. v. Cascade Town Co., 205 F. 123 (8th Cir. 1913).

The reason and thrust for this section is to negate any thought that Colorado would follow the riparian doctrine in the acquisition and use of water. Colo. River Water Conservation Dist. v. Colo. Water Conservation Bd., 197 Colo. 469, 594 P.2d 570 (1979).

This section and preceding section are self-executing. People ex rel. Park Reservoir Co. v. Hinderlider, 98 Colo. 505, 57 P.2d 894 (1936).

And this section and preceding section are so plain that no construction is needed. Wyatt v. Larimer & Weld Irrigation Co., 1 Colo. App. 480, 29 P. 906 (1892), rev'd on other grounds, 18 Colo. 298, 33 P. 144 (1893).

Water right is a legal right to use water; often, it is characterized as a property right. Gardner v. State, 200 Colo. 221, 614 P.2d 357 (1980).

"Divert" must be interpreted in connection with "appropriation", and with other language used in the remaining sections of this article referring to the subject of irrigation. Larimer County Reservoir Co. v. People ex rel. Luthe, 8 Colo. 614, 9 P. 794 (1885).

Use of "unappropriated waters", in this section and "not heretofore appropriated", in section 5 of this article clearly indicates an intention to limit the application of these provisions to the future. Strickler v. City of Colo. Springs, 16 Colo. 61, 26 P. 313 (1891).

As rights to use of water acquired prior to adoption of constitution are not affected by the provisions of this section. Colo. Milling & Elevator Co. v. Larimer & Weld Irrigation Co., 26 Colo. 47, 56 P. 185 (1899).

"Beneficial uses", as used in this section, has not been definitely fixed and limited in its meaning. Cascade Town Co. v. Empire Water & Power Co., 181 F. 1011 (D. Colo. 1910), rev'd on other grounds, 205 F. 123 (8th Cir. 1913).

"Milling" held synonymous with "manufacturing". Lamborn v. Bell, 18 Colo. 346, 32 P. 989 (1893).

And owners of placer-mining claims are of manufacturing class, within the meaning of this section. Schwab v. Beam, 86 F. 41 (D. Colo. 1898).

Delegation of water adjudication jurisdiction. Although in Colorado jurisdiction for water adjudication has traditionally been in the courts, there is nothing in the Colorado constitution--and particularly nothing in this section--to prevent the general assembly from placing such jurisdiction in a different agency, such as the ground water commission in the case of designated ground water, considering that such determinations are appealable to the courts. In re Water Rights in Irrigation Div. No. 1, Irrigation Dist. No. 1, 181 Colo. 395, 510 P.2d 323 (1973).

The exclusive authority granted to the Colorado water conservation board by § 37-92-102 to

appropriate minimum stream flows does not detract from the right to divert and to put to beneficial use unappropriated waters by removal or control. City of Thornton v. City of Fort Collins, 830 P.2d 915 (Colo. 1992).

Act regarding the obtainment of well permits and augmentation plans by owners and operators of sand and gravel pits does not violate this section. While the provisions of the act alter the manner in which senior and junior water right appropriators may obtain relief from injury, they do not create a new class of water rights not subject to the principles of appropriation. Central Colo. Water v. Simpson, 877 P.2d 335 (Colo. 1994).

Ground water management act is not unconstitutional in violation of section 5 of this article and of this section insofar as said act applies to tributary ground water. Kuiper v. Lundvall, 187 Colo. 40, 529 P.2d 1328 (1974), appeal dismissed, 421 U.S. 996, 95 S. Ct. 2391, 44 L. Ed. 2d 663 (1975).

Time provisions for appropriations not limit on constitutional right. The ground water management act's time provisions, including the portions which authorize extensions upon good cause shown, do not prohibit nor impermissibly limit the constitutional right to appropriate the unappropriated waters of this state's natural streams, but rather, regulate the manner of effecting an appropriation in the designated ground water context. Kuiper v. Warren, 195 Colo. 541, 580 P.2d 32 (1978).

States' disputes over use of interstate stream governed by equitable apportionment. Equitable apportionment is the doctrine of federal common law that governs disputes between states concerning their rights to use the water of an interstate stream. Colo. v. New Mexico, 459 U.S. 176, 103 S. Ct. 539, 74 L. Ed. 2d 348 (1982), reh'g denied, 459 U.S. 1229, 103 S. Ct. 1418, 75 L. Ed. 2d 471 (1983).

Each state through which rivers pass has a right to the benefit of the water, but it is for the United States supreme court, as a matter of discretion, to measure their relative rights and obligations and to apportion the available water equitably. Colo. v. New Mexico, 459 U.S. 176, 103 S. Ct. 539, 74 L. Ed. 2d 348 (1982) (concurring opinion), reh'g denied, 459 U.S. 1229, 103 S. Ct. 1418, 75 L. Ed. 2d 471 (1983).

Equitable apportionment is a flexible doctrine which calls for the exercise of an informed judgment on a consideration of many factors to secure a just and equitable allocation. Colo. v. New Mexico, 459 U.S. 176, 103 S. Ct. 539, 74 L. Ed. 2d 348 (1982), reh'g denied, 459 U.S. 1229, 103 S. Ct. 1418, 75 L. Ed. 2d 471 (1983).

In an equitable apportionment of interstate waters, it is proper to weigh the harms and benefits to competing states. Colo. v. New Mexico, 459 U.S. 176, 103 S. Ct. 539, 74 L. Ed. 2d 348 (1982), reh'g denied, 459 U.S. 1229, 103 S. Ct. 1418, 75 L. Ed. 2d 471 (1983).

If a state may equitably apportion interstate waters by means of an interstate compact, such state may also agree that a sister state which is also governed by the interstate compact will have exclusive authority to determine an applicant's right to divert water and to administer any such decreed water right. Frontier Ditch v. S.E. Colo. Water Cons., 761 P.2d 1117 (Colo. 1988).

Applied in In re Senate Resolution, 12 Colo. 287, 21 P. 484 (1889); Mohl v. Lamar Canal Co., 128 F. 776 (D. Colo. 1904); Anderson v. Grand Valley Irrigation Dist., 35 Colo. 525, 85 P. 313 (1906); Acom v. Frye, 55 Colo. 56, 132 P. 55 (1913); Model Land & Irrigation Co. v. Baca

Irrigating Ditch Co., 83 Colo. 131, 262 P. 517 (1927); La Plata River & Cherry Creek Ditch Co. v. Hinderlider, 93 Colo. 128, 25 P.2d 187 (1933); Fundingsland v. Colo. Ground Water Comm'n, 171 Colo. 487, 468 P.2d 835 (1970); Hall v. Kuiper, 181 Colo. 130, 510 P.2d 329 (1973); People v. Emmert, 198 Colo. 137, 597 P.2d 1025 (1979); Navajo Dev. Co. v. Sanderson, 655 P.2d 1374 (Colo. 1982); Beacom v. Bd. of County Comm'rs, 657 P.2d 440 (Colo. 1983).

II. APPROPRIATION.

A. In General.

This section guarantees right of diversion and appropriation for beneficial uses. With certain qualifications it recognizes and protects a prior right of user, acquired through priority of appropriation. Wheeler v. Northern Colo. Irrigating Co., 10 Colo. 582, 17 P. 487 (1887).

By this section and laws of Colorado, state and territorial, from the earliest times, rights to the beneficial use of water from natural streams have been acquired by diversion through prior appropriation rather than by grant. Platte Water Co. v. Northern Colo. Irrigation Co., 12 Colo. 525, 21 P. 711 (1889).

Unappropriated waters of natural streams may be appropriated. The unappropriated waters of every natural stream belong to the public, and are subject to appropriation by the people to beneficial use. Combs v. Agricultural Ditch Co., 17 Colo. 146, 28 P. 966 (1892).

This and the preceding section recognize the doctrine of appropriation as applicable only to the water in "natural streams". Whitten v. Coit, 153 Colo. 157, 385 P.2d 131 (1963).

The waters of the natural streams of Colorado are, under the constitution, the property of the public, not any segment thereof or any geographical portion of the state, and the right to appropriate water and put it to beneficial use at any place in the state is no longer open to question. Metro. Sub. Water Users Ass'n v. Colo. River Water Conservation Dist., 148 Colo. 173, 365 P.2d 273 (1961).

Including ground, as well as surface, waters. The Colorado courts have gone further than those of any other western state in applying the doctrine of appropriation to ground waters, as well as to surface waters. It has been frequently held by Colorado appellate courts, from a very early date down to the present time, that all underground waters which by flowage, seepage, or percolation will eventually, if not intercepted, reach and become a part of some natural stream either on or beneath the surface, are governed and controlled by the terms of the constitution and statutes relative to appropriation, the same as the surface waters of such stream. Black v. Taylor, 128 Colo. 449, 264 P.2d 502 (1953).

The doctrine of prior appropriation of water to beneficial use is applicable to underground waters which are tributary to any natural stream. Whitten v. Coit, 153 Colo. 157, 385 P.2d 131 (1963).

Not irrigation waters only. The trial court erred in concluding that the doctrine of appropriation of water applied to irrigation waters only. Black v. Taylor, 128 Colo. 449, 264 P.2d 502 (1953).

Thus vested rights to waters in natural streams may be acquired. Under sections 5 to 8 of this article, inclusive, and the legislation enacted pursuant thereto, vested rights to waters in natural streams may be acquired. Archuleta v. Boulder & Weld County Ditch Co., 118 Colo. 43, 192 P.2d 891 (1948).

Capture and storage of flood waters may be a "beneficial use" underlying an appropriation of

water. Pueblo West Metro. Dist. v. Southeastern Colo. Water Conservancy Dist., 689 P.2d 594 (Colo. 1984).

General assembly cannot prohibit but may regulate manner of appropriation or diversion. While the general assembly cannot prohibit the appropriation or diversion of unappropriated water for useful purposes from natural streams upon the public domain, that body has the power to regulate the manner of effecting such appropriation or diversion. Larimer County Reservoir Co. v. People ex rel. Luthe, 8 Colo. 614, 9 P. 794 (1885).

Regulation of appropriation of water. The right conferred by this section, to divert and appropriate unappropriated water of the state, is not absolute. The manner and method of appropriation of water may be reasonably regulated. City & County of Denver v. Bergland, 517 F. Supp. 155 (D. Colo. 1981), aff'd in part and rev'd in part on other grounds, 695 F.2d 465 (10th Cir. 1982); City & County of Denver v. Bd. of County Comm'rs, 760 P.2d 656 (Colo. App. 1988).

Water administration provisions provide framework for diverting unappropriated waters. The Water Right Determination and Administration Act of 1969, §§ 37-92-101 to 37-92-602, provides the statutory framework for implementing the constitutional right to divert the unappropriated waters of any natural stream to beneficial uses. State ex rel. Danielson v. Vickroy, 627 P.2d 752 (Colo. 1981).

State engineer's authority to apply tributary rule of compact abolished. A compact requiring administration of the Rio Grande mainstem and Conejos river according to delivery schedules that did not include the contributions of three creeks as significant to the delivery obligation did away with the state engineer's authority to apply the tributary rule of the compact to the three creeks. Alamosa-La Jara Water Users Prot. Ass'n v. Gould, 674 P.2d 914 (Colo. 1983).

After appropriation paramount right to use of water, unless forfeited, continues in appropriator. Wheeler v. Northern Colo. Irrigating Co., 10 Colo. 582, 17 P. 487 (1887).

Right to water by appropriation and diversion is property. Wyatt v. Larimer & Weld Irrigation Co., 1 Colo. App. 480, 29 P. 906 (1892), rev'd on other grounds, 18 Colo. 298, 33 P. 144 (1893).

Water rights in this state, where agriculture is almost exclusively carried on by means of irrigation, are valuable properties. Loshbaugh v. Benzel, 133 Colo. 49, 291 P.2d 1064 (1956); Saunders v. Spina, 140 Colo. 317, 344 P.2d 469 (1959).

Water is a valuable property right, subject to sale and conveyance. Sherwood Irrigation Co. v. Vandewark, 138 Colo. 261, 331 P.2d 810 (1958).

And it is property in every legal aspect. While the title of the public or the state to the unappropriated waters in the streams can only be divested as to the portions thereof segregated and appropriated to beneficial uses, when this has been legally done the appropriator becomes the proprietor of the water appropriated and diverted, or of the use thereof, which is the same thing, and as long as the beneficial use thereof is continued the water remains the subject of exclusive ownership and control, and is the property of the appropriator in every legal aspect. Wyatt v. Larimer & Weld Irrigation Co., 1 Colo. App. 480, 29 P. 906 (1892), rev'd on other grounds, 18 Colo. 298, 33 P. 144 (1893).

Fully protected by constitution. A priority to the use of water for irrigation or domestic purposes is a property right and as such is fully protected by the constitutional guaranties relating to property in general. Strickler v. City of Colo.

Springs, 16 Colo. 61, 26 P. 313 (1891); Farmers Irrigation Co. v. Game & Fish Comm'n, 149 Colo. 318, 369 P.2d 557 (1962).

Title to use of water vests as of date of appropriation. The right to the use of water is property; the title accrues by legal appropriation, and becomes vested as of the date of such appropriation. Armstrong v. Larimer County Ditch Co., 1 Colo. App. 49, 27 P. 235 (1891).

However, owners of priority of rights to divert water from stream are not owners of water in stream so as to maintain action for partition of the water of the stream. Crippen v. White, 28 Colo. 298, 64 P. 184 (1901).

Effect of decree adjudicating right to specific appropriation. The appropriation of water for a specific purpose, and a decree adjudicating the right to such appropriation, not only limits the use to the amount appropriated, but also to the quantity necessary for the purpose for which it is appropriated. Colo. Milling & Elevator Co. v. Larimer & Weld Irrigation Co., 26 Colo. 47, 56 P. 185 (1899).

Right to divert does not apply where water has been appropriated for placer claim. The provision of this section which declares: "The right to divert the unappropriated waters of any natural stream to beneficial uses shall never be denied", is applicable to the unappropriated waters of a natural stream and not to case where the water has been appropriated for a placer claim. Schwab v. Beam, 86 F. 41 (D. Colo. 1898).

Abandoned water rights return to stream. Where an appropriator abandons his right to water from a stream, such right returns to the stream. Kaess v. Wilson, 132 Colo. 443, 289 P.2d 636 (1955).

Where decreed rights have been abandoned the water so decreed returns to the stream and is available for subsequent appropriation. Rocky Mt. Power Co. v. White River Elec. Ass'n, 151 Colo. 45, 376 P.2d 158 (1962).

Carrier may sell, transfer, or deliver appropriated water. A carrier who completes a constitutional appropriation becomes the proprietor or owner of the water diverted to, and as such, may sell, transfer and deliver it to be used by those who require it for irrigation, and such rights can only be divested by a subsequent failure to apply the water, or to cause it to be applied to a beneficial use. Wyatt v. Larimer & Weld Irrigation Co., 1 Colo. App. 480, 29 P. 906 (1892), rev'd on other grounds, 18 Colo. 298, 33 P. 144 (1893).

Transporting water for hire sanctioned by this section. The constitution unquestionably contemplates and sanctions the business of transporting water for hire from natural streams to distant consumers. Wheeler v. Northern Colo. Irrigating Co., 10 Colo. 582, 17 P. 487 (1887).

As water need not be retained for use at origin. There is nothing in the constitution which even intimates that waters should be retained for use in the watershed where originating. Metro. Sub. Water Users Ass'n v. Colo. River Water Conservation Dist., 148 Colo. 173, 365 P.2d 273 (1961).

Noninjurious use of stream bed as reservoir permitted. The act of utilizing as a reservoir a natural depression, which includes the bed of a stream, or which is found at the source thereof, is not in and of itself unlawful where no injury results. But the privilege so recognized is, of course, qualified by the condition that no injury to others shall result through its invocation. He who attempts to appropriate water in this way does so at his peril. He must see to it that no legal right of prior appropriators, or of other

persons, is in any way interefered with by his acts. He cannot lessen the quantity of water, seriously impair its quality, or impede its natural flow, to the detriment of others who have acquired legal rights therein superior to his. And he must respond in proper actions for all injuries resulting to them by reason of his acts in the premises. He cannot, in any event, interfere with the flow of even the surplus water to a greater extent than is requisite for the beneficial use designed. Larimer County Reservoir Co. v. People ex rel. Luthe, 8 Colo. 614, 9 P. 794 (1885).

Streams independently appropriated remain independent under doctrine of prior appropriation unless the water of those streams becomes subject to equitable apportionment by compact, in which case the streams must be administered as mandated by the compact or statutory provisions for priority administration of water rights. Alamosa-La Jara Water Users Prot. Ass'n v. Gould, 674 P.2d 914 (Colo. 1983).

Nontributary ground water is not subject to appropriation under § 5 of this article and this section. State, Dept. of Natural Res. v. Southwestern Colo. Water Conservation Dist., 671 P.2d 1294 (Colo. 1983), cert. denied, 466 U.S. 944, 104 S. Ct. 1929, 80 L. Ed. 2d 474 (1984).

B. Acts Necessary.

Act of appropriation consists of diversion and application thereof to beneficial use. The appropriation of water within the meaning of this section consists of two acts -- first, the diversion of the water from the natural stream, and second, the application thereof to beneficial use. These two acts may be performed by the same or different persons; but the appropriation is not complete until the two are conjoined. Farmers' High Line Canal & Reservoir Co. v. Southworth, 13 Colo. 111, 21 P. 1028 (1889).

Appropriation requires actual diversion and use. City & County of Denver v. Northern Colo. Water Conservancy Dist., 130 Colo. 375, 276 P.2d 992 (1954).

Act of diversion must have reference to natural stream. To constitute an appropriation such as is recognized and protected by this section, the essential act of diversion, with which is coupled the essential act of use, must have reference to the natural stream. Farmers' High Line Canal & Reservoir Co. v. Southworth, 13 Colo. 111, 21 P. 1028 (1889).

True test of appropriation is successful application of water to beneficial use designed, and the method of diverting or carrying the same or making such application, is immaterial. Thomas v. Guiraud, 6 Colo. 530 (1883); Farmers' High Line Canal & Reservoir Co. v. Southworth, 13 Colo. 111, 21 P. 1028 (1889); Cash v. Thornton, 3 Colo. App. 475, 34 P. 268 (1893); People ex rel. Park Reservoir Co. v. Hinderlider, 98 Colo. 505, 57 P.2d 894 (1936).

To be valid, an appropriation must be manifested by the successful application of the water to the beneficial use designed, or accompanied by some open, physical demonstration of intent to take the same for such use. Platte Water Co. v. Northern Colo. Irrigation Co., 12 Colo. 525, 21 P. 711 (1889).

The construction of a ditch and the application of water to a beneficial use completes an appropriation. Cresson Consol. Gold Mining & Milling Co. v. Whitten, 139 Colo. 273, 338 P.2d 278 (1959).

In order to have a valid appropriation there must be an application of water to a beneficial use, and failure to so use available water for an unreasonable time, coupled with an intent, expressed or implied, to abandon, work a forfeiture or

abandonment. Lengel v. Davis, 141 Colo. 94, 347 P.2d 142 (1959).

Thus mere diversion of water not appropriation within meaning of section; there must be an application of the water to beneficial use within a reasonable time or the diversion is unlawful. Farmers' High Line Canal & Reservoir Co. v. Southworth, 13 Colo. 111, 21 P. 1028 (1889); Combs v. Argricultural Ditch Co., 17 Colo. 146, 28 P. 966 (1892).

Diversion of spring water and its storage in a reservoir, even though sanctioned by decree, is not an appropriation of such water. Cline v. Whitten, 150 Colo. 179, 372 P.2d 145 (1962).

And diversion must be for beneficial and not speculative use. The privilege of diversion is granted only for uses truly beneficial, and not for purposes of speculation. Combs v. Agricultural Ditch Co., 17 Colo. 146, 28 P. 966 (1892).

Land reclamation and dust control are proper beneficial uses for appropriations of tributary and nontributary water. State, Dept. of Natural Res. v. Southwestern Colo. Water Conservation Dist., 671 P.2d 1294 (Colo. 1983), cert. denied, 466 U.S. 944, 104 S. Ct. 1929, 80 L. Ed. 2d 474 (1984).

In irrigation, "beneficial use" means actual application of water to land. To make any diversion of water from a natural stream an appropriation, within the meaning of this section, it must be applied to some beneficial use, and in case of irrigation it must be actually applied to the land. Farmers' High Line Canal & Reservoir Co. v. Southworth, 13 Colo. 111, 21 P. 1028 (1889).

And excessive diversion of water cannot be regarded as diversion to beneficial use within the meaning of this section. Combs v. Agricultural Ditch Co., 17 Colo. 146, 28 P. 966 (1892).

A landowner may rely upon an efficient application of water by nature, and need do no more than affirmatively avail himself of it, but the use in that way should not be unnecessarily or wastefully excessive. Empire Water & Power Co. v. Cascade Town Co., 205 F. 123 (8th Cir. 1913).

At his own point of diversion on a natural water course, each diverter must establish some reasonable means of effectuating his diversion. He is not entitled to command the whole or a substantial flow of the stream merely to facilitate his taking the fraction of the whole flow to which he is entitled. This principle applied to diversion of underflow or underground water means that priority of appropriation does not give a right to an inefficient means of diversion, such as a well which reaches to such a shallow depth into the available water supply that a shortage would occur to such senior even though diversion by others did not deplete the stream below, where there would be an adequate supply for the senior's lawful demand. Fellhauer v. People, 167 Colo. 320, 447 P.2d 986 (1968).

Water diverted must be applied within reasonable time to some beneficial use. To constitute a legal appropriation, the water diverted must be applied within a reasonable time to some beneficial use. That is to say, the diversion ripens into a valid appropriation only when the water is utilized by the consumer. Wheeler v. Northern Colo. Irrigation Co., 10 Colo. 582, 17 P. 487 (1887).

Those who construct ditches and divert water for general purposes of irrigation must within a reasonable time apply the water to beneficial use; or else, upon proper application and for proper consideration, they must dispose of the same to those who are ready to make beneficial use of it. Combs v. Agricultural Ditch Co., 17 Colo. 146, 28 P. 966 (1892).

The initial act of diversion must be followed up with reasonable diligence by an act evidencing the

intention to appropriate, and the purpose must be consummated without unnecessary delay; there may be a constitutional appropriation of water without its being at the instant taken from the bed of the stream. Larimer County Reservoir Co. v. People ex rel. Luthe, 8 Colo. 614, 9 P. 794 (1885).

Water rights may be created without written instrument. Greeley & Loveland Irrigation Co. v. McCloughan, 140 Colo. 173, 342 P.2d 1045 (1959).

Compliance with statutory requirements is not strictly part of act of appropriation; the appropriation is completed when a ditch or conduit is constructed and the water is diverted therethrough and applied to a beneficial use. Cresson Consol. Gold Mining & Milling Co. v. Whitten, 139 Colo. 273, 338 P.2d 278 (1959).

Adjudication decree confirms preexisting rights. A decree in a water adjudication is confirmatory of preexisting rights; the decree does not create or grant any rights; it serves as evidence of rights previously acquired. Cresson Consol. Gold Mining & Milling Co. v. Whitten, 139 Colo. 273, 338 P.2d 278 (1959); Saunders v. Spina, 140 Colo. 317, 344 P.2d 469 (1959).

But decree of priority not essential. It is not essential to acquisition of a water right that a claimant participate in water adjudications, and secure a decree of priority. Black v. Taylor, 128 Colo. 449, 264 P.2d 502 (1953); Cresson Consol. Gold Mining & Milling Co. v. Whitten, 139 Colo. 273, 338 P.2d 278 (1959).

As adjudication only confirms that which already accomplished. The right to the use of water accrues by virtue of acts in putting the water to beneficial use, or in producing and developing nontributary water, and adjudication only confirms that which has already been accomplished. Cresson Consol. Gold Mining & Milling Co. v. Whitten, 139 Colo. 273, 338 P.2d 278 (1959).

A judicial decree confirming a conditional or absolute water right is not the source of the right but simply a determination that the right has been established. Abandonment of a right precludes reliance on the acts and intent that gave rise to that right as a basis for establishing a new right. Purgatoire River Water Conservancy v. Witte, 859 P.2d 825 (Colo. 1993).

Water rights not based on filings of maps or statements. Such filings do not constitute appropriations nor lack thereof invalidate them. The statute providing that appropriators shall file map and statement nowhere declares such filings are essential to a valid appropriation; it declares only that a map and statement so filed shall be prima facie evidence in any court of intent to appropriate. Black v. Taylor, 128 Colo. 449, 264 P.2d 502 (1953); Cresson Consol. Gold Mining & Milling Co. v. Whitten, 139 Colo. 273, 338 P.2d 278 (1959).

Whether any map and statement is actually filed, is a matter of evidence only and does not constitute the substance of an appropriation. Cresson Consol. Gold Mining & Milling Co. v. Whitten, 139 Colo. 273, 338 P.2d 278 (1959).

Carrier's diversion ripens into perfect appropriation. The carrier makes a diversion both in fact and in law. This diversion is accomplished through an agency (the carrier). It would undoubtedly become unlawful were the water diverted not applied to beneficial uses within a reasonable time; but, when thus applied, the diversion unquestionably ripens into a perfect appropriation. When a canal company constructs its channel for the transportation of unappropriated water from a stream to arid lands, for the purpose of irrigating them, -- diverts, conveys and delivers

the water for such purpose, it satisfies the requirements of this section, and by its own acts completes the appropriation. Wyatt v. Larimer & Weld Irrigation Co., 1 Colo. App. 480, 29 P. 906 (1892), rev'd on other grounds, 18 Colo. 298, 33 P. 144 (1893).

When united with consumer's use. The carrier's diversion from the natural stream must unite with the consumer's use in order that there may be a complete appropriation within the meaning of our fundamental law. Farmers' High Line Canal & Reservoir Co. v. Southworth, 13 Colo. 111, 21 P. 1028 (1889).

But consumer himself makes no diversion from the natural stream. The act of turning water from the carrier's canal into his lateral cannot be regarded as a diversion within the meaning of this section; nor can this act of itself, when combined with the use, create a valid constitutional appropriation. Farmers' High Line Canal & Reservoir Co. v. Southworth, 13 Colo. 111, 21 P. 1028 (1889).

Citizenship alone cannot be made basis of priority. Users of water from a canal, obtaining their supply under contracts with the canal company, having themselves made no appropriations from the natural stream, nor having asserted a right to the water prior to the appropriation of the canal company, have no constitutional or statutory rights to the water by virtue of citizenship which can be enforced against the corporation. Having acquired no proprietary interest in the canal or to the water appropriated by the company, except the quantity agreed to be delivered, their only rights to equitable relief in the matter are such as arise upon the construction of their contracts with the corporation. Wyatt v. Larimer & Weld Irrigation Co., 1 Colo. App. 480, 29 P. 906 (1892), rev'd on other grounds, 18 Colo. 298, 33 P. 144 (1893).

Acts demonstrate intention to appropriate. Neither plaintiffs nor their predecessors in interest were necessarily required to make formal announcement concerning their intention to make beneficial use of the water diverted, carried and applied to domestic purposes. Their acts themselves were a demonstration of this intention. After the lapse of many years, the existence of this intention cannot successfully be denied because another beneficial result, namely, reclamation of boggy ground, also was accomplished. Black v. Taylor, 128 Colo. 449, 264 P.2d 502 (1953).

Large expenditures indicate good faith effort to appropriate and put to beneficial use unappropriated waters. Empire Water & Power Co. v. Cascade Town Co., 205 F. 123 (8th Cir. 1913); Metro. Sub. Water Users Ass'n v. Colo. River Water Conservation Dist., 148 Colo. 173, 365 P.2d 273 (1961).

C. Priorities.

Colorado has rule of priority of appropriation as distinguished from the rule of riparian rights. Nebraska v. Wyoming, 325 U.S. 589, 65 S. Ct. 1332, 89 L. Ed. 1815 (1945).

Colorado applies the doctrine of prior appropriation in establishing rights to the use of water. Colo. River Water Conservation Dist. v. United States, 424 U.S. 800, 96 S. Ct. 1236, 47 L. Ed. 2d 483 (1976).

Under doctrine of prior appropriation, one acquires a right to water by diverting it from its natural source and applying it to some beneficial use. Continued beneficial use of the water is required in order to maintain the right. In periods of shortage, priority among confirmed rights is determined according to the date of initial diversion. Colo. River Water Conservation Dist. v. United States, 424 U.S. 800, 96 S. Ct. 1236, 47 L. Ed. 2d 483 (1976).

Priority of right to water by priority of appropriation is older than constitution itself, and has existed from the date of the earliest appropriations of water within the boundaries of Colorado. Farmers' High Line Canal & Reservoir Co. v. Southworth, 13 Colo. 111, 21 P. 1028 (1889); People ex rel. Park Reservoir Co. v. Hinderlider, 98 Colo. 505, 57 P.2d 894 (1936).

Hence rule cannot be changed by legislative enactment. If the prorating of the water actually received into an irrigating ditch in time of scarcity between all the consumers can be effected by legislative enactment, then the superiority of right acquired by priority of appropriation is without protection or security; and houses and other permanent improvements of prior appropriators may be rendered comparatively valueless. Hence, the rule that priority of appropriation shall give the better right as between those using water for the same purpose cannot be changed by legislative enactment. Farmers' High Line Canal & Reservoir Co. v. Southworth, 13 Colo. 111, 21 P. 1028 (1889).

Section recognizes priorities only among those taking water from natural streams. Farmers' High Line Canal & Reservoir Co. v. Southworth, 13 Colo. 111, 21 P. 1028 (1889).

The priority of appropriation which gives the better right under the Colorado constitution is priority on a stream rather than on a project. City & County of Denver v. Northern Colo. Water Conservancy Dist., 130 Colo. 375, 276 P.2d 992 (1954).

Actual use of prior right must be made within reasonable time. Those who by labor or by the payment of money, actually construct an irrigating ditch may thereby acquire a prior right to the water which may be diverted therein, provided they apply the same to beneficial use within a reasonable time after such diversion. But they cannot postpone the exercise of such right for an unreasonable time, so as to prevent others from acquiring a right to the water; nor can they thus acquire a right to dispose of the water contrary to the priority rule. Combs v. Agricultural Ditch Co., 17 Colo. 146, 28 P. 966 (1892).

Neither a company nor any stockholder of the company can withold water from beneficial use, nor reserve it for the future use of junior appropriators to the prejudice of prior appropriators nor to the exclusion of those who in the meantime may undertake, in good faith, to make a valid appropriation thereof. Combs v. Agricultural Ditch Co., 17 Colo. 146, 28 P. 966 (1892).

Priorities depend upon dates of respective application to use. All priorities are to be accurately determined as well as impartially protected. They depend upon the dates of the respective applications to use, and these dates must be ascertained with reference not merely to years nor to months, nor even to weeks, but also with reference to days. Farmers' High Line Canal & Reservoir Co. v. Southworth, 13 Colo. 111, 21 P. 1028 (1889).

Or when act evidencing intent performed. While a diversion must of necessity take place before the water is actually applied to the irrigation of the soil, the appropriation thereof is, in legal contemplation, made when the act evidencing the intent is performed. Larimer County Reservoir Co. v. People ex rel. Luthe, 8 Colo. 614, 9 P. 794 (1885).

Right to appropriation may date from first step taken to secure it. Although the appropriation is not deemed complete until the actual diversion or use of the water, if such work be prosecuted with reasonable diligence, the right relates to the time when the first step was taken to secure it. Sieber v. Frink, 7 Colo. 148, 2 P. 901 (1883).

The priority of appropriation may date, proper diligence having been used after diversion to apply the water to a beneficial use, from the commencement of the canal or ditch. Wheeler v. Northern Colo. Irrigation Co., 10 Colo. 582, 17 P. 487 (1887).

Doctrine of relation back strictly construed. The doctrine of relation back is a legal fiction in derogation of the constitution for the benefit of claimants under larger and more difficult projects and should be strictly construed. City & County of Denver v. Northern Colo. Water Conservancy Dist., 130 Colo. 375, 276 P.2d 992 (1954).

In order to date back, intent must have been to divert definite volume as evidenced by the capacity of the ditch and at a definite point evidenced by location of the headgate so that other appropriators could know the nature and extent of the claim. City & County of Denver v. Northern Colo. Water Conservancy Dist., 130 Colo. 375, 276 P.2d 992 (1954).

No relation back where plan abandoned for another. The priority of a water right may not be dated back to the date of surveys or the filing of a plat of a diversion proposal which has been abandoned in favor of another and very different plan. City & County of Denver v. Northern Colo. Water Conservancy Dist., 130 Colo. 375, 276 P.2d 992 (1954).

Prior appropriator entitled to quantity of water covered by his appropriation as against all later appropriators. The protection awarded in connection with a consumer's constitutional priority extends to controversies between him and all his co-consumers, though their number be legion; but the assertion of his rights cannot be limted to such controversies. He is necessarily entitled to the quantity of water covered by his appropriation as against all others obtaining water at a later period, directly or indirectly, from the same natural stream. Farmers' High Line Canal & Reservoir Co. v. Southworth, 13 Colo. 111, 21 P. 1028 (1889).

The doctrine of prior appropriation protects senior appropriators from injury by junior appropriators. Application of Hines Highlands P'ship, 929 P.2d 718 (Colo. 1996).

In times of scarcity those having earlier priorities need not prorate with those having later priorities. Appropriators of water from the same stream through the same ditch may have different priorities of right to the use of the water, and in times of scarcity of water, consumers having the earlier priorities may not be compelled to prorate the water of the ditch with other consumers having later priorities of rights. Farmers' High Line Canal & Reservoir Co. v. White, 32 Colo. 114, 75 P. 415 (1903).

But prior appropriator may not waste water. The constitutional rule of distribution, "first come, first served", does not imply that the prior appropriator may be extravagantly prodigal in dealing with this peculiar bounty of nature. Combs v. Agricultural Ditch Co., 17 Colo. 146, 28 P. 966 (1892).

And prior appropriators cannot extend or enlarge use of water to prejudice of later appropriators. An appropriator of water from a stream already partly appropriated acquires a right to the surplus or residuum he appropriates, and those in whom prior rights in the same stream are vested, cannot extend or enlarge their use of water to his prejudice, but are limited to their rights as they existed when he acquired his, because, in such case, each with respect to his particular appropriation is prior in time and exclusive in right. Colo. Milling & Elevator Co. v. Larimer & Weld Irrigation Co., 26 Colo. 47, 56 P. 185 (1899).

But may change use of

appropriation. An appropriation of water for irrigation purposes may be changed to a use for storage, but such change cannot be made to the detriment of other appropriators whose rights are subsequent to the appropriation for irrigation, but prior to the appropriation for storage. When the water in the stream is needed by the subsequent appropriators, the diversion of the prior appropriator for storage purposes would be limited to what he was entitled to divert for irrigation purposes, both as to amount and time of diversion. Colo. Milling & Elevator Co. v. Larimer & Weld Irrigation Co., 26 Colo. 47, 56 P. 185 (1899).

Rule "first in time first in right" applies as between users for same purpose. And junior appropriators may not infringe the right of seniors. People ex rel. Park Reservoir Co. v. Hinderlider, 98 Colo. 505, 57 P.2d 894 (1936).

Two basic principles applicable to all appropriations of water are: (1) He who is first in time is first in right, and (2) and appropriator of water from a stream may insist that conditions on the stream remain substantially as when he made his original appropriation and he may prevent interference therewith by others to his detriment. Reagle v. Square S Land & Cattle Co., 133 Colo. 392, 296 P.2d 235 (1956).

And rule applies to rights of different parties claiming same interest adversely. Bloom v. West, 3 Colo. App. 212, 32 P. 846 (1893).

Consumers using same ditch may have different priorities of right. The appropriations of water by consumers who receive the same through the same ditch do not necessarily relate to the same time; but, on the contrary, such consumers may have different priorities of right. Farmers' High Line Canal & Reservoir Co. v. Southworth, 13 Colo. 111, 21 P. 1028, 4 L.R.A. 767 (1889).

The same irrigating ditch may have two or more priorities belonging to the same or different parties. Saunders v. Spina, 140 Colo. 317, 344 P.2d 469 (1959).

Whether water received from artificial or natural streams. The "better right", acquired by priority of appropriation, is applicable to individual consumers as between themselves when they receive the water through the agency of an artificial stream, as well as when they receive the same direct from the natural stream. Farmers' High Line Canal & Reservoir Co. v. Southworth, 13 Colo. 111, 21 P. 1028 (1889).

Corporation cannot by bylaws exempt itself or stockholders from operation of rule or priority of appropriations. A ditch company diverting water for general purposes of irrigation cannot by any provision of its bylaws, rules, or regulations exempt itself or its stockholders from the operation of the constitution in respect to priority of appropriation. Combs v. Agricultural Ditch Co., 17 Colo. 146, 28 P. 966 (1892).

A ditch company carrying water for general purposes of irrigation cannot arbitrarily refuse to supply water to an actual and bona fide consumer making seasonable application and offering proper compensation therefor. The rule of this section that "priority of appropriation shall give the better right as between those using the water for the same purpose" must never be overlooked. Combs v. Agricultural Ditch Co., 17 Colo. 146, 28 P. 966 (1892).

Nor can rule be evaded by compelling purchase of stock as condition precedent to use. The constitutional right of individual consumers, upon tender of the carriage fee, to water diverted by a carrier and not already applied to beneficial uses, can no more be evaded or qualified by a regulation compelling the purchase of stock as a condition precedent to use, than it can by a regulation fixing a sum

in excess of the price charged for carriage, to be thus paid for the constitutional right of user. Combs v. Agricultural Ditch Co., 17 Colo. 146, 28 P. 966 (1892).

Nor does mere title to stock, without beneficial use, give title to priority. A stockholder in an irrigating company who makes an actual application of water from the company's ditch to beneficial use may, by means of such use, acquire a prior right thereto; but his title to the stock without such use gives him no title to the priority. He may transfer his stock to whom he will; but he can only transfer his priority to someone who will continue to use the water. Combs v. Agricultural Ditch Co., 17 Colo. 146, 28 P. 966 (1892).

Priority of appropriation to actual beneficial use, and not mere ownership of stock in a ditch company, gives the better right to such use. Combs v. Agricultural Ditch Co., 17 Colo. 146, 28 P. 966 (1892).

As between parties whose rights to use of water never have been formally adjudicated, neither can claim an advantage over the other by reason of the absence of any decreed priorities in connection with the water in controversy. Black v. Taylor, 128 Colo. 449, 264 P.2d 502 (1953); Cresson Consol. Gold Mining & Milling Co. v. Whitten, 139 Colo. 273, 338 P.2d 278 (1959).

Carrier ditch company, by diverting water from natural streams, may acquire prior right to put diverted water to beneficial use; however, the water must be put to beneficial use within reasonable period of time after diversion. City of Westminster v. City of Broomfield, 769 P.2d 490 (Colo. 1989).

Carrier ditch company may satisfy requirement of putting diverted water to beneficial use by contracting with third parties subject to constitutional and statutory requirements. City of Westminster v. City of Broomfield, 769 P.2d 490 (Colo. 1989).

Carrier ditch company properly allocated to its owners water previously decreed to ditch and declared forfeited because of nonpayment of assessment charges and company had no fiduciary duty to make forfeited water available to all contract consumers. City of Westminster v. City of Broomfield, 769 P.2d 490 (Colo. 1989).

Postponement doctrine provides that water rights adjudicated in a previous decree are senior to water rights adjudicated in a subsequent decree on the same stream, regardless of their dates of appropriation. Because the North and South Forks of the South Platte River are separated by a high mountain range, there can be no conflict between the North and South Fork users, and therefore it would be improper to use the postponement doctrine to treat a 1913 adjudication of North Fork rights as supplemental to an 1889 adjudication of South Fork water rights. South Adams County v. Broe Land Co., 812 P.2d 1161 (Colo. 1991).

Water court properly considered the more than seventy years of consistent administration by state water officials of the North Fork of the South Platte River water rights according to their date of appropriation. South Adams County v. Broe Land Co., 812 P.2d 1161 (Colo. 1991).

D. Preference for Domestic Purposes.

This section relates to preferences when the waters of any natural stream are not sufficient to supply all appropriators. The uses are classified as domestic purposes, agricultural purposes and manufacturing purposes. This classification becomes important when preferences are involved. City & County of Denver v. Sheriff, 105 Colo.

193, 96 P.2d 836 (1939).

There can be no doubt concerning right to appropriate water for domestic purposes and the interpretation to be given the constitutional preference relating to such appropriations. Black v. Taylor, 128 Colo. 449, 264 P.2d 502 (1953).

Meaning of "domestic use". The "domestic use" protected by this section is such use as the riparian owner has at common law to take water for himself, his family or his stock, and the like. Montrose Canal Co. v. Loutsenhizer Ditch Co., 23 Colo. 233, 48 P. 532 (1896); Black v. Taylor, 128 Colo. 449, 264 P.2d 502 (1953).

Domestic preference not limited to towns and cities. That water cannot be diverted from a stream for domestic use, except by towns and cities, by one not a riparian owner, is not tenable. The right to water appropriated for domestic purposes does not depend upon the locus of its use for those purposes. Town of Sterling v. Pawnee Ditch Extension Co., 42 Colo. 421, 94 P. 339 (1908); Black v. Taylor, 128 Colo. 449, 264 P.2d 502 (1953).

This section and preceding section do not authorize interference with rights of prior appropriators for irrigating purposes, whose rights vested before the adoption of the constitution, in order to supply later comers with water for domestic uses. Armstrong v. Larimer County Ditch Co., 1 Colo. App. 49, 27 P. 235 (1891).

Domestic user must gain right to water by consent of prior appropriator or by condemnation. This section gives no right to a domestic user over an appropriator for another purpose without either the latter's consent or condemnation. Town of Sterling v. Pawnee Ditch Extension Co., 42 Colo. 421, 94 P. 339 (1908); Nevius v. Smith, 86 Colo. 178, 279 P. 44 (1929).

And must pay just compensation to prior appropriator. This provision does not entitle one desiring to use water for domestic purposes, to take it from another who has previously appropriated it for some other purpose, without just compensation. Town of Sterling v. Pawnee Ditch Extension Co., 42 Colo. 421, 94 P. 339 (1908); People ex rel. Park Reservoir Co. v. Hinderlider, 98 Colo. 505, 57 P.2d 894 (1936).

If the term "domestic use" is to be given a different or greater meaning than the common-law definition, then, as between such enlarged use and those having prior rights for agricultural and manufacturing purposes, it is subject to section 7 of this article, requiring just compensation to those whose rights are affected thereby. Montrose Canal Co. v. Loutsenhizer Ditch Co., 23 Colo. 233, 48 P. 532 (1896).

A domestic water user cannot be preferred over a prior appropriator for irrigation purposes without fully compensating the senior appropriator for the loss sustained by invoking the preference. Black v. Taylor, 128 Colo. 449, 264 P.2d 502 (1953).

"Better right" attaches to priority primarily intended for consumer rather than carrier. The "better right" which attaches to the priority of appropriation was primarily intended for the benefit of those who apply the water to the cultivation of the soil or other beneficial use, rather than for the benefit of those engaged in diverting and carrying it to be used by others. Farmers' High Line Canal & Reservoir Co. v. Southworth, 13 Colo. 111, 21 P. 1028 (1889).

Diversion of water for domestic use cannot be wasteful. The appropriators of water for domestic uses undertook to convey a very small volume through a ditch of great capacity. It is a matter of common knowledge that in doing so necessarily a very great proportion of such volume would be lost by seepage and evaporation before it was conveyed any

considerable distance. The law contemplates an economical use of water. It will not countenance the diversion of a volume from a stream which, by reason of the loss resulting from the appliances used to convey it, is many times that which is actually consumed at the point where it is utilized. Town of Sterling v. Pawnee Ditch Extension Co., 42 Colo. 421, 94 P. 339 (1908).

Thus, diversion of water for domestic use cannot be effected by means of large canals. While it is true that this section recognizes a preference in those using water for domestic purposes over those using it for any other purpose, it is not intended thereby to authorize a diversion of water for domestic use from the public streams of the state, by means of large canals. Montrose Canal Co. v. Loutsenhizer Ditch Co., 23 Colo. 233, 48 P. 532 (1896).

Section 7. Right-of-way for ditches, flumes. All persons and corporations shall have the right-of-way across public, private and corporate lands for the construction of ditches, canals and flumes for the purpose of conveying water for domestic purposes, for the irrigation of agricultural lands, and for mining and manufacturing purposes, and for drainage, upon payment of just compensation.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 72.

Cross references: For rights-of-way and ditches, see also article 86 of title 37; for taking private property for private use, see § 14 of article II of this constitution; for public ownership of natural stream waters, see § 5 of this article; for diverting unappropriated water, see § 6 of this article; for eminent domain, see article 1 to 7 of title 38.

ANNOTATION

Law reviews. For article, "Irrigation Law in Colorado", see 10 Rocky Mt. L. Rev. 87, 178 (1938). For article, "Colorado Ground Water Act of 1957 -- Is Ground Water Property of the Public?", see 31 Rocky Mt. L. Rev. 165 (1959). For note, "A Survey of Colorado Water Law", see 47 Den. L.J. 226 (1970). For article, "Colorado Water Law Problems", see 50 Den. L.J. 293 (1973). For article, "Principles & Law of Colorado's Nontributary Ground Water", see 62 Den. U.L. Rev. 809 (1985). For article, "Unilateral Ditch Modification", see 38 Colo. Law. 37 (February 2009). For article, "Reviving the Public Ownership, Antispeculation, and Beneficial Use Moorings of Prior Appropriation Water Law", see 84 U. Colo. L. Rev. 97 (2013).

Section complete in itself and precludes legislative action. This section does not merely declare principles. On the contrary, it is complete in itself, and by its own terms, confers a right and prescribes the rules and conditions by means of which such right may be enforced. It employs no language to indicate that the subject with which it deals is to be referred to the general assembly for action. Town of Lyons v. City of Longmont, 54 Colo. 112, 129 P. 198 (1912).

And is self-executing. This section confers a right and prescribes the rule by means of which, in an appropriate action in a court of competent jurisdiction, that right may be enforced without further legislation, and is, therefore, self-executing. Town of Lyons v. City of Longmont, 54 Colo. 112, 129 P. 198 (1912).

Although does not provide for assessment of compensation. This section is not self-executing in the

sense that it does not provide the manner in which compensation can be assessed; it nevertheless does confer the right in express terms. Lamborn v. Bell, 18 Colo. 346, 32 P. 989 (1893).

Assessment of compensation is expressly provided for by statute. See Lamborn v. Bell, 18 Colo. 346, 32 P. 989 (1893).

Ultimate sources of the right of condemnation are § 14 of art. II and this section. Bubb v. Christensen, 200 Colo. 21, 610 P.2d 1343 (1980).

Section confers right-of-way upon all persons and corporations. Manifestly, the intent of this section was to confer upon all persons and corporations the right-of-way across lands, either public or private, by whomsoever owned, through which to carry water for domestic purposes, and necessarily embraces a municipal corporation seeking a right-of-way for such purposes. Town of Lyons v. City of Longmont, 54 Colo. 112, 129 P. 198 (1912).

Under this provision of the constitution and §§ 37-86-104 to 37-86-106, dealing with the construction of ditches on rights-of-way through private property, a plaintiff is entitled to possession, under the eminent domain laws, of the lands of a defendant of such dimensions as are necessary to convey his irrigation water to his own property. Mott v. Coleman, 132 Colo. 306, 287 P.2d 655 (1955).

Right to appropriate and divert water is not absolute. City & County of Denver v. Bergland, 517 F. Supp. 155 (D. Colo. 1981), aff'd in part and rev'd in part on other grounds, 695 F.2d 465 (10th Cir. 1982).

It covers every form in which water is used, domestic, irrigation, mining and manufacturing, and its object is to be ascertained from its language and not from the title or heading the compiler of the constitution has given the article in which it is found. Town of Lyons v. City of Longmont, 54 Colo. 112, 129 P. 198 (1912).

Right of condemnation not dependent upon source of supply. The right of condemnation for purposes of obtaining a right-of-way to a point of diversion of a water right is not dependent upon whether the source of supply is characterized as a well or a spring. Bubb v. Christensen, 200 Colo. 21, 610 P.2d 1343 (1980).

When water transportation facility constructed without easement, landowner's remedy limited to temporary relief. When a facility for the transportation of water is constructed or utilized by one having the right of eminent domain, without prior acquisition of an easement, the remedy of the landowner is limited to temporary relief, pending conduct of the eminent domain proceedings by the owners of the water right. Bubb v. Christensen, 200 Colo. 21, 610 P.2d 1343 (1980).

And right to spill waste water is part of right to transport water where essential to the maintenance of the ditch. Hitti v. Montezuma Valley Irrigation Co., 42 Colo. App. 194, 599 P.2d 918 (1979).

Right-of-way for ditch to convey water to operate electric light plant may be condemned-- that being a manufacturing purpose within the meaning of this and the preceding section. Lamborn v. Bell, 18 Colo. 346, 32 P. 989 (1893).

Section covers milling of ore. This section, § 14 of art. II, Colo. Const., and sections 38-1-101 and 38-2-101 cover the milling of ore. Pine Martin Mining Co. v. Empire Zinc Co., 90 Colo. 529, 11 P.2d 221 (1932).

As "milling" is synonymous with "manufacturing". Lamborn v. Bell, 18 Colo. 346, 32 P. 989 (1893).

Section contemplates use of pipelines in permitting right-of-way. This section does not mention a

pipeline, but its evident object was to permit a right-of-way for a conduit through which to convey water for the purposes designated, and hence, the kind of conduit employed and utilized is of no material moment, so far as any question in the case at bar is involved. Town of Lyons v. City of Longmont, 54 Colo. 112, 129 P. 198 (1912).

Applied in Trippe v. Overacker, 7 Colo. 72, 1 P. 695 (1883); Knoth v. Barclay, 8 Colo. 300, 6 P. 924 (1885); Wheeler v. Northern Colo. Irrigating Co., 10 Colo. 582, 17 P. 487 (1887); Belknap Sav. Bank v. Lamar Land & Canal Co., 28 Colo. 326, 64 P. 212 (1901); United States v. O'Neill, 198 F. 677 (D. Colo. 1912); City and County of Denver v. Sheriff, 105 Colo. 193, 96 P.2d 836 (1939); Winter v. Tarabino, 173 Colo. 30, 475 P.2d 331 (1970); City of Northglenn v. City of Thornton, 193 Colo. 536, 569 P.2d 319 (1977); Coquina Oil Corp. v. Harry Kourlis Ranch, 643 P.2d 519 (Colo. 1982).

Section 8. County commissioners to fix rates for water, when. The general assembly shall provide by law that the board of county commissioners in their respective counties, shall have power, when application is made to them by either party interested, to establish reasonable maximum rates to be charged for the use of water, whether furnished by individuals or corporations.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 72.

Cross references: For rates of public utilities, see article XXV of this constitution; for fixing a reasonable maximum rate of compensation for water, see also § 37-85-106; for public ownership of natural stream waters, see § 5 of this article.

ANNOTATION

Purpose of this section. The evident purpose of this section is that actual and beneficial consumers of water may not be subjected to extortionate demands. Combs v. Agricultural Ditch Co., 17 Colo. 146, 28 P. 966 (1892).

The primary objects of this section were to encourage and protect the beneficial use of water, and, while recognizing the carrier's right to reasonable compensation for its carriage, collectible in a reasonable manner, the constitution also unequivocally asserts the consumer's right to its use upon payment of such compensation. Wheeler v. Northern Colo. Irrigation Co., 10 Colo. 582, 17 P. 487 (1887).

"To be charged for the use of water", relating to the carrier's compensation, does not recognize a like ownership in such use. Wheeler v. Northern Colo. Irrigation Co., 10 Colo. 582, 17 P. 487 (1887).

Section forbids enforcement of unreasonable payment demands. By fair implication, this section forbids the carrier's enforcement of unreasonable and oppressive demands in relation to the time and manner of collecting rates. Wheeler v. Northern Colo. Irrigation Co., 10 Colo. 582, 17 P. 487 (1887).

The constitutional right of individual consumers, upon tender of the carriage fee, to water diverted by a carrier and not already applied to beneficial uses, can no more be evaded or qualified by a regulation compelling the purchase of stock as a condition precedent to use, than it can by a regulation fixing a sum in excess of the price charged for carriage, to be thus paid for the constitutional right of user. Combs v. Agricultural Ditch Co., 17 Colo. 146, 28 P. 966 (1892).

Power to fix rate vested exclusively in county commissioners. Under this section neither the general

assembly nor any court has power to fix a maximum rate for the delivery of water. The power is vested exclusively in the boards of county commissioners. The board can act only on the petition for an interested party. The rate fixed by the board, when acting within its jurisdiction, is binding upon all persons affected thereby until vacated by the decree of some court of competent jurisdiction. The board is not charged with the duty of seeing that the prescribed rate is observed by the carriers of water. McCracken v. Montezuma Water & Land Co., 25 Colo. App. 280, 137 P. 903 (1914).

No stipulation of the parties and no decree of the trial court can have any validity as to the rates to be charged by a ditch company to users who are neither stockholders nor coowners of such ditch company, the authority to set reasonable rates for the carriage and delivery of such water being vested exclusively in the board of county commissioners. Farmers Water Dev. Co. v. Barrett, 151 Colo. 140, 376 P.2d 693 (1962).

And ratemaking power cannot be delegated to others. Farmers Water Dev. Co. v. Barrett, 151 Colo. 140, 376 P.2d 693 (1962).

General assembly cannot confer power to fix rates on carrier. This section expressly commands the general assembly to provide by law that county commissioners shall have the power to fix rates for the use of water; it is not a divisible power and the general assembly cannot divest itself thereof and confer it upon the carrier. Northern Colo. Irrigation Co. v. Bd. of Comm'rs, 95 Colo. 555, 38 P.2d 889 (1934); Farmers Water Dev. Co. v. Barrett, 151 Colo. 140, 376 P.2d 693 (1962).

Contract fixing rate between carrier and consumer not binding. A contract between the carrier and the consumer, whereby the carrier attempts to fix and collect the rate for carrying and delivering water to the consumer, is not binding on the latter because this section of the constitution and section 37-85-103 et seq., which provide for the fixing of reasonable maximum rates charged for water, have conferred upon and vested in the county commissioners of the respective counties the exclusive power to fix the rate for such service. Farmers Water Dev. Co. v. Barrett, 151 Colo. 140, 376 P.2d 693 (1962).

County commissioners may only establish maximum amount of rate. They cannot be empowered to dictate the exact rate that shall be collected, or to fix the time or conditions of payment. The time and conditions of payment are proper subjects for legislation. Wheeler v. Northern Colo. Irrigation Co., 10 Colo. 582, 17 P. 487 (1887).

This section provides for a tribunal to fix the maximum rate in case of disagreement. Wheeler v. Northern Colo. Irrigation Co., 10 Colo. 582, 17 P. 487 (1887).

With maximum rates subject to judicial control. The maximum reasonable rates fixed by the board of county commissioners are subject to judicial control. Montezuma Water & Land Co. v. McCracken, 62 Colo. 394, 163 P. 286 (1917).

When courts may interfere with rate making. The only time the courts can interfere with rate making is after the board of county commissioners either acts or fails to act, and then only to determine whether what was done or not done was unreasonable, arbitrary or an abuse of discretion. Farmers Water Dev. Co. v. Barrett, 151 Colo. 140, 376 P.2d 693 (1962).

However, court lacks jurisdiction to fix rates. Where section 37-85-103 et seq. enacted pursuant to this section, provides that the board of county commissioners shall have power to establish reasonable maximum rates to be charged for the use of water, the trial court erred in enjoining the board

from fixing rates in excess of 20 dollars per cubic foot for carriage and delivery of such water pursuant to prior decree of district court, that court being without jurisdiction to fix such rates. Farmers Water Dev. Co. v. Barrett, 151 Colo. 140, 376 P.2d 693 (1962).

Assessment provided for by court decree not rate fixing. An assessment provided for by a court decree directing a ditch company to assess and plaintiff to pay a reasonable rate for carrying extra water for plaintiff is not a rate to be charged for use of water to be determined by the county commissioners, and the court's decree does not usurp the rate power of the county commissioners. Zoller v. Mail Creek Ditch Co., 31 Colo. App. 99, 498 P.2d 1169 (1972).

Irrigation company must provide service for reasonable maximum rate established. A corporation operating a canal or ditch for conveying water for irrigation to the proprietors of the land thereunder is bound to carry and deliver water to the class of consumers named in its certificate of incorporation, and the service must be performed for a reasonable maximum charge, to be fixed by the board of county commissioners, upon proper application made. Northern Colo. Irrigation Co. v. Pouppirt, 22 Colo. App. 563, 127 P. 125 (1912).

And cannot complain if rate fixed gives adequate return. An irrigation company has nothing of which to complain, if the rate fixed by the board provided for by this section is an adequate return for its services and on the value of its property, even if the county board erred in the method of arriving at the rate. Pioneer Irrigation Co. v. Bd. of Comm'rs, 251 F. 264 (8th Cir. 1918).

Carrying ditch is not given power to appropriate water for sale and hence cannot by the purchase of water acquire any right or title to it. Pioneer Irrigation Co. v. Bd. of Comm'rs, 236 F. 790 (D. Colo. 1916), aff'd, 251 F. 264 (8th Cir. 1918).

Mutual ditch companies do not charge for use of water. Zoller v. Mail Creek Ditch Co., 31 Colo. App. 99, 498 P.2d 1169 (1972).

But consumers, who are sole owners of ditch and diversion works, share costs of operation without profit. Zoller v. Mail Creek Ditch Co., 31 Colo. App. 99, 498 P.2d 1169 (1972).

Section applicable only to private persons. The framers intended, and the general assembly understood, that this section was applicable only to private persons or corporations engaged in the business of storage, carriage, and sale of water for irrigation, mining, milling, manufacturing, or domestic purposes. Matthews v. Tri-County Water Conservancy Dist., 200 Colo. 202, 613 P.2d 889 (1980).

And not applicable to political subdivision. The language of this section and of article 85 of title 37 is not applicable to a political subdivision of the state of Colorado. Matthews v. Tri-County Water Conservancy Dist., 200 Colo. 202, 613 P.2d 889 (1980).

Water conservancy districts not subject to jurisdiction of boards of commissioners. Water conservancy districts, when fixing rates for the sale of water, are not subject to the jurisdiction of the boards of county commissioners. Matthews v. Tri-County Water Conservancy Dist., 200 Colo. 202, 613 P.2d 889 (1980).

Applied in Golden Canal Co. v. Bright, 8 Colo. 144, 6 P. 142 (1884); Post Printing & Publishing Co. v. Shafroth, 53 Colo. 129, 124 P. 176 (1912).

ARTICLE XVII
Militia

Section 1. Persons subject to service. The militia of the state shall consist of all able-bodied male residents of the state between the ages of eighteen and forty-five years; except, such persons as may be exempted by the laws of the United States, or of the state.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 72.
Cross references: For the state defense force, see article 4 of title 28; for the composition of the state defense force, see § 28-4-104; for the requirement of United States citizenship, see § 28-4-112.

Section 2. Organization - equipment - discipline. The organization, equipment and discipline of the militia shall conform as nearly as practicable, to the regulations for the government of the armies of the United States.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 72.
Cross references: For rules and regulations dealing with organization, equipment, and discipline, see § 28-4-105; for the requisition of equipment, see § 28-4-107.

Section 3. Officers - how chosen. The governor shall appoint all general, field and staff officers and commission them. Each company shall elect its own officers, who shall be commissioned by the governor; but if any company shall fail to elect such officers within the time prescribed by law, they may be appointed by the governor.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 73.
Cross references: For oath of officers, see § 28-4-113.

ANNOTATION

Applied in People ex rel. Boatright v. Newlon, 77 Colo. 516, 238 P. 44 (1925).

Section 4. Armories. The general assembly shall provide for the safekeeping of the public arms, military records, relics and banners of the state.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 73.
Cross references: For the provision of state armories, see also § 28-4-107.

Section 5. Exemption in time of peace. No person having conscientious scruples against bearing arms shall be compelled to do militia duty in time of peace.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 73. **L. 2006:** Entire section amended, p. 2955, effective upon proclamation of the Governor, **L. 2007,** p. 2964, December 31, 2006.

ARTICLE XVIII
Miscellaneous

Law reviews: For article, "The Colorado Constitution in the New Century", see 78 U. Colo. L. Rev. 1265 (2007).

Section 1. Homestead and exemption laws. The general assembly shall pass liberal homestead and exemption laws.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 73.

Cross references: For homestead exemptions, see also part 2 of article 41 of title 38.

ANNOTATION

Law reviews. For article, "Some Phases of the Exemption Laws", see 12 Dicta 107 (1935). For note, "The Landlord's Lien in Colorado", see 27 Dicta 447 (1950). For article, "Homestead v. Mechanics' Lien", see 40 Den. L. Ctr. J. 2 (1963).

Scope of article. Although this article is captioned "miscellaneous" and consists of eight different sections bearing no particular relation to each other, it does not follow that any proposed new article not germane to any of the matters in any of the articles other than this one becomes a part of this article. People ex rel. Tate v. Prevost, 55 Colo. 199, 134 P. 129 (1913).

Homestead and exemption laws are not in derogation of common law. Edson-Keith & Co. v. Bedwell, 52 Colo. 310, 122 P. 392 (1912).

Homestead exemptions are not in derogation of the common law and must be liberally construed so as to give effect to their beneficent purposes. Frank v. First Nat'l Bank, 653 P.2d 748 (Colo. App. 1982); In Re Kulp, 949 F.2d 1106 (10th Cir. 1991).

But homestead and exemption laws are to be liberally construed for the purpose of giving effect to the beneficent object in view. Edson-Keith & Co. v. Bedwell, 52 Colo. 310, 122 P. 392 (1912).

Debtor must have an ownership interest in the property before any exemption may be claimed. In re Ferguson, 15 Bankr. 439 (Bankr. D. Colo. 1981).

Applied in In re Hellman, 474 F. Supp. 348 (D. Colo. 1979); In re Alvarez, 14 Bankr. 940 (Bankr. D. Colo. 1981); In re Janesofsky, 22 Bankr. 973 (Bankr. D. Colo. 1982); Genova v. Chavez, 26 Bankr. 129 (Bankr. D. Colo. 1983).

Section 2. Lotteries prohibited - exceptions. (1) The general assembly shall have no power to authorize lotteries for any purpose; except that the conducting of such games of chance as provided in subsections (2) to (4) of this section shall be lawful on and after January 1, 1959, and the conducting of state-supervised lotteries pursuant to subsection (7) of this section shall be lawful on and after January 1, 1981.

(2) No game of chance pursuant to this subsection (2) and subsections (3) and (4) of this section shall be conducted by any person, firm, or organization, unless a license as provided for in this subsection (2) has been issued to the firm or organization conducting such games of chance. The secretary of state shall, upon application therefor on such forms as shall be

prescribed by the secretary of state and upon the payment of an annual fee as determined by the general assembly, issue a license for the conducting of such games of chance to any bona fide chartered branch or lodge or chapter of a national or state organization or to any bona fide religious, charitable, labor, fraternal, educational, voluntary firemen's or veterans' organization which operates without profit to its members and which has been in existence continuously for a period of five years immediately prior to the making of said application for such license and has had during the entire five-year period a dues-paying membership engaged in carrying out the objects of said corporation or organization, such license to expire at the end of each calendar year in which it was issued.

(3) The license issued by the secretary of state shall authorize and permit the licensee to conduct games of chance, restricted to the selling of rights to participate and the awarding of prizes in the specific kind of game of chance commonly known as bingo or lotto, in which prizes are awarded on the basis of designated numbers or symbols on a card conforming to numbers or symbols selected at random and in the specific game of chance commonly known as raffles, conducted by the drawing of prizes or by the allotment of prizes by chance.

(4) Such games of chance shall be subject to the following restrictions:

(a) The entire net proceeds of any game shall be exclusively devoted to the lawful purposes of organizations permitted to conduct such games.

(b) No person except a bona fide member of any organization may participate in the management or operation of any such game.

(c) No person may receive any remuneration or profit for participating in the management or operation of any such game.

(5) Subsections (2) to (4) of this section are self-enacting, but laws may be enacted supplementary to and in pursuance of, but not contrary to, the provisions thereof.

(6) The enforcement of this section shall be under such official or department of government of the state of Colorado as the general assembly shall provide.

(7) Any provision of this constitution to the contrary notwithstanding, the general assembly may establish a state-supervised lottery. Unless otherwise provided by statute, all proceeds from the lottery, after deduction of prizes and expenses, shall be allocated to the conservation trust fund of the state for distribution to municipalities and counties for park, recreation, and open space purposes.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p.73. **Initiated 58:** Entire section amended, see **L. 59,** p. 867. **L. 79:** Entire section amended, p. 1676, effective upon proclamation of the Governor, **L. 81,** p. 2054, December 19, 1980.

Cross references: For statutory provisions implementing a state-supervised lottery, including lotto, see part 2 of article 35 of title 24.

ANNOTATION

Legislative power of state may not be used to authorize

lotteries, whether or not that exercise of legislative power is ratified directly by the people through a referendum. In re Interrogatories of Governor Regarding Sweepstakes Races Act, 196 Colo. 353, 585 P.2d 595 (1978).

All gambling not lottery. It unquestionably is true that all lotteries are forms of gambling, but it does not follow that all gambling is a "lottery" as those terms are defined in law. Ginsberg v. Centennial Turf Club, 126 Colo. 471, 251 P.2d 926 (1952).

Valuable consideration must be paid, directly or indirectly, for chance to draw prize by lot, to bring the transaction within the class of lotteries or gift enterprises that the law prohibits as criminal. Ginsberg v. Centennial Turf Club, 126 Colo. 471, 251 P.2d 926 (1952).

Statutes authorizing pari-mutuel betting on racing events are valid against the contention that such betting constitutes a lottery. Ginsberg v. Centennial Turf Club, 126 Colo. 471, 251 P.2d 926 (1952).

Since element of chance does not control races. While an element of chance no doubt enters into horse and dog races, it does not control them. The bettor makes his own choice of the animal he believes will finish the race in first, second or third place. In making that selection he has available the previous records of the animal and the jockey, and various other facts which he may take into consideration in choosing the animal upon which he places a wager. Ginsberg v. Centennial Turf Club, 126 Colo. 471, 251 P.2d 926 (1952).

And section violated when chance controlling factor in award. A lottery is present when consideration is paid for the opportunity to win a prize awarded by chance and this section is violated if chance is the controlling factor in award. In re Interrogatories of Governor Regarding Sweepstakes Races Act, 196 Colo. 353, 585 P.2d 595 (1978).

Section 3. Arbitration laws. It shall be the duty of the general assembly to pass such laws as may be necessary and proper to decide differences by arbitrators, to be appointed by mutual agreement of the parties to any controversy who may choose that mode of adjustment. The powers and duties of such arbitrators shall be as prescribed by law.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 73.

ANNOTATION

Law reviews. For article, "Trial by Lawyer Panel: A Solution to Trial Court Backlogs?", see 37 Dicta 115 (1960).

State policy to encourage arbitration. It is the policy of this state to foster and encourage the use of arbitration as a method of dispute resolution. Judd Constr. Co. v. Evans Joint Venture, 642 P.2d 922 (Colo. 1982); Cohen v. Quiat, 749 P.2d 453 (Colo. App. 1987).

All doubts as to whether a dispute is arbitrable are to be resolved in favor of arbitration. Huizar v. Allstate Ins. Co., 932 P.2d 839 (Colo. App. 1996).

Binding grievance arbitration of disputes arising under the terms of a public employment collective bargaining agreement is not per se unconstitutional as a delegation of legislative authority. City & County of Denver v. Denver Firefighters Local 858, 663 P.2d 1032 (Colo. 1983).

This section does not require arbitration. This section neither contemplates nor admits of a law providing for the compulsory submission of differences to arbitration.

In re Bill Relating to Compulsory Arbitration, 9 Colo. 629, 21 P. 474 (1886).

But agreements to arbitrate are enforceable, and actions based on disputes subject to arbitration may be dismissed for failure to comply with the condition precedent. Ellis v. Rocky Mt. Empire Sports, Inc., 43 Colo. App. 166, 602 P.2d 895 (1979).

A submission of differences to the decision of arbitrators must be by mutual agreement of the parties to the controversy, who choose that mode of adjustment. In re Bill Relating to Compulsory Arbitration, 9 Colo. 629, 21 P. 474 (1886).

The Colorado mandatory arbitration act does not violate this section because the act provides for non-binding arbitration with de novo review by the district court. Firelock Inc. v. District Court, 776 P.2d 1090 (Colo. 1989).

This section does not expressly prohibit mandatory, binding arbitration. Arbitration requirements of "no fault" motor vehicle insurance law in § 10-4-708 (1.5) does not contravene this section. State Farm v. Broadnax, 827 P.2d 531 (Colo. 1992) (decided under law in effect prior to 1991 amendment to section 10-4-708 (1.5)).

Where clause of an uninsured motorist policy permits either party to demand trial on merits after the completion of arbitration if amount awarded exceeds specified amount, clause violates public policy favoring fair, adequate, and timely resolution of uninsured motorist claims. Huizar v. Allstate Ins. Co., 952 P.2d 342 (Colo. 1998).

Provision allowing trial de novo if automobile insurance arbitration award is above the limits of the state financial responsibility law is not void as against public policy. Although the public policy of Colorado strongly favors arbitration, there is no stated public policy requirement that arbitration be made mandatory or binding by agreement. Huizar v. Allstate Ins. Co., 932 P.2d 839 (Colo. App. 1996).

Applied in Sandefer v. District Court, 635 P.2d 547 (Colo. 1981).

Section 4. Felony defined. The term felony, wherever it may occur in this constitution, or the laws of the state, shall be construed to mean any criminal offense punishable by death or imprisonment in the penitentiary, and none other.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 73.
Cross references: For classification of felonies, see § 18-1.3-401.

ANNOTATION

Law reviews. For article, "Prosecution of Habitual Criminals", see 27 Dicta 376 (1950). For article, "Commitment of Misdemeanants to the Colorado State Reformatory", see 29 Dicta 294 (1952). For article, "One Year Review of Criminal Law", see 34 Dicta 98 (1957). For comment on Smalley v. People appearing below, see 34 Dicta 126 (1957). For article, "One Year Review of Constitutional and Administrative Law", see 34 Dicta 79 (1957). For article, "One Year Review of Criminal Law and Procedure", see 40 Den. L. Ctr. J. 89 (1963).

Supreme court has recognized this section as definition of "felony". Smalley v. People, 134 Colo. 360, 304 P.2d 902 (1956).

Felony determined by punishment prescribed. The test by which to determine whether an offense is a felony is by the punishment prescribed. Smalley v. People, 134

Colo. 360, 304 P.2d 902 (1956).

The test by which to determine whether an offense shall be deemed a felony or a misdemeanor is made to depend upon whether the same is punishable by imprisonment in the penitentiary or in the county jail. People v. Enlow, 135 Colo. 249, 310 P.2d 539 (1957); People v. Green, 734 P.2d 616 (Colo. 1987).

Although actual sentence to penitentiary requisite. While this section defines the term "felony" wherever it may occur in the constitution or laws to mean a criminal offense, punishable by death or imprisonment in the penitentiary and none other, it does not follow, in the absence of language in the constitution to that effect, that everyone convicted of felony must, of necessity, be sentenced to the penitentiary. The constitution does not thus provide, and such has never been the uniform practice in this state. Martin v. People, 69 Colo. 60, 168 P. 1171 (1917).

That offense may be visited alternatively, by imprisonment or fine, does not change rule. People v. Godding, 55 Colo. 579, 136 P. 1011 (1913).

"Punishable", as used in this section, is identical in meaning with "liable to punishment". People v. Godding, 55 Colo. 579, 136 P. 1011 (1913).

Meaning of "the penitentiary". "The penitentiary" does not mean a penitentiary or any penitentiary; it means the penitentiary of this state. Whether infamous or not, an offense is a felony if punishable by death or imprisonment in the state penitentiary. The word "the" is a word of limitation--a word used before nouns, with a specifying or particularizing effect, opposed to the indefinite or generalizing force of "a" or "any". People v. Enlow, 135 Colo. 249, 310 P.2d 539 (1957).

"And none other" means no other offense; that is it relates to the word "offense", and not to the character or mode of punishment. Martin v. People, 69 Colo. 60, 168 P. 1171 (1917).

General assembly has no power to depart from classification of section. Every offense which may be punished by death or imprisonment in the penitentiary is a felony, even though in the discretion of the court a lesser penalty may be inflicted. And though the general assembly may expressly denominate the offense a high misdemeanor, or the like, it is still in law felony, the general assembly having no power to depart from this constitutional classification. People v. Godding, 55 Colo. 579, 136 P. 1011 (1913).

Penitentiary sentence is more severe than reformatory sentence because it carries the stigma of a felony. Petsche v. Clingan, 273 F.2d 688 (10th Cir. 1960).

Defendant between ages of 16 and 21 usually sentenced to reformatory. A defendant between the ages of 16 and 21, convicted of a felony for the first time, with certain exceptions, must be sentenced to the state reformatory, the court having no discretion in the matter. Barrett v. People, 136 Colo. 144, 315 P.2d 192 (1957).

And, sentence to reformatory will not answer requirements for felony conviction. Barrett v. People, 136 Colo. 144, 315 P.2d 192 (1957).

A reformatory sentence does not suffice for a felony conviction under the habitual criminal act, and where a court has imposed a life sentence under such circumstances the judgment will be set aside. Smalley v. People, 134 Colo. 360, 304 P.2d 902 (1956).

Incorrigible reformatory inmates transferable to penitentiary though not convicted of felony. The statute authorizing the governor to order the transfer of incorrigible

inmates does not provide that the power can be exercised by him only if the reformatory inmate involved has been convicted of a felony. Tinsley v. Crespin, 137 Colo. 302, 324 P.2d 1033 (1958).

Military conviction. A military conviction for an offense that would be punishable as a felony under the law of Colorado is admissible for impeachment under § 13-90-101. People v. Apodaca, 668 P.2d 941 (Colo. App. 1982), aff'd in part and rev'd in part on other grounds, 712 P.2d 467 (Colo. 1985).

Physician's conviction for wanton assault in the first degree in Kentucky was a conviction of a felony for purposes of § 12-36-117 (1)(f) where the conviction was punishable by imprisonment for ten years in the Kentucky penitentiary. Colo. Bd. of Med. Exam'rs v. Boyle, 924 P.2d 1113 (Colo. App. 1996).

"Felony" distinguished from "feloniously". Feloniously no longer possesses the distinctive or restricted meaning it had at the common law. Under this section, a felony is any criminal offense punishable by death or imprisonment in the penitentiary; and an act that is done feloniously is one that is done with a more or less deliberate purpose or intent to commit a crime of the nature of a felony. Williams v. People, 26 Colo. 272, 57 P. 701 (1899).

Section 18-8-210.1 does not reclassify adjudicated delinquents as felons. Therefore, there is no conflict with this section of the Colorado Constitution. People v. M.B., 90 P.3d 880 (Colo. 2004).

Applied in In re Lowrie, 8 Colo. 499, 9 P. 489 (1885); In re Pratt, 19 Colo. 138, 34 P. 680 (1893); Ritchey v. People, 23 Colo. 314, 47 P. 272 (1896); West v. People, 60 Colo. 488, 156 P. 137 (1915); Martinez v. Tinsley, 142 Colo. 495, 351 P.2d 879 (1960); Pigg v. Tinsley, 158 Colo. 160, 405 P.2d 687 (1965); People v. Austin, 162 Colo. 10, 424 P.2d 113 (1967); Sandoval v. People, 162 Colo. 416, 426 P.2d 968 (1967); Lacey v. People, 166 Colo. 152, 442 P.2d 402 (1968).

Source: L. 2008: Section 5. Spurious and drugged liquors - laws concerning, repealed in its entirety, p. 3112, effective upon proclamation of the Governor, **L. 2009,** p. 3384, January 8, 2009.

Section 6. Preservation of forests. The general assembly shall enact laws in order to prevent the destruction of, and to keep in good preservation, the forests upon the lands of the state, or upon lands of the public domain, the control of which shall be conferred by congress upon the state.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 74.
Cross references: For provisions regulating forestry, see article 7 of title 36.

Source: L. 2008: Section 7. Land value increase - arboreal planting exempt, repealed in its entirety, p. 3113, effective upon proclamation of the Governor, **L. 2009,** p. 3383, January 8, 2009.

Section 8. Publication of laws. The general assembly shall provide for the publication of the laws passed at each session thereof.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 74. **L. 90:** Entire section amended, p. 1862, effective upon proclamation of the Governor,

L. 91, p. 2033, January 3, 1991.

Editor's note: The 1990 amendment to this section deleted language which required that, until 1900, laws passed at each session of the General Assembly be published in Spanish and German. For the language of this section prior to the 1990 amendment, see the 1980 Replacement Volume 1A, Colorado Revised Statutes.

Cross references: For the publication of session laws, see also § 24-70-223; for the publication of Colorado Revised Statutes, see article 5 of title 2.

ANNOTATION

To make provision for publication of session acts is mandatory. In re Interrogatories from House of Representatives, 127 Colo. 160, 254 P.2d 853 (1953).

But manner and form is sole province of general assembly. In re Interrogatories from House of Representatives, 127 Colo. 160, 254 P.2d 853 (1953).

Applied in In re Reapportionment of Colo. Gen. Ass'y, 647 P.2d 191 (Colo. 1982).

Section 9. Limited gaming permitted. (1) Any provisions of section 2 of this article XVIII or any other provisions of this constitution to the contrary notwithstanding, limited gaming in the City of Central, the City of Black Hawk, and the City of Cripple Creek shall be lawful as of October 1, 1991.

(2) The administration and regulation of this section 9 shall be under an appointed limited gaming control commission, referred to in this section 9 as the commission; said commission to be created under such official or department of government of the state of Colorado as the general assembly shall provide by May 1, 1991. Such official or the director of the department of government shall appoint the commission by July 1, 1991. The commission shall promulgate all necessary rules and regulations relating to the licensing of limited gaming by October 1, 1991, in the manner authorized by statute for the promulgation of administrative rules and regulations. Such rules and regulations shall include the necessary defining of terms that are not otherwise defined.

(3) Limited gaming shall be subject to the following:

(a) Limited gaming shall take place only in the existing Colorado cities of: the City of Central, county of Gilpin, the City of Black Hawk, county of Gilpin, and the City of Cripple Creek, county of Teller. Such limited gaming shall be further confined to the commercial districts of said cities as said districts are respectively defined in the city ordinances adopted by: the City of Central on October 7, 1981, the City of Black Hawk on May 4, 1978, and the City of Cripple Creek on December 3, 1973.

(b) Limited gaming shall only be conducted in structures which conform, as determined by the respective municipal governing bodies, to the architectural styles and designs that were common to the areas prior to World War I and which conform to the requirements of applicable respective city ordinances, regardless of the age of said structures.

(c) No more than thirty-five percent of the square footage of any building and no more than fifty percent of any one floor of such building, may be used for limited gaming.

(d) Limited gaming operations shall be prohibited between the hours of 2:00 o'clock a.m. and 8:00 o'clock a.m., unless such hours are revised as provided in subsection (7) of this section.

(e) Limited gaming may occur in establishments licensed to sell alcoholic beverages.

(4) As certain terms are used in regards to limited gaming:

(a) "Adjusted gross proceeds" means the total amount of all wagers made by players on limited gaming less all payments to players; said payments to players being deemed to include all payments of cash premiums, merchandise, tokens, redeemable game credits, or any other thing of value.

(b) "Limited gaming" means the use of slot machines and the card games of blackjack and poker, each game having a maximum single bet of five dollars, unless such games or single bets are revised as provided in subsection (7) of this section.

(c) "Slot machine" means any mechanical, electrical, video, electronic, or other device, contrivance, or machine which, after insertion of a coin, token, or similar object, or upon payment of any required consideration whatsoever by a player, is available to be played or operated, and which, whether by reason of the skill of the player or application of the element of chance, or both, may deliver or entitle the player operating the machine to receive cash premiums, merchandise, tokens, redeemable game credits, or any other thing of value other than unredeemable free games, whether the payoff is made automatically from the machines or in any other manner.

(5) (a) Up to a maximum of forty percent of the adjusted gross proceeds of limited gaming shall be paid by each licensee, in addition to any applicable license fees, for the privilege of conducting limited gaming. Subject to subsection (7) of this section, such percentage shall be established annually by the commission according to the criteria established by the general assembly in the implementing legislation to be enacted pursuant to paragraph (c) of this subsection (5). Such payments shall be made into a limited gaming fund that is hereby created in the state treasury.

(b) (I) From the moneys in the limited gaming fund, the state treasurer is hereby authorized to pay all ongoing expenses of the commission and any other state agency, related to the administration of this section 9. Such payment shall be made upon proper presentation of a voucher prepared by the commission in accordance with statutes governing payments of liabilities incurred on behalf of the state. Such payment shall not be conditioned on any appropriation by the general assembly.

(II) At the end of each state fiscal year, the state treasurer shall distribute the balance remaining in the limited gaming fund, except for an amount equal to all expenses of the administration of this section 9 for the preceding two-month period, according to the following guidelines and subject to the distribution criteria provided in subsection (7) of this section: fifty percent shall be transferred to the state general fund or such other fund as the general assembly shall provide; twenty-eight percent shall be transferred to the state historical fund, which fund is hereby created in the state treasury; twelve percent

shall be distributed to the governing bodies of Gilpin county and Teller county in proportion to the gaming revenues generated in each county; the remaining ten percent shall be distributed to the governing bodies of the cities of: the City of Central, the City of Black Hawk, and the City of Cripple Creek in proportion to the gaming revenues generated in each respective city.

(III) Of the moneys in the state historical fund, from which the state treasurer shall also make annual distributions, twenty percent shall be used for the preservation and restoration of the cities of: the City of Central, the City of Black Hawk, and the City of Cripple Creek, and such moneys shall be distributed, to the governing bodies of the respective cities, according to the proportion of the gaming revenues generated in each respective city. The remaining eighty percent in the state historical fund shall be used for the historic preservation and restoration of historical sites and municipalities throughout the state in a manner to be determined by the general assembly.

(c) and (d) Repealed.

(e) The general assembly shall enact provisions for the special licensing of qualifying nonprofit charitable organizations desiring to periodically host charitable gaming activities in licensed gaming establishments.

(f) If any provision of this section 9 is held invalid, the remainder of this section 9 shall remain unimpaired.

(6) **Local vote on legality of limited gaming - election required.** (a) Except as provided in paragraph (e) of this subsection (6), limited gaming shall not be lawful within any city, town, or unincorporated portion of a county which has been granted constitutional authority for limited gaming within its boundaries unless first approved by an affirmative vote of a majority of the electors of such city, town, or county voting thereon. The question shall first be submitted to the electors at a general, regular, or special election held within thirteen months after the effective date of the amendment which first adds such city, county, or town to those authorized for limited gaming pursuant to this constitution; and said election shall be conducted pursuant to applicable state or local government election laws.

(b) If approval of limited gaming is not obtained when the question is first submitted to the electors, the question may be submitted at subsequent elections held in accordance with paragraph (d) of this subsection (6); except that, once approval is obtained, limited gaming shall thereafter be lawful within the said city, town, or unincorporated portion of a county so long as the city, town, or county remains among those with constitutional authority for limited gaming within their boundaries.

(c) Nothing contained in this subsection (6) shall be construed to limit the ability of a city, town, or county to regulate the conduct of limited gaming as otherwise authorized by statute or by this constitution.

(d) (I) The question submitted to the electors at any election held pursuant to this subsection (6) shall be phrased in substantially the following form: "Shall limited gaming be lawful within _____?"

(II) The failure to acquire approval of limited gaming in the unincorporated portion of a county shall not prevent lawful limited gaming

within a city or town located in such county where such approval is acquired in a city or town election, and failure to acquire such approval in a city or town election shall not prevent lawful limited gaming within the unincorporated area of the county in which such city or town is located where such approval is acquired in an election in the unincorporated area of a county.

(III) If approval of limited gaming is not acquired when the question is first submitted in accordance with this subsection (6), the question may be submitted at subsequent elections so long as at least four years have elapsed since any previous election at which the question was submitted.

(e) Nothing contained in this subsection (6) shall be construed to affect the authority granted upon the initial adoption of this section at the 1990 general election, or the conduct and regulation of gaming on Indian reservations pursuant to federal law.

(f) For purposes of this subsection (6), a "city, town, or county" includes all land and buildings located within, or owned and controlled by, such city, town, or county or any political subdivision thereof. "City, town, or county" also includes the city and county of Denver.

(7) **Local elections to revise limits applicable to gaming - statewide elections to increase gaming taxes.** (a) Through local elections, the voters of the cities of Central, Black Hawk, and Cripple Creek are authorized to revise limits on gaming that apply to licensees operating in their city's gaming district to extend:

(I) Hours of limited gaming operation;

(II) Approved games to include roulette or craps, or both; and

(III) Single bets up to one hundred dollars.

(b) Limited gaming tax revenues attributable to the operation of this subsection (7) shall be deposited in the limited gaming fund. The commission shall annually determine the amount of such revenues generated in each city.

(c) From gaming tax revenues attributable to the operation of this subsection (7), the treasurer shall pay:

(I) Those ongoing expenses of the commission and other state agencies that are related to the administration of this subsection (7);

(II) Annual adjustments, in connection with distributions to limited gaming fund recipients listed in subsection (5)(b)(II) of this section, to reflect the lesser of six percent of, or the actual percentage of, annual growth in gaming tax revenues attributable to this subsection (7); and

(III) Of the remaining gaming tax revenues, distributions in the following proportions:

(A) Seventy-eight percent to the state's public community colleges, junior colleges, and local district colleges to supplement existing state funding for student financial aid programs and classroom instruction programs; provided that such revenue shall be distributed to institutions that were operating on and after January 1, 2008, in proportion to their respective full-time equivalent student enrollments in the previous fiscal year;

(B) Ten percent to the governing bodies of the cities of Central, Black Hawk, and Cripple Creek to address local gaming impacts; provided that such

revenue shall be distributed based on the proportion of gaming tax revenues, attributable to the operation of this subsection (7), that are paid by licensees operating in each city; and

(C) Twelve percent to the governing bodies of Gilpin and Teller Counties to address local gaming impacts; provided that such revenue shall be distributed based on the proportion of gaming tax revenues, attributable to the operation of this subsection (7), that are paid by licensees operating in each county.

(d) After July 1, 2009, the commission shall implement revisions to limits on gaming as approved by voters in the cities of Central, Black Hawk, or Cripple Creek. The general assembly is also authorized to enact, as necessary, legislation that will facilitate the operation of this subsection (7).

(e) If local voters in one or more cities revise any limits on gaming as provided in paragraph (a) of this subsection (7), any commission action pursuant to subsection (5) of this section that increases gaming taxes from the levels imposed as of July 1, 2008, shall be effective only if approved by voters at a statewide election held under section 20(4)(a) of article X of this constitution.

(f) Gaming tax revenues attributable to the operation of this subsection (7) shall be collected and spent as a voter-approved revenue change without regard to any limitation contained in section 20 of article X of this constitution or any other law.

Source: Initiated 90: Entire section added, effective upon proclamation of the Governor, **L. 91,** p. 2037, January 3, 1991. **L. 92:** (6) added, p. 2313, effective upon proclamation of the Governor, **L. 93,** p. 2158, January 14, 1993. **L. 2002:** (5)(c) and (5)(d) repealed, p. 3095, § 1, effective upon proclamation of the Governor, **L. 2003,** p. 3611, December 20, 2002. **Initiated 2008:** (3) (d), (4) (b), (5) (a), and (5) (b) (II) amended and (7) added, effective upon proclamation of the Governor, **L. 2009,** p. 3377, January 8, 2009.

Cross references: For statutory provisions concerning limited gaming, see articles 47.1 and 47.2 of title 12.

ANNOTATION

Law reviews. For article, "Colorado's New Gaming Industry", see 20 Colo. Law. 207 (1991).

This section and section 20 of article X of the Colorado Constitution are not in direct conflict. Submission of Interrogatories on Senate Bill 93-74, 852 P.2d 1 (Colo. 1993).

This section prohibits the general assembly from enacting limitations on revenues collected by the Colorado Limited Gaming Commission in order to comply with section 20 of article X of the Colorado Constitution, and insofar as revenues generated by limited gaming might tend in a given year to violate the spending limits imposed by that section, the general assembly may comply by decreasing revenues collected elsewhere, or if that is impossible after the fact, by refunding the surplus to taxpayers. Submission of Interrogatories on Senate Bill 93-74, 852 P.2d 1, (Colo. 1993).

Limited gaming control commission acted properly and within its authority in promulgating regulation defining otherwise undefined term "payment to players". Tivolino Teller House, Inc.

v. Fagan, 926 P.2d 1208 (Colo. 1996).

Casino's promotional slot club payouts are not deductible as "payments to players" for computing taxable adjusted gross proceeds where a player receives a bonus point for every dollar he or she spends on a machine that may then be redeemed in 200 point increments and player receives one dollar for every 200 points redeemed. Tivolino Teller House, Inc. v. Fagan, 926 P.2d 1208 (Colo. 1996).

Section 9a. U.S. senators and representatives - limitations on terms. (1) In order to broaden the opportunities for public service and to assure that members of the United States Congress from Colorado are representative of and responsive to Colorado citizens, no United States Senator from Colorado shall serve more than two consecutive terms in the United States Senate, and no United States Representative from Colorado shall serve more than three consecutive terms in the United States House of Representatives. This limitation on the number of terms shall apply to terms of office beginning on or after January 1, 1995. Any person appointed or elected to fill a vacancy in the United States Congress and who serves at least one half of a term of office shall be considered to have served a term in that office for purposes of this subsection (1). Terms are considered consecutive unless they are at least four years apart.

(2) The people of Colorado hereby state their support for a nationwide limit of twelve consecutive years of service in the United States Senate and six consecutive years of service in the United States House of Representatives and instruct their public officials to use their best efforts to work for such a limit.

(3) The people of Colorado declare that the provisions of this section shall be deemed severable from the remainder of this measure and that their intention is that federal officials elected from Colorado will continue voluntarily to observe the wishes of the people as stated in this section in the event any provision thereof is held invalid. The severability provisions of Section 10 of Article XVIII of the Colorado Constitution apply to this Section 9a.

Source: Initiated 90: Entire section added, effective upon proclamation of the Governor, **L. 91,** p. 2036, January 3, 1991. **Initiated 94:** Entire section amended, effective upon proclamation of the Governor, **L. 95,** p. 1435, January 19, 1995.

Editor's note: (1) Although this section was numbered as section 9 as it appeared on the ballot in 1990, for ease of location, it has numbered as section 9a.

(2) The reference in subsection (3) to "this measure" refers to the initiative adopted by the people on November 6, 1990, which added this section and amended section 1 of article IV and section 3 of article V of this constitution.

Section 10. Severability of constitutional provisions. If any provision of any section of any article in this constitution is found by a court of competent jurisdiction to be unconstitutional, the remaining provisions are valid unless the court holds that the valid provisions are so essentially and inseparably connected with, and so dependent upon, the void provision that it cannot be presumed the enactment of the valid provisions would have occurred without the void one; or unless the court determines that the valid provisions, standing alone, are incomplete and not capable of being executed.

Source: L. 92: Entire section added, p. 2314, effective upon proclamation of the Governor, **L. 93,** p. 2158, January 14, 1993.

Section 11. Elected government officials - limitation on terms. (1) In order to broaden the opportunities for public service and to assure that elected officials of governments are responsive to the citizens of those governments, no nonjudicial elected official of any county, city and county, city, town, school district, service authority, or any other political subdivision of the State of Colorado, no member of the state board of education, and no elected member of the governing board of a state institution of higher education shall serve more than two consecutive terms in office, except that with respect to terms of office which are two years or shorter in duration, no such elected official shall serve more than three consecutive terms in office. This limitation on the number of terms shall apply to terms of office beginning on or after January 1, 1995. For purposes of this Section 11, terms are considered consecutive unless they are at least four years apart.

(2) The voters of any such political subdivision may lengthen, shorten or eliminate the limitations on terms of office imposed by this Section 11. The voters of the state may lengthen, shorten, or eliminate the limitations on terms of office for the state board of education or the governing board of a state institution of higher education imposed by this Section 11.

(3) The provisions of this Section 11 shall apply to every home rule county, home rule city and county, home rule city and home rule town, notwithstanding any provision of Article XX, or Sections 16 and 17 of Article XIV, of the Colorado Constitution.

Source: Initiated 94: Entire section added, effective upon proclamation of the Governor, **L. 95,** p. 1436, January 19, 1995.

ANNOTATION

The term limits established in this section apply to district attorneys. District attorneys belong to the executive branch of government and are elected, and a judicial district is a political subdivision. A district attorney is thus a nonjudicial elected official of a political subdivision and is subject to term limits. Davidson v. Sandstrom, 83 P.3d 648 (Colo. 2004).

This section is self-executing. Absent clarifying legislation that specifies the governing body that may call elections for a judicial district, it is thus appropriate for the county commissioners of a county that shares the same territory as a judicial district to refer to the voters of the district a ballot question to exempt the district attorney of the district from term limits. Davidson v. Sandstrom, 83 P.3d 648 (Colo. 2004).

Section 12. (Repealed)

Source: Initiated 96: Entire section added, effective upon proclamation of the Governor, **L. 97,** p. 2395, December 26, 1996. **L. 2002:** Entire section repealed, p. 3096, effective upon proclamation of the Governor, **L. 2003,** p. 3611, December 20, 2002.

Editor's note: (1) This section was found unconstitutional by the Colorado Supreme Court in Morrissey v. State, 951 P.2d 911 (Colo. 1998).

(2) This section related to congressional term limits.

Section 12a. Congressional Term Limits Declaration. (1) Information for voters about candidates' decisions to term limit themselves is more important than party labeling, therefore, any candidate seeking to be elected to the United States Congress shall be allowed, but not required, to submit to the secretary of state an executed copy of the Term Limits Declaration set forth in subsection (2) of this section not later than 15 days prior to the certification of every congressional election ballot to each county clerk and recorder by the secretary of state. The secretary of state shall not refuse to place a candidate on any ballot due to the candidate's decision not to submit such declaration.

(2) The language of the Term Limits Declaration shall be as set forth herein and the secretary of state shall incorporate the applicable language in square brackets "[ ]" for the office the candidate seeks:

Congressional Term Limits Declaration

Term Limits Declaration One

Part A: I, _____, voluntarily declare that, if elected, I will not serve in the United States [House of Representatives more than 3 terms] [Senate more than 2 terms] after the effective date of the Congressional Term Limits Declaration Act of 1998.

_____

_____

Signature by candidate executes Part A Date

Part B: I, _____, authorize and request that the secretary of state place the applicable ballot designation, "Signed declaration to limit service to no more than [3 terms] [2 terms]" next to my name on every election ballot and in all government-sponsored voter education material in which my name appears as a candidate for the office to which Term Limit Declaration One refers.

_____

_____

Signature by candidate executes Part B Date

If the candidate chooses not to execute any or all parts of Term Limits Declaration One, then he or she may execute and submit to the secretary of state any or all parts of Term Limits Declaration Two.

Term Limits Declaration Two

Part A: I, _____, have voluntarily chosen not to sign Term Limits Declaration One. If I had signed that declaration, I would have voluntarily

agreed to limit my service in the United States [House of Representatives to no more than 3 terms] [Senate to no more than 2 terms] after the passage of the congressional Term Limits Declaration Amendment of 1998.

_____

_____

Signature by candidate executes Part A Date

After executing Part A, a candidate may execute and submit the voluntary statement in Part B.

Part B: I, _____, authorize and request that the secretary of state place the ballot designation, "Chose not to sign declaration to limit service to [3 terms] [2 terms]" next to my name on every official election ballot and in all government-sponsored voter education material in which my name appears as a candidate for the office to which Term Limits Declaration Two refers.

_____

_____

Signature by candidate executes Part B Date

(3) In the ballot designations in this section, the secretary of state shall incorporate the applicable language in brackets for the office the candidate seeks. Terms shall be calculated without regard to whether the terms were served consecutively.

(4) The secretary of state shall allow any candidate who at any time has submitted an executed copy of Term Limits Declaration One or Two, to timely submit an executed copy of Term Limits Declaration One or Two at which time all provisions affecting that Term Limits Declaration shall apply.

(5) The secretary of state shall place on that part of the official election ballot and in all government-sponsored voter education material, immediately following the name of each candidate who has executed and submitted Parts A and B of Term Limits Declaration One, the words, "Signed declaration to limit service to [3 terms] [2 terms]" unless the candidate has qualified as a candidate for a term that would exceed the number of terms set forth in Term Limits Declaration One. The secretary of state shall place on that part of the official election ballot and in all government-sponsored voter education material, immediately following the name of each candidate who has executed and submitted Parts A and B of Term Limits Declaration Two the words, "Chose not to sign declaration to limit service to [3 terms] [2 terms]".

(6) For the purpose of this section, service in office for more than one-half of a term shall be deemed as service for a full term.

(7) No candidate shall have more than one declaration and ballot designation in effect for any office at the same time and a candidate may only execute and submit Part B of a declaration if Part A of that declaration is or has been executed and submitted.

(8) The secretary of state shall provide candidates with all the declarations in this section and promulgate regulations as provided by law to facilitate implementation of this section as long as the regulations do not alter the intent of this section.

(9) If any portion of this section be adjudicated invalid, the remaining portion shall be severed from the invalid portion to the greatest possible extent and be given the fullest force and application.

Source: Initiated 98: Entire section added, effective upon proclamation of the Governor, **L. 99,** p. 2257, December 30, 1998.

Section 12b. Prohibited methods of taking wildlife. (1) It shall be unlawful to take wildlife with any leghold trap, any instant kill body-gripping design trap, or by poison or snare in the state of Colorado.

(2) The provisions of subsection (1) of this section shall not prohibit:

(a) The taking of wildlife by use of the devices or methods described in subsection (1) of this section by federal, state, county, or municipal departments of health for the purpose of protecting human health or safety;

(b) The use of the devices or methods described in subsection (1) of this section for controlling:

(I) wild or domestic rodents, except for beaver or muskrat, as otherwise authorized by law; or

(II) wild or domestic birds as otherwise authorized by law;

(c) The use of non-lethal snares, traps specifically designed not to kill, or nets to take wildlife for scientific research projects, for falconry, for relocation, or for medical treatment pursuant to regulations established by the Colorado wildlife commission; or

(d) The use of traps, poisons or nets by the Colorado division of wildlife to take or manage fish or other non-mammalian aquatic wildlife.

(3) Notwithstanding the provisions of this section 12, the owner or lessee of private property primarily used for commercial livestock or crop production, or the employees of such owner or lessee, shall not be prohibited from using the devices or methods described in subsection (1) of this section on such private property so long as:

(a) such use does not exceed one thirty day period per year; and

(b) the owner or lessee can present on-site evidence to the division of wildlife that ongoing damage to livestock or crops has not been alleviated by the use of non-lethal or lethal control methods which are not prohibited.

(4) The provisions of this section 12 shall not apply to the taking of wildlife with firearms, fishing equipment, archery equipment, or other implements in hand as authorized by law.

(5) The general assembly shall enact, amend, or repeal such laws as are necessary to implement the provisions of this section 12, including penalty provisions, no later than May 1, 1997.

(6) As used in this section, unless the context otherwise requires:

(a) The term "taking" shall be defined as provided in section 33-1-102 (43), C.R.S., on the date this section is enacted.

(b) The term "wildlife" shall be defined as provided in section 33-1-102 (51), C.R.S., on the date this section is enacted.

Source: Initiated 96: Entire section added, effective upon proclamation of the Governor, **L. 97,** p. 2397, January 15, 1997.

Editor's note: Although this section was numbered as section 12 as it appeared on the ballot, for ease of location it has been numbered as section 12b.

ANNOTATION

Although plaintiff established standing, denial of mandamus and injunctive relief was appropriate regarding proposed requirements to take reasonable steps to minimize the effects of the poisoning on nontargeted wildlife and prosecution of alleged violations, because no plain duty to impose the requirements and no plain right to such relief existed. Rocky Mtn. Animal Def. v. Div. of Wildlife, 100 P.3d 508 (Colo. App. 2004).

This amendment does not protect particular species but rather restricts certain methods of controlling wildlife; therefore, the general prohibition on the use of poisons, which is subject to an exception for use on rodents, does not prohibit the poisoning of nontargeted wildlife that is purely incidental to poisoning prairie dogs for purposes of rodent control. The voters were informed that poisoning of nontargeted wildlife would sometimes occur although the poisoner intended to control only rodents; hence, the ambiguity in the text is best resolved by allowing incidental poisoning. Rocky Mtn. Animal Def. v. Div. of Wildlife, 100 P.3d 508 (Colo. App. 2004).

This section does not expressly or implicitly create a private cause of action and therefore a non-state plaintiff lacks standing to enforce it. Additionally, this section expressly does not apply to rodents, including prairie dogs. Prairie Dog Advocates v. City of Lakewood, 20 P.3d 1203 (Colo. App. 2000).

Section 14. Medical use of marijuana for persons suffering from debilitating medical conditions. (1) As used in this section, these terms are defined as follows:

(a) "Debilitating medical condition" means:

(I) Cancer, glaucoma, positive status for human immunodeficiency virus, or acquired immune deficiency syndrome, or treatment for such conditions;

(II) A chronic or debilitating disease or medical condition, or treatment for such conditions, which produces, for a specific patient, one or more of the following, and for which, in the professional opinion of the patient's physician, such condition or conditions reasonably may be alleviated by the medical use of marijuana: cachexia; severe pain; severe nausea; seizures, including those that are characteristic of epilepsy; or persistent muscle spasms, including those that are characteristic of multiple sclerosis; or

(III) Any other medical condition, or treatment for such condition, approved by the state health agency, pursuant to its rule making authority or its approval of any petition submitted by a patient or physician as provided in this section.

(b) "Medical use" means the acquisition, possession, production, use, or transportation of marijuana or paraphernalia related to the administration of such marijuana to address the symptoms or effects of a patient's debilitating medical condition, which may be authorized only after a diagnosis of the patient's debilitating medical condition by a physician or physicians, as provided by this section.

(c) "Parent" means a custodial mother or father of a patient under the age of eighteen years, any person having custody of a patient under the age of eighteen years, or any person serving as a legal guardian for a patient under the age of eighteen years.

(d) "Patient" means a person who has a debilitating medical condition.

(e) "Physician" means a doctor of medicine who maintains, in good standing, a license to practice medicine issued by the state of Colorado.

(f) "Primary care-giver" means a person, other than the patient and the patient's physician, who is eighteen years of age or older and has significant responsibility for managing the well-being of a patient who has a debilitating medical condition.

(g) "Registry identification card" means that document, issued by the state health agency, which identifies a patient authorized to engage in the medical use of marijuana and such patient's primary care-giver, if any has been designated.

(h) "State health agency" means that public health related entity of state government designated by the governor to establish and maintain a confidential registry of patients authorized to engage in the medical use of marijuana and enact rules to administer this program.

(i) "Usable form of marijuana" means the seeds, leaves, buds, and flowers of the plant (genus) cannabis, and any mixture or preparation thereof, which are appropriate for medical use as provided in this section, but excludes the plant's stalks, stems, and roots.

(j) "Written documentation" means a statement signed by a patient's physician or copies of the patient's pertinent medical records.

(2) (a) Except as otherwise provided in subsections (5), (6), and (8) of this section, a patient or primary care-giver charged with a violation of the state's criminal laws related to the patient's medical use of marijuana will be deemed to have established an affirmative defense to such allegation where:

(I) The patient was previously diagnosed by a physician as having a debilitating medical condition;

(II) The patient was advised by his or her physician, in the context of a bona fide physician-patient relationship, that the patient might benefit from the medical use of marijuana in connection with a debilitating medical condition; and

(III) The patient and his or her primary care-giver were collectively in possession of amounts of marijuana only as permitted under this section.

This affirmative defense shall not exclude the assertion of any other defense where a patient or primary care-giver is charged with a violation of state law related to the patient's medical use of marijuana.

(b) Effective June 1, 1999, it shall be an exception from the state's criminal laws for any patient or primary care-giver in lawful possession of a registry identification card to engage or assist in the medical use of marijuana, except as otherwise provided in subsections (5) and (8) of this section.

(c) It shall be an exception from the state's criminal laws for any physician to:

(I) Advise a patient whom the physician has diagnosed as having a debilitating medical condition, about the risks and benefits of medical use of marijuana or that he or she might benefit from the medical use of marijuana, provided that such advice is based upon the physician's contemporaneous assessment of the patient's medical history and current medical condition and a bona fide physician-patient relationship; or

(II) Provide a patient with written documentation, based upon the physician's contemporaneous assessment of the patient's medical history and current medical condition and a bona fide physician-patient relationship, stating that the patient has a debilitating medical condition and might benefit from the medical use of marijuana.

No physician shall be denied any rights or privileges for the acts authorized by this subsection.

(d) Notwithstanding the foregoing provisions, no person, including a patient or primary care-giver, shall be entitled to the protection of this section for his or her acquisition, possession, manufacture, production, use, sale, distribution, dispensing, or transportation of marijuana for any use other than medical use.

(e) Any property interest that is possessed, owned, or used in connection with the medical use of marijuana or acts incidental to such use, shall not be harmed, neglected, injured, or destroyed while in the possession of state or local law enforcement officials where such property has been seized in connection with the claimed medical use of marijuana. Any such property interest shall not be forfeited under any provision of state law providing for the forfeiture of property other than as a sentence imposed after conviction of a criminal offense or entry of a plea of guilty to such offense. Marijuana and paraphernalia seized by state or local law enforcement officials from a patient or primary care-giver in connection with the claimed medical use of marijuana shall be returned immediately upon the determination of the district attorney or his or her designee that the patient or primary care-giver is entitled to the protection contained in this section as may be evidenced, for example, by a decision not to prosecute, the dismissal of charges, or acquittal.

(3) The state health agency shall create and maintain a confidential registry of patients who have applied for and are entitled to receive a registry identification card according to the criteria set forth in this subsection, effective June 1, 1999.

(a) No person shall be permitted to gain access to any information about patients in the state health agency's confidential registry, or any information otherwise maintained by the state health agency about physicians and primary care-givers, except for authorized employees of the state health

agency in the course of their official duties and authorized employees of state or local law enforcement agencies which have stopped or arrested a person who claims to be engaged in the medical use of marijuana and in possession of a registry identification card or its functional equivalent, pursuant to paragraph (e) of this subsection (3). Authorized employees of state or local law enforcement agencies shall be granted access to the information contained within the state health agency's confidential registry only for the purpose of verifying that an individual who has presented a registry identification card to a state or local law enforcement official is lawfully in possession of such card.

(b) In order to be placed on the state's confidential registry for the medical use of marijuana, a patient must reside in Colorado and submit the completed application form adopted by the state health agency, including the following information, to the state health agency:

(I) The original or a copy of written documentation stating that the patient has been diagnosed with a debilitating medical condition and the physician's conclusion that the patient might benefit from the medical use of marijuana;

(II) The name, address, date of birth, and social security number of the patient;

(III) The name, address, and telephone number of the patient's physician; and

(IV) The name and address of the patient's primary care-giver, if one is designated at the time of application.

(c) Within thirty days of receiving the information referred to in subparagraphs (3) (b) (I)-(IV), the state health agency shall verify medical information contained in the patient's written documentation. The agency shall notify the applicant that his or her application for a registry identification card has been denied if the agency's review of such documentation discloses that: the information required pursuant to paragraph (3) (b) of this section has not been provided or has been falsified; the documentation fails to state that the patient has a debilitating medical condition specified in this section or by state health agency rule; or the physician does not have a license to practice medicine issued by the state of Colorado. Otherwise, not more than five days after verifying such information, the state health agency shall issue one serially numbered registry identification card to the patient, stating:

(I) The patient's name, address, date of birth, and social security number;

(II) That the patient's name has been certified to the state health agency as a person who has a debilitating medical condition, whereby the patient may address such condition with the medical use of marijuana;

(III) The date of issuance of the registry identification card and the date of expiration of such card, which shall be one year from the date of issuance; and

(IV) The name and address of the patient's primary care-giver, if any is designated at the time of application.

(d) Except for patients applying pursuant to subsection (6) of this

section, where the state health agency, within thirty-five days of receipt of an application, fails to issue a registry identification card or fails to issue verbal or written notice of denial of such application, the patient's application for such card will be deemed to have been approved. Receipt shall be deemed to have occurred upon delivery to the state health agency, or deposit in the United States mails. Notwithstanding the foregoing, no application shall be deemed received prior to June 1, 1999. A patient who is questioned by any state or local law enforcement official about his or her medical use of marijuana shall provide a copy of the application submitted to the state health agency, including the written documentation and proof of the date of mailing or other transmission of the written documentation for delivery to the state health agency, which shall be accorded the same legal effect as a registry identification card, until such time as the patient receives notice that the application has been denied.

(e) A patient whose application has been denied by the state health agency may not reapply during the six months following the date of the denial and may not use an application for a registry identification card as provided in paragraph (3) (d) of this section. The denial of a registry identification card shall be considered a final agency action. Only the patient whose application has been denied shall have standing to contest the agency action.

(f) When there has been a change in the name, address, physician, or primary care- giver of a patient who has qualified for a registry identification card, that patient must notify the state health agency of any such change within ten days. A patient who has not designated a primary care-giver at the time of application to the state health agency may do so in writing at any time during the effective period of the registry identification card, and the primary care-giver may act in this capacity after such designation. To maintain an effective registry identification card, a patient must annually resubmit, at least thirty days prior to the expiration date stated on the registry identification card, updated written documentation to the state health agency, as well as the name and address of the patient's primary care-giver, if any is designated at such time.

(g) Authorized employees of state or local law enforcement agencies shall immediately notify the state health agency when any person in possession of a registry identification card has been determined by a court of law to have willfully violated the provisions of this section or its implementing legislation, or has pled guilty to such offense.

(h) A patient who no longer has a debilitating medical condition shall return his or her registry identification card to the state health agency within twenty-four hours of receiving such diagnosis by his or her physician.

(i) The state health agency may determine and levy reasonable fees to pay for any direct or indirect administrative costs associated with its role in this program.

(4) (a) A patient may engage in the medical use of marijuana, with no more marijuana than is medically necessary to address a debilitating medical condition. A patient's medical use of marijuana, within the following limits, is lawful:

(I) No more than two ounces of a usable form of marijuana; and

(II) No more than six marijuana plants, with three or fewer being mature, flowering plants that are producing a usable form of marijuana.

(b) For quantities of marijuana in excess of these amounts, a patient or his or her primary care-giver may raise as an affirmative defense to charges of violation of state law that such greater amounts were medically necessary to address the patient's debilitating medical condition.

(5) (a) No patient shall:

(I) Engage in the medical use of marijuana in a way that endangers the health or well-being of any person; or

(II) Engage in the medical use of marijuana in plain view of, or in a place open to, the general public.

(b) In addition to any other penalties provided by law, the state health agency shall revoke for a period of one year the registry identification card of any patient found to have willfully violated the provisions of this section or the implementing legislation adopted by the general assembly.

(6) Notwithstanding paragraphs (2) (a) and (3) (d) of this section, no patient under eighteen years of age shall engage in the medical use of marijuana unless:

(a) Two physicians have diagnosed the patient as having a debilitating medical condition;

(b) One of the physicians referred to in paragraph (6) (a) has explained the possible risks and benefits of medical use of marijuana to the patient and each of the patient's parents residing in Colorado;

(c) The physicians referred to in paragraph (6) (b) has provided the patient with the written documentation, specified in subparagraph (3) (b) (I);

(d) Each of the patient's parents residing in Colorado consent in writing to the state health agency to permit the patient to engage in the medical use of marijuana;

(e) A parent residing in Colorado consents in writing to serve as a patient's primary care-giver;

(f) A parent serving as a primary care-giver completes and submits an application for a registry identification card as provided in subparagraph (3) (b) of this section and the written consents referred to in paragraph (6) (d) to the state health agency;

(g) The state health agency approves the patient's application and transmits the patient's registry identification card to the parent designated as a primary care-giver;

(h) The patient and primary care-giver collectively possess amounts of marijuana no greater than those specified in subparagraph (4) (a) (I) and (II); and

(i) The primary care-giver controls the acquisition of such marijuana and the dosage and frequency of its use by the patient.

(7) Not later than March 1, 1999, the governor shall designate, by executive order, the state health agency as defined in paragraph (1) (g) of this section.

(8) Not later than April 30, 1999, the General Assembly shall define

such terms and enact such legislation as may be necessary for implementation of this section, as well as determine and enact criminal penalties for:

(a) Fraudulent representation of a medical condition by a patient to a physician, state health agency, or state or local law enforcement official for the purpose of falsely obtaining a registry identification card or avoiding arrest and prosecution;

(b) Fraudulent use or theft of any person's registry identification card to acquire, possess, produce, use, sell, distribute, or transport marijuana, including but not limited to cards that are required to be returned where patients are no longer diagnosed as having a debilitating medical condition;

(c) Fraudulent production or counterfeiting of, or tampering with, one or more registry identification cards; or

(d) Breach of confidentiality of information provided to or by the state health agency.

(9) Not later than June 1, 1999, the state health agency shall develop and make available to residents of Colorado an application form for persons seeking to be listed on the confidential registry of patients. By such date, the state health agency shall also enact rules of administration, including but not limited to rules governing the establishment and confidentiality of the registry, the verification of medical information, the issuance and form of registry identification cards, communications with law enforcement officials about registry identification cards that have been suspended where a patient is no longer diagnosed as having a debilitating medical condition, and the manner in which the agency may consider adding debilitating medical conditions to the list provided in this section. Beginning June 1, 1999, the state health agency shall accept physician or patient initiated petitions to add debilitating medical conditions to the list provided in this section and, after such hearing as the state health agency deems appropriate, shall approve or deny such petitions within one hundred eighty days of submission. The decision to approve or deny a petition shall be considered a final agency action.

(10) (a) No governmental, private, or any other health insurance provider shall be required to be liable for any claim for reimbursement for the medical use of marijuana.

(b) Nothing in this section shall require any employer to accommodate the medical use of marijuana in any work place.

(11) Unless otherwise provided by this section, all provisions of this section shall become effective upon official declaration of the vote hereon by proclamation of the governor, pursuant to article V, section (1) (4), and shall apply to acts or offenses committed on or after that date.

Source: Initiated 2000: Entire section added, effective upon proclamation of the Governor, **L. 2001,** p. 2379, December 28, 2000.

Editor's note: (1) This section was added by an initiated measure and numbered as section 14 as it appeared on the ballot, which leaves a gap between sections 12b and 14.

(2) In subsection (7), the reference cited to state health agency as defined in paragraph (1)(g) of this section should read (1)(h) of this section.

ANNOTATION

Law reviews. For article, "The New, More Regulated Frontier for Medical Marijuana", see 39 Colo. Law. 29 (November 2010). For article, "Colorado's Emerging Medical Marijuana Legal Framework and Constitutional Rights", see 40 Colo. Law. 69 (November 2011). For article, "Employment Law and Medical Marijuana An Uncertain Relationship", see 41 Colo. Law. 57 (January 2012). For article, "Litigating Disputes Involving the Medical Marijuana Industry", see 41 Colo. Law. 103 (August 2012).

Primary care-giver must do more than merely supply a patient with marijuana for medical use in order to meet the constitutional requirement of having a significant responsibility for managing the well-being of a patient who has a debilitating medical condition. People v. Clendenin, 232 P.3d 210 (Colo. App. 2009).

Primary care-giver affirmative defense does not apply where the provision of marijuana is itself the substance of the relationship. People v. Clendenin, 232 P.3d 210 (Colo. App. 2009).

Presence of medical marijuana in an individual's system during working hours is a ground for disqualification from unemployment benefits under § 8-73-108. Medical use of marijuana by an employee holding a registry card under this section of the constitution does not constitute the use of "medically prescribed controlled substances" within the meaning of § 8-73-108 (5)(e)(IX.5). Beinor v. Indus. Claim Appeals Office, 262 P.3d 970 (Colo. App. 2011).

Although medical certification permitting the possession and use of marijuana may insulate claimant from state criminal prosecution, it does not preclude claimant from being denied unemployment benefits based on a separation from employment for testing positive for marijuana in violation of an employer's express zero-tolerance drug policy. Beinor v. Indus. Claim Appeals Office, 262 P.3d 970 (Colo. App. 2011).

"Cause" exists under 11 U.S.C. § 1112(b) for dismissal or conversion of debtor's chapter 11 bankruptcy case because debtor is engaged in an ongoing criminal violation of the federal Controlled Substances Act (CSA) by deriving roughly one quarter of its revenues from leasing warehouse space to tenants who are engaged in the business of growing marijuana, which, while legal under Colorado law, violates the CSA. In re Rent-Rite Super Kegs W. Ltd., 484 B.R. 799 (Bankr. D. Colo. 2012).

Section 15. State minimum wage rate. Effective January 1, 2007, Colorado's minimum wage shall be increased to $6.85 per hour and shall be adjusted annually for inflation, as measured by the Consumer Price Index used for Colorado. This minimum wage shall be paid to employees who receive the state or federal minimum wage. No more than $3.02 per hour in tip income may be used to offset the minimum wage of employees who regularly receive tips.

Source: Initiated 2006: Entire section added, effective upon proclamation of the Governor, **L. 2007,** p. 2961, December 31, 2006.

ANNOTATION

Law reviews. For article, "The Colorado Constitution in the New

Century", see 78 U. Colo. L. Rev. 1265 (2007).

Plaintiffs failed to show beyond a reasonable doubt that this section is incomprehensible or impermissibly vague in all its applications, and therefore have not demonstrated that this section is facially unconstitutional. The department of labor did not exceed its authority and act in an arbitrary and capricious manner in applying the Denver-Boulder-Greeley consumer price index as the consumer price index used for Colorado. Table Servs. v. Hickenlooper, 257 P.3d 1210 (Colo. App. 2011).

Section 16. Personal use and regulation of marijuana.

(1) Purpose and findings.

(a) In the interest of the efficient use of law enforcement resources, enhancing revenue for public purposes, and individual freedom, the people of the state of Colorado find and declare that the use of marijuana should be legal for persons twenty-one years of age or older and taxed in a manner similar to alcohol.

(b) In the interest of the health and public safety of our citizenry, the people of the state of Colorado further find and declare that marijuana should be regulated in a manner similar to alcohol so that:

(I) Individuals will have to show proof of age before purchasing marijuana;

(II) Selling, distributing, or transferring marijuana to minors and other individuals under the age of twenty-one shall remain illegal;

(III) Driving under the influence of marijuana shall remain illegal;

(IV) Legitimate, taxpaying business people, and not criminal actors, will conduct sales of marijuana; and

(V) Marijuana sold in this state will be labeled and subject to additional regulations to ensure that consumers are informed and protected.

(c) In the interest of enacting rational policies for the treatment of all variations of the cannabis plant, the people of Colorado further find and declare that industrial hemp should be regulated separately from strains of cannabis with higher delta-9 tetrahydrocannabinol (THC) concentrations.

(d) The people of the state of Colorado further find and declare that it is necessary to ensure consistency and fairness in the application of this section throughout the state and that, therefore, the matters addressed by this section are, except as specified herein, matters of statewide concern.

(2) Definitions. As used in this section, unless the context otherwise requires,

(a) "Colorado Medical Marijuana Code" means article 43.3 of title 12, Colorado Revised Statutes.

(b) "Consumer" means a person twenty-one years of age or older who purchases marijuana or marijuana products for personal use by persons twenty-one years of age or older, but not for resale to others.

(c) "Department" means the department of revenue or its successor agency.

(d) "Industrial hemp" means the plant of the genus cannabis and any

part of such plant, whether growing or not, with a delta-9 tetrahydrocannabinol concentration that does not exceed three-tenths percent on a dry weight basis.

(e) "Locality" means a county, municipality, or city and county.

(f) "Marijuana" or "marihuana" means all parts of the plant of the genus cannabis whether growing or not, the seeds thereof, the resin extracted from any part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or its resin, including marihuana concentrate. "Marijuana" or "marihuana" does not include industrial hemp, nor does it include fiber produced from the stalks, oil, or cake made from the seeds of the plant, sterilized seed of the plant which is incapable of germination, or the weight of any other ingredient combined with marijuana to prepare topical or oral administrations, food, drink, or other product.

(g) "Marijuana accessories" means any equipment, products, or materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, composting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, vaporizing, or containing marijuana, or for ingesting, inhaling, or otherwise introducing marijuana into the human body.

(h) "Marijuana cultivation facility" means an entity licensed to cultivate, prepare, and package marijuana and sell marijuana to retail marijuana stores, to marijuana product manufacturing facilities, and to other marijuana cultivation facilities, but not to consumers.

(i) "Marijuana establishment" means a marijuana cultivation facility, a marijuana testing facility, a marijuana product manufacturing facility, or a retail marijuana store.

(j) "Marijuana product manufacturing facility" means an entity licensed to purchase marijuana; manufacture, prepare, and package marijuana products; and sell marijuana and marijuana products to other marijuana product manufacturing facilities and to retail marijuana stores, but not to consumers.

(k) "Marijuana products" means concentrated marijuana products and marijuana products that are comprised of marijuana and other ingredients and are intended for use or consumption, such as, but not limited to, edible products, ointments, and tinctures.

(l) "Marijuana testing facility" means an entity licensed to analyze and certify the safety and potency of marijuana.

(m) "Medical marijuana center" means an entity licensed by a state agency to sell marijuana and marijuana products pursuant to section 14 of this article and the Colorado Medical Marijuana Code.

(n) "Retail marijuana store" means an entity licensed to purchase marijuana from marijuana cultivation facilities and marijuana and marijuana products from marijuana product manufacturing facilities and to sell marijuana and marijuana products to consumers.

(o) "Unreasonably impracticable" means that the measures necessary to comply with the regulations require such a high investment of risk, money, time, or any other resource or asset that the operation of a marijuana

establishment is not worthy of being carried out in practice by a reasonably prudent businessperson.

(3) Personal use of marijuana. Notwithstanding any other provision of law, the following acts are not unlawful and shall not be an offense under Colorado law or the law of any locality within Colorado or be a basis for seizure or forfeiture of assets under Colorado law for persons twenty-one years of age or older:

(a) Possessing, using, displaying, purchasing, or transporting marijuana accessories or one ounce or less of marijuana.

(b) Possessing, growing, processing, or transporting no more than six marijuana plants, with three or fewer being mature, flowering plants, and possession of the marijuana produced by the plants on the premises where the plants were grown, provided that the growing takes place in an enclosed, locked space, is not conducted openly or publicly, and is not made available for sale.

(c) Transfer of one ounce or less of marijuana without remuneration to a person who is twenty-one years of age or older.

(d) Consumption of marijuana, provided that nothing in this section shall permit consumption that is conducted openly and publicly or in a manner that endangers others.

(e) Assisting another person who is twenty-one years of age or older in any of the acts described in paragraphs (a) through (d) of this subsection.

(4) Lawful operation of marijuana-related facilities. Notwithstanding any other provision of law, the following acts are not unlawful and shall not be an offense under Colorado law or be a basis for seizure or forfeiture of assets under Colorado law for persons twenty-one years of age or older:

(a) Manufacture, possession, or purchase of marijuana accessories or the sale of marijuana accessories to a person who is twenty-one years of age or older.

(b) Possessing, displaying, or transporting marijuana or marijuana products; purchase of marijuana from a marijuana cultivation facility; purchase of marijuana or marijuana products from a marijuana product manufacturing facility; or sale of marijuana or marijuana products to consumers, if the person conducting the activities described in this paragraph has obtained a current, valid license to operate a retail marijuana store or is acting in his or her capacity as an owner, employee or agent of a licensed retail marijuana store.

(c) Cultivating, harvesting, processing, packaging, transporting, displaying, or possessing marijuana; delivery or transfer of marijuana to a marijuana testing facility; selling marijuana to a marijuana cultivation facility, a marijuana product manufacturing facility, or a retail marijuana store; or the purchase of marijuana from a marijuana cultivation facility, if the person conducting the activities described in this paragraph has obtained a current, valid license to operate a marijuana cultivation facility or is acting in his or her capacity as an owner, employee, or agent of a licensed marijuana cultivation facility.

(d) Packaging, processing, transporting, manufacturing, displaying, or

possessing marijuana or marijuana products; delivery or transfer of marijuana or marijuana products to a marijuana testing facility; selling marijuana or marijuana products to a retail marijuana store or a marijuana product manufacturing facility; the purchase of marijuana from a marijuana cultivation facility; or the purchase of marijuana or marijuana products from a marijuana product manufacturing facility, if the person conducting the activities described in this paragraph has obtained a current, valid license to operate a marijuana product manufacturing facility or is acting in his or her capacity as an owner, employee, or agent of a licensed marijuana product manufacturing facility.

(e) Possessing, cultivating, processing, repackaging, storing, transporting, displaying, transferring or delivering marijuana or marijuana products if the person has obtained a current, valid license to operate a marijuana testing facility or is acting in his or her capacity as an owner, employee, or agent of a licensed marijuana testing facility.

(f) Leasing or otherwise allowing the use of property owned, occupied or controlled by any person, corporation or other entity for any of the activities conducted lawfully in accordance with paragraphs (a) through (e) of this subsection.

(5) Regulation of marijuana.

(a) Not later than July 1, 2013, the department shall adopt regulations necessary for implementation of this section. Such regulations shall not prohibit the operation of marijuana establishments, either expressly or through regulations that make their operation unreasonably impracticable. Such regulations shall include:

(I) Procedures for the issuance, renewal, suspension, and revocation of a license to operate a marijuana establishment, with such procedures subject to all requirements of article 4 of title 24 of the Colorado Administrative Procedure Act or any successor provision;

(II) A schedule of application, licensing and renewal fees, provided, application fees shall not exceed five thousand dollars, with this upper limit adjusted annually for inflation, unless the department determines a greater fee is necessary to carry out its responsibilities under this section, and provided further, an entity that is licensed under the Colorado Medical Marijuana Code to cultivate or sell marijuana or to manufacture marijuana products at the time this section takes effect and that chooses to apply for a separate marijuana establishment license shall not be required to pay an application fee greater than five hundred dollars to apply for a license to operate a marijuana establishment in accordance with the provisions of this section;

(III) Qualifications for licensure that are directly and demonstrably related to the operation of a marijuana establishment;

(IV) Security requirements for marijuana establishments;

(V) Requirements to prevent the sale or diversion of marijuana and marijuana products to persons under the age of twenty-one;

(VI) Labeling requirements for marijuana and marijuana products sold or distributed by a marijuana establishment;

(VII) Health and safety regulations and standards for the manufacture

of marijuana products and the cultivation of marijuana;

(VIII) Restrictions on the advertising and display of marijuana and marijuana products; and

(IX) Civil penalties for the failure to comply with regulations made pursuant to this section.

(b) In order to ensure the most secure, reliable, and accountable system for the production and distribution of marijuana and marijuana products in accordance with this subsection, in any competitive application process the department shall have as a primary consideration whether an applicant:

(I) Has prior experience producing or distributing marijuana or marijuana products pursuant to section 14 of this article and the Colorado Medical Marijuana Code in the locality in which the applicant seeks to operate a marijuana establishment; and

(II) Has, during the experience described in subparagraph (I), complied consistently with section 14 of this article, the provisions of the Colorado Medical Marijuana Code and conforming regulations.

(c) In order to ensure that individual privacy is protected, notwithstanding paragraph (a), the department shall not require a consumer to provide a retail marijuana store with personal information other than government-issued identification to determine the consumer's age, and a retail marijuana store shall not be required to acquire and record personal information about consumers other than information typically acquired in a financial transaction conducted at a retail liquor store.

(d) The general assembly shall enact an excise tax to be levied upon marijuana sold or otherwise transferred by a marijuana cultivation facility to a marijuana product manufacturing facility or to a retail marijuana store at a rate not to exceed fifteen percent prior to January 1, 2017 and at a rate to be determined by the general assembly thereafter, and shall direct the department to establish procedures for the collection of all taxes levied. Provided, the first forty million dollars in revenue raised annually from any such excise tax shall be credited to the Public School Capital Construction Assistance Fund created by article 43.7 of title 22, C.R.S., or any successor fund dedicated to a similar purpose. Provided further, no such excise tax shall be levied upon marijuana intended for sale at medical marijuana centers pursuant to section 14 of this article and the Colorado Medical Marijuana Code.

(e) Not later than October 1, 2013, each locality shall enact an ordinance or regulation specifying the entity within the locality that is responsible for processing applications submitted for a license to operate a marijuana establishment within the boundaries of the locality and for the issuance of such licenses should the issuance by the locality become necessary because of a failure by the department to adopt regulations pursuant to paragraph (a) or because of a failure by the department to process and issue licenses as required by paragraph (g).

(f) A locality may enact ordinances or regulations, not in conflict with this section or with regulations or legislation enacted pursuant to this section, governing the time, place, manner and number of marijuana establishment

operations; establishing procedures for the issuance, suspension, and revocation of a license issued by the locality in accordance with paragraph (h) or (i), such procedures to be subject to all requirements of article 4 of title 24 of the Colorado Administrative Procedure Act or any successor provision; establishing a schedule of annual operating, licensing, and application fees for marijuana establishments, provided, the application fee shall only be due if an application is submitted to a locality in accordance with paragraph (i) and a licensing fee shall only be due if a license is issued by a locality in accordance with paragraph (h) or (i); and establishing civil penalties for violation of an ordinance or regulation governing the time, place, and manner of a marijuana establishment that may operate in such locality. A locality may prohibit the operation of marijuana cultivation facilities, marijuana product manufacturing facilities, marijuana testing facilities, or retail marijuana stores through the enactment of an ordinance or through an initiated or referred measure; provided, any initiated or referred measure to prohibit the operation of marijuana cultivation facilities, marijuana product manufacturing facilities, marijuana testing facilities, or retail marijuana stores must appear on a general election ballot during an even numbered year.

(g) Each application for an annual license to operate a marijuana establishment shall be submitted to the department. The department shall:

(I) Begin accepting and processing applications on October 1, 2013;

(II) Immediately forward a copy of each application and half of the license application fee to the locality in which the applicant desires to operate the marijuana establishment;

(III) Issue an annual license to the applicant between forty-five and ninety days after receipt of an application unless the department finds the applicant is not in compliance with regulations enacted pursuant to paragraph (a) or the department is notified by the relevant locality that the applicant is not in compliance with ordinances and regulations made pursuant to paragraph (f) and in effect at the time of application, provided, where a locality has enacted a numerical limit on the number of marijuana establishments and a greater number of applicants seek licenses, the department shall solicit and consider input from the locality as to the locality's preference or preferences for licensure; and

(IV) Upon denial of an application, notify the applicant in writing of the specific reason for its denial.

(h) If the department does not issue a license to an applicant within ninety days of receipt of the application filed in accordance with paragraph (g) and does not notify the applicant of the specific reason for its denial, in writing and within such time period, or if the department has adopted regulations pursuant to paragraph (a) and has accepted applications pursuant to paragraph (g) but has not issued any licenses by January 1, 2014, the applicant may resubmit its application directly to the locality, pursuant to paragraph (e), and the locality may issue an annual license to the applicant. A locality issuing a license to an applicant shall do so within ninety days of receipt of the resubmitted application unless the locality finds and notifies the applicant that the applicant is not in compliance with ordinances and regulations made

pursuant to paragraph (f) in effect at the time the application is resubmitted and the locality shall notify the department if an annual license has been issued to the applicant. If an application is submitted to a locality under this paragraph, the department shall forward to the locality the application fee paid by the applicant to the department upon request by the locality. A license issued by a locality in accordance with this paragraph shall have the same force and effect as a license issued by the department in accordance with paragraph (g) and the holder of such license shall not be subject to regulation or enforcement by the department during the term of that license. A subsequent or renewed license may be issued under this paragraph on an annual basis only upon resubmission to the locality of a new application submitted to the department pursuant to paragraph (g). Nothing in this paragraph shall limit such relief as may be available to an aggrieved party under section 24-4-104, C.R.S., of the Colorado Administrative Procedure Act or any successor provision.

(i) If the department does not adopt regulations required by paragraph (a), an applicant may submit an application directly to a locality after October 1, 2013 and the locality may issue an annual license to the applicant. A locality issuing a license to an applicant shall do so within ninety days of receipt of the application unless it finds and notifies the applicant that the applicant is not in compliance with ordinances and regulations made pursuant to paragraph (f) in effect at the time of application and shall notify the department if an annual license has been issued to the applicant. A license issued by a locality in accordance with this paragraph shall have the same force and effect as a license issued by the department in accordance with paragraph (g) and the holder of such license shall not be subject to regulation or enforcement by the department during the term of that license. A subsequent or renewed license may be issued under this paragraph on an annual basis if the department has not adopted regulations required by paragraph (a) at least ninety days prior to the date upon which such subsequent or renewed license would be effective or if the department has adopted regulations pursuant to paragraph (a) but has not, at least ninety days after the adoption of such regulations, issued licenses pursuant to paragraph (g).

(j) Not later than July 1, 2014, the general assembly shall enact legislation governing the cultivation, processing and sale of industrial hemp.

(6) Employers, driving, minors and control of property.

(a) Nothing in this section is intended to require an employer to permit or accommodate the use, consumption, possession, transfer, display, transportation, sale or growing of marijuana in the workplace or to affect the ability of employers to have policies restricting the use of marijuana by employees.

(b) Nothing in this section is intended to allow driving under the influence of marijuana or driving while impaired by marijuana or to supersede statutory laws related to driving under the influence of marijuana or driving while impaired by marijuana, nor shall this section prevent the state from enacting and imposing penalties for driving under the influence of or while impaired by marijuana.

(c) Nothing in this section is intended to permit the transfer of marijuana, with or without remuneration, to a person under the age of twenty-one or to allow a person under the age of twenty-one to purchase, possess, use, transport, grow, or consume marijuana.

(d) Nothing in this section shall prohibit a person, employer, school, hospital, detention facility, corporation or any other entity who occupies, owns or controls a property from prohibiting or otherwise regulating the possession, consumption, use, display, transfer, distribution, sale, transportation, or growing of marijuana on or in that property.

(7) Medical marijuana provisions unaffected. Nothing in this section shall be construed:

(a) To limit any privileges or rights of a medical marijuana patient, primary caregiver, or licensed entity as provided in section 14 of this article and the Colorado Medical Marijuana Code;

(b) To permit a medical marijuana center to distribute marijuana to a person who is not a medical marijuana patient;

(c) To permit a medical marijuana center to purchase marijuana or marijuana products in a manner or from a source not authorized under the Colorado Medical Marijuana Code;

(d) To permit any medical marijuana center licensed pursuant to section 14 of this article and the Colorado Medical Marijuana Code to operate on the same premises as a retail marijuana store; or

(e) To discharge the department, the Colorado Board of Health, or the Colorado Department of Public Health and Environment from their statutory and constitutional duties to regulate medical marijuana pursuant to section 14 of this article and the Colorado Medical Marijuana Code.

(8) Self-executing, severability, conflicting provisions. All provisions of this section are self-executing except as specified herein, are severable, and, except where otherwise indicated in the text, shall supersede conflicting state statutory, local charter, ordinance, or resolution, and other state and local provisions.

(9) Effective date. Unless otherwise provided by this section, all provisions of this section shall become effective upon official declaration of the vote hereon by proclamation of the governor, pursuant to section 1(4) of article V.

Source: Initiated 2012: Entire section added, effective upon proclamation of the Governor, **L. 2013,** p. , December 10, 2012.

Editor's note: (1) In subsection (4)(c), changed "vaild" to "valid"; in subsection (4)(f), changed "activites" to "activities"; and, in subsection (5)(b)(II), changed "consistantly" to "consistently" to correct the misspellings in the 2012 initiative (Amendment 64).

(2) In (5)(a)(II), reference to "at the time this section takes effect" refers to the proclamation date of the governor, December 12, 2012. In subsection (9), reference to "shall become effective date upon official proclamation of the vote hereon by proclamation of the governor" is December 12, 2012.

ANNOTATION

"Cause" exists under 11 U.S.C. § 1112(b) for dismissal or conversion of debtor's chapter 11 bankruptcy case because debtor is engaged in an ongoing criminal violation of the federal Controlled Substances Act (CSA) by deriving roughly one quarter of its revenues from leasing warehouse space to tenants who are engaged in the business of growing marijuana, which, while legal under Colorado law, violates the CSA. In re Rent-Rite Super Kegs W. Ltd., 484 B.R. 799 (Bankr. D. Colo. 2012).

ARTICLE XIX
Amendments

Section 1. Constitutional convention - how called. The general assembly may at any time by a vote of two-thirds of the members elected to each house, recommend to the electors of the state, to vote at the next general election for or against a convention to revise, alter and amend this constitution; and if a majority of those voting on the question shall declare in favor of such convention, the general assembly shall, at its next session, provide for the calling thereof. The number of members of the convention shall be twice that of the senate and they shall be elected in the same manner, at the same places, and in the same districts. The general assembly shall, in the act calling the convention, designate the day, hour and place of its meeting; fix the pay of its members and officers, and provide for the payment of the same, together with the necessary expenses of the convention. Before proceeding, the members shall take an oath to support the constitution of the United States, and of the state of Colorado, and to faithfully discharge their duties as members of the convention. The qualifications of members shall be the same as of members of the senate; and vacancies occurring shall be filled in the manner provided for filling vacancies in the general assembly. Said convention shall meet within three months after such election and prepare such revisions, alterations or amendments to the constitution as may be deemed necessary; which shall be submitted to the electors for their ratification or rejection at an election appointed by the convention for that purpose, not less than two nor more than six months after adjournment thereof; and unless so submitted and approved by a majority of the electors voting at the election, no such revision, alteration or amendment shall take effect.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 74.

ANNOTATION

Law reviews. For article, "The Colorado Constitution", see 22 Dicta 29 (1945).

This section and § 39 of art. V, Colo. Const., are not in pari materia. The last relates to ordinary legislation, and the first to the calling of a convention for the amendment of the constitution. They are of equal dignity, and neither can be invoked to interfere with the operation of the other. People ex rel. Stewart v. Ramer, 62 Colo. 128, 160 P. 1032 (1916).

As amendment of constitution legislative, not an executive function. That which the

general assembly is authorized to do by this article, relative to initiating proceedings to amend or change the fundamental law, is its business solely, with which the executive has nothing whatever to do. People ex rel. Stewart v. Ramer, 62 Colo. 128, 160 P. 1032 (1916).

Applied in Lucas v. Forty-Fourth Gen. Ass'y, 377 U.S. 713, 84 S. Ct. 1459, 12 L. Ed. 2d 632 (1964).

Section 2. Amendments to constitution - how adopted. (1) Any amendment or amendments to this constitution may be proposed in either house of the general assembly, and, if the same shall be voted for by two-thirds of all the members elected to each house, such proposed amendment or amendments, together with the ayes and noes of each house thereon, shall be entered in full on their respective journals. The proposed amendment or amendments shall be published with the laws of that session of the general assembly. At the next general election for members of the general assembly, the said amendment or amendments shall be submitted to the registered electors of the state for their approval or rejection, and such as are approved by a majority of those voting thereon shall become part of this constitution.

(2) If more than one amendment be submitted at any general election, each of said amendments shall be voted upon separately and votes thereon cast shall be separately counted the same as though but one amendment was submitted; but each general assembly shall have no power to propose amendments to more than six articles of this constitution.

(3) No measure proposing an amendment or amendments to this constitution shall be submitted by the general assembly to the registered electors of the state containing more than one subject, which shall be clearly expressed in its title; but if any subject shall be embraced in any measure which shall not be expressed in the title, such measure shall be void only as to so much thereof as shall not be so expressed.

Source: Entire article added, effective August 1, 1876, see **L. 1877,** p. 75. **L. 1899:** Entire section amended, p. 155. **L. 79:** Entire section amended, p. 1674, effective upon proclamation of the Governor, **L. 81,** p. 2051, December 19, 1980. **L. 93:** (3) added, p. 2153, effective upon proclamation of the Governor, **L. 95,** p. 1428, January 19, 1995.

ANNOTATION

I. GENERAL CONSIDERATION.

Law reviews. For article, "The Colorado Constitution", see 22 Dicta 29 (1945).

Authority to propose amendments to constitution is vested in general assembly by virtue of this section. In re Senate Concurrent Resolution No. 10 of Forty-First Gen. Ass'y, 137 Colo. 491, 328 P.2d 103 (1958).

Amendment of the Colorado constitution can be accomplished, in addition to resort to the initiative and referendum device, through a majority vote of the electorate on an amendment

proposed by the general assembly following a favorable vote thereon by two-thirds of all the members elected to each house of the Colorado general assembly, pursuant to this section. Lucas v. Forty-Fourth Gen. Ass'y, 377 U.S. 713, 84 S. Ct. 1459, 12 L. Ed. 2d 632 (1964).

Section must be strictly observed. Constitutional provisions are generally to be considered mandatory rather than directory, and those regulating the mode of making amendments to the constitution must, in general, be strictly observed. Nesbit v. People, 19 Colo. 441, 36 P. 221 (1894).

As section provides exclusive method of proposing amendments. The power of the general assembly to propose amendments to the constitution is not subject to the provisions of art. V, Colo. Const., regulating the introduction and passage of ordinary legislative enactments. This section prescribes the method of proposing amendments to the constitution, and no other rule controls. Nesbit v. People, 19 Colo. 441, 36 P. 221 (1894); People ex rel. Moore v. Perkins, 56 Colo. 17, 137 P. 55 (1913).

In proposing amendment to constitution, action of general assembly is initiatory, not final; a change in the fundamental law cannot be fully and finally consummated by legislative power. Before a proposed amendment can become a part of the constitution, it must receive the approval of a majority of the qualified electors of the state voting thereon at the proper general election. When thus approved it becomes valid as part of the constitution by virtue of the sovereign power of the people constitutionally expressed. Nesbit v. People, 19 Colo. 441, 36 P. 221 (1894); People ex rel. Moore v. Perkins, 56 Colo. 17, 137 P. 55 (1913).

This section does not confer jurisdiction on the courts to review proposed constitutional amendments before they are submitted to the electorate. Thus, the supreme court lacked subject matter jurisdiction to review a legislative referendum for compliance with the single-subject requirement until the referendum was approved by the voters. Polhill v. Buckley, 923 P.2d 119 (Colo. 1996).

Amendment may be proposed at special session of the general assembly. Pearce v. People ex rel. Tate, 53 Colo. 399, 127 P. 224 (1912).

And it may constitute new and separate article. An amendment to the constitution may be proposed by the general assembly and adopted, by the addition to the constitution of a new and separate article. People ex rel. Elder v. Sours, 31 Colo. 369, 74 P. 167 (1903).

General assembly has authority under this section to change and amend proposed amendment in special session prior to submission of said proposed amendment to the people. In re Senate Concurrent Resolution No. 10 of Forty-First Gen. Ass'y, 137 Colo. 491, 328 P.2d 103 (1958).

Clerical errors do not invalidate proposed amendments. Where a proposed amendment to the constitution was introduced in the senate and before final passage was amended by striking out certain words and inserting the word "and" but the amendment did not materially change the meaning, and as it passed the senate was transmitted to the house, and the house journal shows that no amendment was made or offered in the house and that it was not returned to the senate after its passage in the house, but when it was entered in full upon the house journal, by mistake it was entered as it was originally introduced in the senate, and the house journal itself shows that the difference between the entries of the two houses was due to a clerical error, and it was enrolled and signed by the presiding officers of both houses and published in the session

laws as it was passed, the constitutional provision requiring proposed amendments to the constitution to be entered in full upon the journal of each house was satisfied and it is not invalid because of said difference in the journal entries of the two houses. People ex rel. Elder v. Sours, 31 Colo. 369, 74 P. 167 (1903).

But measure that is itself invalid cannot be regarded as amendment. A measure which, while in form and to all indicated purposes is a statute, contravenes the constitution is not to be regarded as an amendment to the constitution but is itself unconstitutional. People ex rel. Tate v. Prevost, 55 Colo. 199, 134 P. 129 (1913).

Even grave emergencies cannot justify attempted amendment to the state constitution by city charter, nor an amendment of a city charter by a simple ordinance. McNichols v. People ex rel. Cook, 95 Colo. 235, 35 P.2d 863 (1934).

This section deemed sui generis and not in pari materia with art. V. It is not by the "legislative" article, but by the article entitled "amendments", that the legality of the action of the general assembly in proposing amendments to the constitution is to be tested. This article is sui generis; it provides for revising, altering, and amending the fundamental law of the state, and is not in pari materia with those provisions of art. V, Colo. Const., prescribing the method of enacting ordinary statutory laws. Nesbit v. People, 19 Colo. 441, 36 P. 221 (1894); People ex rel. Moore v. Perkins, 56 Colo. 17, 137 P. 55 (1913).

Applied in Russell v. Courier Printing & Publishing Co., 43 Colo. 321, 95 P. 936 (1908); People ex rel. Attorney Gen. v. Curtice, 50 Colo. 503, 117 P. 357 (1911); Speer v. People ex rel. Rush, 52 Colo. 325, 122 P. 768 (1912); In re Interrogatories of Governor Regarding Sweepstakes Races Act, 196 Colo. 353, 585 P.2d 595 (1978); In re Reapportionment of Colo. Gen. Ass'y, 647 P.2d 191 (Colo. 1982).

II. PUBLICATION.

Publication requirement relates to newspapers, not session laws. The publication for "four successive weeks", prescribed by the constitution, relates to the publication required to be made in the newspapers and not to that in the session laws. Pearce v. People ex rel. Tate, 53 Colo. 399, 127 P. 224 (1912).

"Of general circulation" is descriptive of character of newspaper. It must be one of general -- not special, or limited -- circulation. In re House Resolution No. 10, 50 Colo. 71, 114 P. 293 (1911).

Publication to be obtained at reasonable cost to people. True construction of this section contemplates that publication of proposed amendments shall be obtained at reasonable cost to the people, and flagrant departure from that construction is in violation of sound public policy. Oliver v. Wilder, 27 Colo. App. 337, 149 P. 275 (1915).

Time for publication in session laws not specified. Under this section, it is not required, for the effectual submission to the people of a proposed amendment to the constitution, that it should appear in the session laws for any certain time, or that such publication should occur previous to the election at which the amendment is to be submitted. Pearce v. People ex rel. Tate, 53 Colo. 399, 127 P. 224 (1912).

III. SUBMISSION OF SEVERAL AMENDMENTS.

Annotator's note. The following annotations include cases decided prior to the 1994 amendment of this section.

Last clause of proviso is for

protection of people and was not written in the constitution for the benefit of the general assembly. People ex rel. Tate v. Prevost, 55 Colo. 199, 134 P. 129 (1913).

Proviso applies only to express amendments. The provision of this section that amendments to not more than six articles of the constitution shall be proposed at the same session of the general assembly, applies to express amendments and not to implied or incidental amendments or modifications of other articles of the constitution than the one expressly amended. People ex rel. Elder v. Sours, 31 Colo. 369, 74 P. 167 (1903).

Constitutional amendment may embrace more than one subject. If the amendment embraces several subjects all of which are germane to the general subject or purpose of the amendment, the several subjects need not be separately submitted but the amendment may be submitted and voted upon as a single proposition. People ex rel. Elder v. Sours, 31 Colo. 369, 74 P. 167 (1903); People v. Prevost, 55 Colo. 199, 134 P. 129 (1913).

There is no limitation on the number of subjects that may be included in a constitutional amendment. City & County of Denver v. Mewborn, 143 Colo. 407, 354 P.2d 155 (1960); Coopersmith v. City & County of Denver, 156 Colo. 469, 399 P.2d 943 (1965).

The inhibition against more than one subject in legislative enactments has no application to constitutional or organic law. City & County of Denver v. Mewborn, 143 Colo. 407, 354 P.2d 155 (1960);Coopersmith v. City & County of Denver, 156 Colo. 469, 399 P.2d 943 (1965).

Amendment with most votes prevails. In order to carry out the meaning and purpose of § 1 of art. V of this constitution if inconsistent amendments are submitted to the voters, the one which received the most votes must prevail. That, in the view of the supreme court, is what the "republican" form of government means with respect to the right of the people to amend the constitution. In re Interrogatories Propounded by Senate Concerning House Bill 1078, 189 Colo. 1, 536 P.2d 308 (1975).

ARTICLE XX
Home Rule Cities and Towns

Law reviews: For article, "The Colorado Constitution in the New Century", see 78 U. Colo. L. Rev. 1265 (2007).

Section 1. Incorporated. The municipal corporation known as the city of Denver and all municipal corporations and that part of the quasi-municipal corporation known as the county of Arapahoe, in the state of Colorado, included within the exterior boundaries of the said city of Denver as the same shall be bounded when this amendment takes effect, are hereby consolidated and are hereby declared to be a single body politic and corporate, by the name of the "City and County of Denver". By that name said corporation shall have perpetual succession, and shall own, possess, and hold all property, real and personal, theretofore owned, possessed, or held by the said city of Denver and by such included municipal corporations, and also all property, real and personal, theretofore owned, possessed, or held by the said county of Arapahoe, and shall assume, manage, and dispose of all trusts in any way connected

therewith; shall succeed to all the rights and liabilities, and shall acquire all benefits and shall assume and pay all bonds, obligations, and indebtedness of said city of Denver and of said included municipal corporations and of the county of Arapahoe; by that name may sue and defend, plead and be impleaded, in all courts and places, and in all matters and proceedings; may have and use a common seal and alter the same at pleasure; may purchase, receive, hold, and enjoy or sell and dispose of, real and personal property; may receive bequests, gifts, and donations of all kinds of property, in fee simple, or in trust for public, charitable, or other purposes; and do all things and acts necessary to carry out the purposes of such gifts, bequests, and donations, with power to manage, sell, lease, or otherwise dispose of the same in accordance with the terms of the gift, bequest, or trust; shall have the power, within or without its territorial limits, to construct, condemn and purchase, purchase, acquire, lease, add to, maintain, conduct, and operate water works, light plants, power plants, transportation systems, heating plants, and any other public utilities or works or ways local in use and extent, in whole or in part, and everything required therefore, for the use of said city and county and the inhabitants thereof, and any such systems, plants, or works or ways, or any contracts in relation or connection with either, that may exist and which said city and county may desire to purchase, in whole or in part, the same or any part thereof may be purchased by said city and county which may enforce such purchase by proceedings at law as in taking land for public use by right of eminent domain, and shall have the power to issue bonds upon the vote of the taxpaying electors, at any special or general election, in any amount necessary to carry out any of said powers or purposes, as may by the charter be provided.

The provisions of section 3 of article XIV of this constitution and the general annexation and consolidation statutes of the state relating to counties shall apply to the city and county of Denver. Any contiguous town, city, or territory hereafter annexed to or consolidated with the city and county of Denver, under any such laws of this state, in whatsoever county the same may be at the time, shall be detached per se from such other county and become a municipal and territorial part of the city and county of Denver, together with all property thereunto belonging.

The city and county of Denver shall alone always constitute one judicial district of the state.

Any other provisions of this constitution to the contrary notwithstanding:

No annexation or consolidation proceeding shall be initiated after the effective date of this amendment pursuant to the general annexation and consolidation statutes of the state of Colorado to annex lands to or consolidate lands with the city and county of Denver until such proposed annexation or consolidation is first approved by a majority vote of a six-member boundary control commission composed of one commissioner from each of the boards of county commissioners of Adams, Arapahoe, and Jefferson counties, respectively, and three elected officials of the city and county of Denver to be chosen by the mayor. The commissioners from each of the said counties shall be

appointed by resolution of their respective boards.

No land located in any county other than Adams, Arapahoe, or Jefferson counties shall be annexed to or consolidated with the city and county of Denver unless such annexation or consolidation is approved by the unanimous vote of all the members of the board of county commissioners of the county in which such land is located.

(Paragraph deleted by amendment, L. 2002, p. 3097, effective upon proclamation of the Governor, L. 2003, p. 3611, December 20, 2002.)

(Paragraph deleted by amendment, L. 2002, p. 3097, effective upon proclamation of the Governor, L. 2003, p. 3611, December 20, 2002.)

(Paragraph deleted by amendment, L. 2002, p. 3097, effective upon proclamation of the Governor, L. 2003, p. 3611, December 20, 2002.)

All actions, including actions regarding procedural rules, shall be adopted by the commission by majority vote. Each commissioner shall have one vote, including the commissioner who acts as the chairman of the commission. All procedural rules adopted by the commission shall be filed with the secretary of state.

This amendment shall be self-executing.

Source: L. 01: Entire article added, p. 97. **Initiated 74:** Paragraphs 1-3 were amended by the people, effective upon proclamation of the Governor, December 20, 1974, but do not appear in the session laws. **L. 74:** Paragraphs 7-10 amended, p. 457, effective upon proclamation of the Governor, December 20, 1974. **L. 2002:** Paragraphs deleted, p. 3097, § 1, effective upon proclamation of the Governor, **L. 2003,** p. 3611, December 20, 2002.

Cross references: For annexation of territory from one county to adjoining county, see § 3 of article XIV of this constitution; for officers of the city and county of Denver, see §§ 2 and 3 of this article; for the control of franchises and the power of taxation, see § 4 of this article; for amendment of charter or adoption of new charter, see § 5 of this article; for home rule for cities and towns and powers of home rule cities generally, see § 6 of this article; for power to regulate rates and service charges of public utilities, see article XXV of this constitution; for statutory provisions relative to the city of Denver, see part 2 of article 11 of title 30.

ANNOTATION

I. GENERAL CONSIDERATION.

Law reviews. For article, "Colorado Constitutional Amendments: An Analysis", see 3 Den. B. Ass'n Rec. 4 (Nov. 1926). For article, "Report of Justice Court Committee", see 9 Dicta 221 (1932). For note, "Prohibition in 'Home Rule' Cities of Colorado", see 6 Rocky Mt. L. Rev. 146 (1934). For article, "Extraterritorial Service of Municipally Owned Water Works in Colorado", see 21 Rocky Mt. L. Rev. 56 (1948). For article, "Has the Doctrine of Stare Decisis Been Abandoned in Colorado?", see 25 Dicta 91 (1948). For article, "Strengthening Home Rule in Colorado -- Proposed Amendment No. 1", see 27 Dicta 343

(1950). For article, "Eminent Domain in Colorado", see 29 Dicta 313 (1952). For note, "The Constitutionality of a Colorado Municipal Income Tax", see 25 Rocky Mt. L. Rev. 343 (1953). For note, "The Power of the Denver Water Board to Enact Penalty Regulations", see 31 Dicta 349 (1954). For article, "Municipal Penal Ordinances in Colorado", see 30 Rocky Mt. L. Rev. 267 (1958). For article, "One Year Review of Constitutional and Administrative Law", see 36 Dicta 11 (1959). For article, "One Year Review of Criminal Law and Procedure", see 36 Dicta 34 (1959). For article, "One Year Review of Real Property", see 36 Dicta 57 (1959). For article, "Municipal Income Taxation", see 31 Rocky Mt. L. Rev. 123 (1959). For note, "The Effect of Land Use Legislation on the Common Law of Nuisance in Urban Areas", see 36 Dicta 414 (1959). For article, "A Review of the 1959 Constitutional and Administrative law Decisions", see 37 Dicta 81 (1960). For note, "Municipal Tort Immunity in Colorado", see 37 Dicta 133 (1960). For article, "Municipal Home Rule in Colorado: Self-Determination v. State Supremacy", see 37 Dicta 240 (1960). For article, "One Year Review of Constitutional and Administrative Law", see 38 Dicta 154 (1961). For article, "Subdivision Regulations and Compulsory Dedications", see 39 Dicta 299 (1962). For article, "One Year Review of Constitutional Law", see 40 Den. L. Ctr. J. 134 (1963). For note, "Increased Revenues for Colorado Municipalities", see 35 U. Colo. L. Rev. 370 (1963). For article, "The Powers of Home Rule Cities in Colorado", see 36 U. Colo. L. Rev. 321 (1964). For article, "An Engineering -- Legal Solution to Urban Drainage Problems", see 45 Den. L.J. 381 (1968). For article, "May Regulated Utilities Monopolize the Sun", see 56 Den. L.J. 31 (1979). For comment, "Water: Statewide or Local Concern?, City of Thornton v. Farmers Reservoir & Irrigation Co., 194 Colo. 526, 575 P.2d 382 (1978)", see 56 Den. L.J. 625 (1979). For article, "Intergovernmental Relations and Energy Taxation", see 58 Den. L.J. 141 (1980). For article, "Pollution or Resources Out-of-Place -- Reclaiming Municipal Wastewater for Agricultural Use", see 53 U. Colo. L. Rev. 559 (1982). For article, "Growth Management: Recent Developments in Municipal Annexation and Master Plans", see 31 Colo. Law. 61 (March 2002). For article, "Home Rule in Colorado: Evolution or Devolution", see 33 Colo. Law. 61 (January 2004). For article, "Home Rule, Extraterritorial Impact, and the Region", see 86 Den. U.L. Rev. 1271 (2009). For article, "Town of Telluride v. San Miguel Valley Corp.: Extraterritoriality and Local Autonomy", see 86 Den. U.L. Rev. 1311 (2009). For article, "Constitutional Home Rule and Judicial Scrutiny", see 86 Den. U.L. Rev. 1337 (2009). For article, "Telluride's Tale of Eminent Domain, Home Rule, and Retroactivity", see 86 Den. U.L. Rev. 1433 (2009). For comment, "Minority Interests, Majority Politics: A Comment on Richard Collins' 'Telluride's Tale of Eminent Domain, Home Rule, and Retroactivity'", see 86 Den. U.L. Rev. 1459 (2009).

Annotator's note. Prior to the enactment of this article of the constitution, the law incorporating the city of Denver and the several acts amendatory thereto were construed in a number of cases which are included mainly for historical purposes. Brown v. State, 5 Colo. 496 (1881); Beatty v. People, 6 Colo. 538 (1883); Carpenter v. People ex rel. Tilford, 8 Colo. 116, 5 P. 828 (1884); Huffsmith v. People, 8 Colo. 175, 6 P. 157 (1884); Darrow v. People ex rel. Norris, 8 Colo. 426, 8 P. 924 (1885); Phillips v. City & County of Denver, 19 Colo. 179, 34 P. 902 (1893); Denver Tramway Co. v. Londoner, 20 Colo. 150, 37 P. 723 (1894).

For history of section, see Hoper v. City & County of Denver, 173 Colo. 390, 479 P.2d 967 (1971).

This article by its terms is self-executing. Cook v. City of Delta, 100 Colo. 7, 64 P.2d 1257 (1937).

The provisions of this article are self-executing and the adoption of a charter was not required to give effect thereto. Ward v. Colo. E. R. R., 22 Colo. App. 332, 125 P. 567 (1912); Berman v. City & County of Denver, 120 Colo. 218, 209 P.2d 754 (1949).

With respect to annexation, state is supreme. The state at its pleasure may expand or contract the territorial area of a municipal corporation, unite the whole or a part of it with another municipality, repeal the charter and destroy the corporation. All this may be done, conditionally or unconditionally, with or without the consent of the citizens, or even against their protest. Bd. of County Comm'rs v. City & County of Denver, 150 Colo. 198, 372 P.2d 152 (1962), appeal dismissed, 372 U.S. 226, 83 S. Ct. 679, 9 L. Ed. 2d 714 (1963).

Proceedings for annexation. Proceedings for the annexation of a city to the city and county of Denver are governed by this section and section 31-8-201, not by § 3 of art. XIV, Colo. Const. Simon v. Arapahoe County, 80 Colo. 445, 252 P. 811 (1927).

This section modifies and limits § 3 of art. XIV, Colo. Const., insofar as a proposed annexation of territory to the city and county of Denver is concerned, and such annexation can be effected without the consenting vote of a majority of qualified voters of the county from which the annexed territory is detached. People ex rel. Simon v. Anderson, 112 Colo. 558, 151 P.2d 972 (1944); Bd. of County Comm'rs v. City & County of Denver, 150 Colo. 198, 372 P.2d 152 (1962), appeal dismissed, 372 U.S. 226, 83 S. Ct. 679, 9 L. Ed. 2d 714 (1963).

Inhabitants have no right to unaltered existence of municipality. Although the inhabitants and property owners may suffer inconvenience by annexation, and their property may be lessened in value by the burden of increased taxation or for any other reason, they have no right, by contract or otherwise, in the unaltered or continued existence of the municipal corporation or its powers. Bd. of County Comm'rs v. City & County of Denver, 150 Colo. 198, 372 P.2d 152 (1962), appeal dismissed, 372 U.S. 226, 83 S. Ct. 679, 9 L. Ed. 2d 714 (1963).

Annexation detaches territory. This section makes it clear that any annexation under any of the general laws of the state operates, per se, as a detachment of the annexed territory from the county in which it lies. People ex rel. Simon v. Anderson, 112 Colo. 558, 151 P.2d 972 (1944).

Section requires compliance with statutory procedures. Annexation is a special statutory proceeding, and this section requires compliance with such procedures by the city and county of Denver. People ex rel. City & County of Denver v. County Court, 137 Colo. 436, 326 P.2d 372 (1958).

Condemnation by a home rule municipality of property outside its territorial boundaries for open space and park purposes falls within the scope of the eminent domain power granted to such municipalities in this article. The eminent domain power granted to home rule municipalities in this article is not limited to the purposes specified in this section nor is the eminent domain power circumscribed when exercised extraterritorially. Rather, this article grants home rule municipalities the power to condemn property, within or outside of territorial limits, for any lawful, public, local, and municipal purpose. The extraterritorial condemnation of property need not be pursuant to a purpose that is purely local and municipal. As long as the condemnation is based on a lawful,

public, local, and municipal purpose, it does not fall outside of the scope of this article merely because it potentially implicates competing state interests. Based upon statutory provisions authorizing statutory localities to condemn land for open space, parks, and recreation, as well as the traditional exercise of this power by the state's statutory and home rule municipalities, the extraterritorial condemnation of property for open space and parks is a lawful, public, local, and municipal purpose within the scope of this article. The condemnation of the landowner's property outside the territorial boundaries of the municipality was, therefore, lawful. Town of Telluride v. San Miguel Valley Corp.,185 P.3d 161 (Colo. 2008).

Section 38-1-101 (4)(b) abrogates constitutional powers granted to home rule municipalities by this article. Accordingly, the statutory provision is unconstitutional with respect to home rule municipalities. Court's inquiry need not extend beyond the question of whether the statute purports to deny home rule municipalities powers specifically granted by the constitution. No analysis of competing state and local interests is necessary where a statute purports to take away home rule powers granted by the constitution. The legislature cannot prohibit the exercise of constitutional home rule powers regardless of the state interests that may be implicated by the exercise of those powers. Town of Telluride v. San Miguel Valley Corp.,185 P.3d 161 (Colo. 2008).

Section 38-1-101 (4)(b) prohibits home rule municipalities from condemning property for parks and open space, thus denying them their constitutional power to condemn for any lawful, public, local, and municipal purpose. Section 38-1-101 (4)(b) curtails the condemnation power in this article by limiting it to the enumerated purposes in this section and also by removing certain enumerated purposes from the list. Accordingly, § 38-1-101 (4)(b) is an unconstitutional abrogation of the powers granted to home rule municipalities under this article. The general assembly has no power to enact a law that denies a right specifically granted by the constitution. Town of Telluride v. San Miguel Valley Corp.,185 P.3d 161 (Colo. 2008).

Applied in Sch. Dist. No. 1 v. Sch. Dist. No. 7, 33 Colo. 43, 78 P. 690 (1904); Heuston v. Gilman, 98 Colo. 301, 56 P.2d 40 (1936); Bd. of County Comm'rs v. City & County of Denver, 190 Colo. 347, 547 P.2d 249 (1976); City of Northglenn v. City of Thornton, 193 Colo. 536, 569 P.2d 319 (1977); James v. Bd. of Comm'rs, 42 Colo. App. 27, 595 P.2d 262 (1978); Bd. of County Comm'rs v. City of Thornton, 629 P.2d 605 (Colo. 1981); Carstens v. Lamm, 543 F. Supp. 68 (D. Colo. 1982); Gold Star Sausage Co. v. Kempf, 653 P.2d 397 (Colo. 1982).

II. PURPOSE OF ARTICLE.

To grant home rule. The purpose of this article is to grant home rule to Denver and other municipalities of the state. City & County of Denver v. Hallett, 34 Colo. 393, 83 P. 1066 (1905); Lehman v. City & County of Denver, 144 Colo. 109, 355 P.2d 309 (1960).

The subject matter of this article is home rule, or the right of self-government by Denver and other municipalities in the state relating to local and municipal matters. People ex rel. Tate v. Prevost, 55 Colo. 199, 134 P. 129 (1913).

The purpose of this article is to extend to the other cities of the state the privilege of adopting charters in substantially the same manner as is provided for the adoption of the Denver charter, granting to such cities the same power as to real and personal property and public utilities as is granted to the city and county of Denver. People ex

rel. Elder v. Sours, 31 Colo. 369, 74 P. 167 (1903).

It was intended to give as large a measure of home rule in municipal affairs as could be granted under a republican form of government which the state is obliged to maintain under its compact with the federal government, as evidenced by the enabling act. People ex rel. Parish v. Adams, 31 Colo. 476, 73 P. 866 (1903); Fishel v. City & County of Denver, 106 Colo. 576, 108 P.2d 236 (1940); Toll v. City & County of Denver, 139 Colo. 462, 340 P.2d 862 (1959).

The prime purpose of this article was to bestow upon the inhabitants of the city of Denver, and certain surrounding territory, a very greatly increased measure of home rule. Ward v. Colo. E. R. R., 22 Colo. App. 332, 125 P. 567 (1896); Berman v. City & County of Denver, 120 Colo. 218, 209 P.2d 754 (1949).

And to consolidate city and county powers. The purpose of this article was to consolidate the city of Denver and a portion of the county of Arapahoe into a new sort of municipality having the combined powers of city and county governments. People ex rel. Elder v. Sours, 31 Colo. 369, 74 P. 167 (1903).

The purpose of this article is to grant home rule to the city and county of Denver, subject to the conditions that the people establish such a government as would consolidate the functions of city and county affairs so as to be administered by one set of officers. Lindsley v. City & County of Denver, 64 Colo. 444, 172 P. 707 (1918).

And to enlarge their powers. Thus it was intended to enlarge the powers beyond those usually given by the general assembly. City & County of Denver v. Hallett, 34 Colo. 393, 83 P. 1066 (1905); Berman v. City & County of Denver, 120 Colo. 218, 209 P.2d 754 (1949); Lehman v. City & County of Denver, 144 Colo. 109, 355 P.2d 309 (1960).

The purpose of this article was to extend the powers of cities, not to impose further restrictions. Hoper v. City & County of Denver, 173 Colo. 390, 479 P.2d 967 (1971).

III. CONSTITUTIONALITY.

This article is constitutional, and it is a part of the constitution of the state, not partially constitutional, but constitutional as a whole, throughout its entirety, and in full force and effect. Montclair v. Thomas, 31 Colo. 327, 73 P. 48 (1903); People ex rel. Elder v. Sours, 31 Colo. 369, 74 P. 167 (1903); People ex rel. Parish v. Adams, 31 Colo. 476, 73 P. 866 (1903); McMurray v. Wright, 19 Colo. App. 17, 73 P. 257 (1903); Parsons v. People, 32 Colo. 221, 76 P. 666 (1904); City Council v. Bd. of Comm'rs, 33 Colo. 1, 77 P. 858 (1904); Boston & Colo. Smelting Co. v. Elder, 20 Colo. App. 96, 77 P. 258 (1904); Uzzell v. Anderson, 38 Colo. 32, 89 P. 785 (1906); People ex rel. Attorney Gen. v. Curtice, 50 Colo. 503, 117 P. 357, appeal dismissed for want of jurisdiction sub nom. Cassiday v. Colo., 223 U.S. 707, 32 S. Ct. 518, 56 L. Ed. 662 (1911); People ex rel. Moore v. Perkins, 56 Colo. 17, 137 P. 55 (1913).

And is to be given force and effect according to its plain intent, purpose and meaning. When the whole people speak through a fundamental law, or by amendment thereto, not in conflict with the federal constitution, all should hear and heed, more especially the courts, whose function is to interpret, and, where possible, uphold and enforce, not nullify, overthrow, and destroy the law. People ex rel. Attorney Gen. v. Curtice, 50 Colo. 503, 117 P. 357, appeal dismissed for want of jurisdiction sub nom. Cassiday v. Colo., 223 U.S. 707, 32 S. Ct. 518, 56 L. Ed. 662 (1911).

And is not repugnant to state government or federal constitution. The home rule amendment is not subversive of the state government or repugnant to the constitution of the United States. The contention that the government proposed by the home rule amendment is not republican in form has been fully settled. It is a political question purely, over which courts have no jurisdiction. People ex rel. Tate v. Prevost, 55 Colo. 199, 134 P. 129 (1913).

This article does not create a government unrepublican in form or involve any inhibition of the federal constitution, and was clearly within the powers reserved to the people of the state, upon entering into federal compact. People ex rel. Elder v. Sours, 31 Colo. 369, 74 P. 167 (1903); People ex rel. Attorney Gen. v. Curtice, 50 Colo. 503, 117 P. 357, appeal dismissed for want of jurisdiction sub nom. Cassiday v. Colo., 233 U.S. 707, 32 S. Ct. 518, 56 L. Ed. 662 (1911).

The objection that this article is repugnant to § 4 of art. IV, U.S. Const., guaranteeing to the state a republican form of government, in that it takes from the state general assembly and vests directly in the people of the city legislative power over all subjects of purely municipal concern, was sufficiently covered and disposed of by a previous decision of the United States supreme court. City & County of Denver v. New York Trust Co., 229 U.S. 123, 33 S. Ct. 657, 57 L. Ed. 1101 (1913).

Since government provided may be withdrawn or modified at will. The government provided for the city and county of Denver by this article rests solely upon the will of the people of the whole state, and is the creature of such will. It is a full and complete answer to the contention that the government so provided is unrepublican in form, to show that it rests upon the will of the people of the entire state, and may be by the same authority either withdrawn or modified. People ex rel. Attorney Gen. v. Curtice, 50 Colo. 503, 117 P. 357, appeal dismissed for want of jurisdiction sub nom. Cassiday v. Colo., 223 U.S. 707, 32 S. Ct. 518, 56 L. Ed. 662 (1911).

Municipalities are not city-states. Colorado municipalities are creatures of either legislative enactment or constitutional provision or both and are not city-states. They have only powers expressly or impliedly granted to them. City of Golden v. Ford, 141 Colo. 472, 348 P.2d 951 (1960).

Clearly the federal system does not envisage as a part thereof city-states. It follows that home rule cities can be only an arm or branch of the state with delegated power. That is the kind of power granted by this article. City & County of Denver v. Sweet, 138 Colo. 41, 329 P.2d 441 (1958).

Since the power still resides with the people of the state to completely annul this article, or amend, alter, or set aside any one or more of its provisions providing a government for the city and county of Denver at will, a state within the state of Colorado has not been created. People ex rel. Attorney Gen. v. Curtice, 50 Colo. 503, 117 P. 357, appeal dismissed for want of jurisdiction sub nom. Cassiday v. Colo., 223 U.S. 707, 32 S. Ct. 518, 56 L. Ed. 662 (1911).

Every decision of the supreme court upholding this article of the constitution is based upon the proposition that it does not violate the federal law against the creation of a state within a state contained in § 3 of art. IV, U.S. Const. People v. Max, 70 Colo. 100, 198 P. 150 (1921).

Classification of Denver does not violate equal protection. The classification under this section is based upon geographical and historical conditions peculiar to Denver as a capital city and regional commercial center, and is neither arbitrary nor unreasonable. Bd. of County Comm'rs

v. City & County of Denver, 150 Colo. 198, 372 P.2d 152 (1962), appeal dismissed for want of substantial federal question, 372 U.S. 226, 83 S. Ct. 679, 9 L. Ed. 714 (1963); Francis v. County Court, 175 Colo. 308, 487 P.2d 375 (1971).

The classification under this section is not violative of equal protection merely because it is limited in the object to which it is directed or the territory within which it is to operate. Bd. of County Comm'rs v. City & County of Denver, 150 Colo. 198, 372 P.2d 152 (1962), appeal dismissed for want of jurisdiction, 372 U.S. 226, 83 S. Ct. 679, 9 L. Ed. 2d 714 (1963).

The equal protection clause of the fourteenth amendment to the United States Constitution is not in conflict with provisions granting the city and county of Denver annexation procedures unlike the provisions controlling other counties. Francis v. County Court, 175 Colo. 308, 487 P.2d 375 (1971).

Loss of public property upon consolidation does not violate due process. This article of the constitution is not unconstitutional on the ground that it violates the provisions of the constitution of the United States by taking property from existing towns and giving it to the city and county of Denver, without due process of law. The loss of public property by adjoining towns and the loss of shares of public buildings by people of other towns excluded from the city and county of Denver, are incidental and unavoidable conditions which exist whenever the boundaries of counties are changed or municipalities are consolidated. These municipalities exist for the public convenience, their property is the property of the public, and is held, not as private property, but subject to the changing conditions and requirements of local government. People ex rel. Ceder v. Sours, 31 Colo. 369, 74 P. 167 (1903); Hazlet v. Gaunt, 126 Colo. 385, 250 P.2d 188 (1952).

Procedure does not violate individual rights. There is no constitutional violation of the rights of individual plaintiffs by the annexation procedure under this section. Bd. of County Comm'rs v. City & County of Denver, 150 Colo. 198, 372 P.2d 152 (1962), appeal dismissed for want of substantial federal question, 372 U.S. 226, 83 S. Ct. 679, 9 L. Ed. 2d 714 (1963).

IV. CITY AND COUNTY OF DENVER.

A. In General.

City and county of Denver came into existence by virtue of this article of the constitution, and this article measures its powers. City of Denver v. Mercantile Trust Co., 201 F. 790 (8th Cir. 1912); City & County of Denver v. Mountain States Tel. & Tel. Co., 67 Colo. 225, 184 P. 604 (1919), dismissed for want of jurisdiction, 251 U.S. 545, 40 S. Ct. 219, 64 L. Ed. 407 (1920).

The moment the constitutional amendment took effect, the municipal corporation, known as the city of Denver, and the quasi-corporation, known as the county of Arapahoe, ceased to exist; a new body politic and corporate was created, called the city and county of Denver. McMurray v. Wright, 19 Colo. App. 17, 73 P. 257 (1903).

It is but a reincorporation of city of Denver, with some extended territory. City of Denver v. Mercantile Trust Co., 201 F. 790 (8th Cir. 1912); McMurray v. Wright, 19 Colo. App. 17, 73 P. 257 (1903).

It was the purpose of the general assembly to provide in this article for disincorporating, and merging into a new one, all municipal bodies within the exterior boundaries of the former city of Denver as these boundaries were specifically described. Town of Montclair v. Thomas, 31

Colo. 327, 73 P. 48 (1903).

It is a change only in governmental form under a new name. Hilts v. Markey, 52 Colo. 382, 122 P. 394 (1912); City of Denver v. Mercantile Trust Co., 201 F. 790 (8th Cir. 1912).

Under this article the merger of the different municipal corporations into the city and county of Denver took effect upon the proclamation of the governor, December 1, 1902, and until that date the different municipal corporations continued, separate and independent, and the municipal officers continued in office with the same powers and duties that they had prior to the adoption of the amendment. Boston & Colo. Smelting Co. v. Elder, 20 Colo. App. 96, 77 P. 258 (1904).

City and county of Denver succeeded to all the rights of former city of Denver. Hallett v. City & County of Denver, 46 Colo. 487, 104 P. 1038 (1909); City of Denver v. Mercantile Trust Co., 201 F. 790 (8th Cir. 1912).

Such as right of municipal corporations to collect taxes. It also succeeded to the right to collect taxes levied by the municipal corporations merged into said city and county. Boston & Colo. Smelting Co. v. Elder, 20 Colo. App. 96, 77 P. 258 (1904).

And was vested with title to tax certificates of purchase. Title to tax certificates of purchase issued and held by Arapahoe county on lands which thereafter became a part of the city and county of Denver upon adoption of this article vested in the latter, and transfer of the same by it to another was valid. Nat'l Tax & Mtg. Co. v. Cartwright, 90 Colo. 16, 5 P.2d 878 (1931).

City and county of Denver assumed all liabilities of former city of Denver. The city of Denver did not cease to exist by virtue of this article and a motion to dismiss in a trial pending when this article went into effect was denied because the parties, in effect, agreed by their conduct that the suit should proceed in the name of the original parties. City of Denver v. Iliff, 38 Colo. 357, 89 P. 823 (1906); City of Denver v. Mercantile Trust Co., 201 F. 790 (8th Cir. 1912).

And became liable for obligations of former county of Arapahoe. This article conferred upon the city and county of Denver all the property belonging to, and made it liable for the obligations of, the county of Arapahoe, but made no specific provision for the payment to other new counties created out of said Arapahoe county of their proportion of the value of said county property. The city and county of Denver is liable to such other new counties for said proportional value and its city council may be compelled by mandamus to levy a tax to provide for the payment of such claims. City Council v. Bd. of Comm'rs, 33 Colo. 1, 77 P. 858 (1904).

Thus a claim against the former county of Arapahoe, was a liability against the county of Denver, not against the city and county. City & County of Denver v. Bottom, 44 Colo. 308, 98 P. 13 (1935).

"City and county of Denver" was proper party in suit to cancel tax certificates. In a suit to have tax sales held void and certificates of purchase cancelled, the city of Denver being primarily interested, the "city and county of Denver" held properly made a party to the action. Burton v. City & County of Denver, 99 Colo. 207, 61 P.2d 856 (1936).

It remains agency of state for purpose of government. The municipality of Denver, though created by a constitutional amendment by a direct vote of the people, and having the power to frame its own charter, is just as much an agency of the state for the purpose of government as if it was organized under a general law passed by the general assembly. The mode of its creation does not change the nature of its relation to the state. Like cities

and towns organized under the general statutes, it is still a part of the state government. Keefe v. People, 37 Colo. 317, 87 P. 791 (1906).

Sovereign immunity from suit. Assertions of an unconstitutional deprivation of a right of action have no merit under the governmental immunity doctrine. In Colorado there is no "right" in the absence of a statute granting such, thus it cannot be taken away or damaged by the application of sovereign immunity to a tort claim. Abeyta v. City & County of Denver, 165 Colo. 58, 437 P.2d 67 (1968).

Charter provisions in conflict with article lost their effect upon its adoption. Upon the adoption of this article of the constitution every provision of the former charter of the city of Denver, and its ordinances, in conflict with the provisions of the new article, immediately lost their effect. Aichele v. City & County of Denver, 52 Colo. 183, 120 P. 149 (1911).

Section did not amend general provisions of constitution. The powers of city and county municipalities being essentially different, in investing the new municipality of Denver with the powers of both by the adoption of § 1 of art. XX, Colo. Const., it became necessary to modify the provisions of the constitution relative to municipal affairs, by providing new ones applicable to such combined government; but this is not an amendment of those provisions such as was in contemplation by the framers of the constitution, because the constitutional provisions that are abrogated as to the city and county of Denver remain in force generally throughout the state. People ex rel. Elder v. Sours, 31 Colo. 369, 74 P. 167 (1903).

B. Form and Nature of Government.

Article affects only local or municipal government. This article does not affect state or county but only local or municipal government. City & County of Denver v. Bottom, 44 Colo. 308, 98 P. 13 (1908).

The general scheme of government contemplated in this article is restricted to that of the municipality proper, and does not entrench upon county or state government. It does not purport to nullify the constitution or general laws of the state insofar as they pertain to county or state government, or attempt to interfere with the power of the state in raising state revenue. Parsons v. People, 32 Colo. 221, 76 P. 666 (1904).

Denver is granted special status as both city and county under this article. City & County of Denver v. Miller, 151 Colo. 444, 379 P.2d 169 (1963).

The city and county of Denver is still a county as well as a city. This new municipality is invested with the combined powers of both city and county municipalities, which powers are essentially different. People ex rel. Elder v. Sours, 31 Colo. 369, 74 P. 167 (1903); City Council v. Bd. of Comm'rs, 33 Colo. 1, 77 P. 858 (1904).

The new corporation of Denver is subject to the general provisions of art. XIV, Colo. Const., providing for counties and county officers, and of the state legislation enacted in pursuance of it, so that, although a city, it is a county equally with any other legal subdivision of the state to which the constitution and statutes have given the name of county. McMurray v. Wright, 19 Colo. App. 17, 73 P. 257 (1903).

A county, and likewise state and county governmental functions and duties, exist in the territory known as the city and county of Denver, as they exist in other portions of the state. Dixon v. People ex rel. Elliott, 53 Colo. 527, 127 P. 930 (1912).

There are two governmental entities within municipality of Denver, a county,

with all the duties of a county as prescribed by the general law, and a city, with duties wholly of local character. Hilts v. Markey, 52 Colo. 382, 122 P. 394 (1912).

And its municipal and county governments are distinct. County government and county offices remain in the city and county of Denver the same as in all other counties of the state, and its municipal and county government is distinct. City & County of Denver v. Bottom, 44 Colo. 308, 98 P. 13 (1908).

The city and county of Denver, insofar as the exercise of county functions is concerned, is a new county, created by the merger and consolidation of the municipalities and territory within the boundaries designated by this article, and, as such new county, comes within the purview of § 6 of art. XIV, Colo. Const., providing for the election of county commissioners. Uzzell v. Anderson, 38 Colo. 32, 89 P. 785, 1056 (1906).

But single set of municipal officers have all duties. All the duties of these governmental entities are imposed upon a single set of municipal officers. Hilts v. Markey, 52 Colo. 382, 122 P. 394 (1912); Lail v. City & County of Denver, 88 Colo. 362, 297 P. 512 (1931).

Such duties are fixed by constitution and general laws. Their duties, so far as they concern county government, are fixed by the constitution and general laws, and as to these, the people of the municipality have no power to legislate. Hilts v. Markey, 52 Colo. 382, 122 P. 394 (1912).

Inhabitants to designate agencies to perform county duties. The sole effect of this article in relation to county functions and duties is to impose upon the inhabitants of the territory of Denver the power and duty to designate the agencies which shall therein discharge the acts and duties required of county officers to be done by the constitution and general law. Dixon v. People ex rel. Elliott, 53 Colo. 527, 127 P. 930 (1912).

This article embodied radical changes by consolidating the city and county of Denver and allowing it to designate the persons therein who should perform the duties pertaining to county offices, as well as granting to it the right to make its own charter, a power theretofore resting in the general assembly. People ex rel. Moore v. Perkins, 56 Colo. 17, 137 P. 55 (1913).

C. Powers Conferred.

Annotator's note. In view of the fact that § 6 of this article enumerates the specific powers granted cities operating under this article, the cases dealing with the powers granted the city and county of Denver have been treated in the annotations to § 6.

This article is a grant of power to the inhabitants of the city and county of Denver, and it authorizes them to do what it specifically states they can do and such other matters as must be necessarily implied from the language used. People ex rel. Moore v. Perkins, 56 Colo. 17, 137 P. 55, 1914D Ann. Cas. 1154 (1913).

Listing of powers is not complete enumeration of powers conferred. The statement of powers contained in this section was not intended to be an enumeration of powers conferred, but simply the expression of a few of the more prominent powers which municipal corporations are frequently granted. City & County of Denver v. Hallett, 34 Colo. 393, 83 P. 1066 (1905); Londoner v. City & County of Denver, 52 Colo. 15, 119 P. 156 (1911); Fishel v. City & County of Denver, 106 Colo. 576, 108 P.2d 236 (1940).

The powers enumerated do not constitute a limitation on the powers conferred on the municipality. City & County of Denver v. Sweet, 138 Colo. 41, 329 P.2d 441 (1958).

The people by this section enumerated broad powers which they conferred upon the city and county of Denver. Four-County Metro. Capital Imp. Dist. v. Bd. of County Comm'rs, 149 Colo. 284, 369 P.2d 67 (1962).

"Water works", as used in this section, includes water and water rights. City of Thornton v. Farmers Reservoir & Irrigation Co., 194 Colo. 526, 575 P.2d 382 (1978).

Denver's creation and operation of a water works for the use of Denver and its residents does not offend this constitutional provision. Cottrell v. City & County of Denver, 636 P.2d 703 (Colo. 1981).

Denver has constitutional and statutory authority to appropriate and provide water for use outside its city limits. Denver v. Colo. River Water Conservation Dist., 696 P.2d 730 (Colo. 1985).

"Public utilities" are those facilities necessary for the maintenance of life and occupation of the residents, the services of which are available to all, and with respect to which all have the right to demand service. Ginsberg v. City & County of Denver, 164 Colo. 572, 436 P.2d 685 (1968).

The term "public utility" has come into use in the sense, not of a chattel or other property used for the benefit of the public, but of a system of works operated for public use, examples of which are telephone, street railway, water, electric light and power, gas works and other systems. Ginsberg v. City & County of Denver, 164 Colo. 572, 436 P.2d 685 (1968).

Sewers are "public utilities". Although sewers are not expressly mentioned in the constitution, the necessary correlative to waterworks expressly granted in the constitution is a facility to carry off that same water. Thus, sewage lines and disposal facilities also are included in the general term "other public utilities". Town of Glendale v. City & County of Denver, 137 Colo. 188, 322 P.2d 1053 (1958); Toll v. City & County of Denver, 139 Colo. 462, 340 P.2d 862 (1959).

Water project located outside boundaries. Denver is not immune from regulation by Grand county in the development of a water project without its local boundaries and on national forest lands within Grand county. City & County of Denver v. Bergland, 517 F. Supp. 155 (D. Colo. 1981), aff'd in part and rev'd on other grounds, 695 F.2d 465 (10th Cir. 1982).

Denver has constitutional and statutory authority to lease water for use outside its city limits. Cottrell v. City & County of Denver, 636 P.2d 703 (Colo. 1981).

Denver's water projects are matters of mixed local and state interest. Where Denver's charter conflicts with state act that authorizes local governments to designate projects as matters of state interests and to promulgate rules and regulations to administer such projects, the state act controls. City & County of Denver v. Bd. of County Comm'rs, 760 P.2d 656 (Colo. App. 1988).

Power granted with respect to light plants concerned local or municipal matters or both. Cook v. City of Delta, 100 Colo. 7, 64 P.2d 1257 (1937).

Deficiency bond payment is not loan or new bond. The charter of the city of Denver in authorizing payment by the city of deficiencies in bond payments does not amount to the issuance of bonds or the creation of a loan within the meaning of this section. Montgomery v. City & County of Denver, 102 Colo. 427, 80 P.2d 434 (1938).

Section 2. Officers. The officers of the city and county of Denver shall be such as by appointment or election may be provided for by the charter; and

the jurisdiction, term of office, duties and qualifications of all such officers shall be such as in the charter may be provided; but the charter shall designate the officers who shall, respectively, perform the acts and duties required of county officers to be done by the constitution or by the general law, as far as applicable. If any officer of said city and county of Denver shall receive any compensation whatever, he or she shall receive the same as a stated salary, the amount of which shall be fixed by the charter, or, in the case of officers not in the classified civil service, by ordinance within limits fixed by the charter; provided, however, no elected officer shall receive any increase or decrease in compensation under any ordinance passed during the term for which he was elected.

Source: L. 01: Entire article added, p. 99. **L. 50:** Entire entire section amended, see **L. 51,** p. 232. **L. 2000:** Entire section amended, p. 2778, effective upon proclamation of the Governor, **L. 2001,** p. 2391, December 28, 2000.

Cross references: For the establishment of government civil service regulations, see § 3 of this article.

ANNOTATION

I. GENERAL CONSIDERATION.

Section not in conflict with federal constitution and should be enforced. The people have sovereign capacity to make, alter, or change their constitution as they see fit, subject only to the federal compact. This section does not conflict with the federal constitution, and ought to be enforced. The supreme court does not agree with decisions holding this section inoperative and void. The fundamental error in such cases lies in the refusal to recognize and enforce this section, which is a part of the constitution, according to its clear, unmistakable, and unquestionable meaning. People ex rel. Attorney Gen. v. Curtice, 50 Colo. 503, 117 P. 357 (1911), appeal dismissed for want of jurisdiction sub nom. Cassiday v. Colo., 223 U.S. 707, 32 S. Ct. 518, 56 L. Ed. 622 (1911).

The warrant of authority given to the people of the city and county of Denver to merely designate the agency by which governmental duties therein shall be discharged is not obnoxious to any provision of the enabling act or of the federal constitution, and therefore it may be lawfully done. People ex rel. Attorney Gen. v. Curtice, 50 Colo. 503, 117 P. 357 (1911), appeal dismissed for want of jurisdiction sub nom. Cassiday v. Colo., 223 U.S. 707, 32 S. Ct. 518, 56 L. Ed. 662 (1911); Reed v. Blakley, 115 Colo. 559, 176 P.2d 681 (1946).

Officers of Denver shall be as provided in the charter. People ex rel. McQuaid v. Pickens, 91 Colo. 109, 12 P.2d 349 (1932).

Section does not set aside governmental duties and functions as to state and county affairs. This section not only does not set aside governmental duties and functions as to state and county affairs in the city and county of Denver, it does not even pretend to do so, and by no stretch of the imagination can it be fairly held to do so. People ex rel. Attorney Gen. v. Curtice, 50 Colo. 503, 117 P. 357 (1911), appeal dismissed for want of jurisdiction sub nom. Cassiday v.

Colo., 223 U.S. 707, 32 S. Ct. 518, 56 L. Ed. 622 (1911); Hilts v. Markey, 52 Colo. 382, 122 P. 394 (1912).

But recognizes that such duties exist and must be discharged, and forthwith proceeds to provide and declare by whom they shall be performed. People ex rel. Attorney Gen. v. Curtice, 50 Colo. 503, 117 P. 357, appeal dismissed for want of jurisdiction sub nom. Cassiday v. Colo., 223 U.S. 707, 32 S. Ct. 518, 56 L. Ed. 622 (1911); Reed v. Blakley, 115 Colo. 559, 176 P.2d 681 (1946).

Such duties are absolutely fixed. These duties are fixed, absolutely fixed, until changed by the same power which created them. People ex rel. Attorney Gen. v. Curtice, 50 Colo. 503, 117 P. 357, appeal dismissed for want of jurisdiction sub nom. Cassiday v. Colo., 223 U.S. 707, 32 S. Ct. 518, 56 L. Ed. 622 (1911).

This article places duty of discharging local responsibilities on local officers. Four-County Metro. Capital Imp. Dist. v. Bd. of County Comm'rs, 149 Colo. 284, 369 P.2d 67 (1962).

This section vests in Denver exclusive control over public officers, their powers and duties. Int'l. Bhd. of Police Officers Local 127 v. City & County of Denver, 185 Colo. 50, 521 P.2d 916 (1974).

Because this section grants Denver the power to control the qualifications, as well as the powers, duties, and terms or tenure, of its deputy sheriffs, it necessarily follows that the P.O.S.T. Act is in conflict with the constitution to the extent that it purports to require Denver deputy sheriffs to be certified by the P.O.S.T. board. Fraternal Order, No. 27 v. Denver, 914 P.2d 483 (Colo. App. 1995).

Duties to be performed by one set of officers. Under the provisions of this section it was intended ultimately, so far as practicable, that all the powers and duties pertaining to former county offices, as well as the powers and duties of municipal offices, should be performed by one set of officers each drawing one salary; the economy which could be thus secured was one of the chief factors in causing the adoption of this amendment. Aichele v. City & County of Denver, 52 Colo. 183, 120 P. 149 (1911).

The terms "officer" and "employee" are not interchangeable, and the two are to be distinguished. City & County of Denver v. McNichols, 129 Colo. 251, 268 P.2d 1026 (1954); Evert v. Ouren, 37 Colo. App. 402, 549 P.2d 791 (1976).

"County officers". The words "county officers" in requiring that every charter shall designate the officers who shall "perform the acts and duties required of county officers to be done by the constitution or by the general law, as far as applicable", mean "county officers" that are such by reason of the provisions of art. XIV, Colo. Const., and none other. Dixon v. People ex rel. Elliott, 53 Colo. 527, 127 P. 930 (1912).

Employees of Denver department of social services are not "officers" of Denver for the purposes of this section. Evert v. Ouren, 37 Colo. App. 402, 549 P.2d 791 (1976).

Salaries of state personnel system officers. This section provides that the officers in the classified state personnel system of the city shall receive their compensation as a stated salary, the amount of which shall be fixed by the charter. Derby v. Police Pension & Relief Bd., 159 Colo. 468, 412 P.2d 897 (1966).

Applied in People ex rel. Parish v. Adams, 31 Colo. 476, 73 P. 866 (1903); McNichols v. Police Protective Ass'n, 121 Colo. 45, 215 P.2d 303 (1949); Smith v. City & County of Denver, 39 Colo. App. 421, 569 P.2d 329 (1977).

II. CITY AND COUNTY

OFFICERS.

A. In General.

Charter to designate officers to perform duties of county officers. This section requires that every charter designate the officers who shall perform the acts and duties required of county officers to be done by the constitution or by the general law, as far as applicable. McMurray v. Wright, 19 Colo. App. 17, 73 P. 257 (1893); Lail v. City & County of Denver, 88 Colo. 362, 297 P. 512 (1931); McNichols v. City & County of Denver, 109 Colo. 269, 124 P.2d 601 (1942).

By this article the people of Denver were given the right to name their own officers and to determine their selection, qualifications and tenure, subject only to the provision that acts and duties required by the constitution and statutory law of county officers be carried out by some officer designated by the charter. City & County of Denver v. Rinker, 148 Colo. 441, 366 P.2d 548 (1961); Meller v. Municipal Court, 152 Colo. 130, 380 P.2d 668 (1963).

Power to designate extends to statutory and constitutional officers. Power to designate county officers by charter is not limited to those created by the constitution, but includes those created by the general assembly. People ex rel. Fairall v. Sabin, 75 Colo. 545, 227 P. 565 (1924).

The power to designate by charter, given by this article, is not limited to county offices created by § 8 of art. XIV, Colo. Const., and does include the office of public trustee; it includes county offices to be created by the general assembly, to whom the necessary power is given by section 12 of that article. People ex rel. Fairall v. Sabin, 75 Colo. 545, 227 P. 565 (1924).

Mayor may be empowered to make designations. Under this section providing charters shall designate officials to perform the duties of county officers, the mayor may be empowered to make the designations. People ex rel. Fairall v. Sabin, 75 Colo. 545, 227 P. 565 (1924).

Such designation is not legislative act. The designation of officers under the provisions of a city charter pursuant to this section is not a legislative act. People ex rel. Fairall v. Sabin, 75 Colo. 545, 227 P. 565 (1924).

Power not delegated to city and county of Denver to create any county office, but to designate only the officers holding the offices which it had the right to create, who should respectively perform the acts and duties required of county officers to be done by the constitution and general laws. Thrush v. People ex rel. Elliott, 53 Colo. 544, 127 P. 937 (1912).

Charter cannot change duties of officers relating to state and county affairs. The people of the city and county of Denver have not been given, and do not have, the power by charter to in any way change the duties of governmental officers, so far as they relate to state and county affairs. People ex rel. Attorney Gen. v. Curtice, 50 Colo. 503, 117 P. 357 (1911), appeal dismissed for want of jurisdiction sub nom. Cassiday v. Colo., 223 U.S. 707, 32 S. Ct. 518, 56 L. Ed. 662 (1911).

In prescribing the "jurisdiction, term of office, duties, and qualifications of all such officers", this section did not mean that the charter convention could so prescribe in cases where it would operate to hinder the performance of the acts and duties required of county officers to be done by the constitution or by the general law, as far as applicable to the changed conditions of the new municipality. People ex rel. Miller v. Johnson, 34 Colo. 143, 86 P. 233 (1905).

A consolidation of the office of district attorney, a state office, and of attorney of the city and county, a transitional local office established by

section 3 of this article, was not a change which could be perpetuated by the people of Denver in their charter as contemplated by this article, because by this section their authority is limited to providing for city and county offices. Lindsley v. City & County of Denver, 64 Colo. 444, 172 P. 707 (1918).

General assembly retains exclusive control of such offices. All that this article purports to do relative to the county offices is to provide that the people of the city and county of Denver, through their charter, shall designate the agencies, which are to discharge the respective duties and functions which pertain to them. There is no warrant or authority in the article to the people of the city and county of Denver to alter, change, or dispense with such acts and duties. They remain, as before, subject to the constitution and general laws, and are exclusively under the control of the general assembly. People ex rel. Attorney Gen. v. Curtice, 50 Colo. 503, 117 P. 357, appeal dismissed for want of jurisdiction sub nom. Cassiday v. Colo., 223 U.S. 707, 32 S. Ct. 518, 56 L. Ed. 662 (1911); Reed v. Blakley, 115 Colo. 559, 176 P.2d 681 (1946).

The duties of judges of the district court, county judges, district attorneys, justices of the peace, and, generally, of county officers, are mainly governmental; and, so far as they are governmental, they may not be controlled by other than state agencies without undermining the very foundation of our government. People ex rel. Elder v. Sours, 31 Colo. 369, 74 P. 167 (1903).

Thus abolishing county offices did not abolish duties pertaining to them. This article, by the abolishment of county offices as such, did not abolish the duties pertaining to them, but they continued and it became the duty of someone to continue to perform all such duties just the same as it had been prior to the adoption of the article. Arnold v. Hilts, 52 Colo. 391, 121 P. 753 (1912).

Upon the adoption of this article and the charter the office of public trustee of Arapahoe county ceased to exist within the limits of the consolidated corporation, but there came into existence the office of public trustee of the city and county of Denver. Lail v. City & County of Denver, 88 Colo. 362, 297 P. 512 (1931).

Statutory duties of public trustee cannot be abolished by charter of the city and county of Denver either expressly or by a failure to obey the mandate of the constitution. Lail v. City & County of Denver, 88 Colo. 362, 297 P. 512 (1931).

Denver is subject to general constitutional provisions relating to counties. By this section the new corporation of Denver is made subject to the general provisions of art. XIV, Colo. Const., providing for counties and county officers, and of the state legislation enacted in pursuance of it; so that, although a city, it is a county equally with any other legal subdivision of the state to which the constitution and statutes have given the name of county. McMurray v. Wright, 19 Colo. App. 17, 73 P. 257 (1903).

B. Particular Officers.

County judges are not included as "county officers". Dixon v. People ex rel. Elliott, 53 Colo. 527, 127 P. 930 (1912).

Under the express authority of this section county judges may exercise not only state jurisdiction but also municipal jurisdiction, if provided by charter and ordinance. Blackman v. County Court, 169 Colo. 345, 455 P.2d 885 (1969).

Sheriff. The office of sheriff is a county office and not a state office; thus, 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 this article 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. City & County of Denver v. Rinker, 148 Colo. 441, 366 P.2d 548 (1961).

Because the state's interest under the Peace Officers Standards and Training Act was not sufficient to outweigh Denver's home rule authority, the provisions of this section supersede the conflicting provisions of the POST Act. Fraternal Order of Police, Lodge 27 v. Denver, 926 P.2d 582 (Colo. 1996).

The qualification and certification of Denver deputy sheriffs is a local concern, specifically, where it was shown that there was no need for statewide uniformity of training that would include Denver deputy sheriffs; that the extraterritorial impact of Denver deputy sheriffs is, at best, de minimis; that Denver deputy sheriffs do not substantially impact public safety beyond the boundaries of Denver; and Denver's interest in the training and certification of its deputy sheriffs is substantial and has direct textual support in the Colorado constitution and in case law precedent. Fraternal Order of Police, Lodge 27 v. Denver, 926 P.2d 582 (Colo. 1996).

The holding regarding the training and certification under the POST Act is limited to Denver deputy sheriffs since Colorado constitution article XX, § 2, pertains only to the City and County of Denver. Fraternal Order of Police, Lodge 27 v. Denver, 926 P.2d 582 (Colo. 1996).

Policemen. Under charter provisions of the city and county of Denver, policemen are officers, and their salaries being fixed by the charter under constitutional mandate cannot be lawfully reduced by ordinance. McNichols v. People ex rel. Cook, 95 Colo. 235, 35 P.2d 863 (1934).

Members of fire department are also officers. McNichols v. People ex rel. Cook, 95 Colo. 235, 35 P.2d 863 (1934); Rogers v. City & County of Denver, 121 Colo. 484, 217 P.2d 865 (1950).

Mayor has sole power to appoint public trustee. Under the existing provisions of the charter of Denver, the mayor has the sole power to appoint the public trustee. People ex rel. Fairall v. Sabin, 75 Colo. 545, 227 P. 565 (1924).

But may not consolidate such office with other offices. The charter of the city and county of Denver did not consolidate the office of public trustee with that of the clerk and recorder and ex officio clerk; the mayor has no power to make such consolidation, and until the enactment of a charter provision authorizing a consolidation, the office of public trustee will continue to be a separate office. Lail v. City & County of Denver, 88 Colo. 362, 297 P. 512 (1931).

Only manager of safety and excise may issue licenses for sale of intoxicating liquors. The agency through which Denver shall perform and discharge the duty of licensing dispensers of intoxicating liquors is within the city and county's keeping, through appropriate charter enactment. Since Denver has designated an office or agency called manager of safety and excise, to the occupant of which it has assigned all licensing authority, only that official, and not the city council, has authority to issue, or refuse to grant, licenses for the sale of intoxicating liquors in the city and county of Denver, and a statute passed by the general assembly authorizing the council of the city and county of Denver to issue licenses violates this section. Reed v. Blakley, 115 Colo. 559, 176 P.2d 681 (1946).

Section 3. Establishment of government civil service regulations. Immediately upon the canvass of the vote showing the adoption of this amendment, it shall be the duty of the governor of the state to issue his proclamation accordingly. Every charter shall provide that the department of fire and police and the department of public utilities and works shall be under such civil service regulations as in said charter shall be provided.

Source: L. 01: Entire article added, p. 100. **L. 2002:** Entire section amended, p. 3099, effective upon proclamation of the Governor, **L. 2003,** p. 3611, December 20, 2002.

ANNOTATION

I. GENERAL CONSIDERATION.

Purpose of section. The manifest purpose of this section was to remedy the administration of the functions of the city and county governments in the same territory by two sets of officers by immediately setting in operation a temporary or provisional government which the people of the city and county could perpetuate in their charter. Lindsley v. City & County of Denver, 64 Colo. 444, 172 P. 707 (1918).

This section did away with all county offices and officers as such. This section by express provision, terminated, upon its adoption, the terms of office of all officers of the then city of Denver, of the included municipalities and of the old county of Arapahoe, a portion of which, together with the city of Denver and included municipalities, were then merged into the consolidated municipality of the city and county of Denver. It in effect did away with all county officers and offices, purely as such, in the consolidated territory, and provided a single set of officers or agencies to perform, in the new municipality, all duties of a local nature and all duties pertaining to governmental, state and county affairs as well. Since the adoption of the article, and the formation of the city and county of Denver, there has never been, within that territory, a county office or county officer, as such. People ex rel. Attorney Gen. v. Curtice, 50 Colo. 503, 117 P. 357, appeal dismissed for want of jurisdiction, 223 U.S. 707, 32 S. Ct. 518, 56 L. Ed. 622 (1911).

This section in effect did away with all county officers and offices purely as such. In the territory comprising the city and county of Denver no county office or county officer, as in other counties of the state, exists. This being the case and this article of the constitution being a grant of power, it follows that the only power granted to the city and county of Denver pertaining to the duties of county officers under the constitution and general laws was to designate the officers holding the offices properly created by the charter who should perform the acts and duties required of county officers. Thrush v. People ex rel. Elliott, 53 Colo. 544, 127 P. 937 (1912).

All county officers and offices as such were abolished subject only to the provisions that the duties and acts required of them by the constitution or by general law should be carried out by some officer so designated by the charter. City & County of Denver v. Rinker, 148 Colo. 441, 366 P.2d 548 (1961); Meller v. Municipal Court, 152 Colo. 130, 380

P.2d 668 (1963).

It was intended to establish a temporary or provisional government in which it is provided that governmental, as well as all municipal powers and duties referred to, should be assumed and discharged by one set of officers; for instance, it provides that the council shall perform the duties of the board of county commissioners. Aichele v. City & County of Denver, 52 Colo. 183, 120 P. 149 (1911).

This section made certain existing officers of the former city and its boards officers and boards of the new municipality, to hold until their successors were elected and qualified. Hallett v. City & County of Denver, 46 Colo. 487, 104 P. 1038 (1909).

The mayor and the persons composing the council of the city of Denver became, by virtue of this provision, the mayor and council of the city and county of Denver. The mayor and members of the council, as well as all other officers of the new corporation, derive their title to office solely from the article; they have therefore such powers as it expressly confers, or are legitimately deducible from it and consistent with it, and no other. The council is clothed with all the powers of a board of county commissioners. McMurray v. Wright, 19 Colo. App. 17, 73 P. 257 (1903).

To perform duties of county officers until new charter adopted. Without this section there would have been no one to perform the duties of county officers until the adoption of a new charter. This is apparent for the reason that the old county of Arapahoe had been abolished, its officers as such had ceased to exist, and it was necessary to provide someone to perform the duties of county officers under the constitution and general laws until the procedure provided for in the article had been carried into effect. Thrush v. People ex rel. Elliott, 53 Colo. 544, 127 P. 937 (1912).

Complete county and city government is furnished to corporation. The amendment provides it with a mayor, council and other city officers; and with a body having the authority of a board of county commissioners, a sheriff, clerk, recorder, county judge and all other county officers. The duties of city officers are prescribed by the charter, and the duties of county officers by the general laws of the state. McMurray v. Wright, 19 Colo. App. 17, 73 P. 257 (1903).

And in the hands of the same persons. And the fact that the city government and the county government are in the hands of the same persons, is immaterial. The distinction between the functions pertaining to a city government and those pertaining to a county government, is not, and does not purport to be, affected by this article. McMurray v. Wright, 19 Colo. App. 17, 73 P. 257 (1903).

This section must be construed with section 2 of this article, which provides that the officers of the city and county of Denver shall be such as by appointment or election may be provided for by charter. So construed, this section did not require that the district attorney should perform the duties of attorney until an attorney was "elected" by the people, but that the district attorney should perform the duties of attorney for the city and county until an attorney was "selected" in such manner as the charter might provide. People v. Lindsley, 37 Colo. 476, 86 P. 352 (1906).

Applied in Bratton v. Dice, 93 Colo. 593, 27 P.2d 1028 (1933); Hawkins v. Hunt, 113 Colo. 468, 160 P.2d 357 (1945); Cain v. Civil Serv. Comm'n, 159 Colo. 360, 411 P.2d 778 (1966).

II. PARTICULAR OFFICES AND OFFICERS.

Office of county assessor terminated. By the formation of the city and county of Denver, the office of county assessor immediately terminated. An incumbent maintained in office by a decision of the supreme court which was subsequently overruled was at best no more than a de facto official. Arnold v. Hilts, 61 Colo. 8, 155 P. 316 (1916).

As did office of county commissioner. By the plain, unambiguous language of this section the terms of office of county commissioners of Arapahoe county terminated immediately upon the canvass of the vote showing the adoption of this article and the proclamation of the governor to that effect. Uzzell v. Anderson, 38 Colo. 32, 89 P. 785 (1906).

And office of city clerk. Considering the purposes of this article, including the phraseology of this section, it is clear the intent was, during the interim period, that the office of city clerk as such should be abolished just the same as the offices of county commissioners were, and that the duties pertaining to this office should be transferred and attached to the office of clerk and recorder for the city and county of Denver the same as those of county commissioners were to the city council. Aichele v. City & County of Denver, 52 Colo. 183, 120 P. 149 (1911).

But county clerk not entitled to salary as city clerk, during the period intervening between the adoption of the article, and the going into operation of the new charter adopted by the city, pursuant to its provisions. Aichele v. City & County of Denver, 52 Colo. 183, 120 P. 149 (1911).

County office of sheriff terminated. This section terminated the county office of sheriff in Denver and, together with the enabling provisions of article XX, reposed in the people of Denver for later decision by adoption of their charter whether to create the office of sheriff. Int'l. Bhd. of Police Officers Local 127 v. City & County of Denver, 185 Colo. 50, 521 P.2d 916 (1974).

And replaced by police department. In lieu of office of sheriff, Denver established a police department by charter. Int'l. Bhd. of Police Officers Local 127 v. City & County of Denver, 185 Colo. 50, 521 P.2d 916 (1974).

Treasurer of city and county of Denver, though performing duties of county treasurer, was not entitled to a salary in the latter capacity. Elder v. City & County of Denver, 53 Colo. 496, 127 P. 949 (1912).

Fire and police board. Upon the adoption of this article, the fire and police board of the city of Denver became the fire and police board of the city and county of Denver until their successors were elected and qualified as should be provided in the charter, and the members thereof held their offices by virtue of the amendment to the constitution and not by appointment of the governor and the governor had no power to remove them from office and appoint their successors. People ex rel. Parish v. Adams, 31 Colo. 476, 73 P. 866 (1903).

District attorney and attorney of city and county of Denver. The language of the provision, "and the district attorney shall also be ex officio attorney of the city and county", plainly imports that plaintiff should hold two offices, namely, the office of district attorney under state government, and the office of attorney of the city and county under local government, which were separate and distinct offices, the tenures of which were different, terminating at different times and for different causes. Lindsley v. City & County of Denver, 64 Colo. 444, 172 P. 707 (1918).

As district attorney, duties and power were defined by the state constitution and general laws; as attorney for the city and county, by the

city charter and ordinances. His responsibilities and duties in the two offices were not only separate and distinct, but of an entirely different character, having no possible relation to or connection with each other. In such circumstances, under all the authorities, the words, "and the district attorney shall also be ex officio attorney of the city and county of Denver", mean that plaintiff held separate and distinct offices. Lindsley v. City & County of Denver, 64 Colo. 444, 172 P. 707 (1918).

Deputy sheriffs and jailors. The people of Denver have the power under this article to include deputy sheriffs and jailors in a career service system. City & County of Denver v. Rinker, 148 Colo. 441, 366 P.2d 548 (1961).

Departmental rules and directives of manager of safety govern deputy sheriff's duties in Denver. Int'l. Bhd. of Police Officers Local 127 v. City & County of Denver, 185 Colo. 50, 521 P.2d 916 (1974).

No general police power in Denver deputy sheriffs. There is no authority, constitutional or statutory, granting to deputy sheriffs of the city and county of Denver the same general police powers given sheriffs and their deputies in other counties. Int'l. Bhd. of Police Officers Local 127 v. City & County of Denver, 185 Colo. 50, 521 P.2d 916 (1974).

Section 4. First charter. (1) The people of the city and county of Denver are hereby vested with and they shall always have the exclusive power in making, altering, revising or amending their charter.

(2) and (3) (Deleted by amendment, L. 2000, p. 2778, effective upon proclamation of the Governor, L. 2001, p. 2391, December 28, 2000.)

(4) Any franchise relating to any street, alley, or public place of the said city and county shall be subject to the initiative and referendum powers reserved to the people under section 1 of article V of this constitution. Such referendum power shall be guaranteed notwithstanding a recital in an ordinance granting such franchise that such ordinance is necessary for the immediate preservation of the public peace, health, and safety. Not more than five percent of the registered electors of a home rule city shall be required to order such referendum. Nothing in this section shall preclude a home rule charter provision which requires a lesser number of registered electors to order such referendum or which requires a franchise to be voted on by the registered electors. If such a referendum is ordered to be submitted to the registered electors, the grantee of such franchise shall deposit with the treasurer the expense (to be determined by said treasurer) of such submission. The council shall have power to fix the rate of taxation on property each year for city and county purposes.

Source: L. 01: Entire article added, p. 101. **L. 84:** Entire section amended, p. 1145, effective upon proclamation of the Governor, **L. 85,** p. 1791, January 14, 1985. **L. 86:** Entire section amended, p. 1239, effective upon proclamation of the Governor, **L. 87,** p. 1861, December 17, 1986. **L. 2000:** Entire section amended, p. 2778, effective upon proclamation of the Governor, **L. 2001,** p. 2391, December 28, 2000.

ANNOTATION

I. General Consideration.

II. Control of Franchises.

III. Power of Taxation.

I. GENERAL CONSIDERATION.

People are given exclusive right to amend charter. Under this and the following section the inhabitants of the city and county of Denver are given the exclusive power to amend their charter, and are entitled to demand the submission of anything which falls within the definition of an amendment. People ex rel. Moore v. Perkins, 56 Colo. 17, 137 P. 55, (1913).

This article is not invalid on the ground that it is dependent on future contingencies. People ex rel. Elder v. Sours, 31 Colo. 369, 74 P. 167 (1903).

City and county of Denver invested with all power prior to adoption of charter. Under this section the city and county of Denver, during the interim between the adoption of the constitutional amendment and the adoption of the new charter, was invested with all the authority, which was not made or rendered inapplicable by the article itself, previously reposed in the city of Denver, including the power to create sidewalk districts and assess the cost of the sidewalk constructed therein upon the abutting properties. Hallett v. City & County of Denver, 46 Colo. 487, 104 P. 1038 (1909).

Council of city and county possesses powers conferred on old city council. The old charter of the city of Denver, insofar as it is the charter of the city and county of Denver, is to be considered in determining the extent of the council's authority, but the old charter is not the charter of the city and county except qualifiedly. It is such charter only insofar as it is applicable to the constitution of the new corporation. Subject to this qualification, the council of the city and county of Denver possesses all the powers conferred by the charter upon the city council of the city of Denver. McMurray v. Wright, 19 Colo. App. 17, 73 P. 257 (1903).

Prior ordinances remain in effect. Ordinances in force at date of new charter, which were not inconsistent therewith, remain in force until repealed or amended by the council, or until they expire by their own limitations. To receive such prior ordinance in evidence, in an action for negligence founded on the disregard of the requirements of the ordinance, is not to give it retroactive effect. Denver City Tramway Co. v. Carson, 21 Colo. App. 604, 123 P. 680 (1912).

Courts to take judicial notice of charter. The courts will judicially notice the charter of the city of Denver, adopted under this article by the people of that municipality, to the same extent as the former charter granted by the general assembly. Denver City Tramway Co. v. Carson, 21 Colo. App. 604, 123 P. 680 (1912).

Charter election was governed as provided by general law. While the charter of the old corporation is made the charter of the new body corporate until after the election is determined, the requirement as to the election is that it shall be conducted, not as provided by that charter, but as provided by law. If it had been the intention to apply the charter to the election, the word "charter", instead of the word "law", would have been used. McMurray v. Wright, 19 Colo. App. 17, 73 P. 257 (1903).

Canvass of returns of election for members of charter convention. It is the duty of the clerk of said city and county, assisted by two justices of the peace, and not of the city council, to canvass the returns of an election for members of the charter convention, and to issue certificates of election to the members elected thereto. McMurray v. Wright, 19 Colo. App. 17, 73 P. 257 (1903).

Successive charter elections are not required. The contention that successive charter elections must be

held until a new charter has been approved, under this section and section 5 of this article was rejected by the supreme court. Mahood v. City & County of Denver, 118 Colo. 338, 195 P.2d 379 (1948).

Distinction between modes of amending or making new charter. This article, while investing the people of the city under this section with "exclusive power in the making, altering, revising, or amending their charter", makes a distinction between the modes of amending it and of revising it in extenso or making a new one, the difference being that an amendment may be initiated by petition and directly voted upon and adopted by the electors, while a revised or new charter requires the intervention of a charter convention. City & County of Denver v. New York Trust Co., 229 U.S. 123, 33 S. Ct. 657, 57 L. Ed. 1101 (1913).

Ordinance effecting amendment of charter held invalid. A Denver ordinance was invalid because in effect it would be an amendment of the charter, which power of amendment under this section is exclusively reserved to the people of Denver. McNichols v. City & County of Denver, 109 Colo. 269, 124 P.2d 601 (1942).

New charter cannot be framed and submitted by those not possessing qualifications prescribed in this section although initiatory steps with respect to matters prescribed in section 5 of this article may be taken by qualified electors, whether taxpayers or not, and without regard to the length of time they have been such electors. Speer v. People ex rel. Rush, 52 Colo. 325, 122 P. 768 (1912).

Applied in People ex rel. Parish v. Adams, 31 Colo. 476, 73 P. 866 (1903); City of Montrose v. Pub. Utils. Comm'n, 629 P.2d 619 (Colo. 1981); In re Reapportionment of Colo. Gen. Ass'y, 647 P.2d 191 (Colo. 1982).

II. CONTROL OF FRANCHISES.

"Franchise" is defined as the privilege of doing that which does not belong to the citizens of the country generally by common right. It is a right, privilege, or power, of public concern, which ought not to be exercised by private individuals at their mere will and pleasure, but should be reserved for public control and administration. City of Englewood v. Crabtree, 157 Colo. 593, 404 P.2d 525, cert. dismissed, 382 U.S. 934, 86 S. Ct. 385, 15 L. Ed. 2d 347 (1965); Cmty. Tele-Communications v. Heather Corp., 677 P.2d 330 (Colo. 1984); City of Greeley v. Poudre Valley R. Elec., 744 P.2d 739 (Colo. 1987), appeal dismissed for want of a properly presented federal question, 485 U.S. 949, 108 S. Ct. 1207, 99 L. Ed. 2d 409 (1988).

A "franchise" by definition is a special right or privilege granted by a government to an individual or corporation -- such a right as does not ordinarily belong to citizens in general. City of Englewood v. Mountain States Tel. & Tel. Co., 163 Colo. 400, 431 P.2d 40 (1967).

The object of this provision relating to franchises is to give the taxpaying electors absolute control over the granting of franchises. Ward v. Colo. E. R. R., 22 Colo. App. 332, 125 P. 567 (1912); Berman v. City & County of Denver, 120 Colo. 218, 209 P.2d 754 (1949); Cmty. Tele-Communications v. Heather Corp., 677 P.2d 330 (Colo. 1984); City of Greeley v. Poudre Valley R. Elec., 744 P.2d 739 (Colo. 1987), appeal dismissed for want of a properly presented federal question, 485 U.S. 949, 108 S. Ct. 1207, 99 L. Ed. 2d 409 (1988).

Power to grant franchises was transferred from city council to the qualified taxpaying electors when this article took effect. Williams v. People, 38 Colo. 497, 88 P. 463 (1906);

Ward v. Colo. E. R. R., 22 Colo. App. 332, 125 P. 567 (1912); Berman v. City & County of Denver, 120 Colo. 218, 209 P.2d 754 (1949).

Franchise must be approved by electors. Under this section the people of the new organization are vested with the exclusive power to make their own municipal charter, but, with this limitation, inter alia, that a franchise relating to any street, alley or public place of the city cannot be granted except upon the vote of its qualified taxpaying electors. Williams v. People, 38 Colo. 497, 88 P. 463 (1906).

The city council of Denver is without authority to grant to a street railway company a so-called revocable license, in effect a franchise, to use the streets of the city for street railway purposes, except upon a vote of the qualified taxpaying electors, under the provisions of this section. Baker v. Denver Tramway Co., 72 Colo. 233, 210 P. 845 (1922); Berman v. City & County of Denver, 120 Colo. 218, 209 P.2d 754 (1949).

City franchising power not applicable to party franchised by state. The constitutional provisions permitting home rule cities to grant franchises are applicable to situations where the individual or corporation does not have some type of a state franchise. City of Englewood v. Mountain States Tel. & Tel. Co., 163 Colo. 400, 431 P.2d 40 (1967).

By its original city franchise, obtained before the city became a home rule city, the telephone company acquired what in law is a valid state franchise or right. This permitted it not only to maintain its facilities in the city's public ways, but also to construct and operate additional ones therein without obtaining a city franchise. City of Englewood v. Mountain States Tel. & Tel. Co., 163 Colo. 400, 431 P.2d 40 (1967).

Provision for payment before vote is subordinate part of limitation. While this section provides that the question of granting a desired franchise shall be submitted to the electors upon the deposit with the city treasurer of the expense of the submission, it is a subordinate part of a limitation or restriction to the effect that no franchise to occupy or use the streets of the city shall be granted except upon an approving vote of the electors, and is evidently intended to be merely regulatory of the payment of the expense of taking the vote, and not to make such payment the only test of the right to have the vote taken. City & County of Denver v. New York Trust Co., 229 U.S. 123, 33 S. Ct. 657, 57 L. Ed. 1101 (1913).

Franchise election upheld. When the vast majority of the votes cast on a franchise matter were for the franchise, an election will not be voided on the basis of the claim that the limitation of votes on the franchise matter to qualified taxpaying electors was invalid, when the result would have been the same even if those who had not been permitted to vote were allowed to do so. DeMoulin v. City & County of Denver, 177 Colo. 129, 495 P.2d 203, cert. denied, 409 U.S. 934, 93 S. Ct. 232, 34 L. Ed. 2d 188 (1972).

Sports stadium is not street, alley or avenue requiring franchise vote any more than the auditorium, the arena, the coliseum or any other facility that the city from time to time leases to persons. Ginsberg v. City & County of Denver, 164 Colo. 572, 436 P.2d 685 (1968).

Sale of land was not grant of franchise. The sale of a block in the city of Denver on which the courthouse was formerly located was not the grant of a franchise relating to a public place within the meaning of this section. Hall v. City & County of Denver, 115 Colo. 538, 177 P.2d 234 (1946).

The reverter provision of the contract for sale of land is nothing more than the reservation of a right in property which the owner thereof

retains in itself upon conveyance of a major interest in that property to the city. The interest thus retained is not a franchise but is an interest in real property. City of Englewood v. Crabtree, 157 Colo. 593, 404 P.2d 525, cert. dismissed, 382 U.S. 934, 86 S. Ct. 385, 15 L. Ed. 2d 347 (1965).

Nor is lease. The user arrangement whereby the city leases a sports stadium for professional sports and other uses is a mere lease or rental arrangement and is not a franchise. Ginsberg v. City & County of Denver, 164 Colo. 572, 436 P.2d 685 (1968).

But maintenance of telephone facilities on streets is. The right of a telephone or telegraph company to maintain its facilities on or in the streets is a franchised right. City of Englewood v. Mountain States Tel. & Tel. Co., 163 Colo. 400, 431 P.2d 40 (1967).

Attempt to grant franchise privileges contrary to section invalid. An ordinance of the Denver city council adopted subsequent to this article and prior to the adoption of the charter thereunder, granting to a railway company the right to occupy certain streets and alleys, was without effect, either as a grant or as a mere permit or license; it conferred no right whatever. Ward v. Colo. E. R. R., 22 Colo. App. 332, 125 P. 567 (1912).

An ordinance granting to a tramway corporation authority to eliminate rail lines on certain streets and operate trolley coaches or motor busses and fixing maximum fares constituted an attempt to grant, extend and enlarge franchise privileges contrary to, and in violation of, this section. Berman v. City & County of Denver, 120 Colo. 218, 209 P.2d 754 (1949).

Grant of right to construct, operate, and maintain cable television system is a franchise. Since the right to use the streets and public ways of the city to construct, operate, and maintain a cable television system is a proper subject for the granting of a franchise, enacting an ordinance to grant company a permit to operate a cable system was unlawful. Cmty. Tele-Communications v. Heather Corp., 677 P.2d 330 (Colo. 1984).

Standing to challenge charter amendments. Qualified taxpaying electors have standing to challenge a charter amendment which confers authority conferred upon the council to act in the name and on behalf of the city and county of Denver on all matters pertaining to the installation and operation of a cable television system in the city and county of Denver and which provides that no additional authorization relating to such matters shall be required to be submitted to a vote at any election. People ex rel. Feld v. City & County of Denver, 673 P.2d 43 (Colo. App. 1983).

The public utilities commission cannot authorize a power company operating pursuant to a certificate of public convenience and necessity in an area annexed by a home rule municipality to expand its system and use city streets without obtaining a franchise from such municipality. City of Greeley v. Poudre Valley R. Elec., 744 P.2d 739 (Colo. 1987), appeal dismissed for want of a properly presented federal question, 485 U.S. 949, 108 S. Ct. 1207, 99 L. Ed. 2d 409 (1988).

The consent of both the municipality and the public utilities commission is necessary to operate a public utility within a home rule city, but neither the general assembly not the public utilities commission is empowered to grant a franchise to a public utility to use the streets, alleys, and public places of a home rule municipality without the municipality's consent. City of Greeley v. Poudre Valley R. Elec., 744 P.2d 739 (Colo. 1987), appeal dismissed for want of a properly presented federal question, 485 U.S. 949, 108 S. Ct. 1207, 99 L. Ed. 2d 409 (1988).

The right of home rule cities to grant franchises is not unconstitutionally interfered with by § 40-3-106 (4), which results in the customers within a municipality which has granted a franchise paying the cost of the franchise fee as part of the rates for the service. City of Montrose v. Pub. Utils. Comm'n, 732 P.2d 1181 (Colo. 1987).

Section 40-3-106 (4) does not affect either a home rule city's ability to negotiate and grant franchises and to collect franchise fees or a fixed utility's obligation to pay to a municipality the entire amount of the franchise fee negotiated and, therefore, does not violate this section or § 6 of this article or article XXV of this constitution. City of Montrose v. Pub. Utils. Comm'n, 732 P.2d 1181 (Colo. 1987).

III. POWER OF TAXATION.

Duty of city council in fixing rate of taxation is purely ministerial. The power to fix the rate of taxation given the council is limited to the necessities of the case, and such rate must be based upon fixed charges, levies and estimated expenses. The duty of the council in that respect is neither legislative nor judicial, but is purely ministerial. Perkins v. People ex rel. McFarland, 59 Colo. 107, 147 P. 356 (1915).

And does not include power to determine validity of tax directed by people. The power to fix the rate of taxation granted the council in this section does not include the power to determine the necessity or validity of a tax arising from a fixed levy for the construction and maintenance of public improvements directed by the people, whether in the form of bonds, the interest and principal of which must be paid by the levy of a tax, or whether from any specific levy for a stated purpose. Such a power would enable the council to nullify every act of the people providing for a public improvement. Perkins v. People ex rel. McFarland, 59 Colo. 107, 147 P. 356 (1915).

But confers no power to limit the rate of taxation for county purposes. The provision of the charter adopted by the people of Denver, under authority of this article is construed to apply only to taxes levied for municipal purposes, and is of no effect upon the power and duty of the board of supervisors in fixing the rate of taxation for state and county purposes. Hilts v. Markey, 52 Colo. 382, 122 P. 394 (1912).

Since that is matter solely under state control. If by the charter of the city and county of Denver it is undertaken to legislate upon, or in any way control and fix, the method of making, or the amount of the levy, by way of limitation or otherwise, within the consolidated territory, for county purposes, such attempt is futile, because that is a matter solely under state control, and may not be interfered with in any way by local legislation. Hilts v. Markey, 52 Colo. 382, 122 P. 394 (1912).

And is performed by board of supervisors of city and county. The board of supervisors of the city and county of Denver, in levying taxes for county purposes, performs the same office as the board of county commissioners in other counties. They have authority, and are under an absolute duty to determine the amount to be levied. And this authority is not limited by the provision of this section. Hilts v. Markey, 52 Colo. 382, 122 P. 394 (1912).

Excise tax payable to milk producers upheld. Ordinance laying an excise tax of two cents per quart upon milk intended for human consumption in the city and county of Denver was held constitutional within the provisions of this section. Bowles v. Stapleton, 53 F. Supp. 336 (D. Colo. 1943).

Section 5. New charters, amendments or measures. The citizens of the city and county of Denver shall have the exclusive power to amend their charter or to adopt a new charter, or to adopt any measure as herein provided;

It shall be competent for qualified electors in number not less than five percent of the next preceding gubernatorial vote in said city and county to petition the council for any measure, or charter amendment, or for a charter convention. The council shall submit the same to a vote of the qualified electors at the next general election not held within thirty days after such petition is filed; whenever such petition is signed by qualified electors in number not less than ten percent of the next preceding gubernatorial vote in said city and county, with a request for a special election, the council shall submit it at a special election to be held not less than thirty nor more than sixty days from the date of filing the petition; provided, that any question so submitted at a special election shall not again be submitted at a special election within two years thereafter. In submitting any such charter, charter amendment or measure, any alternative article or proposition may be presented for the choice of the voters, and may be voted on separately without prejudice to others. Whenever the question of a charter convention is carried by a majority of those voting thereon, a charter convention shall be called through a special election ordinance as provided in section four (4) hereof, and the same shall be constituted and held and the proposed charter submitted to a vote of the qualified electors, approved or rejected, and all expenses paid, as in said section provided.

The clerk of the city and county shall publish, with his official certification, for three times, a week apart, in the official newspapers, the first publication to be with his call for the election, general or special, the full text of any charter, charter amendment, measure, or proposal for a charter convention, or alternative article or proposition, which is to be submitted to the voters. Within ten days following the vote the said clerk shall publish once in said newspaper the full text of any charter, charter amendment, measure, or proposal for a charter convention, or alternative article or proposition, which shall have been approved by majority of those voting thereon, and he shall file with the secretary of state two copies thereof (with the vote for and against) officially certified by him, and the same shall go into effect from the date of such filing. He shall also certify to the secretary of state, with the vote for and against, two copies of every defeated alternative article or proposition, charter, charter amendment, measure or proposal for a charter convention. Each charter shall also provide for a reference upon proper petition therefor, of measures passed by the council to a vote of the qualified electors, and for the initiative by the qualified electors of such ordinances as they may by petition request.

The signatures to petitions in this amendment mentioned need not all be on one paper. Nothing herein or elsewhere shall prevent the council, if it sees fit, from adopting automatic vote registers for use at elections and references.

No charter, charter amendment or measure adopted or defeated under the provisions of this amendment shall be amended, repealed or revived, except by petition and electoral vote. And no such charter, charter amendment or measure shall diminish the tax rate for state purposes fixed by act of the general

assembly, or interfere in any wise with the collection of state taxes.

The city council, or board of trustees, or other body in which the legislative powers of any home rule city or town may then be vested, on its own initiative, may submit any measure, charter amendment, or the question whether or not a charter convention shall be called, at any general or special state or municipal election held not less than 30 days after the effective date of the ordinance or resolution submitting such question to the voters.

Source: L. 01: Entire article added, p. 103. **L. 50:** Entire section amended, see **L. 51,** p. 233.

Editor's note: The reference in the last sentence of the second paragraph to a charter convention being called through a special election ordinance as provided in section 4 of this article was deleted by amendment in senate concurrent resolution 00-005. Section 4 of article XX was amended to delete provisions for the first charter of the city and county of Denver calling for the adoption of the charter and specifying the procedures to be followed for a special election since the charter was adopted November 8, 1881. (See L. 2000, p. 2778.)

Cross references: For procedure and requirements for adoption of a home rule charter by the registered electors of each city and county, city, and town of the state, see § 9 of this article.

ANNOTATION

I. GENERAL CONSIDERATION.

This section is not one of limitation. City & County of Denver v. Mewborn, 143 Colo. 407, 354 P.2d 155 (1960).

Construction of charter where it differs from constitution. If the charter differs from the constitution in any respect, it does not thereby diminish the power reserved by the constitution. If the powers reserved by the charter exceed those reserved in the constitution, the effect of the charter would be to give the people the additional powers there described. Burks v. City of Lafayette, 142 Colo. 61, 349 P.2d 692 (1960).

"Special elections" mentioned in this section are special municipal elections, although not specifically so designated. People ex rel. Austin v. Billig, 72 Colo. 209, 210 P. 324 (1922).

"General election". The term "general election" used in this section refers to a general municipal election, and does not include a general state election. People ex rel. Austin v. Billig, 72 Colo. 209, 210 P. 324 (1922).

Within the specific context of this section, a "general election" is a regularly scheduled election at which all qualified electors may participate. Election Comm'n v. McNichols, 193 Colo. 263, 565 P.2d 937 (1977).

Change in plan of government can only be effected by a charter convention. A measure proposed as an amendment, inasmuch as it changed the city council from a body composed of two houses, the members chosen from designated districts, to a single body of five commissioners chosen at large, so that all may come from one locality, denying to the mayor the veto of power now vested in him, reposing in the five commissioners all administrative powers which, by the existing charter,

are vested in separate boards, commissions and officials, was not a mere amendment but an entire change in the plan of government which can only be effected by a charter convention. Speer v. People ex rel. Rush, 52 Colo. 325, 122 P. 768 (1912).

Proposition held to be amendment, not new charter. A charter must be complete in itself, and a proposition for the amendment of twenty sections out of three hundred and sixty, for the repeal of twenty sections, and the addition of twenty sections, leaving approximately three hundred sections untouched; which is germane to the subject of municipal government; which fails to provide for the appointment or election of many officers and employees required in the existing charter, or their duties or salaries; which makes no provisions as to the civil service, the fire and police department, the management of municipal finance, public utilities, and the control thereof, the public health, franchises, and public improvements, must be regarded as amendatory to the charter, and not as a new charter. People ex rel. Moore v. Perkins, 56 Colo. 17, 137 P. 55 (1913).

Prohibition against revival limited to particular measure. The prohibition in the next to last paragraph of this section lies against the reenactment or revival of the particular ordinance or measure defeated, and not against all legislation on the subject matter thereof. Hall v. City & County of Denver, 115 Colo. 538, 177 P.2d 234 (1946).

Such prohibition was amended by implication. That part of this section which states: "No charter, charter amendment, or measure adopted or defeated under the provisions of this amendment shall be amended, repealed, or revived except by petition and electoral vote", was amended by implication by a later constitutional amendment granting the city council the same power as held by the electorate to initiate such changes. Coopersmith v. City & County of Denver, 156 Colo. 469, 399 P.2d 943 (1965).

No charter or charter amendment can interfere with state taxes. There is nothing in this article, nor in the charter of the former city government under which the new municipality acts until it secures a new charter and new ordinances, which prohibits an act of the general assembly which imposes a license fee by a tax upon lawful occupations within the city of Denver for the purpose of securing state revenue. Parsons v. People, 32 Colo. 221, 76 P. 666 (1904).

Charter must include referendum and initiative provisions. The effect of this section is to require that referendum and initiative provisions be included in home rule charters. It does not specify as to the scope and extent of the power but the presence of this provision indicates the importance of this reservation. Burks v. City of Lafayette, 142 Colo. 61, 349 P.2d 692 (1960).

But scope and extent of provisions not specified. The Colorado constitution requires that referendum and initiative provisions be included in home rule charters, but includes no requirement as to the scope and extent that must be allowed. Witkin Homes, Inc. v. City & County of Denver, 31 Colo. App. 410, 504 P.2d 1121 (1972).

Home rule charter is not subject to constitutional limitation on referendum. The limitation does not operate to restrict the referendum to the same boundaries existing at the state level, it not being a maximum limitation, but the minimum which must be reserved to the people of a locality. Burks v. City of Lafayette, 142 Colo. 61, 349 P.2d 692 (1960).

City may restrict or reserve full measure of referendum authority to voters. Inasmuch as the home rule city has the power to adopt its own

charter and can within its sphere exercise as much legislative power as the general assembly, it follows that such a city has authority to either restrict the power of referendum by allowing its council to declare health and safety or it may validly reserve a full measure of referendum authority to the voters of the community by not restricting it -- by providing that it shall be exercisable with respect to any measure--even those measures which have become effective. Witkin Homes, Inc. v. City & County of Denver, 31 Colo. App. 410, 504 P.2d 1121 (1972).

A home rule city may adopt a charter which reserves to the voters authority to refer all measures, and which withholds from the council power to thwart referendum by the expedient of declaring health and safety. Such a charter provision is valid and there is no reason for implied incorporation within it of the safety exception. Burks v. City of Lafayette, 142 Colo. 61, 349 P.2d 692 (1960).

Council may preclude referendum by petition through acceleration of effective date of ordinance based upon a determination and declaration that the ordinance is necessary for the immediate preservation of the public health and safety. Witkin Homes, Inc. v. City & County of Denver, 31 Colo. App. 410, 504 P.2d 1121 (1972).

Power of referendum should be broadly construed. The interpretative approach to the power of referendum which gives broad effect to the reservation in the people and which refrains from implying or incorporating restrictions not specified in the constitution or the charter is supported by the terms of art. V, Colo. Const. Being a reservation of the people, it should not be narrowly construed, and there should be strict construction of the authority which would nullify the referendum. Burks v. City of Lafayette, 142 Colo. 61, 349 P.2d 692 (1960).

In construing a home rule charter, broad effect is given to the power granted a city council to submit a matter to a vote of the people, and any limitations on that power will be narrowly construed. Witkin Homes, Inc. v. City & County of Denver, 31 Colo. App. 410, 504 P.2d 1121 (1972).

When ordinances are "adopted". Referendum provisions are negative in their operation and an ordinance submitted to referendum is not "adopted" by a subsequent favorable vote of the people, but on the contrary such had already been "adopted" by the earlier action of the city council. Interstate Trust Bldg. Co. v. Denver Urban Renewal Auth., 172 Colo. 427, 473 P.2d 978 (1970).

Council may amend ordinance adopted by council and approved by electors. Though this section and the corresponding Denver city charter provisions would appear to bar the Denver city council from amending initiated ordinances, nevertheless such constitutional and charter provisions do not contain any similar words of limitations as concerns the power of city council to amend an ordinance which it adopted and which was thereafter referred to a vote of the qualified electors and approved by them. Interstate Trust Bldg. Co. v. Denver Urban Renewal Auth., 172 Colo. 427, 473 P.2d 978 (1970).

Ordinances submitted for referendum not limited to certain types. Where the charter provision in question allows the city council to submit for a referendum "any ordinance passed by it in the same manner and with the same force and effect as hereinabove provided", the language is not limited to those types of ordinances allowed to be the subject of referendum initiated by petition, and thus, "any ordinance" includes an ordinance previously enacted and in effect, including zoning ordinances. Witkin Homes, Inc. v. City & County of Denver, 31 Colo. App. 410, 504 P.2d 1121 (1972).

Applied in City of Englewood v. Crabtree, 157 Colo. 593, 404 P.2d 525 (1965); Int'l. Bhd. of Police Officers Local 127 v. City & County of Denver, 185 Colo. 50, 521 P.2d 916 (1974); In re Reapportionment of Colo. Gen. Ass'y, 647 P.2d 191 (Colo. 1982).

II. POWER TO AMEND OR TO ADOPT NEW CHARTER.

A. In General.

Home rule cities have power to amend charter. Home rule cities are vested with, and shall always have, power to make, amend, add to, or replace the charter of the city or town, which shall be its organic law and extend to all its local and municipal matters. Four-County Metro. Capital Imp. Dist. v. Bd. of County Comm'rs, 149 Colo. 284, 369 P.2d 67 (1962).

Citizens of Denver have legislative power over municipal matters. Under this section the citizens of the municipality of Denver, so far as concerns municipal matters, have all the powers of the legislature. City & County of Denver v. Hallett, 34 Colo. 393, 83 P. 1066 (1905); Londoner v. City & County of Denver, 52 Colo. 15, 119 P. 156 (1911); Speer v. People ex rel. Rush, 52 Colo. 325, 122 P. 768 (1912).

The power to amend or adopt a new charter expressly granted to the citizens of Denver is a legislative one. The power thus granted is plainly not executive nor judicial. It is a power to make laws, to legislate, and cannot be other than legislative. Speer v. People ex rel. Rush, 52 Colo. 325, 122 P. 768 (1912).

Power is granted not to citizens and city council, but to citizens only. Speer v. People ex rel. Rush, 52 Colo. 325, 122 P. 768 (1912).

Such power is exclusive in citizens. As the power thus granted is expressly exclusive in the citizens, of necessity all other governmental agencies, departments, bodies, and officers are excluded from exercising it. This exclusion is direct, positive, and unequivocal. Speer v. People ex rel. Rush, 52 Colo. 325, 122 P. 768 (1912).

And includes power to initiate proposed charter amendments. The petition for an amendment is part of the act of legislation, and the petitioners, in submitting their petition, are exercising legislative power; they who thus initiate the measure, and the whole body of electors who vote upon it, constituting the legislature of the municipality. Speer v. People ex rel. Rush, 52 Colo. 325, 122 P. 768 (1912).

Any matter germane to principal subject may be submitted as amendment. Where the word "amendment" is used without limitation as in this section, any matter which is germane to the principal subject, to wit, that of municipal government, is proper to be submitted as an amendment. People ex rel. Moore v. Perkins, 56 Colo. 17, 137 P. 55 (1913).

New charter may not be submitted as amendment. The article does not authorize the submission to the people, as an amendment to the charter, of what is in effect a new charter. Speer v. People ex rel. Rush, 52 Colo. 325, 122 P. 768 (1912).

Amendment need not be limited to single subject. This section does not require that a charter amendment be limited to a single subject or proposition. City & County of Denver v. Mewborn, 143 Colo. 407, 354 P.2d 155 (1960).

The use of the singular form "amendment" in this section is not to be construed as prohibiting more than one subject within a single amendment to the charter of a home rule city, the constitutional provision not being one of limitation. Several subjects can be constitutionally included within a single charter amendment. City & County of Denver v. Mewborn, 143

Colo. 407, 354 P.2d 155 (1960).

Where the several propositions in an amendment to the charter of a home rule city are related and deal with subjects within the power of the municipality there is no constitutional objection to such an amendment, even though it is multi-purposed. City & County of Denver v. Mewborn, 143 Colo. 407, 354 P.2d 155 (1960).

If the subjects submitted were germane to each other or if the subjects were so interconnected and dependent on each other that it is not desirable to adopt one without the others, it is unnecessary to submit to the voters each subject individually. Coopersmith v. City & County of Denver, 156 Colo. 469, 399 P.2d 943 (1965).

The inhibition against more than one subject in legislative enactments has no application to constitutional or organic law. City & County of Denver v. Mewborn, 143 Colo. 407, 354 P.2d 155 (1960); Coopersmith v. City & County of Denver, 156 Colo. 469, 399 P.2d 943 (1965).

Section 21 of art. V, Colo. Const., providing that no bill shall contain more than one subject which shall be clearly expressed in its title, has no application to charter amendments made pursuant to this article by municipalities. Hoper v. City & County of Denver, 173 Colo. 390, 479 P.2d 967 (1971).

But submission of many amendments as one not permitted. This section does not permit the submission, as one, of many amendments. If more than one be submitted, the voter must be enabled to approve or reject them separately. People ex rel. Walker v. Stapleton, 79 Colo. 629, 247 P. 1062 (1926); City & County of Denver v. Mewborn, 143 Colo. 407, 354 P.2d 155 (1960).

A proposed amendment consisted of several distinct propositions, many of them entirely foreign to the proposed change in the form of government, all to be submitted as a single amendment where the elector was afforded no opportunity to vote for those which he favored, and against those of which he disapproved, was improper. The necessity of voting for or against all is in conflict with the letter as well as the spirit of our election laws, and condemned by an unbroken line of authority. Speer v. People ex rel. Rush, 52 Colo. 325, 122 P. 768 (1912).

A charter amendment proposal containing several unrelated propositions, submitted to the voters as a single amendment, and under which the voters have no opportunity to accept or reject each such proposal, is a "package deal", with the result that the ballot title used is in clear violation of the provisions of this section of the constitution. Any purported amendment adopted under such circumstance is of no force or effect. Howard v. City of Boulder, 132 Colo. 401, 290 P.2d 237 (1955).

B. Procedure.

The procedure outlined in this section is definite and complete. Cook v. City of Delta, 100 Colo. 7, 64 P.2d 1257 (1937).

General provisions for initiative and referendum do not apply to amendment. A charter amendment may be proposed only by petition of the electors and must be passed by a majority vote of the electorate before it becomes effective. It is in its very nature an initiated measure and the general constitutional and statutory provisions for initiative and referendum do not apply to a charter amendment. Cook v. City of Delta, 100 Colo. 7, 64 P.2d 1257 (1937).

Amendment may be initiated by petition or by ordinance. This section provides that a charter amendment may be initiated either by a

petition signed by qualified electors in number not less than five percent of the next preceding gubernatorial vote, or by an ordinance passed by the council. City & County of Denver v. Mewborn, 143 Colo. 407, 354 P.2d 155 (1960).

Power to propose amendments is limited to authority prescribed and must be initiated in manner required. The authority of the people to initiate legislation by petition is limited to that prescribed, and must be initiated in the manner required. If they should undertake to initiate legislation which they have no authority to initiate, or do not follow the steps prescribed, their action would certainly be futile; consequently, it is only when they have acted within the authority conferred and in the manner prescribed, that their right to have proposed legislation submitted attaches. Speer v. People ex rel. Rush, 52 Colo. 325 122 P. 768 (1912).

Proceeding is analagous to that provided by constitution for amendment of fundamental law. The petitioners stand in the same relation to the proposed amendment as does the general assembly to any amendment proposed to the constitution. Speer v. People ex rel. Rush, 52 Colo. 325, 122 P. 768 (1912).

This article authorizes the city and county of Denver to make its charter, which in a sense is its constitution, concerning local affairs; the state constitution provides the method by which it can be amended. This does not include the restrictions placed upon the general assembly in the enactment of laws, or any restrictions other than the word "amendment" would imply. This makes the rules pertaining to amendments to constitutions more applicable to those under consideration, than amendments pertaining to general laws. People ex rel. Moore v. Perkins, 56 Colo. 17, 137 P. 55 (1913).

Exact form of petition is governed by charter provisions. No form of petition, no procedure for the ascertainment of the sufficiency of the signatures, no form of submission of a proposed amendment or other necessary details are provided for in the constitution. These, therefore, are all proper subjects to be regulated and controlled by charter. Speer v. People ex rel. Rush, 52 Colo. 325, 122 P. 768 (1912).

Purpose of publication is to prevent confusion. The purpose of a municipal charter provision that ordinances must be published and shall not be revised or amended by title only, is to prevent the confusion which results from amending ordinances by reference to the title, or by interpolating words without restating the part amended. This reasoning applies as well to the publication of ordinances under this section. Thiele v. City & County of Denver, 135 Colo. 442, 312 P.2d 786 (1957).

Object of title of amendment is to notify those concerned with the act as to what is being proposed in the body of the ordinance. Coopersmith v. City & County of Denver, 156 Colo. 469, 399 P.2d 943 (1965); Cottrell v. City & County of Denver, 636 P.2d 703 (Colo. 1981).

Charter may require ballot title to show nature of amendment. While the governing body of a home rule municipality may not circumvent or seek to avoid such constitutional requirements as the publication requirement, there is no illegality in a municipal charter requirement that the ballot title of an amendment be clear and comprehensive and show the nature of the amendment. The power to establish minimum standards for ballot titles is clearly expressed in both the general and specific provisions of section 6 of this article. Hoper v. City & County of Denver, 173 Colo. 390, 479 P.2d 967 (1971).

Section does not provide for submission to electors by ordinance.

This section provides that whenever petitions providing for the submission of amendments to the charter are signed by qualified electors in number not less than ten percent, with a request for a special election, the council shall submit it at a special election to be held not less than 30 days nor more than 60 days from the date of filing the petition, but it does not state that it shall be by ordinance. People ex rel. Moore v. Perkins, 56 Colo. 17, 137 P. 55 (1913).

Submission of compiled code by referral numbering was proper. It was not improper to use the 1960 compilation of Denver city ordinances as referral numbering in submitting the questioned amendment to the voters. The city has the implied power to make periodically a compilation of its city charter, charter amendments and ordinances so that they are in some coherent and logical order. Coopersmith v. City & County of Denver, 156 Colo. 469, 399 P.2d 943 (1965).

Council to determine whether proposal is within constitutional prescription. The city council is vested with power to determine in the first instance whether what is proposed is within the constitutional prescription, and if not, to refuse to submit it to the electors, their action being subject to review by the courts. And the courts in determining the propriety of the action of the council in such case, are not invading the functions of the legislative department, or interfering with the formative stages of legislation. Speer v. People ex rel. Rush, 52 Colo. 325, 122 P. 768 (1912).

Under this section before an election may be called by the Denver city council to amend the charter, it must determine that the petition therefor bears the specified number of signatures, that the same question has not been submitted within the two preceding years, and that the proposed legislation does not diminish the state tax rates or interfere with the collection of state taxes. People ex rel. Walker v. Stapleton, 79 Colo. 629, 247 P. 1062 (1926).

But cannot judge as to validity of proposed measure. An assumption by the city council of authority to judge of any legislation proposed by such petition, and to refuse to submit it to the electorate, as required by the constitution, because it would be invalid if enacted, is an attempted exercise of legislative power from which the council is excluded by the express terms of the constitution. The council has no such authority. It is no part of its duty to inquire into the validity of the proposed measure. Its only duty is the ministerial one expressly prescribed by the constitution, to submit the proposed measure to the vote of the electors. Speer v. People ex rel. Rush, 52 Colo. 325, 122 P. 768 (1912).

Mandamus lies upon refusal of council to submit proposed measure. When the municipal council, or any section or body thereof, of a city having by the constitution power to enact their own charter and from time to time to amend it, refuses to submit to the electors an amendment proposed in the manner, and by the number of electors prescribed by the constitution, it is the duty of the courts by the writ of mandamus to compel the performance by the obstructive body of the ministerial duty which the constitution imposes. Speer v. People ex rel. Rush, 52 Colo. 325, 122 P. 768 (1912).

Courts cannot pass upon effect of validity of proposed measure. While any proposed amendment of the charter of the city and county of Denver is pending, the courts have no power to inquire into or pass upon the effect or validity of the measure proposed. Speer v. People ex rel. Rush, 52 Colo. 325, 122 P. 768 (1912).

Until after it is approved

and placed in charter. When it has received the approval of the electors, and assumed a place in the charter, the courts may, when actual litigants whose rights are affected are before them, determine the validity and effect of the measure--and only then. Speer v. People ex rel. Rush, 52 Colo. 325, 122 P. 768 (1912).

Section 6. Home rule for cities and towns. The people of each city or town of this state, having a population of two thousand inhabitants as determined by the last preceding census taken under the authority of the United States, the state of Colorado or said city or town, are hereby vested with, and they shall always have, power to make, amend, add to or replace the charter of said city or town, which shall be its organic law and extend to all its local and municipal matters.

Such charter and the ordinances made pursuant thereto in such matters shall supersede within the territorial limits and other jurisdiction of said city or town any law of the state in conflict therewith.

Proposals for charter conventions shall be submitted by the city council or board of trustees, or other body in which the legislative powers of the city or town shall then be vested, at special elections, or at general, state or municipal elections, upon petition filed by qualified electors, all in reasonable conformity with section 5 of this article, and all proceedings thereon or thereafter shall be in reasonable conformity with sections 4 and 5 of this article.

From and after the certifying to and filing with the secretary of state of a charter framed and approved in reasonable conformity with the provisions of this article, such city or town, and the citizens thereof, shall have the powers set out in sections 1, 4 and 5 of this article, and 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;

b. The creation of police courts; the definition and regulation of the jurisdiction, powers and duties thereof, and the election or appointment of police magistrates therefor;

c. The creation of municipal courts; the definition and regulation of the jurisdiction, powers and duties thereof, and the election or appointment of the officers thereof;

d. All matters pertaining to municipal elections in such city or town, and to electoral votes therein on measures submitted under the charter or ordinances thereof, including the calling or notice and the date of such election or vote, the registration of voters, nominations, nomination and election systems, judges and clerks of election, the form of ballots, balloting, challenging, canvassing, certifying the result, securing the purity of elections, guarding against abuses of the elective franchise, and tending to make such elections or electoral votes non-partisan in character;

e. The issuance, refunding and liquidation of all kinds of municipal obligations, including bonds and other obligations of park, water and local improvement districts;

f. The consolidation and management of park or water districts in such cities or towns or within the jurisdiction thereof; but no such consolidation shall be effective until approved by the vote of a majority, in each district to be consolidated, of the qualified electors voting therein upon the question;

g. The assessment of property in such city or town for municipal taxation and the levy and collection of taxes thereon for municipal purposes and special assessments for local improvements; such assessments, levy and collection of taxes and special assessments to be made by municipal officials or by the county or state officials as may be provided by the charter;

h. The imposition, enforcement and collection of fines and penalties for the violation of any of the provisions of the charter, or of any ordinance adopted in pursuance of the charter.

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

The statutes of the state of Colorado, so far as applicable, shall continue to apply to such cities and towns, except insofar as superseded by the charters of such cities and towns or by ordinance passed pursuant to such charters.

All provisions of the charters of the city and county of Denver and the cities of Pueblo, Colorado Springs and Grand Junction, as heretofore certified to and filed with the secretary of state, and of the charter of any other city heretofore approved by a majority of those voting thereon and certified to and filed with the secretary of state, which provisions are not in conflict with this article, and all elections and electoral votes heretofore had under and pursuant thereto, are hereby ratified, affirmed and validated as of their date.

Any act in violation of the provisions of such charter or of any ordinance thereunder shall be criminal and punishable as such when so provided by any statute now or hereafter in force.

The provisions of this section 6 shall apply to the city and county of Denver.

This article shall be in all respects self-executing.

Source: L. 01: Entire article added, p. 104. **Initiated 12:** Entire section amended, see **L. 13,** p. 669, effective January 22, 1913.

Cross references: For powers granted the city and county of Denver, see § 1 of this article; for amendment of charter or adoption of new charter, see § 5 of this article; for effect of conflicting constitutional provisions, see § 8 of this article; for power to regulate rates and service charges of public utilities in home rule cities, see article XXV; for the prohibition on appointment of outgoing officers, see § 24-50-402.

ANNOTATION

I. General Consideration. II. State Powers Reserved.

III. Powers Granted to Charter Cities.
A. Control of Local and Municipal Matters.
B. Specific Powers.
1. In General.
2. Control of Municipal Elections.
3. Power to Raise Revenue.
4. Regulation of Motor Vehicles.
5. Violations of Municipal Ordinances.

I. GENERAL CONSIDERATION.

Law reviews. For comment on City & County of Denver v. Henry appearing below, see 7 Rocky Mt. L. Rev. 223 (1935). For comment on Woolverton v. City & County of Denver appearing below, see 34 Rocky Mt. L. Rev. 250 (1962). For note, "Colorado Municipal Government Authority to Regulate Obscene Materials", see 51 Den. L.J. 75 (1974). For article, "Proposed Public Sector Bargaining Legislation for Colorado", see 51 U. Colo. L. Rev. 107 (1979). For article, "May Regulated Utilities Monopolize the Sun", see 56 Den. L.J. 31 (1979). For comment, "Water: Statewide or Local Concern?, City of Thornton v. Farmers Reservoir & Irrigation Co., 194 Colo. 526, 575 P.2d 382 (1978)", see 56 Den. L.J. 625 (1979). For article, "Cumulative Impact Assessment of Western Energy Development: Will it Happen?", see 51 U. Colo. L. Rev. 551 (1980). For article, "Antitrust", see 58 Den. L.J. 249 (1981). For article, "A Primer on Municipal Home Rule in Colorado", see 18 Colo. Law. 443 (1989). For article, "Home Rule Municipalities and Colorado's Open Records and Meetings Laws", see 18 Colo. Law. 1125 (1989). For article, "Civil Enforcement of Building and Zoning Codes in Municipal Court", see 19 Colo. Law. 469 (1990). For article, "Home Rule City Regulation of Oil and Gas Development", see 23 Colo. Law. 2771 (1994). For article, "Municipal Home Rule in the 1990s", see 28 Colo. Law. 95 (September 1999). For article, "Colorado's Municipal System", see 30 Colo. Law. 33 (December 2001). For article, "Transferable Development Rights and Their Application in Colorado: An Overview", see 34 Colo. Law. 75 (March 2005). For article, "The Doctrine of Preemption and Regulating Oil and Gas Development", see 38 Colo. Law. 47 (October 2009). For article, "Home Rule, Extraterritorial Impact, and the Region", see 86 Den. U.L. Rev. 1271 (2009). For article, "Town of Telluride v. San Miguel Valley Corp.: Extraterritoriality and Local Autonomy", see 86 Den. U.L. Rev. 1311 (2009). For article, "Constitutional Home Rule and Judicial Scrutiny", see 86 Den. U.L. Rev. 1337 (2009). For article, "Telluride's Tale of Eminent Domain, Home Rule, and Retroactivity", see 86 Den. U.L. Rev. 1433 (2009). For comment, "Minority Interests, Majority Politics: A Comment on Richard Collins' 'Telluride's Tale of Eminent Domain, Home Rule, and Retroactivity'", see 86 Den. U.L. Rev. 1459 (2009).

Construction of section. Narrow and technical reasoning is out of place in the interpretation of a constitution. This rule is not abrogated but rather enlarged by this section. City & County of Denver v. Mountain States Tel. & Tel. Co., 67 Colo. 225, 184 P. 604 (1919).

The rule was intended to reiterate unmistakably the will of the people that the power of a municipal corporation should be as broad as possible within the scope of a republican form of government of the state. City of Fort Collins v. Pub. Utils. Comm'n, 69 Colo. 554, 195 P. 1099 (1921).

This rule also confirms the power set out in §§ 1, 4, and 5 of this article and invests the people of the

municipality with all other powers necessary, requisite, or proper for the government and administration of its local and municipal matters, including the power to amend, add to, or replace the charter of said city or town, which shall be its organic law and extend to all its local and municipal matters. City & County of Denver v. Mountain States Tel. & Tel. Co., 67 Colo. 225, 184 P. 604 (1919), appeal dismissed for want of jurisdiction, 251 U.S. 545, 40 S. Ct. 219, 64 L. Ed. 407 (1920).

Home rule city is created and derives powers from this article. The home rule city does not derive its powers over local matters from the general assembly but is created and derives its powers from this article. Burks v. City of Lafayette, 142 Colo. 61, 349 P.2d 692 (1960).

The home rule city shares its powers with the state. By this article the sovereign power created a new agency, vesting it with some of the powers previously reposed in the general assembly. The two agencies are creatures of the same sovereign; neither has supreme power. Each may exercise the power conferred upon it but only in the manner and to the extent prescribed. City & County of Denver v. Mountain States Tel. & Tel. Co., 67 Colo. 225, 184 P. 604 (1919), appeal dismissed for want of jurisdiction, 251 U.S. 545, 40 S. Ct. 219, 64 L. Ed. 407 (1920); City & County of Denver v. Sweet, 138 Colo. 41, 329 P.2d 441 (1958).

A home rule city created under this section is not an agency or subdivision of the state. Clark-Wine v. City of Colo. Springs, 556 F. Supp. 2d 1238 (D. Colo. 2008).

The overall effect of this section was to grant to home rule municipalities the power the legislature previously had and to limit the authority of the legislature with respect to local and municipal affairs in home rule cities. Fraternal Order of Police, Lodge 27 v. Denver, 926 P.2d 582 (Colo. 1996).

Powers of chartered municipality part of constitutional powers granted to home rule city. The powers granted to a municipality which is chartered under the provisions of this article, and not superseded by the charter of the home rule city, are incorporated as a part of the powers which are granted by the constitution to a home rule city. Pueblo Aircraft Serv., Inc. v. City of Pueblo, 498 F. Supp. 1205 (D. Colo. 1980), aff'd, 679 F.2d 805 (10th Cir. 1982), cert. denied, 459 U.S. 1126, 103 S. Ct. 762, 74 L. Ed. 2d 977 (1983).

This section applies to city and county of Denver. People ex rel. McQuaid v. Pickens, 91 Colo. 109, 12 P.2d 349 (1932); City & County of Denver v. Henry, 95 Colo. 582, 38 P.2d 895 (1935).

The powers of the city and county of Denver are derived from this article and are limited thereby. McNichols v. People ex rel. Cook, 95 Colo. 235, 35 P.2d 863 (1934).

The authority of the city and county of Denver is conferred by constitutional grant. Town of Glendale v. City & County of Denver, 137 Colo. 188, 322 P.2d 1053 (1958).

The legislative jurisdiction of Denver derives from this article together with the charter adopted pursuant thereto, thus, in the area of local legislative jurisdiction, Denver is not limited by the statutes pertaining to powers of towns and cities. Lehman v. City & County of Denver, 144 Colo. 109, 355 P.2d 309 (1960).

Judiciary cannot alter article. Only by a vote of the people may this article be altered or repealed, it not being the function of the judiciary to do so by judicial decision. Four-County Metro. Capital Imp. Dist. v. Bd. of County Comm'rs, 149 Colo. 284, 369 P.2d 67 (1962).

Jurisdictional powers of a home rule city are subject to change. Pub. Utils. Comm'n v. City of Durango,

171 Colo. 553, 469 P.2d 131 (1970).

A home rule city's powers under this article can be limited or altered by constitutional change or by a broadening of the concept of what constitutes a matter of statewide concern. City & County of Denver v. Sweet, 138 Colo. 41, 329 P.2d 441 (1958).

The city and county of Denver has not been freed from the constitution but is as much subject thereto as any other part of the state, though portions of the constitution, as it existed prior to the adoption of this article, became inapplicable to such territory because of the express provision of the new article. People ex rel. Attorney Gen. v. Curtice, 50 Colo. 503, 117 P. 357, appeal dismissed for want of jurisdiction, 223 U.S. 707, 32 S. Ct. 518, 56 L. Ed. 622 (1911); Mauff v. People, 52 Colo. 562, 123 P. 101 (1912); Dixon v. People ex rel. Elliott, 53 Colo. 527, 127 P. 930 (1912).

The fact that the authority given by this article to the people of the city and county of Denver to legislate was confined and limited solely to local matters was the precise thing that made it possible for the courts to uphold and enforce it. If by this article it had been undertaken to free the people of the city and county of Denver from the state constitution, from statute law, and from the authority of the general assembly, respecting matters other than those purely of local concern, that article could not have been upheld. Mauff v. People, 52 Colo. 562, 123 P. 101 (1912).

Unless set aside by express words or necessary implication, the constitution and general laws are as much in force in home rule cities as in other portions of the state. Speer v. People ex rel. Rush, 52 Colo. 325, 122 P. 768 (1912); City & County of Denver v. Tihen, 77 Colo. 212, 235 P. 777 (1925).

No part of the constitution has been set aside unless directly so, or by necessary implication, through some one or more provisions of the article. Where the constitution and general laws of the state have not been, either by direct provision or necessary implication, set aside, they are as much in force in the city and county of Denver as they are in other portions of the state. Mauff v. People, 52 Colo. 562, 123 P. 101 (1912).

Even by constitutional amendment, the people cannot set apart any portion of the state in such manner that that portion of the state shall be freed from the constitution, or delegate the making of constitutional amendments concerning it to a charter convention, or give to such charter convention the power to prescribe the jurisdiction and duties of public officers with respect to state government as distinguished from municipal or city government. People ex rel. Elder v. Sours, 31 Colo. 369, 74 P. 167 (1903).

Cities operating under this article are subject to limitations of §§ 1 and 2 of art. XI, Colo. Const. Nowhere in this section can there be found express alteration or limit of the prohibition contained in §§ 1 and 2 of art. XI, Colo. Const., prohibiting the pledging of credit or aid to corporations by municipalities, and all municipalities operating under this article are clearly subject to such limitations. Lord v. City & County of Denver, 58 Colo. 1, 143 P. 284 (1914).

In addition, cities operating under this article are subject to limitations of fourteenth amendment. A state's political subdivisions must comply with the fourteenth amendment. The actions of local government are the actions of the state. A city, town, or county may no more deny the equal protection of the laws than it may abridge freedom of speech, establish an official religion, arrest without probable cause, or deny due process of the law. Hartman v. City & County of Denver, 165 Colo. 565, 440

P.2d 778 (1968).

Due process requirements of fairness are properly imposed on any lawful exercise of jurisdiction by the city council of a home rule city. Pub. Utils. Comm'n v. City of Durango, 171 Colo. 553, 469 P.2d 131 (1970).

Home rule town met requirements of due process when it substantially complied with its own procedures in adopting ordinance. Lot Thirty-Four Venture, L.L.C. v. Town of Telluride, 976 P.2d 303 (Colo. App. 1998), aff'd on other grounds, 3 P.3d 30 (Colo. 2000).

Towns may free themselves from jurisdiction of commissions. Under this section any town may free itself from the jurisdiction of any commission, special or otherwise, having power to interfere in local affairs. Town of Holyoke v. Smith, 75 Colo. 286, 226 P. 158 (1924).

Subsection (f) is intended to preserve existing political entities or at least provide that such existing political entities shall be terminated only at the behest of those who created them. City & County of Denver v. Mewborn, 143 Colo. 407, 354 P.2d 155 (1960).

Regulation of parks does not violate section. The adoption of a charter amendment providing for the regulation and support of parks and city improvements does not constitute a "consolidation" of park districts within the meaning of subsection (f) of this section, and the amendment does not violate this section of the constitution. City & County of Denver v. Mewborn, 143 Colo. 407, 354 P.2d 155 (1960).

Section does not apply to persons engaged in statewide activities. This section relates only to the establishment of conditions of employment for "municipal" officers or employees rather than persons engaged in activities of a statewide concern. Evert v. Ouren, 37 Colo. App. 402, 549 P.2d 791 (1976).

This section was properly submitted as single amendment. The provisions of this section are effectual to make the regulation of municipal elections, the levy and collection of taxes for municipal purposes, and special assessments matters of municipal concern. All the provisions of the amendment are germane to its general purpose, and it was properly submitted as a single amendment. People ex rel. Tate v. Prevost, 55 Colo. 199, 134 P. 129 (1913).

"Consolidation". The word "consolidation" appears on its face to be one of rather narrow meaning and, when considered in light of the policy of this section, would appear to be a word that was consciously and carefully chosen by the framers of this section. City & County of Denver v. Mewborn, 143 Colo. 407, 354 P.2d 155 (1960).

"Termination" and "consolidation". There is a distinction between termination and consolidation; the latter is of concern because of the possibility of an adverse effect on bondholders in a park district consolidated with another, but there is no such concern when a park district is terminated as an administrative area. In such a case existing obligations and security would not be affected. City & County of Denver v. Mewborn, 143 Colo. 407, 354 P.2d 155 (1960).

"Officer" and "employee" are not interchangeable, and the two terms are to be distinguished. City & County of Denver v. McNichols, 129 Colo. 251, 268 P.2d 1026 (1954).

General grant of eminent domain power confers no specific condemnation powers over state-owned lands. Town and water and sanitation district were not authorized to condemn state-owned property to determine feasibility of recreation and water storage project. Town of Parker v. Colo. Div. of Parks, 860 P.2d 584 (Colo. App. 1993).

The condemnation by a home rule municipality of property

outside its territorial boundaries for open space and park purposes falls within the scope of the eminent domain power granted to such municipalities in this article. The eminent domain power granted to home rule municipalities in this article is not limited to the purposes specified in this section nor is the eminent domain power circumscribed when exercised extraterritorially. Rather, this article grants home rule municipalities the power to condemn property, within or outside of territorial limits, for any lawful, public, local, and municipal purpose. The extraterritorial condemnation of property need not be pursuant to a purpose that is purely local and municipal. As long as the condemnation is based on a lawful, public, local, and municipal purpose, it does not fall outside of the scope of this article merely because it potentially implicates competing state interests. Based upon statutory provisions authorizing statutory localities to condemn land for open space, parks, and recreation, as well as the traditional exercise of this power by the state's statutory and home rule municipalities, the extraterritorial condemnation of property for open space and parks is a lawful, public, local, and municipal purpose within the scope of this article. The condemnation of the landowner's property outside the territorial boundaries of the municipality was, therefore, lawful. Town of Telluride v. San Miguel Valley Corp.,185 P.3d 161 (Colo. 2008).

Section 38-1-101 (4)(b) abrogates constitutional powers granted to home rule municipalities by this article. Accordingly, the statutory provision is unconstitutional with respect to home rule municipalities. Court's inquiry need not extend beyond the question of whether the statute purports to deny home rule municipalities powers specifically granted by the constitution. No analysis of competing state and local interests is necessary where a statute purports to take away home rule powers granted by the constitution. The legislature cannot prohibit the exercise of constitutional home rule powers regardless of the state interests that may be implicated by the exercise of those powers. Town of Telluride v. San Miguel Valley Corp.,185 P.3d 161 (Colo. 2008).

Section 38-1-101 (4)(b) prohibits home rule municipalities from condemning property for parks and open space, thus denying them their constitutional power to condemn for any lawful, public, local, and municipal purpose. Section 38-1-101 (4)(b) curtails the condemnation power in this article by limiting it to the enumerated purposes in this section and also by removing certain enumerated purposes from the list. Accordingly, § 38-1-101 (4)(b) is an unconstitutional abrogation of the powers granted to home rule municipalities under this article. The general assembly has no power to enact a law that denies a right specifically granted by the constitution. Town of Telluride v. San Miguel Valley Corp.,185 P.3d 161 (Colo. 2008).

Applied in Perkins v. People ex rel. MacFarland, 59 Colo. 107, 147 P. 356 (1915); Milheim v. Moffat Tunnel Imp. Dist., 72 Colo. 268, 211 P. 649 (1922); People ex rel. Setters v. Lee, 72 Colo. 598, 213 P. 583 (1923); Kingsley v. City & County of Denver, 126 Colo. 194, 247 P.2d 805 (1952); Western Heights Land Corp. v. City of Fort Collins, 146 Colo. 464, 362 P.2d 155 (1961); City of Englewood v. Crabtree, 157 Colo. 593, 404 P.2d 525, cert. dismissed, 382 U.S. 934, 86 S. Ct. 385, 15 L. Ed. 2d 347 (1965); Associated Dry Goods Corp. v. City of Arvada, 197 Colo. 491, 593 P.2d 1375 (1979); Cmty. Commc'ns Co. v. City of Boulder, 485 F. Supp. 1035 (D. Colo. 1980); City of Sheridan v. City of Englewood, 199 Colo. 348, 609 P.2d 108 (1980); Pueblo Aircraft Serv., Inc. v. City of Pueblo, 679 F.2d 805 (10th

Cir. 1982); Gold Star Sausage Co. v. Kempf, 653 P.2d 397 (Colo. 1982); Glennon Heights, Inc. v. Central Bank & Trust, 658 P.2d 872 (Colo. 1983).

II. STATE POWERS RESERVED.

State's power to declare public policy not relinquished. The people in adopting this article and the amendments thereto never intended to surrender or relinquish any portion of its police power to declare the public policy of the state; but, if it had so intended, it would have been an abortive effort. City & County of Denver v. Tihen, 77 Colo. 212, 235 P. 777 (1925); People ex rel. Stokes v. Newton, 106 Colo. 61, 101 P.2d 21 (1940).

No provision in this article deprives the state of its unquestioned power in declaring what the public policy of the state shall be in matters of taxation as well as in other matters of statewide importance. People v. City & County of Denver, 90 Colo. 598, 10 P.2d 1106 (1932).

State laws apply except where superseded by charter or ordinance. Under this article charter provisions of home rule municipalities, and ordinances thereunder, supersede any law of the state in conflict therewith, but state laws still are applicable to such cities except insofar as superseded by charter or by ordinance passed under the charter. Horst v. City & County of Denver, 101 Colo. 284, 73 P.2d 388 (1937); Bd. of Trustees of Firemen's Pension Fund v. People ex rel. Behrman, 119 Colo. 301, 203 P.2d 490 (1949); City of Canon City v. Merris, 137 Colo. 169, 323 P.2d 614 (1958); City & County of Denver v. Sweet, 138 Colo. 41, 329 P.2d 441 (1958); Conrad v. City of Thornton, 191 Colo. 444, 553 P.2d 822 (1976).

This article does not preclude regulation by state agency of public utilities serving in areas of local and municipal concern. The operation of state law is ineffective in local and municipal matters in home rule cities only to the extent that charters or ordinances governing such matters are adopted by such cities and remain in effect therein. Zelinger v. Pub. Serv. Co., 164 Colo. 424, 435 P.2d 412 (1967).

In purely local and municipal matters, home rule cities may exercise exclusive jurisdiction by passing ordinances which supersede state statutes. Until they do so, however, the Colorado Constitution provides that state statutes shall continue to apply. Vela v. People, 174 Colo. 465, 484 P.2d 1204 (1971); People v. Hizhniak, 195 Colo. 427, 579 P.2d 1131 (1978).

In matters of exclusively statewide concern, state statutes will always supersede conflicting local enactments. DeLong v. City & County of Denver, 195 Colo. 27, 576 P.2d 537 (1978).

Factors for determining whether state interest is sufficient to preempt inconsistent home rule provisions include: (1) Need for statewide uniformity of regulation; (2) impact of municipal regulations on persons living outside municipality; and (3) whether particular matter is traditionally governed by state or local government. City & County of Denver v. State, 788 P.2d 764 (Colo. 1990); Lundvall Bros. Inc. v. Voss, 812 P.2d 693 (Colo. App. 1990), aff'd in part and rev'd in part on other grounds, 830 P.2d 1061 (Colo. 1992); Town of Telluride v. Lot Thirty-Four Venture, L.L.C., 3 P.3d 30 (Colo. 2000); City & County of Denver v. Qwest Corp., 18 P.3d 748 (Colo. 2001).

Whether a matter is of local, state, or mixed concern determines whether state or local legislation controls in that area. Boulder County Apt. Ass'n v. City of Boulder, 97 P.3d 332 (Colo. App. 2004).

Whether a matter is of local, state, or mixed concern is

determined on an ad hoc basis considering the totality of the circumstances. The factors to be considered include the need for statewide uniformity, whether the municipal legislation has an extraterritorial impact, whether the subject matter is traditionally one governed by state or local government, and whether the Colorado Constitution specifically identifies that the issue should be regulated by state or local legislation. City of Northglenn v. Ibarra, 62 P.3d 151 (Colo. 2003).

Home rule cities subject to state legislation. With respect to matters of statewide concern, home rule cities are subject to state legislation. City of Colo. Springs v. State, 626 P.2d 1122 (Colo. 1980).

In regard to matters of statewide concern, home rule cities may only act when authorized by the constitution or state statute. R.E.N. v. City of Colo. Springs, 823 P.2d 1359 (Colo. 1992); Town of Telluride v. Lot Thirty-Four Venture, L.L.C., 3 P.3d 30 (Colo. 2000); City & County of Denver v. Qwest Corp., 18 P.3d 748 (Colo. 2001); Boulder County Apt. Ass'n v. City of Boulder, 97 P.3d 332 (Colo. App. 2004).

Thus, state may adopt uniform statewide legislative program, even though the subject has a local or municipal character, where the municipality has not acted. Rabinoff v. District Court, 145 Colo. 225, 360 P.2d 114 (1961).

All statutes of general nature are applicable within the cities. The language contained in this section providing for the application of general laws within the cities operating thereunder can have but one meaning, fixed and definite--that all statutes of a general nature shall have application within municipalities. It is the precise converse of the language of the grant to municipalities--of powers limited to local and municipal matters. There is perfect harmony between the language of the grant and the language of the reservation of power. The sum of the two equals the total of the state's inherent power in this respect. City & County of Denver v. Mountain States Tel. & Tel. Co., 67 Colo. 225, 184 P. 604 (1919), appeal dismissed for want of jurisdiction, 251 U.S. 545, 40 S. Ct. 219, 64 L. Ed. 407 (1920).

Ordinance of home rule city in clear opposition to general state law is invalid. City & County of Denver v. Sweet, 138 Colo. 41, 329 P.2d 441 (1958); Vick v. People, 166 Colo. 565, 445 P.2d 220 (1968).

Where the subject matter of a municipal ordinance is of statewide concern and the terms of the ordinance authorize what the general assembly has forbidden, or forbid what the general assembly has expressly authorized, the ordinance must fail. Bennion v. City & County of Denver, 180 Colo. 213, 504 P.2d 350 (1972).

While this provision established exclusive home rule over matters of local concern, statutes dealing with matters of statewide concern operate to the exclusion of conflicting local ordinances. Century Elec. Serv. & Repair, Inc. v. Stone, 193 Colo. 181, 564 P.2d 953 (1977).

Statute declaring rent control a matter of statewide importance preempted conflicting home rule town ordinance that mandated affordable housing mitigation. Lot Thirty-Four Venture, L.L.C. v. Town of Telluride, 976 P.2d 303 (Colo. App. 1998), aff'd on other grounds, 3 P.3d 30 (Colo. 2000).

Both home rule city and state may legislate on same subject. There is nothing basically invalid about legislation on the same subject by both a home rule city and the state. Vela v. People, 174 Colo. 465, 484 P.2d 1204 (1971); Bennion v. City & County of Denver, 180 Colo. 213, 504 P.2d 350 (1972); City of Aurora v. Martin, 181 Colo. 72, 507 P.2d 868 (1973).

Both the state and home

rule cities may legislate in matters of local concern, however a local ordinance will supersede any conflicting state statute on a local matter. R.E.N. v. City of Colo. Springs, 823 P.2d 1359 (Colo. 1992); Winslow Constr. Co. v. City and County of Denver, 960 P.2d 685 (Colo. 1998); Boulder County Apt. Ass'n v. City of Boulder, 97 P.3d 332 (Colo. App. 2004).

Factors to consider in determining whether the state's interest is sufficient to justify preemption of the inconsistent home rule provisions include: (1) The need for statewide uniformity of regulation; (2) the extraterritorial impact, i.e., the impact of the municipal regulation or home rule provision on persons living outside the municipal limits; (3) any other state interests; and (4) the asserted local interests in the municipal regulation contemplated by the home rule provision, e.g., does the Colorado constitution specifically commit a particular matter to state or local regulation. Fraternal Order of Police, Lodge 27 v. Denver, 926 P.2d 582 (Colo. 1996).

Test for determining whether municipal ordinance and statute conflict is whether the ordinance authorizes what the state forbids or forbids what the state has expressly authorized. City of Aurora v. Martin, 181 Colo. 72, 507 P.2d 868 (1973); R.E.N. v. City of Colo. Springs, 823 P.2d 1359 (Colo. 1992).

City has no preemptive right. Even where there is a demonstrable local interest, as well as a state interest, a home rule city does not by virtue of this article derive preemptive authority. Century Elec. Serv. & Repair, Inc. v. Stone, 193 Colo. 181, 564 P.2d 953 (1977).

State statute is not preemption of subject matter. The mere enactment of a state statute does not constitute a preemption by the state of the matter regulated so as to void municipal ordinances on the same subject matter. City of Aurora v. Martin, 181 Colo. 72, 507 P.2d 868 (1973).

Where a subject of statewide concern is involved, a state statute on the matter does not necessarily preempt the home rule city from adopting a city charter provision or ordinance. Conrad v. City of Thornton, 191 Colo. 444, 553 P.2d 822 (1976).

Difference in penalties in statute and ordinance does not necessarily establish conflict. Except in felony categories, mere difference in penalty provisions in a statute and municipal ordinance does not necessarily establish a conflict. City of Aurora v. Martin, 181 Colo. 72, 507 P.2d 868 (1973).

If a statute provides for a substantially greater penalty than does a similar municipal ordinance, this fact may be considered in ruling whether the general assembly intended, by enactment of the statute, to preempt that field of regulation. City of Aurora v. Martin, 181 Colo. 72, 507 P.2d 868 (1973).

Statute specifically delegating power of regulation to cities or towns would be useful in deciding that the state did not intend to preempt that field of regulation, but the absence of such a statute is not determinative of the issue. City of Aurora v. Martin, 181 Colo. 72, 507 P.2d 868 (1973).

State may reduce area of municipal authority. In the field of local and municipal matters, the authority granted home rule cities by this article may be taken away by subsequent amendments to the constitution or by legislative acts broadening the concept of what constitutes matters of statewide concern. City & County of Denver v. Sweet, 138 Colo. 41, 329 P.2d 441 (1958).

The state may delegate additional power in areas of both

local and state concern. The authority of the state to delegate police powers to the municipality in those areas where the subject matter, although predominantly general, is also to some extent municipal is an approved practice even though there be a state statute on the same subject. Davis v. City & County of Denver, 140 Colo. 30, 342 P.2d 674 (1959).

A state may grant legislative authority to a home rule municipality on a subject such as gambling which has both general and local attributes. Woolverton v. City & County of Denver, 146 Colo. 247, 361 P.2d 982 (1961).

In such areas, home rule city has supplemental, not superseding, authority. In matters of both local and state interest, the home rule city does not have a superseding authority; it has a supplemental authority which permits its ordinance to coexist with the state statute, so long as they are not in conflict. Vick v. People, 166 Colo. 565, 445 P.2d 220 (1968), cert. denied, 394 U.S. 945, 89 S. Ct. 1273, 22 L. Ed. 2d 477 (1969); R.E.N. v. City of Colo. Springs, 823 P.2d 1359 (Colo. 1992).

Mutual exclusion doctrine is not applicable. Some subjects are neither strictly local nor exclusively statewide, and the mutual exclusion doctrine is not applicable to these intermediate subjects. Woolverton v. City & County of Denver, 146 Colo. 247, 361 P.2d 982 (1961).

State interest in uniformity does not outweigh a home rule city's interest in preventing tax avoidance by purchasing outside the city. Although the general assembly has an interest in promoting the free flow of commerce between jurisdictions and preventing multiple taxation by local governments, a home rule city collecting a use tax of only the difference between what would have been collected in sales tax had the equipment been purchased in the home rule city and any sales or use tax previously paid to another municipality does not conflict with state interests. Winslow Constr. Co. v. City & County of Denver, 960 P.2d 685 (Colo. 1998).

Cities may regulate in areas where state has acted. In the absence of constitutional limitations, the general assembly may confer police power on a municipal corporation over subjects within the provisions of existing general state statutes, and, if there is no conflict with general law, municipal corporations, under their general police powers, may regulate on municipal subjects on which the state has acted. Davis v. City & County of Denver, 140 Colo. 30, 342 P.2d 674 (1959).

Where the charter or legislation confers on a municipality express power to legislate on a particular subject, both state and city may legislate thereon even though it is not a subject of local concern. Davis v. City & County of Denver, 140 Colo. 30, 342 P.2d 674 (1959).

City is state agency in matters of state control. There being no constitutional provision requiring that in matters of statewide interest the regulation thereof be conducted by the state alone to the exclusion of a home rule city, it follows that in matters beyond the scope of this article in the area of state control, a city is an agency of the state and subject to control by the general assembly. Davis v. City & County of Denver, 140 Colo. 30, 342 P.2d 674 (1959).

After the adoption of the article, the city and county of Denver, as a municipality, continued to be, as the city was before, an agency of the state for the purpose of government and as such amenable to state control in all matters of a public, as distinguished from matters of a local, character as are other municipalities. Keefe v. People, 37 Colo. 317, 87 P. 791 (1906); People ex rel. Hershey v. McNichols, 91 Colo. 141, 13 P.2d 266 (1932); Spears Free Clinic & Hosp. for Poor Children v.

State Bd. of Health, 122 Colo. 147, 220 P.2d 872 (1950).

A municipality is an agency of the state; to it the state delegates certain powers and duties. City of Canon City v. Merris, 137 Colo. 169, 323 P.2d 614 (1958); Evert v. Ouren, 37 Colo. App. 402, 549 P.2d 791 (1976).

Constitutional exemptions cannot be changed by home rule cities. At the time of the adoption of this article, the public policy of the state provided for a constitutional exemption from general taxation of cemeteries not for profit, and a statutory exemption from local assessments, which applies to every portion of the state. It is just as applicable to the home rule cities now as it was and is to municipalities organized under general statutes. City & County of Denver v. Tihen, 77 Colo. 212, 235 P. 777 (1925).

Denver is subject to the public policy of the state which expressly exempts cemeteries from special assessments for local improvements. City & County of Denver v. Sweet, 138 Colo. 41, 329 P.2d 441 (1958).

State never relinquished power to enact laws to punish crimes and misdemeanors, and the operation of such laws embraces all of the people of the state, whether living in municipalities or counties created directly by the constitution or organized under general laws. Such legislation would not be valid if it expressly exempted the city and county of Denver from its operation. Keefe v. People, 37 Colo. 317, 87 P. 791 (1906).

Larceny being the subject of statute and of statewide concern is distinguished from a local and municipal matter in which municipalities may exercise jurisdiction, and a municipal ordinance purporting to cover such field is invalid. Gazotti v. City & County of Denver, 143 Colo. 311, 352 P.2d 963 (1960).

Shoplifting ordinance held not constitutionally applicable to petty theft. When a municipal shoplifting ordinance which does not limit shoplifting to goods not exceeding $100 in value and thereby goes beyond a municipal or local matter contains no severable operative provisions, and when plaintiff allegedly takes articles valued over $100, the ordinance cannot be constitutionally applied to petty theft. Quintana v. Edgewater Mun. Court, 178 Colo. 213, 496 P.2d 1009 (1972).

Prosecution and deterrence of juveniles who commit minor offenses such as shoplifting and unlawful concealment of a weapon is a matter of mixed local and state concerns. R.E.N. v. City of Colo. Springs, 823 P.2d 1359 (Colo. 1992).

Registration of vital statistics. The general assembly has power to impose upon Denver a liability to pay the compensation of a local registrar of vital statistics, and the city cannot avoid the expense by failing to have such an officer of its own selection appointed. People ex rel. Hershey v. McNichols, 91 Colo. 141, 13 P.2d 266 (1932).

Section 25-2-101 et seq., concerning vital statistics, is a valid exercise of the police power of the state, and it operates in all parts of the state including Denver and other home rule cities. People ex rel. Hershey v. McNichols, 91 Colo. 141, 13 P.2d 266 (1932).

Regulation of traffic in intoxicating liquors. The collection of liquor license fees by a city is not a local and municipal matter, because art. XXII, Colo. Const., concerning intoxicating liquor, applies to the whole state. Walker v. People, 55 Colo. 402, 135 P. 794 (1913); City & County of Denver v. People, 103 Colo. 565, 88 P.2d 89, appeal dismissed sub nom. City & County of Denver v. Colo., 307 U.S. 615, 59 S. Ct. 1044, 83 L. Ed.

1496 (1939).

Art. XXII, Colo. Const., applies to the whole state and supersedes all possibility of authority in the city of Denver to regulate the traffic in intoxicating liquors contained in this article. People ex rel. Carlson v. City Council, 60 Colo. 370, 153 P. 690 (1915).

Small loans. The state has preempted small loans regulation by legislating upon it. City & County of Denver v. Sweet, 138 Colo. 41, 329 P.2d 441 (1958).

Public utility rates. The addition of art. XXV, Colo. Const., determined that all power to regulate rates of public utilities within a home rule city, as well as elsewhere in the state, should be vested in the public utilities commission. Pub. Utils. Comm'n v. City of Durango, 171 Colo. 553, 469 P.2d 131 (1970).

Where a city had regulatory power only as long as it saw fit to exercise it and withdrew from the field of the regulation of rates charged by public utilities by a charter amendment, thereupon the law of the state was automatically effective. The public utilities commission had jurisdiction to regulate the rates of the public service company from and after the date of the charter amendment without regard to the question of whether the company operations were of local and municipal or statewide concern. Zelinger v. Pub. Serv. Co., 164 Colo. 424, 435 P.2d 412 (1967).

Privately owned public utilities. The purpose of art. XXV, Colo. Const., was to grant to the general assembly the authority to regulate privately owned public utilities within home rule cities, and, without the grant of such power, the regulation of service among the inhabitants of the city was a local matter, and laws of the state in conflict with ordinances and charter provisions enacted pursuant to this article had no force and effect within the municipality. City & County of Denver v. Pub. Utils. Comm'n, 181 Colo. 38, 507 P.2d 871 (1973).

Municipally owned utility. A municipally owned public utility, as to service furnished consumers beyond its territorial jurisdiction, should be subject to the same regulation to which a privately owned public utility must conform in similar circumstances. City & County of Denver v. Pub. Utils. Comm'n, 181 Colo. 38, 507 P.2d 871 (1973).

Statewide telephone system, with its need for coordinated intra and interstate communications is a matter of statewide concern heavily outweighing any possible municipal interest. City of Englewood v. Mountain States Tel. & Tel. Co., 163 Colo. 400, 431 P.2d 40 (1967); City & County of Denver v. Qwest Corp., 18 P.3d 748 (Colo. 2001).

A municipal ordinance that conflicts with the specific provisions of a state statute concerning telecommunications providers, which imposes express limitations on local regulation of telecommunications providers, is preempted and invalid. City & County of Denver v. Qwest Corp., 18 P.3d 748 (Colo. 2001).

Gas company franchise. A franchise ordinance adopted by a home rule city granting to a gas company the right to operate a gas plant in the city and to supply gas service to citizens of that city did not suspend the power of the state to regulate and did not intend to do so. Pub. Utils. Comm'n v. City of Durango, 171 Colo. 553, 469 P.2d 131 (1970).

Denver housing authority is an independent entity not subject to the charter of Denver even though the city forms a part of the district. Insofar as the exercise of any power granted to the Denver housing authority under applicable state statutes is concerned, this article has no application. People ex rel. Stokes v. Newton, 106 Colo. 61, 101 P.2d 21 (1940).

Urban renewal authority is

a proper exercise of the police power of the state, and, if a city has not exercised the authority to legislate by amending its charter, the state law controls. Rabinoff v. District Court, 145 Colo. 225, 360 P.2d 114 (1961).

Regulation of state personnel employees. Under the charter of Colorado Springs, adopted under the authority of this article, classification affecting the position of persons in the classified service must be by the state personnel board; that body alone may properly determine the order of dismissal of employees, and the city council and manager of safety cannot justify unwarranted dismissals on the ground of effecting municipal economy or of promoting efficiency. Birdsall v. Sanders, 96 Colo. 275, 42 P.2d 194 (1935).

The determination of whether an employee is entitled to unemployment compensation benefits is a matter of statewide concern and state statutes supercede ordinances of home rule cities. Colo. Springs v. Indus. Comm'n, 720 P.2d 601 (Colo. App. 1985), aff'd, 749 P.2d 412 (Colo. 1988).

Social services system is a matter of statewide rather than local or municipal concern. Evert v. Ouren, 37 Colo. App. 402, 549 P.2d 791 (1976); Dempsey v. City & County of Denver, 649 P.2d 726 (Colo. App. 1982).

Firemen's pension act. Because the subject of firemen's pensions has statewide dimensions, inconsistent provisions of a city ordinance must fail insofar as they are inconsistent with the firemen's pension act, and the act must be enforced. Huff v. Mayor of Colo. Springs, 182 Colo. 108, 512 P.2d 632 (1973).

The establishment of pension plans for firemen is a matter of statewide concern. City of Colo. Springs v. State, 626 P.2d 1122 (Colo. 1980).

Licensing of electricians. The state has a clear concern in ensuring that Colorado electricians have free access to markets throughout the state in eliminating duplicative and expensive licensing and in establishing a statewide policy on the required competence of electricians, and therefore the licensing ordinance of a home-rule city could not supersede state law. Century Elec. Serv. & Repair, Inc. v. Stone, 193 Colo. 181, 564 P.2d 953 (1977).

Regulation of obscenity. The question of the regulation of obscenity is properly a matter of statewide concern under this section. Pierce v. City & County of Denver, 193 Colo. 347, 565 P.2d 1337 (1977).

Regulation of obscenity as a matter of statewide concern under this section is consistent with the community-based standards required by the first amendment of the United States Constitution. Pierce v. City & County of Denver, 193 Colo. 347, 565 P.2d 1337 (1977).

State's interest in efficient oil and gas development and production as manifested in the Oil and Gas Conservation Act preempts a home-rule city from totally excluding all drilling operations within city limits. Voss v. Lundvall Bros., Inc., 830 P.2d 1061 (Colo. 1992).

While the Oil and Gas Conservation Act does not totally preempt a home-rule city's exercise of land-use authority over oil and gas development and operations within the territorial limits of the city, the state-wide interest in the efficient development and production of oil and gas resources in a manner calculated to prevent waste, as well as in protecting the correlative rights of owners and producers in a common pool or source to a just and equitable share of the profits of production, prevents a home-rule city from exercising its land-use authority so as to totally ban the drilling of oil, gas, or hydrocarbon wells within the city. Voss v. Lundvall Bros., Inc., 830 P.2d 1061 (Colo.

1992).

Bond issuance. City charter provision that gives city power to issue bonds is not inconsistent with § 29-2-112, so the suppression doctrine of this section dooes not apply. Leek v. City of Golden, 870 P.2d 580 (Colo. App. 1993).

The protection of adjudicated delinquent children in need of state supervision and appropriate treatment is a matter of statewide concern and is sufficiently dominant to override a home rule city's interest in regulating the number of registered juvenile sex offenders who may live in one foster care family. City of Northglenn v. Ibarra, 62 P.3d 151 (Colo. 2003).

III. POWERS GRANTED TO CHARTER CITIES.

A. Control of Local and Municipal Matters.

Purpose of section. The purpose of this section is to give municipalities exclusive control in matters of local concern only. Speer v. People ex rel. Rush, 52 Colo. 325, 122 P. 768 (1912); Mauff v. People, 52 Colo. 562, 123 P. 101 (1912); City & County of Denver v. Tihen, 77 Colo. 212, 235 P. 777 (1925); People ex rel. Hershey v. McNichols, 91 Colo. 141, 13 P.2d 266 (1932); Vela v. People, 174 Colo. 465, 484 P.2d 1204 (1971).

Home rule cities under this section have exclusive control only over matters of truly local concern. City & County of Denver v. Eggert, 647 P.2d 216 (Colo. 1982); City & County of Denver v. Qwest Corp., 18 P.3d 748 (Colo. 2001).

A home rule city's police powers are supreme only in matters of purely local concern, and the fact that an ordinance is justified as a legitimate exercise of a city's police powers in no way establishes that its substance is purely a matter of local concerns and in no way alters its powers vis-a-vis state statutes in matters of mixed or statewide concern. City & County of Denver v. Qwest Corp., 18 P.3d 748 (Colo. 2001).

Even though an ordinance may be an otherwise legitimate exercise of a municipality's police powers, to the extent that it conflicts with a state statute concerning a matter of mixed statewide and local concern, it is invalid. City & County of Denver v. Qwest Corp., 18 P.3d 748 (Colo. 2001).

Under this section the city may assume exclusive control of all matters of local and municipal concern. Bd. of Comm'rs v. City of Colo. Springs, 66 Colo. 111, 180 P. 301 (1919); City & County of Denver v. Bossie, 83 Colo. 329, 266 P. 214 (1928).

The city and county of Denver is a municipal corporation created by this article as a home rule city with exclusive power to legislate on matters of local and municipal concern. Independent Dairymen's Ass'n v. City & County of Denver, 142 F.2d 940 (10th Cir. 1944).

The very essence of a home rule city is embodied in the constitutional mandate that, in its local and municipal affairs, it has full, complete, and exclusive authority and the general assembly is powerless to change such essential concept of home rule. Four-County Metro. Capital Imp. Dist. v. Bd. of County Comm'rs, 149 Colo. 284, 369 P.2d 67 (1962).

Constitution confers upon home rule city legally protected interest in its local concerns. Denver Urban Renewal Auth. v. Byrne, 618 P.2d 1374 (Colo. 1980).

City's ordinance requiring a single subject to be expressed in ballot initiatives does not offend the Colorado constitution. Bruce v. City of Colo. Springs, 252 P.3d 30 (Colo. App. 2010).

How home rule city exercises exclusive jurisdiction.

Where purely local or municipal matters are involved, a home rule city may exercise exclusive jurisdiction by adopting a charter provision or by passing an ordinance which will supersede a state statute. Conrad v. City of Thornton, 191 Colo. 444, 553 P.2d 822 (1976).

This power equals that possessed by general assembly in granting charters. This article confers upon municipalities organized hereunder, and which have adopted such a charter, every power possessed by the general assembly in granting charters generally. Londoner v. City & County of Denver, 52 Colo. 15, 119 P. 156 (1911); People ex rel. Moore v. Perkins, 56 Colo. 17, 137 P. 55 (1913); Watson v. City of Ft. Collins, 86 Colo. 305, 281 P. 355 (1929); Fishel v. City & County of Denver, 106 Colo. 576, 108 P.2d 236 (1940); Lehman v. City & County of Denver, 144 Colo. 109, 355 P.2d 309 (1960); Four-County Metro. Capital Imp. Dist. v. Bd. of County Comm'rs, 149 Colo. 284, 369 P.2d 67 (1962); Roosevelt v. City of Englewood, 176 Colo. 576, 492 P.2d 65 (1971).

This article intended to confer not only the powers specially mentioned but to bestow upon the people of Denver every power possessed by the general assembly in the making of a charter for Denver. City & County of Denver v. Hallett, 34 Colo. 393, 83 P. 1066 (1905); City & County of Denver v. Sweet, 138 Colo. 41, 329 P.2d 441 (1958); Lehman v. City & County of Denver, 144 Colo. 109, 355 P.2d 309 (1960).

The power granted by this section is determined by ascertaining whether the general assembly in the absence of the article could have conferred upon the municipality the power in question. Londoner v. City & County of Denver, 52 Colo. 15, 119 P. 156 (1911); City & County of Denver v. Mountain States Tel. & Tel. Co., 67 Colo. 225, 184 P. 604 (1919), appeal dismissed for want of jurisdiction, 251 U.S. 545, 40 S. Ct. 219, 64 L. Ed. 407 (1920); City & County of Denver v. Henry, 95 Colo. 582, 38 P.2d 895 (1934); Four-County Metro. Capital Imp. Dist. v. Bd. of County Comm'rs, 149 Colo. 284, 369 P.2d 67 (1962).

This article confers upon home rule cities all powers in local and municipal matters which the general assembly could grant. Laverty v. Straub, 110 Colo. 311, 134 P.2d 208 (1943).

Home rule city not inferior to general assembly concerning own affairs. By virtue of this article, a home rule city is not inferior to the general assembly concerning its own local and municipal affairs. Denver Urban Renewal Auth. v. Byrne, 618 P.2d 1374 (Colo. 1980); Bd. of County Comm'rs v. City of Thornton, 629 P.2d 605 (Colo. 1981); Fraternal Order of Police, Lodge 27 v. Denver, 926 P.2d 582 (Colo. 1996).

With respect to purely local matters, the legislative power of special charter cities is, with exceptions not material here, as comprehensive as that of our general assembly over municipalities organized under the general statutes. Sanborn v. City of Boulder, 74 Colo. 358, 221 P. 1077 (1923).

For the government and administration of its local and municipal matters, the people of Denver are given the power to legislate to the same extent as the general assembly may with respect to statutory municipalities concerning their local and municipal matters. City & County of Denver v. Tihen, 77 Colo. 212, 235 P. 777 (1925).

There is nothing in the charter which supports an argument that Denver, as a home rule city, is more restricted than a so-called legislative city. Lehman v. City & County of Denver, 144 Colo. 109, 355 P.2d 309 (1960).

This section grants home

rule cities plenary legislative authority over matters exclusively local in nature. McNichols v. City & County of Denver, 101 Colo. 316, 74 P.2d 99 (1937); City & County of Denver v. Palmer, 140 Colo. 27, 342 P.2d 687 (1959); Kelly v. City of Fort Collins, 163 Colo. 520, 431 P.2d 785 (1967).

The city of Denver, pursuant to this article, adopted in 1904 what is known as a home rule charter. By this action of the city, the people within the territory of the city and county of Denver were vested, in virtue of said article, with the power to legislate for themselves as to all rightful subjects of legislation and were no longer subject to the legislative power of the state. City & County of Denver v. Stenger, 277 F. 865 (8th Cir. 1921).

As a general rule, the powers vested in home rule cities, not specifically limited by constitution or charter, may be exercised through their legislative authority. People ex rel. McQuaid v. Pickens, 91 Colo. 109, 12 P.2d 349 (1932); Fishel v. City & County of Denver, 106 Colo. 576, 108 P.2d 236 (1940); Laverty v. Straub, 110 Colo. 311, 134 P.2d 208 (1943).

Under this article the city and county of Denver has implied authority to carry out its functions as a charter city which are not of statewide concern or prohibited by other constitutional provisions. City & County of Denver v. Sweet, 138 Colo. 41, 329 P.2d 441 (1958).

Home rule cities are granted every power possessed by the general assembly as to local and municipal matters, unless restricted by the terms of their charter. Serv. Oil Co. v. Rhodus, 179 Colo. 335, 500 P.2d 807 (1972).

General assembly is deprived of this power. By this section the general assembly has been deprived of only a part of its powers; namely, the power to legislate concerning matters of local and municipal concern, as distinguished from those of general, statewide concern. The amendment does not create a state within a state. As to matters of general, statewide concern, the powers of the general assembly remain unimpaired. City & County of Denver v. Henry, 95 Colo. 582, 38 P.2d 895 (1934); Vela v. People, 174 Colo. 465, 484 P.2d 1204 (1971).

After the adoption of this article, the general assembly had nothing to give in the way of power or authority to provide capital improvements to a new superstructure of government encompassing multiple counties, towns, and cities and was deprived of all power it might otherwise have had to legislate concerning matters of local and municipal concern. This is particularly true where a home rule city has adopted a charter or ordinances governing such matters. Four-County Metro. Capital Imp. Dist. v. Bd. of County Comm'rs, 149 Colo. 284, 369 P.2d 67 (1962).

Home rule city cannot delegate exclusive power. When the people by constitutional provision have lodged exclusive power in a political subdivision of government such as a home rule city, that power may be exercised only by the entity to which it was granted, and the home rule city cannot delegate the power elsewhere. Four-County Metro. Capital Imp. Dist. v. Bd. of County Comm'rs, 149 Colo. 284, 369 P.2d 67 (1962).

Elected officials responsible for performing legislative functions may not constitutionally delegate their ultimate decision-making authority to persons who are unaccountable to the electorate. City & County of Denver v. Denver Firefighters Local 858, 663 P.2d 1032 (Colo. 1983).

Grievance arbitration pursuant to existing contract. When an arbitrator is required to interpret the provisions of an existing agreement, he or she acts in a judicial capacity rather than in a legislative one. The authority

to interpret an existing contract, therefore, does not constitute legislative authority, and the nondelegation principle is not implicated in grievance arbitration. City & County of Denver v. Denver Firefighters Local 858, 663 P.2d 1032 (Colo. 1983).

General assembly cannot confer power on other entity. The general assembly could not undertake to create by statute a super-municipal body politic superimposed over the city and county of Denver and surrounding cities and counties. Such enactment would clash with this provision of the constitution. Four-County Metro. Capital Imp. Dist. v. Bd. of County Comm'rs, 149 Colo. 284, 369 P.2d 67 (1962).

"Local and municipal" is not a fixed expression that may be eternalized. What is local, as distinguished from general and statewide, depends somewhat upon time and circumstances. Technological and economic forces play their part in any such transition. People v. Graham, 107 Colo. 202, 110 P.2d 256 (1941); City & County of Denver v. Pike, 140 Colo. 17, 342 P.2d 688 (1959).

Classification of local concerns subject to change. What once was a matter of local or local and statewide concern may by constitutional amendment become a matter solely of statewide concern. The people have not surrendered their right to amend the constitution in any manner in which they see fit, and such amendments are always valid unless repugnant to the constitution of the United States. City & County of Denver v. Sweet, 138 Colo. 41, 329 P.2d 441 (1958).

Whether a particular business activity is a matter of municipal concern to a city under this article depends upon the inherent nature of the activity and the impact or effect which it may have or may not have upon areas outside of a municipality. City & County of Denver v. Sweet, 138 Colo. 41, 329 P.2d 441 (1958); Hamilton v. City & County of Denver, 176 Colo. 6, 490 P.2d 1289 (1971).

Activity of entity taxed is not controlling when testing whether Denver is acting in a purely local and municipal matter. Security Life & Accident Co. v. Temple, 177 Colo. 14, 492 P.2d 63 (1972).

Charter and ordinances on local concerns may supersede conflicting state statutes. This section empowers cities and towns of the state to adopt charters which shall be the organic law and extend to all local and municipal matters. Such charter and the ordinances made pursuant thereto in such matters supersede within the territorial limits and other jurisdiction any law of the state in conflict. City & County of Denver v. Tihen, 77 Colo. 212, 235 P. 777 (1925); City of Canon City v. Merris, 137 Colo. 169, 323 P.2d 614 (1958); City & County of Denver v. Sweet, 138 Colo. 41, 329 P.2d 441 (1958); Gidley v. City of Colo. Springs, 160 Colo. 482, 418 P.2d 291 (1966).

Where home rule municipalities have properly adopted regulatory ordinances which are purely in the municipal domain, existing state laws upon the same subject are inapplicable because the local ordinance controls. Kelly v. City of Fort Collins, 163 Colo. 520, 431 P.2d 785 (1967); Vick v. People, 166 Colo. 565, 445 P.2d 220 (1968), cert. denied, 394 U.S. 945, 89 S. Ct. 1273, 22 L. Ed. 2d 477 (1969).

In purely local and municipal matters, home rule cities may exercise exclusive jurisdiction by passing ordinances which supersede state statutes. Vela v. People, 174 Colo. 465, 484 P.2d 1204 (1971); DeLong v. City & County of Denver, 195 Colo. 27, 576 P.2d 537 (1978); Boulder County Apt. Ass'n v. City of Boulder, 97 P.3d 332 (Colo. App. 2004).

Home rule cities may pass viable ordinances which supersede state

statutes upon the same subject matter where the matters contained therein are matters of exclusively local concern. Bennion v. City & County of Denver, 180 Colo. 213, 504 P.2d 350 (1972).

Both the state and a home rule city may legislate in matters of local concern, however a local ordinance will supersede a conflicting state statute on a local matter. R.E.N. v. City of Colo. Springs, 823 P.2d 1359 (Colo. 1992); City & County of Denver v. Qwest Corp., 18 P.3d 748 (Colo. 2001).

For state statute to be superseded by ordinance of home rule city, two requirements must be met. The state statute and the ordinance must be in conflict, and the ordinance must pertain to a purely local matter. Where both of these conditions exist, the state statute is clearly without effect within the jurisdiction of the home rule city. Vela v. People, 174 Colo. 465, 484 P.2d 1204 (1971).

Nonconflicting legislation by state and city may coexist. As to a home rule ordinance and a state statute, if neither piece of legislation permits or licenses what the other forbids and prohibits, the legislation is not in conflict, and both pieces of legislation may validly coexist. Vela v. People, 174 Colo. 465, 484 P.2d 1204 (1971); Boulder County Apt. Ass'n v. City of Boulder, 97 P.3d 332 (Colo. App. 2004).

It is not necessary that each legislative subject be classified and fitted into either a statewide or local and municipal category, with the result that either the home rule city or the state, but not both, is empowered to exercise exclusive authority. This section does not impose any such strict requirement. Woolverton v. City & County of Denver, 146 Colo. 247, 361 P.2d 982 (1961).

The mere fact that the state, in the exercise of the police power, has made certain regulations does not prohibit a municipality from exacting additional requirements. So long as there is no conflict between the two and the requirements of the municipal bylaw are not in themselves pernicious as being unreasonable or discriminatory, both will stand. Woolverton v. City & County of Denver, 146 Colo. 247, 361 P.2d 982 (1961).

If a subject matter is of both local and statewide concern, then a home-rule charter provision or ordinance and a state statute may coexist if they do not conflict. A home-rule city possesses what has been labeled a "supplemental authority" to legislate on a subject matter of concurrent concern. DeLong v. City & County of Denver, 195 Colo. 27, 576 P.2d 537 (1978).

In matters of local and state concerns, nonconflicting legislation enacted by the state and a home rule city may coexist, but if conflicting, state statute would supersede the local ordinance. R.E.N. v. City of Colo. Springs, 823 P.2d 1359 (Colo. 1992).

Local, state, or mixed local and state concern analysis appropriate when considering a statute and a possibly conflicting municipal charter or ordinance. U S West Commc'ns v. City of Longmont, 948 P.2d 509 (Colo. 1997).

Local, state, or mixed local and state concern analysis not appropriate when considering a municipal charter or ordinance and a possibly conflicting filed tariff. U S West Commc'ns v. City of Longmont, 948 P.2d 509 (Colo. 1997).

Common law rule requiring utilities to pay relocation costs arises only when a future contract, franchise agreement, or state statute specifically requires a municipality to bear such costs. U S West Commc'ns v. City of Longmont, 948 P.2d 509 (Colo. 1997).

Where a home rule provision of the constitution conflicts with a statutory enactment of the general assembly and the respective

authorities of the state legislature and the home rule municipality must therefore be reconciled, the court has recognized three broad categories of regulatory matters: (1) Matters of local concern; (2) matters of statewide concern; and (3) matters of mixed state and local concern. The determination that a matter is of local concern, statewide concern, or of mixed state and local concern controls the ultimate resolution of such a conflict. Fraternal Order of Police, Lodge 27 v. Denver, 926 P.2d 582 (Colo. 1996).

A counterpart ordinance is one which deals with a local and municipal matter, enactment of which supersedes the state statute on a subject within the boundaries of the municipality. Davis v. City & County of Denver, 140 Colo. 30, 342 P.2d 674 (1959).

Municipal ordinance on gambling valid despite existing state statute. Woolverton v. City & County of Denver, 146 Colo. 247, 361 P.2d 982 (1961).

State statute as to disturbing peace not superseded by nonconflicting home rule ordinance. Vela v. People, 174 Colo. 465, 484 P.2d 1204 (1971).

Control of outdoor advertising signs. Control of outdoor advertising signs along the roads of state highway system within a home-rule municipality is a matter of mixed local and statewide concern which may be regulated by the home-rule municipality, but state law supersedes where municipal regulation conflicts. Nat. Advertising Co. v. State Dept. of Hwys., 751 P.2d 632 (Colo. 1988).

Municipal ordinance which provides that delinquent assessments for water or sewer services be certified to the county treasurer for collection may coexist with similar state legislation if there is no conflict. City of Craig v. Hammat, 809 P.2d 1034 (Colo. App. 1990).

Regulation of pesticides is a matter affecting the health and welfare of the people and therefore is within the legislative power of a home rule city. Coparr, Ltd. v. City of Boulder, 735 F. Supp. 363 (D. Colo. 1989).

Enumerated purposes of § 1 of this article were superseded by the general standard in this section of "local and municipal matters". Karsh v. City & County of Denver, 176 Colo. 406, 490 P.2d 936 (1971).

The limitation of "said powers and purposes" in § 1 upon home rule cities was removed by the grant of powers in local and municipal matters contained in this provision. Karsh v. City & County of Denver, 176 Colo. 406, 490 P.2d 936 (1971).

Specific grant of powers to provide water works for inhabitants of Denver in § 1 of this article does not prevent Denver from providing water to users outside its boundaries. Denver v. Colo. River Water Conservation Dist., 696 P.2d 730 (Colo. 1985).

Because the state's interest under the Peace Officers Standards and Training Act was not sufficient to outweigh Denver's home rule authority, the provisions of this section supersede the conflicting provisions of the POST Act. Fraternal Order of Police, Lodge 27 v. Denver, 926 P.2d 582 (Colo. 1996).

The qualification and certification of Denver deputy sheriffs is a local concern, specifically, where it was shown that there was no need for statewide uniformity of training that would include Denver deputy sheriffs; that the extraterritorial impact of Denver deputy sheriffs is, at best, de minimis; that Denver deputy sheriffs do not substantially impact public safety beyond the boundaries of Denver; and that Denver's interest in the training and certification of its deputy sheriffs is substantial and has direct textual support in the Colorado Constitution and in case law precedent. Fraternal

Order of Police, Lodge 27 v. Denver, 926 P.2d 582 (Colo. 1996).

The holding regarding the training and certification under the POST Act is limited to Denver deputy sheriffs since Colorado Constitution article XX, § 2, pertains only to the city and county of Denver. Fraternal Order of Police, Lodge 27 v. Denver, 926 P.2d 582 (Colo. 1996).

Municipal policy equivalent of state action. The municipal policy exercised by a home rule city in Colorado is the equivalent of "state action" when exercised in connection with municipal affairs. Pueblo Aircraft Serv., Inc. v. City of Pueblo, 498 F. Supp. 1205 (D. Colo. 1980), aff'd, 679 F.2d 805 (10th Cir. 1982), cert. denied, 459 U.S. 1126, 103 S. Ct. 762, 74 L. Ed. 2d 977 (1983).

As to state action exemptions under federal antitrust laws, see Cmty. Commc'ns Co. v. City of Boulder, 455 U.S. 40, 102 S. Ct. 835, 70 L. Ed. 2d 810 (1982).

B. Specific Powers.

1. In General.

The object of this section and § 4 of article 20 is to give the taxpaying electors of home rule cities absolute control over the granting of franchises to use city streets, alleys, and public places. City of Greeley v. Poudre Valley R. Elec., 744 P.2d 739 (Colo. 1987), appeal dismissed for want of a properly presented federal question, 485 U.S. 949, 108 S. Ct. 1207, 99 L. Ed. 2d 409 (1988).

City council cannot enter into a contract which will bind succeeding city councils and thereby deprive them of the unrestricted exercise of the legislative power. Therefore, the city council could adopt a new pay plan for city employees. Keeling v. City of Grand Junction, 689 P.2d 679 (Colo. App. 1984).

The right of home rule cities to grant franchises is not unconstitutionally interfered with by § 40-3-106 (4), which results in the customers within a municipality which have granted a franchise paying the cost of the franchise fee as part of the rates for the service. City of Montrose v. Pub. Utils. Comm'n, 732 P.2d 1181 (Colo. 1987).

Section 40-3-106 (4) does not affect either a home rule city's ability to negotiate and grant franchises and to collect franchise fees or a fixed utility's obligation to pay to a municipality the entire amount of the franchise fee negotiated and, therefore, does not violate this section or § 4 of this article or article XXV of this constitution. City of Montrose v. Pub. Utils. Comm'n, 732 P.2d 1181 (Colo. 1987).

Municipal court. Under this article a municipal court for the city and county of Denver may be created by ordinance. People ex rel. McQuaid v. Pickens, 91 Colo. 109, 12 P.2d 349 (1932).

Home rule cities may not deny substantive rights of state citizens. This constitutional authority, broad as it is concerning the creation, organization, and administration of municipal courts, is limited in scope to those aspects of court organization and operation which are local and municipal in nature and does not empower home rule cities to deny substantive rights conferred upon all of the citizens of the state by the general assembly. Hardamon v. Municipal Court, 178 Colo. 271, 497 P.2d 1000 (1972).

Right to jury in petty offense cases. Since the right to a jury in petty offense cases is a substantive right granted to all of the citizens of the state, without regard to the place where the offense may have occurred or the court in which trial may be held, home rule cities do not have the power to deny such a right by reason of the authority constitutionally vested in

home rule cities by this section. Hardamon v. Municipal Court, 178 Colo. 271, 497 P.2d 1000 (1972).

Jurisdiction of municipal court. A home rule city does not have the power to adopt and enforce in its municipal courts an ordinance concerning larceny which is not a matter of local and municipal concern in which a home rule city may exercise jurisdiction. Gazotti v. City & County of Denver, 143 Colo. 311, 352 P.2d 963 (1960).

Municipal courts are particularly adaptable to the handling of the crime of shoplifting of articles of relatively small value, and this type of theft should be combated not only by state authorities in state courts but by police departments in municipal courts. Quintana v. Edgewater Mun. Court, 178 Colo. 213, 496 P.2d 1009 (1972).

Where ordinances adopted pursuant to this article are violated which have counterparts in the statutory law of the state and the trial and determination of such violations has been in accordance with criminal procedure, the municipal courts have the power to impose consecutive sentences for such violations. Schooley v. Cain, 142 Colo. 485, 351 P.2d 389 (1960).

Municipal court judges. When acting pursuant to amended art. VI, Colo. Const., the court functions as a state court and the judge as a state judge; whereas, acting pursuant to this section, the court functions as a municipal or police court and the judge as a municipal or police judge. The validity of municipal judges functioning in a dual capacity, exercising jurisdiction under a municipal charter and ordinances and also under state laws as justices of the peace, has been expressly recognized. Blackman v. County Court ex rel. City & County of Denver, 169 Colo. 345, 455 P.2d 885 (1969).

Appointment of municipal judges. Section 13-10-105 (1)(a), relating to appointment of municipal judges, read in context with this section makes it clear that the statute's unambiguous language offers home rule cities the opportunity to specify the terms under which a municipal judge holds his or her office. People ex rel. People of Thornton v. Horan, 192 Colo. 144, 556 P.2d 1217 (1976), cert. denied, 431 U.S. 966, 97 S. Ct. 2922, 53 L. Ed. 2d 1061 (1977); Artes-Roy v. City of Aspen, 856 P.2d 823 (Colo. 1993).

Police court. Subsection (b) authorizes the creation of police courts by home rule cities and grants power to define and regulate jurisdiction and appoint officers for these courts. Blackman v. County Court, 169 Colo. 345, 455 P.2d 885 (1969); Huff v. Police Court, 173 Colo. 414, 480 P.2d 561 (1971).

When a home rule municipality grants its municipal court exclusive original jurisdiction over all matters arising under its charter, ordinances, and other enactments, the district court is deprived of subject matter jurisdiction over such matters. Town of Frisco v. Baum, 90 P.3d 845 (Colo. 2004); Olson v. Hillside Cmty. Church SBC, 124 P.3d 874 (Colo. App. 2005).

Ordinances for public health and safety. Under this section the city and the council have full authority to provide for public health and safety by ordinance. Averch v. City & County of Denver, 78 Colo. 246, 242 P. 47 (1925).

The enactment of adequate measures by municipalities to insure safe and healthful living conditions through housing codes designed to protect the health and welfare of the public is the exercise of the police power in its purest sense. Apple v. City & County of Denver, 154 Colo. 166, 390 P.2d 91 (1964).

Police power prevails. As between proprietary powers given to a special district and the police power to

protect its citizens given to a home rule city, the police power prevails. Metro. Denver Sewage v. Commerce City, 745 P.2d 1041 (Colo. App. 1987).

Zoning under this section is a local and municipal matter. Roosevelt v. City of Englewood, 176 Colo. 576, 492 P.2d 65 (1971); City of Colo. Springs v. Securcare Self Storage, Inc., 10 P.3d 1244 (Colo. 2000).

A zoning ordinance adopted by a home rule city, aimed at establishing low-cost housing in a specific area within that city, is a matter of purely local concern, and the city derives its authority to enact zoning ordinances of this type and content under the home rule provisions of the constitution and not from state statute. Any alleged conflict, between the ordinance and state code provisions as to which controls, is resolved in favor of the local ordinance. Moore v. City of Boulder, 29 Colo. App. 248, 484 P.2d 134 (1971).

The general assembly has power to legislate zoning regulations applicable to statutory cities, but where, however, the charter of a home rule city exercises the power delegated to it by the Colorado Constitution as to matters of purely local concern, the general assembly has no power. Serv. Oil Co. v. Rhodus, 179 Colo. 335, 500 P.2d 807 (1972).

Where a city has adopted a home rule charter, the supreme court must look to the charter and ordinances of the city to determine the proper procedures to be followed in amending the zoning map to encompass the newly annexed land. McArthur v. Zabka, 177 Colo. 337, 494 P.2d 89 (1972).

Colorado Springs is a home rule city. As such, its zoning policies and authority are governed by its own charter and ordinances. City of Colo. Springs v. Smartt, 620 P.2d 1060 (Colo. 1980).

Where the zoning body has established requirements governing a particular use and the developer has met those requirements, the zoning body exceeded its jurisdiction when it rejected the developer's plan. Sherman v. City of Colo. Springs Planning Comm'n, 680 P.2d 1302 (Colo. App. 1983).

In the case of a home rule city, the legislative authority to adopt and implement zoning policies is governed and limited by constitutional limitations and the municipality's own charter and ordinances. City of Colo. Springs v. Securcare Self Storage, Inc., 10 P.3d 1244 (Colo. 2000).

Power to challenge county zoning. The constitution mandates that a home rule city be given the right to challenge in court the legality of a county's master plan and zoning ordinances which affect the value of city property. Bd. of County Comm'rs v. City of Thornton, 629 P.2d 605 (Colo. 1981).

Capital improvements. The matter of financing a program of capital improvements by a home rule city is one dealing with a local and municipal matter. Davis v. City of Pueblo, 158 Colo. 319, 406 P.2d 671 (1965).

The city and county of Denver alone has the power to function in the field of capital improvements within its boundaries, to acquire needed personal property, and to provide capital improvements. By specific charter provision, it has accepted this exclusive grant of power from the people of Colorado. Four-County Metro. Capital Imp. Dist. v. Bd. of County Comm'rs, 149 Colo. 284, 369 P.2d 67 (1962).

Municipal corporations are not limited to providing public improvements for the material necessities of their citizens. Anything calculated to promote the education, the recreation, or the pleasure of the public is to be included within the legitimate domain of public purposes. Ginsberg v. City & County of Denver, 164 Colo. 572, 436 P.2d 685 (1968).

Erection of city auditorium.

The city and county of Denver has the power to provide by charter for the erection of an auditorium, to purchase a site therefor, and to issue bonds to discharge the indebtedness. City & County of Denver v. Hallett, 34 Colo. 393, 83 P. 1066 (1905).

Erection and maintenance of Denver courthouse. The building and maintenance of a Denver courthouse is not such a matter of local and municipal concern as to exempt the municipality from the operation of a statute requiring the use of Colorado materials in public works. City & County of Denver v. Bossie, 83 Colo. 329, 266 P. 214 (1928); City & County of Denver v. Sweet, 138 Colo. 41, 329 P.2d 441 (1958).

A sports stadium is for the recreation of the public and hence is for a public purpose, although it is not a public "utility, work, or way". A public improvement or facility need not be a "public utility", and, having the power to lease a public building, the city has authority to agree by contract on the service charges to be collected from users of the stadium facility. Ginsberg v. City & County of Denver, 164 Colo. 572, 436 P.2d 685 (1968).

User agreements, under which the company will make use of the public stadium facility in connection with the operation of the Bears and the Broncos professional sports teams, do not amount to an unlawful delegation of powers which can only be exercised by the city. Ginsberg v. City & County of Denver, 164 Colo. 572, 436 P.2d 685 (1968).

Power to erect waterworks. A self-chartered city under this article has constitutional power to erect waterworks, and there is no constitutional provision requiring a vote of the electors for this purpose. Newton v. City of Fort Collins, 78 Colo. 380, 241 P. 1114 (1925).

The general assembly has empowered municipalities to operate and maintain water facilities for the benefit of users within and without their territorial boundaries. Colo. Open Space Council, Inc. v. City & County of Denver, 190 Colo. 122, 543 P.2d 1258 (1975).

Sale of water. The general assembly has specifically defined selling water by a municipality both within and without its territorial boundaries to be a proper exercise of its powers. Colo. Open Space Council, Inc. v. City & County of Denver, 190 Colo. 122, 543 P.2d 1258 (1975).

Development of water project outside boundaries. Denver is not immune from regulation by Grand county in the development of a water project without its local boundaries and on national forest lands within Grand county. City & County of Denver v. Bergland, 517 F. Supp. 155 (D. Colo. 1981), aff'd in part and rev'd on other grounds, 695 F.2d 465 (10th Cir. 1982).

Denver's water projects are matters of mixed local and state interest. Where Denver's charter conflicts with state act that authorizes local governments to designate projects as matters of state interests and to promulgate rules and regulations to administer such projects, the state act controls. City & County of Denver v. Bd. of County Comm'rs, 760 P.2d 656 (Colo. App. 1988), aff'd, 782 P.2d 753 (Colo. 1989).

Ordinances to alleviate severe local water drainage problems. The police power authorizes home-rule cities to pass ordinances to alleviate severe local water drainage problems, however, the authority granted by such ordinances may not be exceeded. Wood Bros. Homes, Inc. v. City of Colo. Springs, 193 Colo. 543, 568 P.2d 487 (1977).

Light plants. Power granted with respect to light plants concerned local or municipal matters or both. Cook v. City of Delta, 100 Colo. 7, 64 P.2d 1257 (1937).

The public utilities commission cannot authorize a power

company operating pursuant to a certificate of public convenience and necessity in an area annexed by a home rule municipality to expand its system and use city streets without obtaining a franchise from such municipality. City of Greeley v. Poudre Valley R. Elec., 744 P.2d 739 (Colo. 1987), appeal dismissed for want of a properly presented federal question, 485 U.S. 949, 108 S. Ct. 1207, 99 L. Ed. 2d 409 (1988).

The consent of both the municipality and the public utilities commission is necessary to operate a public utility within a home rule city, but neither the general assembly nor the public utilities commission is empowered to grant a franchise to a public utility to use the streets, alleys, and public places of a home rule municipality without the municipality's consent. City of Greeley v. Poudre Valley R. Elec., 744 P.2d 739 (Colo. 1987), appeal dismissed for want of a properly presented federal question, 485 U.S. 949, 108 S. Ct. 1207, 99 L. Ed. 2d 409 (1988).

Eminent domain. The people delegated to Denver by this article have full power to exercise the right of eminent domain in the effectuation of any lawful, public, local, and municipal purpose. Fishel v. City & County of Denver, 106 Colo. 576, 108 P.2d 236 (1940); Town of Glendale v. City & County of Denver, 137 Colo. 188, 322 P.2d 1053 (1958); Toll v. City & County of Denver, 139 Colo. 462, 340 P.2d 862 (1959).

This article grants to home-rule municipalities ample power to acquire by condemnation property already devoted to a public use. City of Thornton v. Farmers Reservoir & Irrigation Co., 194 Colo. 526, 575 P.2d 382 (1978); Beth Medrosh Hagodol v. City of Aurora, 127 Colo. 267, 248 P.2d 732 (1952).

The city may condemn private property outside its boundaries for its local public use and also where such land is to be given to the United States to be used as the site for an Army school. Fishel v. City & County of Denver, 106 Colo. 576, 108 P.2d 236 (1940).

Acquisition of land for Denver airport. Denver, as a charter city under this article, is not restricted by § 41-4-201 et seq., to the acquisition, construction, and operation of an airport to the territory within five miles of its boundaries. City & County of Denver v. Bd. of Comm'rs, 113 Colo. 150, 156 P.2d 101 (1945).

Denver does not need to first obtain the consent of Arapahoe county to the acquisition, for an airport, of lands already zoned for airport purposes by the Arapahoe county officials, which lands are traversed by county roads. City & County of Denver v. Bd. of Comm'rs, 113 Colo. 150, 156 P.2d 101 (1945).

Operating airport outside Pueblo city limits is exercise of home rule. Even though Pueblo airport is located outside the territorial limits of the city of Pueblo, Pueblo, in operating the airport, is exercising its home rule authority. Pueblo Aircraft Serv., Inc. v. City of Pueblo, 498 F. Supp. 1205 (D. Colo. 1980), aff'd, 679 F.2d 805 (10th Cir. 1982), cert. denied, 459 U.S. 1126, 103 S. Ct. 762, 74 L. Ed. 2d 977 (1983).

Right-of-way for transportation of water. Denver is vested with ample authority under both the constitution and statutes to condemn flowage easements and channel improvement rights for transportation of diverted water to storage facilities. Toll v. City & County of Denver, 139 Colo. 462, 340 P.2d 862 (1959).

Consent of incorporated town not required before acquiring rights-of-way. Under § 1 of this article the city and county of Denver is not required to obtain the consent of an incorporated town before acquiring title and possession of rights-of-way

through such town by condemnation proceedings. Town of Glendale v. City & County of Denver, 137 Colo. 188, 322 P.2d 1053 (1958).

Denver may be required to comply with reasonable construction standards lawfully established by such town. Town of Glendale v. City & County of Denver, 137 Colo. 188, 322 P.2d 1053 (1958).

Denver cannot with impunity and without regard to local ordinances of a traversed municipality construct its sewer lines in its streets irrespective of water lines, water works, sewers, or wells in line of or in the vicinity of the proposed construction. At the point where the public health and safety become involved, a municipality traversed can withhold its consent unless proper, safe, and healthful construction methods are followed. Town of Glendale v. City & County of Denver, 137 Colo. 188, 322 P.2d 1053 (1958).

Power to impound animals. A city organized under this article has power to impound animals running at large, within its bounds, and to charge the owner a reasonable amount for discharging this duty. Such an imposition is a matter of local concern, and the amount thereof is not to be limited. City of Pueblo v. Kurtz, 66 Colo. 447, 182 P. 884 (1919); Thiele v. City & County of Denver, 135 Colo. 442, 312 P.2d 786 (1957).

Grant of right to use of city streets. The granting by the city to a corporation, of the rights to use the streets of the city, like a similar grant by the general assembly to use the highways of the state, is the exertion of the proprietary power of the sovereign. City & County of Denver v. Mountain States Tel. & Tel. Co., 67 Colo. 225, 184 P. 604 (1919), appeal dismissed for want of jurisdiction, 251 U.S. 545, 40 S. Ct. 219, 64 L. Ed. 407 (1920).

Both state and local governments can alleviate urban blight, provided no statutory conflict. Both the general assembly and a local government can act to alleviate the problem of urban blight, provided the state and the local law do not conflict. Denver Urban Renewal Auth. v. Byrne, 618 P.2d 1374 (Colo. 1980).

Railroad crossings. This section does not prohibit the public utilities commission from abolishing railroad crossings in the interest of public safety pursuant to § 40-4-106. City of Craig v. Pub. Utils. Comm'n, 656 P.2d 1313 (Colo. 1983).

Power to accept gifts of charitable bequests. The city and county of Denver is, by express provision of § 1 of this article, authorized to accept gifts in the nature of charitable bequests and is capable of taking the property and executing the trust in accordance with the provisions of the will. Clayton v. Hallett, 30 Colo. 231, 70 P. 429 (1902); Haggin v. Int'l Trust Co., 69 Colo. 135, 169 P. 138 (1917).

Power to receive gift is discretionary. Section 1 of this article concerning gifts to the city and county of Denver confers upon the municipality a power to be exercised or not as it wills. Such grants of power have never been considered as a mandate that they be exercised. In re Nicholson's Estate, 104 Colo. 561, 93 P.2d 880 (1939).

Police powers. This article gives home rule cities the right to exercise police power as to local matters, possibly subject to the limitation that they may not exercise police power in such manner as to interfere with the state's exercise of its police power where it has elected to deal with the same subject matter. McCormick v. City of Montrose, 105 Colo. 493, 99 P.2d 969 (l940).

Courts will not interfere with the exercise of municipal power by enjoining any reasonable regulations in the interest of public safety and particularly where there is no interference with private rights. Heron

v. City of Denver, 131 Colo. 501, 283 P.2d 647 (1955).

Neither the fourteenth amendment to the federal constitution nor any provision of the constitution of this state was designed to interfere with the police power to enact and enforce laws for the protection of the health, peace, safety, morals, or general welfare of the people. The same tests are applied to municipal ordinances. Davis v. City & County of Denver, 140 Colo. 30, 342 P.2d 674 (1959).

Issuing concealed weapons permits not inherent power of police. The issuance of permits for concealed weapons does not fall within the category of inherent powers of a police chief or a sheriff, who can fully perform such functions without this power. Douglass v. Kelton, 199 Colo. 446, 610 P.2d 1067 (1980).

Disturbances of the peace. No limitation is implied upon the traditional but statutory rights of municipalities to prevent disturbances of the peace and to maintain law and order by appropriate police action. It is only when the city's acts or regulations attempt to interfere with or cover a field preempted by the state or which is of statewide concern that they must fail. It makes no difference whether the attempted exercise of power by a city is reasonable or is wholly prohibitory. City of Golden v. Ford, 141 Colo. 472, 348 P.2d 951 (1960).

Vagrancy is a problem in populous areas. It is definitely a local and municipal concern. Being such, the city and county of Denver had authority under this article to adopt an appropriate ordinance to cope with the problem. Dominguez v. City & County of Denver, 147 Colo. 233, 363 P.2d 661 (1961).

As to city ordinance defining vagrancy, see Zerobnick v. City & County of Denver, 139 Colo. 139, 337 P.2d 11 (1959).

Council has power to remove member. The power to remove a member or officer of a legislative body is a legislative power. The council of a home rule city has power to remove a member, including its president. Laverty v. Straub, 110 Colo. 311, 134 P.2d 208 (1943).

Limits of public officers' authority. City's power to determine limits of its public officers' authority, by charter or amendment to its charter, is exclusive. Int'l Bhd. of Police Officers Local 127 v. City & County of Denver, 185 Colo. 50, 521 P.2d 916 (1974).

Residency of municipal employees is a matter of local concern subject to legislation by charter provision or ordinance of home rule city. Section 8-2-120, which prohibits municipalities from imposing residency requirements for municipal employees, is preempted by a conflicting home rule provision. City & County of Denver v. State, 788 P.2d 764 (Colo. 1990).

Power to grant group health insurance benefits to spousal equivalents is a matter of local concern subject to limitation imposed by charter of home rule city. Schaefer v. City & County of Denver, 973 P.2d 717 (Colo. App. 1998).

Power to determine employees. The people of Denver by charter amendment have specifically determined that sheriffs' deputies and jail guards are "employees". This they had the power to do under this article. City & County of Denver v. Rinker, 148 Colo. 441, 366 P.2d 548 (1961).

Pension funds. A home rule city has authority to contract with its firemen and policemen to refund the employees' individual contributions to the respective pension funds on termination of employment prior to qualification for pension benefits. Conrad v. City of Thornton, 191 Colo. 444, 553 P.2d 822 (1976).

Policemen's and firemen's pensions are not a matter exclusively of local concern. Conrad v. City of

Thornton, 191 Colo. 444, 553 P.2d 822 (1976).

Mandatory retirement provision of a charter amendment is not invalid because it allegedly is a question of statewide concern, since tenure is a subject over which constitution grants the power of regulation to home rule cities. Coopersmith v. City & County of Denver, 156 Colo. 469, 399 P.2d 943 (1965).

Disposition of workmen's compensation benefits. While 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. City and County of Denver v. Thomas, 176 Colo. 483, 491 P.2d 573 (1971).

Tortious acts of municipal police officers. Governmental immunity for tortious acts of municipal police officers is a matter of both statewide and local concern. DeLong v. City & County of Denver, 195 Colo. 27, 576 P.2d 537 (1978); Frick v. Abell, 198 Colo. 508, 602 P.2d 852 (1979); Brown v. Gray, 227 F.3d 1278 (10th Cir. 2000).

A municipality may provide greater monetary compensation to victims of torts committed by the municipality's own police officers than that provided by state statute. DeLong v. City & County of Denver, 195 Colo. 27, 576 P.2d 537 (1978); Frick v. Abell, 198 Colo. 508, 602 P.2d 852 (1979).

Whether a municipality provides its police officers with defense costs against tort actions is a matter of both state and local concern. Therefore, to the extent, if any, that the municipal charter conflicts with state law, § 39-5-111 supersedes the charter. Brown v. Gray, 227 F.3d 1278 (10th Cir. 2000).

Labor activities. No statute or constitutional provision has expressly given Colorado municipalities power to regulate labor disputes or picketing and soliciting by employees. Nor can it be said to be an implied power when the proper conduct of labor activities is a matter of statewide concern. City of Golden v. Ford, 141 Colo. 472, 348 P.2d 951 (1960).

Regulation of intoxicating liquor. The city could not enlarge on the state-provided hours of sale; however, where local conditions have been found to require reasonably fewer hours of dispensing fermented malt beverage, such action does not infringe upon the state's legislative prerogative or objectives. Kelly v. City of Fort Collins, 163 Colo. 520, 431 P.2d 785 (1967).

The subject of fermented malt beverages is a matter of statewide concern, and home rule municipalities have no constitutionally derived power generally to legislate on the subject as a matter of local concern, but a city may reasonably regulate the sale of 3.2 beer. Kelly v. City of Fort Collins, 163 Colo. 520, 431 P.2d 785 (1967).

Construction of and apportionment of costs for viaducts is a matter of mixed local and state-wide concern, and, where there is a conflict between a city charter and § 40-4-106(3)(b) (costs for grade separation projects), § 40-4-106 must supersede the charter. Denver & R. G. W. R. R. v. City & County of Denver, 673 P.2d 354 (Colo. 1983).

Weights and measures. The Denver weights and measures ordinance is a valid exercise of legislative power granted to it by the state, in a legitimate area of local concern, and such ordinance has not been rendered ineffective, null and void by the enactment of the weights and measures statute. Blackman v. County Court ex rel. City & County of Denver, 169 Colo. 345, 455 P.2d 885 (1969).

Educational complex. Since the issuance of general obligation bonds for the purchase of lands to be

donated to the United States to be used for the purposes of an air corps technical school and bombing field has been held to be for a local and municipal purpose, an educational complex is even more definitely embraced within a local and municipal purpose. Karsh v. City & County of Denver, 176 Colo. 406, 490 P.2d 936 (1971).

2. Control of Municipal Elections.

Municipal elections are expressly made local matters. The people, by the adoption of the home rule amendment, have declared that municipal elections are local and municipal matters, upon which the people of municipalities have the power to legislate. People ex rel. Tate v. Prevost, 55 Colo. 199, 134 P. 129 (1913).

Qualification of voters in local and municipal elections is a matter of local concern. May v. Town of Mountain Vill., 969 P. 2d 790 (Colo. 1998).

General assembly cannot divest home rule city of its plenary power to deal with municipal elections. Gosliner v. Denver Election Comm'n, 191 Colo. 328, 552 P.2d 1010 (1976).

Such power is not restricted. The grant of power to home rule cities relative to municipal elections is not restrictive. Hoper v. City & County of Denver, 173 Colo. 390, 479 P.2d 967 (1971); Gosliner v. Denver Election Comm'n, 19l Colo. 328, 552 P.2d 1010 (1976).

This section was designed to vest home rule cities with the authority to opt for partisan elections if they so desired. It was not intended to limit the home rule city to nonpartisan elections. Hoper v. City & County of Denver, 173 Colo. 390, 479 P.2d 967 (1971).

Special elections to vote on issuance of municipal obligations. Under the provisions of this section of the constitution and the charter of Colorado Springs, that city is given full power to call special elections for voting for the issuance of all kinds of municipal obligations for public improvements. Clough v. City of Colo. Springs, 70 Colo. 87, 197 P. 896 (1921).

"Special election" and "general state election". The "special election" mentioned in this section, although not specifically so designated, is a special municipal election, and, where a general election is mentioned in this section, referring to a state election at which a municipal matter is to be determined, such general election is specifically designated as a "general state election". People ex rel. Austin v. Billig, 72 Colo. 209, 210 P. 324 (1922).

Special election may be held on the same day as general election. A municipal election charter provision which states that a special election shall not be held within 45 days before or after a general election does not prohibit the municipality from holding a special election on the same day and at the same time as a general election. Englewood Police Ben. Ass'n v. Englewood, 811 P.2d 464 (Colo. App. 1990).

Special election relating to income tax unauthorized. Where a home rule city has no power to levy an income tax, the city council has no authority to call a special election to submit to the electors a proposal to confer such power upon the council, and injunction is the proper remedy to prevent such submission. City & County of Denver v. Sweet, 138 Colo. 41, 329 P.2d 441 (1958).

Power to regulate and control form of ballots and to establish minimum standards for ballot titles is clearly expressed in both the general and specific provisions of this section. Hoper v. City & County of Denver, 173 Colo. 390, 479 P.2d 967 (1971).

While the governing body of a home rule municipality may not

circumvent or seek to avoid such constitutional requirements as the publication requirement, there is no illegality in a municipal charter requirement that the ballot title "show the nature of" the amendment. Hoper v. City & County of Denver, 173 Colo. 390, 479 P.2d 967 (1971).

Purchase of voting machines. While the right to use voting machines in general elections is a matter of state control, the purchase of such machines by a municipality is a local or municipal matter, and bonds issued under authority of § 8 of art. VII, Colo. Const., must also comply with the requirements of a charter adopted under authority of this section. Kingsley v. City & County of Denver, 126 Colo. 194, 247 P.2d 805 (1952).

Local election districts must be apportioned in accord with population. An apportionment plan pursuant to a charter mandate which is based on voter registration is not per se violative of the United States constitution, but its application must produce a distribution sufficiently comparable to that which would result from apportionment strictly in accord with population. Hartman v. City & County of Denver, 165 Colo. 565, 440 P.2d 778 (1968).

When the state apportions its general assembly, it must have due regard for the equal protection clause. Similarly, when the state delegates lawmaking power to local government and provides for the election of local officials from districts specified by statute, ordinance, or local charter, it must insure that those qualified to vote have the right to an equally effective voice in the election process. Hartman v. City & County of Denver, 165 Colo. 565, 440 P.2d 778 (1968).

Referendum and initiative reserved to voters of municipalities. The language in § 1 of art. V, Colo. Const., that "The initiative and referendum powers reserved to the people by this section are hereby further reserved to the legal voters of every city, town and municipality as to all local, special, and municipal legislation of every character" is not language of maximum limitation. Its only limiting effect is from the standpoint of the minimum referendum which must be reserved to the people of a locality. Burks v. City of Lafayette, 142 Colo. 61, 349 P.2d 692 (1960).

Charter may provide that ordinances are subject to referendum. A city charter can provide that all ordinances, with exceptions, are subject to a referendum provision. City of Fort Collins v. Dooney, 178 Colo. 25, 496 P.2d 316 (1972).

Residency requirement as eligibility for office unconstitutional. A five-year residency requirement in a city charter for eligibility for the offices of mayor or councilman is unconstitutional as a violation of equal protection. Bird v. City of Colo. Springs, 181 Colo. 141, 507 P.2d 1099 (1973).

Where an election to authorize a general obligation bond issue is required, the submission to the electorate of, and its vote upon, a charter amendment in fact constituted the election such that a delegation of power is not involved. Karsh v. City & County of Denver, 176 Colo. 406, 490 P.2d 936 (1971).

Judicial review of grounds for recall may be limited. To avoid any conflict between the Boulder charter and the constitution, the limitation on judicial review of the grounds for recall found in the constitution is incorporated by implication in the Boulder charter. Bernzen v. City of Boulder, 186 Colo. 81, 525 P.2d 416 (1974).

City may not allow recalled officer to succeed himself. Home-rule cities may not make it possible to frustrate the will of the majority by allowing a recalled officer to succeed himself. Bernzen v. City of Boulder, 186 Colo. 81, 525 P.2d 416 (1974).

3. Power to Raise Revenue.

Power to levy taxes based on this section. The power to levy a tax in home rule cities, on those who live or sojourn there, for expenses of local and municipal government, stems from a grant by the people by constitutional provision and is not based upon the police power. City & County of Denver v. Tihen, 77 Colo. 212, 235 P. 777 (1925); Berman v. City & County of Denver, 156 Colo. 538, 400 P.2d 434 (1965).

The right of home rule municipalities to enact taxes applicable to local matters is not contested. Hamilton v. City & County of Denver, 176 Colo. 6, 490 P.2d 1289 (1971).

Exercise of such power may not be prohibited. The state, even when acting under its regulatory powers, cannot prohibit home rule cities from exercising a power essential to their existence, such as local taxation. Security Life & Accident Co. v. Temple, 177 Colo. 14, 492 P.2d 63 (1972).

Power to tax is not absolute or unrestricted. The people in adopting this article did not intend to confer upon municipalities organized thereunder the absolute and unrestricted power to tax or to make assessments for local improvements regardless of public policy. The people intended to confer such powers subject to existing or future constitutional and statutory provisions relating to exemptions of cemeteries from taxation and local assessments. City & County of Denver v. Tihen, 77 Colo. 212, 235 P. 777 (1925).

Assessments for local improvements. Under this article the powers of a municipal corporation with reference to assessments for local improvements are plenary. Bd. of Comm'rs v. City of Colo. Springs, 66 Colo. 111, 180 P. 301 (1919).

A municipality has power to levy special improvement taxes on county property both by the general law and by its charter under this article of the constitution. Bd. of Comm'rs v. City of Colo. Springs, 66 Colo. 111, 180 P. 301 (1919); Bd. of County Comm'rs v. Town of Castle Rock, 97 Colo. 33, 46 P.2d 747 (1935).

Assessment for improvement district does not violate this section. This section relates to assessments for local purposes. Assessments for the Moffat tunnel improvement district do not relate to purposes local to Denver but to the district. Milheim v. Moffat Tunnel Imp. Dist., 72 Colo. 268, 211 P. 649 (1922), aff'd, 262 U.S. 710, 43 S. Ct. 964, 67 L. Ed. 1194 (1923).

Assessment levied prior to amendment valid. The home rule amendment, although enacted after the levy of an assessment, ratifies and validates all that had been previously done by charter, and so, inasmuch as all that the city had done in the present matter was within the scope of local and municipal matters, it must be considered as ratified and validated. Bd. of Comm'rs v. City of Colo. Springs, 66 Colo. 111, 180 P. 301 (1919).

State taxation in the same field as that of a municipality can coexist. Berman v. City & County of Denver, 156 Colo. 538, 400 P.2d 434 (1965).

Income taxation. A Colorado home rule city does not have the legal authority to enact a city income tax by council action or by vote of the qualified electors or by both council action and vote of the electors. City & County of Denver v. Sweet, 138 Colo. 41, 329 P.2d 441 (1958).

Ordinance imposing transportation utility fee invalid to extent it allows transfer of excess transportation utility revenues to be used for purpose of defraying general governmental expenses unrelated to maintenance of city streets. Bloom v. City of Ft. Collins, 784 P.2d 304 (Colo.

1989).

Occupational excise taxes. Municipal authority, in the absence of constitutional restrictions, to impose occupational excise taxes at a fixed rate purely for revenue for the support of its government no longer is open to serious question. City of Englewood v. Wright, 147 Colo. 537, 364 P.2d 569 (1961); City & County of Denver v. Duffy Storage & Moving Co., 168 Colo. 91, 450 P.2d 339, appeal dismissed for want of substantial federal question, 396 U.S. 2, 90 S. Ct. 23, 24 L. Ed. 2d 1 (1969).

Excise tax on privilege. A home rule city has the authority to levy an excise tax on a privilege within the city limits. This power has been found to be essential to the full exercise of the right to self-government granted to home rule cities by this section. Deluxe Theatres, Inc. v. City of Englewood, 198 Colo. 771, 596 P.2d 771 (1979).

State cannot prohibit taxes on privilege of doing business. With the grant of the taxing power to home rule cities, the state general assembly cannot, under the guise of its police power to regulate the insurance industry, prohibit a home rule city from taxing such businesses their share of the benefits enjoyed for the privilege of doing business therein. State Farm Mut. Auto. Ins., Co. v. Temple, 176 Colo. 537, 491 P.2d 1371 (1971).

Nondiscriminatory tax on income earned for services rendered to or work done for government does not represent a legally recognizable interference with the activities of that government so as to constitute a tax upon that government. Hamilton v. City & County of Denver, 176 Colo. 6, 490 P.2d 1289 (1971).

Reasonable, nondiscriminatory taxes may be imposed by one governmental unit upon the employees of another where not precluded by applicable law. Hamilton v. City & County of Denver, 176 Colo. 6, 490 P.2d 1289 (1971).

Application of Denver "head tax" to members of an enumerated class in no way interferes with, or imposes a condition precedent to, employment by the state, for an employee is taxed because he is physically present within the taxing jurisdiction of Denver, which furnishes such employee the same facilities and services which are available to its permanent residents, and for which such employees are required to pay a reasonable share. Hamilton v. City & County of Denver, 176 Colo. 6, 490 P.2d 1289 (1971).

Sales and use taxes. Home rule cities have the power to adopt a sales and use tax under the grant of authority given by the constitution. The right to levy a tax to raise revenue for the affairs and business of the city is clearly within the constitutional grant of power. Berman v. City & County of Denver, 156 Colo. 538, 400 P.2d 434 (1965).

The power to levy sales and use taxes for the support of the local home rule government is essential to the full exercise of the right of self-government granted to such cities. Security Life & Accident Co. v. Temple, 177 Colo. 14, 492 P.2d 63 (1972).

The complete autonomy of a home rule city such as Denver in the enactment of purely local excise taxes and the sales tax is set out in strong language. Security Life & Accident Co. v. Temple, 177 Colo. 14, 492 P.2d 63 (1972).

A home rule municipality formed pursuant to this section is constitutionally empowered to adopt a sales tax. Apollo Stereo Music v. City of Aurora, 871 P.2d 1206 (Colo. 1994); Leggett & Platt, Inc. v. Ostrom, 251 P.3d 1135 (Colo. App. 2010).

Municipal ordinance creating a lien for the collection of its sales taxes that is superior to a lien held by a bank was a proper exercise of the municipality's authority under

this section and especially paragraph (g). The priority of local liens for unpaid sales taxes, at least with respect to their superiority over private commercial liens, is a local and municipal concern for which the municipality may legislate, even if such legislation were to conflict with a state statute. Given that the levy and collection of a local sales tax by a home-rule municipality is a local and municipal concern, it would be anomalous to conclude that, while the general assembly may grant priority to the sales tax liens of statutory cities and towns, a home rule municipality may not makes its sales tax lien superior to the commercial lien of a private lender. Town of Avon v. Weststar Bank, 151 P.3d 631 (Colo. App. 2006).

Revenue bonds. The limitations on the power of cities and towns to borrow money in § 8 of art. XI, Colo. Const., are not binding upon home rule cities. A home rule city which undertakes to issue bonds and finance a program of capital improvements, which is a matter of local and municipal concern, is not limited in its power to do so by that section. Berman v. City & County of Denver, 156 Colo. 538, 400 P.2d 434 (1965); Davis v. City of Pueblo, 158 Colo. 319, 406 P.2d 671 (1965); Fladung v. City of Boulder, 165 Colo. 244, 438 P.2d 688 (1968).

The home rule amendment specifically empowers a home rule city to issue bonds. If there is no limitation on the bonds in question in the city charter, neither art. XI, Colo. Const., nor this article is violated. Davis v. City of Pueblo, 158 Colo. 319, 406 P.2d 671 (1965); Ginsberg v. City & County of Denver, 164 Colo. 572, 436 P.2d 685 (1968).

A bond issue authorized by municipal ordinance does not violate the limitations imposed by section 8 of this article concerning conflicting provisions of the constitution. Davis v. City of Pueblo, 158 Colo. 319, 406 P.2d 671 (1965).

Special improvement district does not create debt for city, and it is only when there is such a debt sought to be created that voter approval is necessary. Fladung v. City of Boulder, 165 Colo. 244, 438 P.2d 688 (1968).

Urban renewal tax allocation structure provides relationship between increased revenues and project financed. The tax allocation structure provided by § 31-25-107 (9)(e) has been carefully drafted so that there is a direct relationship between the increased valuation of property within the urban renewal project area, and thus increased ad valorem tax revenues, and the project financed by the bond issue. Denver Urban Renewal Auth. v. Byrne, 618 P.2d 1374 (Colo. 1980).

Transportation utility fee which was imposed by home-rule municipality on developed lots adjoining city streets for the purpose of providing revenues for maintenance of city streets and which was reasonably designed to defray the municipality's cost of providing the service is a valid charge within the legislative authority of the municipality. Bloom v. City of Ft. Collins, 784 P.2d 304 (Colo. 1989).

Municipality cannot compel state officials to collect municipal taxes. Even with all the powers granted home rule cities, a home rule city is still a subdivision of the state, and no municipality, absent statutory authority, can compel the state or its officials to collect municipal taxes. City of Boulder v. Regents of Univ. of Colo., 179 Colo. 420, 501 P.2d 123 (1972).

City admissions tax invalid as to university-sponsored public events. A city cannot, under its home rule powers, compel the regents of a state university to collect an admissions tax on charges for attendance at public events the university sponsors, because such duties would interfere with the

regents' control of the university. City of Boulder v. Regents of Univ. of Colo., 179 Colo. 420, 501 P.2d 123 (1972).

The home rule authority of a city does not permit it to tax a person's acquisition of education furnished by the state, and therefore a city admissions tax is invalid when applied to university lectures, dissertations, art exhibitions, concerts, and dramatic performances. City of Boulder v. Regents of Univ. of Colo., 179 Colo. 420, 501 P.2d 123 (1972).

City admissions tax valid as to football games. Absent a showing that football is so related to the educational process that its devotees may not be taxed by a home rule city, the court will uphold the validity of a city admissions tax as applied to football games sponsored by a state university. City of Boulder v. Regents of Univ. of Colo., 179 Colo. 420, 501 P.2d 123 (1972).

Budgeting of anticipated revenue is matter of local concern. The people of each home rule city are vested with the power to make, amend, add to, or replace its charter, which shall be its organic law and extend to all its local and municipal matters, so the budgeting of its anticipated revenue for the operation of the city government is strictly a matter of local and municipal concern. City & County of Denver v. Blue, 179 Colo. 351, 500 P.2d 970 (1972).

It does not follow from the fact that the culmination of the budget process--the adoption of the budget, the appropriation of money to fund the budget, and the fixing of the tax levy--is legislative that the preparation of the budget is legislative. City & County of Denver v. Blue, 179 Colo. 351, 500 P.2d 970 (1972).

Responsibility for preparation of budget is on mayor. City & County of Denver v. Blue, 179 Colo. 351, 500 P.2d 970 (1972).

4. Regulation of Motor Vehicles.

Regulation of motor vehicles and traffic is mixed concern. As motor vehicle traffic in the state and between home rule municipalities becomes more and more integrated, it gradually ceases to be a "local" matter and becomes subject to general law. People v. Graham, 107 Colo. 202, 110 P.2d 256 (1941); City & County of Denver v. Pike, 140 Colo. 17, 342 P.2d 688 (1959); City of Commerce City v. State, 40 P.3d 1273 (Colo. 2002).

Even though the field of vehicle traffic control is generally considered to be local and municipal, there are some aspects wherein the police power of the state comes into play in order to bring about an integrated statewide policy governing violations which have general statewide character. City & County of Denver v. Pike, 140 Colo. 17, 342 P.2d 688 (1959); City of Commerce City v. State, 40 P.3d 1273 (Colo. 2002).

A city cannot contend that the licensing and regulation of vehicle operators is a matter exclusively local and municipal within this section, so that enactment of an ordinance would supersede a statute on the same subject. Davis v. City & County of Denver, 140 Colo. 30, 342 P.2d 674 (1959).

Regulation of vehicular traffic. A city having the power under this article to pass ordinances regulating vehicular traffic upon its streets cannot be deprived of that power by the passage of a state law. City & County of Denver v. Henry, 95 Colo. 582, 38 P.2d 895 (1934).

Regulation of traffic at street intersections is matter of local concern, and there being a conflict between a city ordinance and state statutes as to the right-of-way of automobiles at street intersections, the ordinance controls. City & County of Denver v. Henry, 95 Colo. 582, 38 P.2d 895 (1934); City & County of Denver v. Pike, 140 Colo. 17, 342 P.2d 688

(1959).

Questions of speed, right-of-way, parking, designation of one-way streets, and similar measures, all regulatory in scope, are matters of local and municipal concern. City of Canon City v. Merris, 137 Colo. 169, 323 P.2d 614 (1958); City & County of Denver v. Pike, 140 Colo. 17, 342 P.2d 688 (1959); Davis v. City & County of Denver, 140 Colo. 30, 342 P.2d 674 (1959).

Under this article, regulation of the speed of vehicles may be treated as a matter solely of local and municipal concern by charter cities. Wiggins v. McAuliffe, 144 Colo. 363, 356 P.2d 487 (1960).

An ordinance of the city of Denver prohibiting the parking of vehicles in any private driveway or on private property is within the legislative authority granted by this article. Lehman v. City & County of Denver, 144 Colo. 109, 355 P.2d 309 (1960).

The authority for a home-rule city to regulate traffic speeds and penalize offenders is not found in the laws of the general assembly but rather is a matter of state constitutional law under this section. People v. Hizhniak, 195 Colo. 427, 579 P.2d 1131 (1978).

Provision for stop at flashing red school lights. Under this section a city of Boulder traffic ordinance providing for a stop at flashing red school lights relates to a matter of local and municipal concern and its adoption a proper exercise of the legislative power of the city of Boulder. Pickett v. City of Boulder, 144 Colo. 387, 356 P.2d 489 (1960).

Careless driving ordinance. Where a careless driving ordinance is out of conformity with the state statute in a material particular, the state statute is inoperative within the territorial limits of the home rule city for the reason that the ordinance relates to a matter of local and municipal concern, and the statutes of the state have been superseded by the ordinance adopted by the city. People ex rel. City of Aurora v. Thompson, 165 Colo. 172, 437 P.2d 537 (1968).

State has right to regulate use of automobiles by license, even though they may never leave the city in which they are operated. Armstrong v. Johnson Storage & Moving Co., 84 Colo. 142, 268 P. 978 (1928).

The investigation and apprehension of a violator of requirements of §§ 42-4-1401 and 42-4-1403 requiring a driver involved in an accident to stop, render aid, and report is not exclusively a local matter. Infractions of these provisions are of general public concern. Moreover, these requirements do not necessarily relate to traffic control but provide certain necessary actions on the part of the motorist involved to be taken after an accident occurs to protect the life and property of the injured. When these offenses are charged they come under the general police power of the state and do not necessarily relate to regulation of motor vehicle traffic of a "local or municipal" nature although occurring in a municipality. People v. Graham, 107 Colo. 202, 110 P.2d 256 (1941).

Power to establish licensing system includes authority to revoke and to penalize the driving of a motor vehicle while the license of the operator has been suspended or revoked, and, the subject being predominately statewide and general, a municipal ordinance dealing with the identical subject is invalid. Davis v. City & County of Denver, 140 Colo. 30, 342 P.2d 674 (1959); City & County of Denver v. Palmer, 140 Colo. 27, 342 P.2d 687 (1959).

Statutes limiting "photo radar" and "photo red light" citations supersede conflicting provisions of municipal ordinances. Regulation of automated vehicle identification systems to enforce traffic laws is a matter of mixed local and state concern. In the event of conflict,

state law prevails. City of Commerce City v. State, 40 P.3d 1273 (Colo. 2002).

Driving motor vehicle while under influence of intoxicating liquor is forbidden by state law, is a matter of statewide concern, and leaves nothing for a city to regulate. City of Canon City v. Merris, 137 Colo. 169, 323 P.2d 614 (1958); City & County of Denver v. Pike, 140 Colo. 17, 342 P.2d 688 (1959).

Ordinance penalizing driving motor vehicle without license held ultra vires. A municipal ordinance imposing a jail sentence of 90 days upon conviction of driving a motor vehicle without a license in the face of a state statute imposing a sentence of six months for the same offense is ultra vires, and the general assembly having failed to consent to the exercise of such authority requires a finding that the ordinance is void. Davis v. City & County of Denver, 140 Colo. 30, 342 P.2d 674 (1959).

License fees. A state statute imposing additional state license fees on motor trucks is of no concern to a city even though such trucks operated exclusively upon streets of home rule cities. City & County of Denver v. Sweet, 138 Colo. 41, 329 P.2d 441 (1958).

Tax on gasoline. The general assembly has the power to tax gasoline used in propelling motor vehicles on the streets of home rule cities. People v. City & County of Denver, 90 Colo. 598, 10 P.2d 1106 (1932).

State regulation of freeway bisecting city. Where, by a contract between a city and the state highway department concerning a freeway bisecting the city, both city and state intend that the city would regulate the traffic thereon subject to a minimum speed regulation and parking restrictions, the state has a regulatory interest therein justifying the imposition of its policies. City & County of Denver v. Pike, 140 Colo. 17, 342 P.2d 688 (1959).

Non home rule cities may not enact or enforce ordinances superseding state statutes. Cities and towns not organized as home rule cities may not enact or enforce any ordinance or regulation relating to motor vehicles which supersedes or attempts to nullify comparable state statute on same subject matter. Vanatta v. Town of Steamboat Springs, 146 Colo. 356, 361 P.2d 441 (1961).

The ruling that a home rule city could consider the area of reckless and careless driving to be a matter of local and municipal concern does not apply to a city that is not a home rule city when these offenses occurred. City of Aurora v. Mitchell, 144 Colo. 526, 357 P.2d 923 (1960).

5. Violations of Municipal Ordinances.

Cities may impose fines and penalties. Among local and municipal matters upon which cities and towns may legislate is the imposition, enforcement, and collection of fines and penalties for the violation of any provisions of charters or of any ordinances adopted in pursuance to charters. City of Canon City v. Merris, 137 Colo. 169, 323 P.2d 614 (1958).

Violations punishable by imprisonment are criminal. Violations of ordinances for which offenders could be punished by imprisonment are criminal offenses, hence should be tried as criminal cases. Geer v. Alaniz, 138 Colo. 177, 331 P.2d 260 (1958).

Although a civil action, enforcement of an ordinance is quasi-criminal or penal where imprisonment may be imposed. City of Canon City v. Merris, 137 Colo. 169, 323 P.2d 614 (1958).

Home rule ordinance violations are criminal if there are counterpart state criminal statutes. Geer v. Alaniz, 138 Colo. 177, 331

P.2d 260 (1958).

Violation of an ordinance which is the counterpart of a criminal statute should be tried and punished under the protections applicable to criminal cases even though prosecuted in a municipal court. Zerobnick v. City & County of Denver, 139 Colo. 139, 337 P.2d 11 (1959); City of Greenwood Vill. v. Fleming, 643 P.2d 511 (Colo. 1982); People v. Wade, 757 P.2d 1074 (Colo. 1988).

Even though an ordinance effectually covers a local and municipal matter and it is a counterpart of a law of the state, its violation is triable and punishable as a crime where so designated by the statute. Such is the plain import of this section. Thereby, uniformity in treatment and disposition of an offense is achieved, whether the act is a statutory crime or a violation of an ordinance. Schooley v. Cain, 142 Colo. 485, 351 P.2d 389 (1960).

Such as driving motor vehicle under influence of intoxicating liquor. Whether driving a motor vehicle while under the influence of intoxicating liquor is a local and municipal matter or of statewide concern is immaterial. Since a statute makes such act a crime, its counterpart in the municipal law must be tried and punished as a crime. City of Canon City v. Merris, 137 Colo. 169, 323 P.2d 614 (1958).

Where a city ordinance defining vagrancy is a counterpart of a state statute defining vagrancy and providing penalties therefor, the offense should be tried and punished under the protections applicable to criminal cases even though prosecuted in a municipal court. Zerobnick v. City & County of Denver, 139 Colo. 139, 337 P.2d 11 (1959).

Proceedings by complaint before magistrate are criminal. When the method of procedure to enforce the payment of a fine or penalty is not by a suit at law, but by complaint before a municipal magistrate who is to determine the matter and impose a fine the proceedings have been sometimes deemed to be of a criminal or quasi-criminal nature. City of Canon City v. Merris, 137 Colo. 169, 323 P.2d 614 (1958).

Defendant entitled to full protection of criminal law. One prosecuted for a violation of an ordinance promulgated under a home rule charter is entitled to the full protection afforded by the law in criminal cases. Pickett v. City of Boulder, 144 Colo. 387, 356 P.2d 489 (1960).

When the state has proscribed certain conduct as a criminal offense, the counterpart provisions of this section prohibit a home-rule city from removing such basic criminal safeguards as proof of guilt beyond a reasonable doubt and the privilege against self-incrimination in a prosecution for violating a municipal ordinance proscribing the same conduct. City of Greenwood Vill. v. Fleming, 643 P.2d 511 (Colo. 1982).

Defendant under risk of imprisonment entitled to notice of charge. Where a judgment against a defendant may, under an ordinance, include imprisonment in the first instance, the failure to file a complaint giving adequate notice of the charge is inexcusable, especially where the violation of city ordinances are held to be in the nature of civil cases although of a quasi-criminal or penal nature where imprisonment may be inflicted. City of Canon City v. Merris, 137 Colo. 169, 323 P.2d 614 (1958).

Notice of hearing and notice of withdrawal of counsel. Where a motion to reinstate a jail sentence imposed following conviction of vagrancy under a city ordinance, and the case is treated as a civil proceeding, it is incumbent upon a city to serve a copy of such motion or a written notice of hearing thereon upon the defendant personally or through his counsel, and where counsel has withdrawn such

notice must be served upon the defendant personally under C.R.C.P. 7(b)(1). Zerobnick v. City & County of Denver, 139 Colo. 139, 337 P.2d 11 (1959).

City cannot deny constitutional right to jury trial. City & County of Denver v. Sweet, 138 Colo. 41, 329 P.2d 441 (1958).

A municipal charter provision that no party shall be entitled to a jury trial in a municipal court in any action arising under the ordinances and charter of the city and county of Denver is invalid wherever the ordinance violated has a counterpart in the criminal statutes of the state or the ordinance provides for imprisonment for its violation. Geer v. Alaniz, 138 Colo. 177, 331 P.2d 260 (1958).

A city cannot deny the statutory right of appeal. City & County of Denver v. Sweet, 138 Colo. 41, 329 P.2d 441 (1958).

Procedures of municipal courts involving violations of municipal ordinances are only required to afford constitutionally mandated procedures that protect due process rights of individuals. R.E.N. v. City of Colo. Springs, 823 P.2d 1359 (Colo. 1992).

Suspension of sentence and probation may be granted. Where a city ordinance relating to vagrancy is a counterpart of a state statute and offenders are prosecuted thereunder as in criminal actions, the privileges of suspension of sentence and of probation may be granted. Zerobnick v. City & County of Denver, 139 Colo. 139, 337 P.2d 11 (1959).

"Uniformity in the treatment and disposition of an offense" does not require that a home rule city's sentencing scheme evidence "consistency of philosophy in sentencing" with the state's sentencing provisions. Even if state statutes preclude the imposition of probation for a term longer than the maximum imprisonment authorized for a particular offense, that limitation is not a constraint on a home rule city's right to impose its own system of punishments for violations of its ordinances. People v. Wade, 757 P.2d 1074 (Colo. 1988).

Rules of civil procedure are generally applicable in cases where fine or penalty is sought by a suit of law, and the proceeding is civil rather than criminal. City of Canon City v. Merris, 137 Colo. 169, 323 P.2d 614 (1958).

Single act is punishable as state and municipal offenses. A single act, made punishable both by the general law of the state and by the ordinances of a town wherein it is committed, constitutes two distinct and several offenses, subject to punishment by the proper tribunals of the state and the municipality respectively. City of Canon City v. Merris, 137 Colo. 169, 323 P.2d 614 (1958).

Where an act is, in its nature, one which constitutes two offenses, one against the state and one against a municipal government, the latter may be constitutionally authorized to punish it, though it be also an offense under the state law; but the legislative intention that this may be done ought to be manifest and unmistakable, or the power in the corporation should be held not to exist. Davis v. City & County of Denver, 140 Colo. 30, 342 P.2d 674 (1959).

Single act subject to prohibition against double prosecution. The fact that the city has the power to legislate does not mean that there could ever be recognition of dual sovereignty or double prosecutions. The determination that there is nothing basically invalid about legislation on the same subject, for example, gambling, by both a home rule city and the state, does not affect the prohibition against double prosecution, nor does it undermine any basic safeguards. Woolverton v. City & County of Denver, 146 Colo. 247, 361

P.2d 982 (1961).

Prosecution of juveniles under municipal ordinance does not conflict with Colorado Children's Code, and, although municipalities are not prohibited from adopting same procedures as Children's Code, municipalities are not required to follow such procedures. R.E.N. v. City of Colo. Springs, 823 P.2d 1359 (Colo. 1992).

Colorado Children's Code does not require that juvenile proceedings in municipal courts be civil in nature as Children's Code and ordinances of municipality on juvenile proceedings do not conflict. R.E.N. v. City of Colo. Springs, 823 P.2d 1359 (Colo. 1992).

City ordinance that regulates the number of adjudicated delinquent children that may reside in a particular foster home regulates a matter of statewide concern and is thus preempted. City of Northglenn v. Ibarra, 62 P.3d 151 (Colo. 2003).

Section 7. City and county of Denver single school district - consolidations. The city and county of Denver shall alone always constitute one school district, to be known as District No. 1, but its conduct, affairs and business shall be in the hands of a board of education consisting of such numbers, elected in such manner as the general school laws of the state shall provide.

The said board of education shall perform all the acts and duties required to be performed for said district by the general laws of the state. Except as inconsistent with this amendment, the general school laws of the state shall, unless the context evinces a contrary intent, be held to extend and apply to the said "District No. 1".

Upon the annexation of any contiguous municipality which shall include a school district or districts or any part of a district, said school district or districts or part shall be merged in said "District No. 1", which shall then own all the property thereof, real and personal, located within the boundaries of such annexed municipality, and shall assume and pay all the bonds, obligations and indebtedness of each of the said included school districts, and a proper proportion of those of partially included districts.

Provided, however, that the indebtedness, both principal and interest, which any school district may be under at the time when it becomes a part, by this amendment or by annexation, of said "District No. 1", shall be paid by said school district so owing the same by a special tax to be fixed and certified by the board of education to the council which shall levy the same upon the property within the boundaries of such district, respectively, as the same existed at the time such district becomes a part of said "District No. 1", and in case of partially included districts such tax shall be equitably apportioned upon the several parts thereof.

Source: L. 01: Entire article added, p. 105. **L. 12:** Entire section was amended but does not appear in the session laws. **L. 2006:** Entire section was amended, p. 2955, effective upon proclamation of the Governor, **L. 2007,** p. 2964, December 31, 2006.

ANNOTATION

Annexation of territory to city and county of Denver changed

boundaries of school districts affected. See Bd. of County Comm'rs v. City & County of Denver, 150 Colo. 198, 372 P.2d 152 (1962), appeal dismissed, 372 U.S. 226, 83 S. Ct. 679, 9 L. Ed. 714 (1963).

Purpose of this section is merely to require that assets and liabilities of school districts lying partly or wholly within annexed territory be consolidated into the constitutionally created single Denver school district. Bd. of County Comm'rs v. City & County of Denver, 193 Colo. 211, 565 P.2d 212 (1977).

And not to restrict annexations to certain land. The language of this section evinces no intent to restrict Denver annexations to land within other incorporated municipalities. Bd. of County Comm'rs v. City & County of Denver, 193 Colo. 211, 565 P.2d 212 (1977).

Territory to be annexed not defined. This section of the state constitution does not define what territory, whether incorporated or not incorporated, is subject to annexation. Bd. of County Comm'rs v. City & County of Denver, 193 Colo. 211, 565 P.2d 212 (1977).

School district created under this section has power to sue and be sued and to compromise actions and claims against such district. Sch. Dist. No. 1 v. Faker, 106 Colo. 356, 105 P.2d 406 (1940).

Office of county superintendent of schools terminated. Immediately upon the taking effect of this article of the constitution, the official term of the superintendent of schools next theretofore elected for the old county of Arapahoe, terminated. No such office existed in the new entity, the city and county of Denver, and there could be no incumbent thereof. The person chosen to the office of superintendent of schools for the city and county of Denver, at the first election under its charter, adopted pursuant to this article, was not entitled to receive, in such office, the salary prescribed by the general law, but only that fixed by the charter. Lawson v. Meyer, 54 Colo. 96, 129 P. 197 (1913).

Applied in Mountain States Legal Found. v. Denver Sch. Dist. No. 1, 459 F. Supp. 357 (D. Colo. 1978); Carstens v. Lamm, 543 F. Supp. 68 (D. Colo. 1982).

Section 8. Conflicting constitutional provisions declared inapplicable. Anything in the constitution of this state in conflict or inconsistent with the provisions of this amendment is hereby declared to be inapplicable to the matters and things by this amendment covered and provided for.

Source: L. 01: Entire article added, p. 106.

ANNOTATION

Parts of constitution in conflict with this article are inapplicable. Under this section, it is only the things in the constitution that are in conflict or inconsistent with the provisions of this article that are declared to be inapplicable to the matters covered therein. Dixon v. People ex rel. Elliott, 53 Colo. 527, 127 P. 930 (1912).

The provisions of this section did not apply to art. XXII, Colo. Const. People ex rel. Carlson v. City Council, 60 Colo. 370, 153 P. 690 (1915).

Power to issue bonds is not limited by this section. A bond issue authorized by municipal ordinance does not violate the limitations imposed by § 6, as the home rule amendment specifically empowers a home rule city to issue revenue bonds. Davis v. City of

Pueblo, 158 Colo. 319, 406 P.2d 671 (1965).

Or by § 8 of art. XI, Colo. Const. A home rule city which undertakes to issue bonds and finance a program of capital improvements, a matter of local and municipal concern, is not limited in its power to do so by § 8 of art. XI, Colo. Const. Berman v. City & County of Denver, 156 Colo. 538, 400 P.2d 434 (1965).

This article has superseded art. XI, Colo. Const. Davis v. City of Pueblo, 158 Colo. 319, 406 P.2d 671 (1965).

Section 9. Procedure and requirements for adoption. (1) Notwithstanding any provision in sections 4, 5, and 6 of this article to the contrary, the registered electors of each city and county, city, and town of the state are hereby vested with the power to adopt, amend, and repeal a home rule charter.

(2) The general assembly shall provide by statute procedures under which the registered electors of any proposed or existing city and county, city, or town may adopt, amend, and repeal a municipal home rule charter. Action to initiate home rule shall be by petition, signed by not less than five percent of the registered electors of the proposed or existing city and county, city, or town, or by proper ordinance by the city council or board of trustees of a town, submitting the question of the adoption of a municipal home rule charter to the registered electors of the city and county, city, or town. No municipal home rule charter, amendment thereto, or repeal thereof, shall become effective until approved by a majority of the registered electors of such city and county, city, or town voting thereon. A new city or town may acquire home rule status at the time of its incorporation.

(3) The provisions of this article as they existed prior to the effective date of this section, as they relate to procedures for the initial adoption of home rule charters and for the amendment of existing home rule charters, shall continue to apply until superseded by statute.

(4) It is the purpose of this section to afford to the people of all cities, cities and counties, and towns the right to home rule regardless of population, period of incorporation, or other limitation, and for this purpose this section shall be self-executing. It is the further purpose of this section to facilitate adoption and amendment of home rule through such procedures as may hereafter be enacted by the general assembly.

Source: L. 69: Entire section added, p. 1250, effective January 1, 1972. **L. 84:** (1) and (2) amended, p. 1146, effective upon proclamation of the Governor, **L. 85,** p. 1791, January 14, 1985.

Cross references: For the power of the citizens of the city and county of Denver regarding new charters, amendments, or measures, see § 5 of this article.

ANNOTATION

A proceeding to obtain a home rule charter may be initiated at the same time a petition for incorporation is filed. Malmgren v. Copper Mountain, Inc., 873 P.2d 44 (Colo. App. 1994).

Requirement that signatories to petitions for

incorporation be landowners was not unconstitutional limitation on municipality's ability to achieve home rule status where such requirement was applicable only to signatories to petition for incorporation, not to signatories to petition for home rule charter. Malmgren v. Copper Mountain, Inc., 873 P.2d 44 (Colo. App. 1994).

Section 10. City and county of Broomfield - created. The city of Broomfield is a preexisting municipal corporation and home rule city of the state of Colorado, physically situated in parts of Adams, Boulder, Jefferson, and Weld counties. On and after November 15, 2001, all territory in the municipal boundaries of the city of Broomfield shall be detached from the counties of Adams, Boulder, Jefferson, and Weld and shall be consolidated into a single county and municipal corporation with the name "The City and County of Broomfield". Prior to November 15, 2001, the city of Broomfield shall not extend its boundaries beyond the annexation boundary map approved by the Broomfield city council on April 28, 1998, as an amendment to the city of Broomfield 1995 master plan. The existing charter of the said city of Broomfield shall become the charter of the city and county of Broomfield.

The city and county of Broomfield shall have perpetual succession; shall own, possess, and hold all real and personal property, including water rights, the right to use water, and contracts for water, currently owned, possessed, or held by the said city of Broomfield; shall assume, manage, and dispose of all trusts in any way connected therewith; shall succeed to all the rights and liabilities of, shall acquire all benefits of, and shall assume and pay all bonds, obligations, and indebtedness of said city of Broomfield and its proportionate share of the general obligation indebtedness and, as provided by intergovernmental agreement, its proportionate share of revenue bond obligations of the counties of Adams, Boulder, Jefferson, and Weld on and after November 15, 2001.

The city and county of Broomfield may sue and defend, plead, and be impleaded in all courts and in all matters and proceedings; may have and use a common seal and alter the same at pleasure; may grant franchises; may purchase, receive, hold, and enjoy, or sell and dispose of real and personal property; may receive bequests, gifts, and donations of real and personal property, or real and personal property in trust for public, charitable, or other purposes, and do all things and acts necessary to carry out the purposes of such gifts, bequests, donations, and trusts with power to manage, sell, lease, or otherwise dispose of the same in accordance with the terms of the gift, bequest, donation, or trust.

The city and county of Broomfield shall have the power within and without its territorial limits to construct, condemn, purchase, acquire, lease, add to, maintain, conduct, and operate water works, water supplies, sanitary sewer facilities, storm water facilities, parks, recreation facilities, open space lands, light plants, power plants, heating plants, electric and other energy facilities and systems, gas facilities and systems, transportation systems, cable television systems, telecommunication systems, and other public utilities or works or ways local in use and extent, in whole or in part, and everything required therefor, for

the use of said city and county and the inhabitants thereof; to purchase in whole or in part any such systems, plants, works, facilities, or ways, or any contracts in relation or connection thereto that may exist, and may enforce such purchase by proceedings at law as in taking land for public use by right of eminent domain; and to issue bonds in accordance with its charter in any amount necessary to carry out any said powers or purposes, as the charter may provide and limit. The city and county of Broomfield shall have all of the powers of its charter and shall have all of the powers set out in section 6 of this article, including the power to make, amend, add to, or replace its charter as set forth in section 9 of this article. The charter provisions and procedures shall supersede any constitutional or statutory limitations and procedures regarding financial obligations. The city and county of Broomfield shall have all powers conferred to home rule municipalities and to home rule counties by the constitution and general laws of the state of Colorado that are not inconsistent with the constitutional provisions creating the city and county of Broomfield.

Prior to November 15, 2001, the charter and ordinances of the city of Broomfield shall govern all local and municipal matters of the city. On and after November 15, 2001, the constitutional provisions creating and governing the city and county of Broomfield, the city and county charter adopted in accordance with these constitutional provisions, and the ordinances existing and adopted from time to time shall govern all local and municipal matters of the city and county of Broomfield.

On and after November 15, 2001, the requirements of section 3 of article XIV of this constitution and the general annexation and consolidation statutes of the state relating to counties shall apply to the city and county of Broomfield. On and after November 15, 2001, any contiguous territory, together with all property belonging thereto, hereafter annexed to or consolidated with the city and county of Broomfield under any laws of this state, in whatsoever county the same may be at the time, shall be detached from such other county and become a municipal and territorial part of the city and county of Broomfield.

On and after November 15, 2001, no annexation or consolidation proceeding shall be initiated pursuant to the general annexation and consolidation statutes of the state to annex lands to or consolidate lands with the city and county of Broomfield until such proposed annexation or consolidation is first approved by a majority vote of a seven-member boundary control commission. The boundary control commission shall be composed of one commissioner from each of the boards of commissioners of Adams, Boulder, Jefferson, and Weld counties, respectively, and three elected officials of the city and county of Broomfield. The commissioners from each of the said counties shall be appointed by resolution of the respective county boards of commissioners. The three elected officials from the city and county of Broomfield shall be appointed by the mayor of the city and county of Broomfield. The boundary control commission shall adopt all actions, including actions regarding procedural rules, by majority vote. Each member of the boundary control commission shall have one vote, including the

commissioner who acts as chairperson of the commission. The commission shall file all procedural rules adopted by the commission with the secretary of state.

Source: L. 98: Entire section added, p. 2225, effective upon proclamation of the Governor, **L. 99,** p. 2269, December 30, 1998.

Section 11. Officers - city and county of Broomfield. The officers of the city and county of Broomfield shall be as provided for by its charter or ordinances. The jurisdiction, term of office, and duties of such officers shall commence on November 15, 2001. The qualifications and duties of all such officers shall be as provided for by the city and county charter and ordinances, but the ordinances shall designate the officers who shall perform the acts and duties required of county officers pursuant to this constitution or the general laws of the state of Colorado, as far as applicable. All compensation for elected officials shall be determined by ordinance and not by state statute. If any elected officer of the city and county of Broomfield shall receive any compensation, such officer shall receive the same as a stated salary, the amount of which shall be fixed by ordinance within limits fixed by the city and county charter or by resolution approving the city and county budget and paid in equal monthly payments. No elected officer shall receive any increase or decrease in compensation under any ordinance or resolution passed during the term for which such officer was elected.

Source: L. 98: Entire section added, p. 2227, effective upon proclamation of the Governor, **L. 99,** p. 2269, December 30, 1998.

Section 12. Transfer of government. Upon the canvass of the vote showing the adoption of the constitutional provisions creating and governing the city and county of Broomfield, the governor shall issue a proclamation accordingly, and, on and after November 15, 2001, the city of Broomfield and those parts of the counties of Adams, Boulder, Jefferson, and Weld included in the boundaries of said city shall be consolidated into the city and county of Broomfield. The duties and terms of office of all officers of Adams, Boulder, Jefferson, and Weld counties shall no longer be applicable to and shall terminate with regard to the city and county of Broomfield. On and after November 15, 2001, the terms of office of the mayor and city council of the city of Broomfield shall terminate with regard to the city of Broomfield and said mayor and city council shall become the mayor and city council of the city and county of Broomfield. The city council of the city and county of Broomfield, in addition to performing the duties prescribed in the city and county charter and ordinances, shall perform the duties of a board of county commissioners or may delegate certain duties to various boards and commissions appointed by the city council of the city and county of Broomfield. The city and county of Broomfield shall be a successor district of the city of Broomfield under section 20 of article X of this constitution. Any voter approval granted the city of Broomfield under section 20 of article X of this constitution prior to November 15, 2001, shall be considered voter approval under said section for the city and county of

Broomfield. The city and county of Broomfield shall have the power to continue to impose and collect sales, use, and property taxes that were imposed by the city of Broomfield and the counties of Adams, Boulder, Jefferson, and Weld within the areas where said taxes were imposed on November 14, 2001, until the voters of the city and county of Broomfield approve uniform sales, use, and property taxes within the city and county of Broomfield or approve increased sales, use, or property taxes within the city and county of Broomfield. Any violation of any criminal statutes of the state of Colorado occurring on or before November 14, 2001, shall continue to be prosecuted within the county where the violation originally occurred.

Source: L. 98: Entire section added, p. 2228, effective upon proclamation of the Governor, **L. 99,** p. 2269, December 30, 1998.

ANNOTATION

The city and county of Broomfield is entitled to retain and use property taxes assessed in 2001 by a county in which a portion of the city of Broomfield was located before the creation of the city and county. Adams County v. City & County of Broomfield, 78 P.3d 1129 (Colo. App. 2003).

The city and county of Broomfield is permitted to retain and use the property taxes payable in 2002 attributable to Jefferson county's 2001 assessment on property that became part of the city and county of Broomfield. Although this section does not expressly allow Broomfield to retain and use property taxes it collects, voters must have known that Broomfield would assume the duties and responsibilities formerly carried out by any other counties with respect to property within the new city and county, and the voters also must have intended that Broomfield would have the power to retain and use the property taxes that Jefferson county formerly assessed and imposed. Bd. of County Comm'rs of Jefferson County v. City & County of Broomfield, 62 P.3d 1086 (Colo. App. 2002).

Jefferson county's argument that it is entitled to tax revenues collected in 2002 to pay for services it rendered in 2001 because taxes are paid in arrears is incorrect. The services that Jefferson county rendered in 2001 were paid for with the taxes that Jefferson county collected in 2001, and services that Broomfield rendered in 2002 were paid for with the taxes Broomfield collected in 2002. This interpretation gives a consistent, harmonious, and sensible effect to the various statutes that create the property tax schemes. A different conclusion permitting Jefferson county to obtain the 2002 taxes would represent a windfall to it, because the services for the residents of the property no longer in Jefferson county, but now lying within Broomfield, must be provided and paid for by Broomfield. Bd. of County Comm'rs of Jefferson County v. City & County of Broomfield, 62 P.3d 1086 (Colo. App. 2002).

Section 13. Sections self-executing - appropriations. Sections 10 through 13 of this article shall be in all respects self-executing and shall be construed so as to supersede any conflicting constitutional or statutory provision that would otherwise impede the creation of the city and county of Broomfield or limit any of the provisions of those sections. Except as otherwise provided in sections 10 through 13, said sections shall be effective on and after November

15, 2001. After the adoption of the constitutional provisions creating and governing the city and county of Broomfield, the general assembly may appropriate funds, if necessary, in cooperation with the city and county of Broomfield to implement these constitutional provisions at the state level.

Source: L. 98: Entire section added, p. 2228, effective upon proclamation of the Governor, **L. 99,** p. 2269, December 30, 1998.

ARTICLE XXI
Recall from Office

Cross references: For recall of state and county officers, see part 1 of article 12 of title 1; for recall of municipal officers see part 5 of article 4 of title 31.

Section 1. State officers may be recalled. Every elective public officer of the state of Colorado may be recalled from office at any time by the registered electors entitled to vote for a successor of such incumbent through the procedure and in the manner herein provided for, which procedure shall be known as the recall, and shall be in addition to and without excluding any other method of removal provided by law.

The procedure hereunder to effect the recall of an elective public officer shall be as follows:

A petition signed by registered electors entitled to vote for a successor of the incumbent sought to be recalled, equal in number to twenty-five percent of the entire vote cast at the last preceding election for all candidates for the position which the incumbent sought to be recalled occupies, demanding an election of the successor to the officer named in said petition, shall be filed in the office in which petitions for nominations to office held by the incumbent sought to be recalled are required to be filed; provided, if more than one person is required by law to be elected to fill the office of which the person sought to be recalled is an incumbent, then the said petition shall be signed by registered electors entitled to vote for a successor to the incumbent sought to be recalled equal in number to twenty-five percent of the entire vote cast at the last preceding general election for all candidates for the office, to which the incumbent sought to be recalled was elected as one of the officers thereof, said entire vote being divided by the number of all officers elected to such office, at the last preceding general election; and such petition shall contain a general statement, in not more than two hundred words, of the ground or grounds on which such recall is sought, which statement is intended for the information of the registered electors, and the registered electors shall be the sole and exclusive judges of the legality, reasonableness and sufficiency of such ground or grounds assigned for such recall, and said ground or grounds shall not be open to review.

Source: Initiated 12: Entire article added, effective January 22, 1913, see **L. 13,** p. 672. **L. 84:** Entire section amended, p. 1147, effective upon proclamation of the Governor, **L. 85,** p. 1791, January 14, 1985.

Law reviews. For note, "A Study of the Colorado Commission on Judicial Qualifications", see 47 Den. L.J. 491 (1970).

Recall, initiative, and referendum are fundamental rights of a republican form of government which the people have reserved unto themselves. Such a reservation of power in the people must be liberally construed in favor of the right of the people to exercise it. Conversely, limitations on the power of referendum must be strictly construed. Bernzen v. City of Boulder, 186 Colo. 81, 525 P.2d 416 (1974).

Power of recall is a fundamental constitutional right of Colorado citizens, and the reservation of this power in the people must be liberally construed. Groditsky v. Pinckney, 661 P.2d 279 (Colo. 1983).

And is cumulative of power to remove. The power to remove public officials pursuant to art. XIII of this constitution and the power of recall under this article are cumulative and concurrent rather than exclusive remedies available to the people. Groditsky v. Pinckney, 661 P.2d 279 (Colo. 1983).

"Every elective public officer of the state of Colorado" refers to officers of state, as distinguished from members of school boards and county, city, town, and precinct officers. Guyer v. Stutt, 68 Colo. 422, 191 P. 120 (1920).

Where it was contended that the second paragraph of this section relates to all elective public officers instead of elective public officers of the state; but if so why does not the first paragraph omit the words "of the state of Colorado"? Since it does not, and since not elsewhere in the article is there any statement that any other elective public officer may be recalled under its provisions, it is fair to say that the second paragraph refers to state officers only. This conclusion is strengthened by the provision that, under section 2 of this article, the petition must be submitted to the governor and that the governor must order the election and fix the date for holding it, and, by the provisions of section 4 of this article, that the state shall pay the election expenses of the unrecalled incumbent. Hall v. Cummings, 73 Colo. 74, 213 P. 328 (1923).

Except as provided in section 4 of this article. The recall was intended to apply only to the elective public officers of the state except as provided in section 4 of this article for the recall of city, county, and town officers. Guyer v. Stutt, 68 Colo. 422, 191 P. 120 (1920).

Article held inapplicable to school directors. Guyer v. Stutt, 68 Colo. 422, 191 P. 120 (1920).

Every elective officer who discharges a governmental function is subject to recall, provided there is a constitutional provision or enabling legislation prescribing the procedure to be followed. Groditsky v. Pinckney, 661 P.2d 279 (Colo. 1983).

Elective officers of subordinate units of government may be recalled. To the extent that prior supreme court decisions hold that elective officers of subordinate units of state government may not be recalled under § 4 of this article, those cases are overruled. Groditsky v. Pinckney, 661 P.2d 279 (Colo. 1983).

Trial court erred in concluding that requirements of this section do not apply to petitions seeking elections for the recall of municipal officers. Combs v. Nowak, 43 P.3d 743 (Colo. App. 2001).

Reapportionment plan nullifying recall power unconstitutional. A reapportionment plan which virtually nullifies the power of recall cannot be constitutionally sanctioned. In re Reapportionment of Colo. Gen. Ass'y, 647 P.2d 191 (Colo.

1982).

Effect of signature requirement. The framers, by requiring that a recall petition contain the signatures of at least 25 percent of all votes cast in the last election for all candidates for the position which the person sought to be recalled occupies, assured that a recall election will not be held in response to the wishes of a small and unrepresentative minority. Bernzen v. City of Boulder, 186 Colo. 81, 525 P.2d 416 (1974).

County clerk must accept petitions for filing even if it appears that some signatures were signed after sixty days from the date of the first signature. The clerk may then conduct a hearing on protests, if any, including protests on the basis of noncompliance of the 60-day rule. Dodge v. County Clerk and Recorder, 768 P.2d 1271 (Colo. App. 1988).

Right is given by third paragraph of section to set up in petition for recall of judge facts upon which recall is sought, even though they might tend to obstruct the administration of the law. Marians v. People ex rel. Hines, 69 Colo. 87, 169 P. 155 (1917).

As act on which recall based must be mentioned in petition. The provision of this section as to statement in the petition intends that when a citizen is of the opinion that a public officer, subject to recall, has done that which shows him to be unfit for the office which he holds, the citizen may make such act the basis of an attempt to recall the officer; and to do that he must necessarily mention said act in the recall petition. Marians v. People ex rel. Hines, 69 Colo. 87, 169 P. 155 (1917).

Dissatisfaction sufficient grounds. Colorado is not a state in which official misconduct is necessarily required as a ground for recall. Rather, the dissatisfaction, whatever the reason, of the electorate is sufficient to set the recall procedures in motion. Bernzen v. City of Boulder, 186 Colo. 81, 525 P.2d 416 (1974).

And court's inquiry into sufficiency of grounds prohibited. Trial court's inquiry into the sufficiency of the statement of the grounds for recall clearly infringes upon the powers reserved by the people and was error. Bernzen v. City of Boulder, 186 Colo. 81, 525 P.2d 416 (1974).

Recall political in nature. The limitation on judicial review of the grounds for recall makes it clear that the recall intended by the framers of the Colorado constitution is purely political in nature. Bernzen v. City of Boulder, 186 Colo. 81, 525 P.2d 416 (1974).

Circulation of petition for recall of district judge is not contempt of court, where the facts set out in the petition are truthfully stated, though with uncalled-for bitterness. Such a petition is privileged. Marians v. People ex rel. Hines, 69 Colo. 87, 169 P. 155 (1917).

Applied in People ex rel. Losavio v. Gentry, 199 Colo. 153, 606 P.2d 856 (1980); Kallenberger v. Buchanan, 649 P.2d 314 (Colo. 1982).

Section 2. Form of recall petition. Any recall petition may be circulated and signed in sections, provided each section shall contain a full and accurate copy of the title and text of the petition; and such recall petition shall be filed in the office in which petitions for nominations to office held by the incumbent sought to be recalled are required to be filed.

The signatures to such recall petition need not all be on one sheet of paper, but each signer must add to his signature the date of his signing said petition, and his place of residence, giving his street number, if any, should he reside in a town or city. The person circulating such sheet must make and

subscribe an oath on said sheet that the signatures thereon are genuine, and a false oath, willfully so made and subscribed by such person, shall be perjury and be punished as such. All petitions shall be deemed and held to be sufficient if they appear to be signed by the requisite number of signers, and such signers shall be deemed and held to be registered electors, unless a protest in writing under oath shall be filed in the office in which such petition has been filed, by some registered elector, within fifteen days after such petition is filed, setting forth specifically the grounds of such protest, whereupon the officer with whom such petition is filed shall forthwith mail a copy of such protest to the person or persons named in such petition as representing the signers thereof, together with a notice fixing a time for hearing such protest not less than five nor more than ten days after such notice is mailed. All hearings shall be before the officer with whom such protest is filed, and all testimony shall be under oath. Such hearings shall be summary and not subject to delay, and must be concluded within thirty days after such petition is filed, and the result thereof shall be forthwith certified to the person or persons representing the signers of such petition. In case the petition is not sufficient it may be withdrawn by the person or a majority of the persons representing the signers of such petition, and may, within fifteen days thereafter, be amended and refiled as an original petition. The finding as to the sufficiency of any petition may be reviewed by any state court of general jurisdiction in the county in which such petition is filed, upon application of the person or a majority of the persons representing the signers of such petition, but such review shall be had and determined forthwith. The sufficiency, or the determination of the sufficiency, of the petition referred to in this section shall not be held, or construed, to refer to the ground or grounds assigned in such petition for the recall of the incumbent sought to be recalled from office thereby.

When such petition is sufficient, the officer with whom such recall petition was filed, shall forthwith submit said petition, together with a certificate of its sufficiency to the governor, who shall thereupon order and fix the date for holding the election not less than thirty days nor more than sixty days from the date of submission of said petition; provided, if a general election is to be held within ninety days after the date of submission of said petition, the recall election shall be held as part of said general election.

Source: Initiated 12: Entire article added, effective January 22, 1913, see **L. 13,** p. 673. **L. 84:** Entire section amended, p. 1148, effective upon proclamation of the Governor, **L. 85,** p. 1791, January 14, 1985.

ANNOTATION

Right of recall is a fundamental right of the people. Hazelwood v. Saul, 619 P.2d 499 (Colo. 1980).

Statutes governing exercise of the power to recall are to be liberally construed in favor of the ability to exercise it, and any limitations on that power must be strictly construed. Hazelwood v. Saul, 619 P.2d 499 (Colo. 1980).

Importance of petition is fully recognized in this article by the several provisions concerning it. The signers must be qualified electors; each one must add to his signature the date of signing and his place of residence, with street and number, if in town or

city; and the genuineness of the signatures must be attested under oath by the circulator of the sheets for signature. The petition is to contain a statement of the grounds of recall, in not more than two hundred words, and must be signed by electors in number equal to one quarter of the vote cast at the last preceding election. Each section of the petition must contain its full title and text. Landrum v. Ramer, 64 Colo. 82, 172 P. 3 (1918).

And petition must conform with this section. This section provides for a series of steps leading up to a recall election, and the first act which partakes of an official character is the filing of a recall petition in the office of the secretary of state. The instrument to be filed is to be of the form and substance prescribed by the amendment, and nothing short of that is a petition with a right to be filed. Until there is such a petition, the movement for an election is not initiated. Landrum v. Ramer, 64 Colo. 82, 172 P. 3 (1918).

Date of signing and place of residence must be added. A signature is not complete, and the writer of it not a "signer" unless there be added the date of signing and place of residence. Until it has been determined that the requisite number of persons have signed, and added to their signatures the matters required, and the verifying affidavits have been made, no one can say that there is a recall petition at all. These matters can be determined from the papers by inspection and computation. Landrum v. Ramer, 64 Colo. 82, 172 P. 3 (1918).

However, electors are presumed qualified. Whether or not signers of a recall petition are qualified electors need not be considered in the first instance; their qualification is presumed until a protest is filed. This is a reasonable and almost necessary provision, in order to make it possible to file a petition within a reasonable time after it is presented. There is no such reason for presuming correctness as to the matters which appear on the face of the papers, and it is worthy of notice that there is but one of all the requirements to which this presumption attaches. Landrum v. Ramer, 64 Colo. 82, 172 P. 3 (1918).

Secretary of state may examine petition before filing it. The secretary of state is not under duty to immediately file in his office a paper presented to him as a petition for an election to recall an officer. It is his duty to examine what is presented and to determine whether it complies with the requirements of this section, and he is entitled to a reasonable time for such examination. Landrum v. Ramer, 64 Colo. 82, 172 P. 3 (1918).

Applied in Bernzen v. City of Boulder, 186 Colo. 81, 525 P.2d 416 (1974); Groditsky v. Pinckney, 661 P.2d 279 (Colo. 1983).

Section 3. Resignation - filling vacancy. If such officer shall offer his resignation, it shall be accepted, and the vacancy caused by such resignation, or from any other cause, shall be filled as provided by law; but the person appointed to fill such vacancy shall hold his office only until the person elected at the recall election shall qualify. If such officer shall not resign within five days after the sufficiency of the recall petition shall have been sustained, the governor shall make or cause to be made publication of notice for the holding of such election, and officers charged by law with duties concerning elections shall make all arrangements for such election, and the same shall be conducted, returned and the result thereof declared in all respects as in the case of general elections.

On the official ballot at such elections shall be printed in not more than

200 words, the reasons set forth in the petition for demanding his recall, and in not more than three hundred words there shall also be printed, if desired by him, the officer's justification of his course in office. If such officer shall resign at any time subsequent to the filing thereof, the recall election shall be called notwithstanding such resignation.

There shall be printed on the official ballot, as to every officer whose recall is to be voted on, the words, "Shall (name of person against whom the recall petition is filed) be recalled from the office of (title of the office)?" Following such question shall be the words, "Yes" and "No", on separate lines, with a blank space at the right of each, in which the voter shall indicate, by marking a cross (X), his vote for or against such recall.

On such ballots, under each question, there shall also be printed the names of those persons who have been nominated as candidates to succeed the person sought to be recalled; but no vote cast shall be counted for any candidate for such office, unless the voter also voted for or against the recall of such person sought to be recalled from said office. The name of the person against whom the petition is filed shall not appear on the ballot as a candidate for the office.

If a majority of those voting on said question of the recall of any incumbent from office shall vote "no", said incumbent shall continue in said office; if a majority shall vote "yes", such incumbent shall thereupon be deemed removed from such office upon the qualification of his successor.

If the vote had in such recall elections shall recall the officer then the candidate who has received the highest number of votes for the office thereby vacated shall be declared elected for the remainder of the term, and a certificate of election shall be forthwith issued to him by the canvassing board. In case the person who received the highest number of votes shall fail to qualify within fifteen days after the issuance of a certificate of election, the office shall be deemed vacant, and shall be filled according to law.

Candidates for the office may be nominated by petition, as now provided by law, which petition shall be filed in the office in which petitions for nomination to office are required by law to be filed not less than fifteen days before such recall election.

Source: Initiated 12: Entire article added, effective January 22, 1913, see **L. 13,** p. 674.

ANNOTATION

Recalled officer may not succeed himself. Home-rule cities may provide for an election system in which candidates may be elected by a plurality vote. They may not, however, make it possible to frustrate the will of the majority by allowing a recalled officer to succeed himself. Bernzen v. City of Boulder, 186 Colo. 81, 525 P.2d 416 (1974).

Section 4. Limitation - municipal corporations may adopt, when.

No recall petition shall be circulated or filed against any officer until he has actually held his office for at least six months, save and except it may be filed

against any member of the state legislature at any time after five days from the convening and organizing of the legislature after his election.

After one recall petition and election, no further petition shall be filed against the same officer during the term for which he was elected, unless the petitioners signing said petition shall equal fifty percent of the votes cast at the last preceding general election for all of the candidates for the office held by such officer as herein above defined.

In any recall election of a state elective officer, if the incumbent whose recall is sought is not recalled, he shall be repaid from the state treasury for the expenses of such election in the manner provided by law. The general assembly may establish procedures for the reimbursement by a local governmental entity of expenses incurred by an incumbent elective officer of such governmental entity whose recall is sought but who is not recalled.

If the governor is sought to be recalled under the provisions of this article, the duties herein imposed upon him shall be performed by the lieutenant-governor; and if the secretary of state is sought to be recalled, the duties herein imposed upon him, shall be performed by the state auditor.

The recall may also be exercised by the registered electors of each county, city and county, city and town of the state, with reference to the elective officers thereof, under such procedure as shall be provided by law.

Until otherwise provided by law, the legislative body of any such county, city and county, city and town may provide for the manner of exercising such recall powers in such counties, cities and counties, cities and towns, but shall not require any such recall to be signed by registered electors more in number than twenty-five percent of the entire vote cast at the last preceding election, as in section 1 hereof more particularly set forth, for all the candidates for office which the incumbent sought to be recalled occupies, as herein above defined.

Every person having authority to exercise or exercising any public or governmental duty, power or function, shall be an elective officer, or one appointed, drawn or designated in accordance with law by an elective officer or officers, or by some board, commission, person or persons legally appointed by an elective officer or officers, each of which said elective officers shall be subject to the recall provision of this constitution; provided, that, subject to regulation by law, any person may, without compensation therefor, file petitions, or complaints in courts concerning crimes, or do police duty only in cases of immediate danger to person or property.

Nothing herein contained shall be construed as affecting or limiting the present or future powers of cities and counties or cities having charters adopted under the authority given by the constitution, except as in the last three preceding paragraphs expressed.

In the submission to the electors of any petition proposed under this article, all officers shall be guided by the general laws of the state, except as otherwise herein provided.

This article is self-executing, but legislation may be enacted to facilitate its operations, but in no way limiting or restricting the provisions of this article,

or the powers herein reserved.

Source: Initiated 12: Entire article added, effective January 22, 1913, see **L. 13,** p. 676. **L. 84:** Entire section amended, p. 1149, effective upon proclamation of the Governor, **L. 85,** p. 1791, January 14, 1985. **L. 88:** Entire section amended, p. 1455, effective upon proclamation of the Governor, **L. 89,** p. 1660, January 3, 1989.

Cross references: For recall of state and county officers, see part 1 article 12 of title 1; for recall of municipal officers, see part 5 of article 4 of title 31; for recall of special district directors, see § 32-1-906.

ANNOTATION

Law reviews. For comment, "Water: Statewide or Local Concern?, City of Thornton v. Farmers Reservoir & Irrigation Co., 194 Colo. 526, 575 P.2d 382 (1978)", see 56 Den. L.J. 625 (1979).

Power of recall is fundamental right of citizens within a representative democracy. Shroyer v. Sokol, 191 Colo. 32, 550 P.2d 309 (1976).

Reservation of power of recall in people must be liberally construed in favor of the ability to exercise it; conversely, limitations on the power of recall must be strictly construed. Shroyer v. Sokol, 191 Colo. 32, 550 P.2d 309 (1976).

Applicability of section. This section, by referring expressly to the last preceding general election, shows the recall applies to state officers only, except as it otherwise makes direct provision for the recall of city, county, and town officers. Guyer v. Stutt, 68 Colo. 422, 191 P. 120 (1920).

As recall power not in conflict with state constitution delegated. The Colorado constitution delegates the recall power to the subordinate levels of state government; however, this delegation of power must be limited to procedural matters and substantive provisions not in conflict with the state constitution. Bernzen v. City of Boulder, 186 Colo. 81, 525 P.2d 416 (1974); Shroyer v. Sokol, 191 Colo. 32, 550 P.2d 309 (1976).

Local officers may not be recalled without further legislation. A county officer cannot be recalled without further legislation. Hall v. Cummings, 73 Colo. 74, 213 P. 328 (1923).

This section provides that the recall may also be exercised with reference to the elective officers of each county, city, and town, but, until otherwise provided by law, leaves the manner of exercising the recall power, as to these officers, to be provided by the legislative body of the county, city, and town, showing that, for the purpose of the recall, in the sense contained in this article, the elective officers of counties, cities, and towns are not regarded as public officers of the state, but as city, county, and town officers. Of course, it follows that the recall power mentioned in this section cannot apply to county, city, and town officers until the manner of exercising it shall be provided according to law. Nowhere in the instrument is it said that school directors may be recalled. Guyer v. Stutt, 68 Colo. 422, 191 P. 120 (1920).

School directors intentionally omitted from recall. By classifying practically all of the elective public officers, and omitting school directors, it would seem they were intentionally omitted from the recall. The framers of the amendment must be presumed to have intended what is expressly and specifically therein stated rather than what might be inferred from the use of ambiguous generalities. Guyer v. Stutt, 68 Colo. 422, 191 P. 120 (1920).

Every elective officer who

discharges a governmental function is subject to recall, provided there is a constitutional provision or enabling legislation prescribing the procedure to be followed. Groditsky v. Pinckney, 661 P.2d 279 (Colo. 1983).

Elective officers of subordinate units of state government may be recalled. To the extent that prior supreme court decisions hold that elective officers of subordinate units of state government may not be recalled under this section, those cases are overruled. Groditsky v. Pinckney, 661 P.2d 279 (Colo. 1983).

Provision of city charter amendment providing for compulsory, binding arbitration of all unresolved municipal-police union labor disputes arising from collective bargaining agreement was unlawful as removing governmental decision-making from aegis of elected representatives, and placing it in the hands of an outside person who had no accountability to the public. Greeley Police Union v. City Council, 191 Colo. 419, 553 P.2d 790 (1976).

However, a city charter amendment requiring binding arbitration of unresolved labor issues with police officers does not violate this provision where the city council creates the panel of arbitrators from which the arbitrator or arbitrators are selected, where the council can modify the membership on the panel with specified restrictions, and where other standards and safeguards exist. Fraternal Order of Police v. City of Commerce City, 996 P.2d 133 (Colo. 2000).

Arbitration provisions in Labor Peace Act do not violate this section. Where arbitrator was selected by a politically accountable government official the arbitration process was constitutional under this section. Reg'l Transp. Dist. v. Dept. of Labor, 830 P.2d 942 (Colo. 1992).

Availability of judicial review of arbitrator's award, under "unfair, capricious, or unjust" standard, and of director's decision to order arbitration, imposed sufficient standards and safeguards. Therefore, no unlawful delegation of legislative authority occurred. Reg'l Transp. Dist. v. Dept. of Labor, 830 P.2d 942 (Colo. 1992).

Arbitrator appointed by the executive director of the department of labor was appointment by a politically accountable government official in compliance with this provision. Reg'l Transp. v. Dept. of Labor, 830 P.2d 942 (Colo. 1992).

Application of 25 percent limitation. The 25 percent limitation expressed in this section does not apply only to local recall ordinances; it also applies to statutory enactments, such as § 30-10-202. Shroyer v. Sokol, 191 Colo. 32, 550 P.2d 309 (1976).

Incorporation of provisions into § 30-10-202. Both the 25 percent limitation and the electors (not necessarily registered) requirements, set forth in this section, can be incorporated by implication into § 30-10-202. Shroyer v. Sokol, 191 Colo. 32, 550 P.2d 309 (1976).

Statutory limitation on reimbursement unconstitutional. Statute which places a ten cent per voter limitation on reimbursement of expenses to an incumbent who prevails in a recall election violates this section. Passarelli v. Schoettler, 742 P.2d 867 (Colo. 1987) (decided prior to 1988 amendment to this section).

Applied in City & County of Denver v. Denver Firefighters Local 858, 663 P.2d 1032 (Colo. 1983).

Source: L. 2008: ARTICLE XXII. Intoxicating liquors, repealed in its entirety, p. 1312, effective upon proclamation of the Governor, **L. 2009,** p. 3384, January 8, 2009.

Editor's note: This article was added in 1876. For the text of this article prior

to its repeal in 2009, consult the 2008 Colorado Revised Statutes and the source notes for the history of amendments to the article.

ARTICLE XXIII
Publication of Legal Advertising

Section 1. Publication of proposed constitutional amendments and initiated and referred bills. (Repealed)

Source: L. 17: Entire article added, p. 147. **L. 94:** Entire section repealed, p. 2852, effective upon proclamation of the Governor, **L. 95,** p. 1431, January 19, 1995.

ARTICLE XXIV
Old Age Pensions

Editor's note: This article was added in 1937 and was not amended prior to 1957. It was repealed and reenacted in 1957, resulting in the addition, relocation, or elimination of sections as well as subject matter. For the text of this article prior to 1957, see volume 1 of Colorado Revised Statutes 1953.

Section 1. Fund created. A fund to be known as the old age pension fund is hereby created and established in the treasury of the state of Colorado.

Source: Initiated 56: Entire article R&RE, effective January 1, 1957, see **L. 57,** p. 554.

ANNOTATION

Law reviews. For article, "One Year Review of Constitutional and Administrative Law", see 34 Dicta 79 (1957).

Constitutionality of article. This article is not repugnant to section 4 of the enabling act; neither is it repugnant to § 10 of art. I, U.S. Const., § 4 of art. IV, U.S. Const., and § 1 of amend. XIV, U.S. Const.; nor is it invalid as containing matter which is not constitutional or fundamental in character; and it is not invalid because never lawfully or actually adopted by the vote of the electors contrary to § 5 of art. II, Colo. Const., and § 2 of art. XIX, Colo. Const. In re Interrogatories by Governor, 99 Colo. 591, 65 P.2d 7 (1937).

This article does not conflict with § 31 of art. V, Colo. Const. and, hence, does not supersede it. In re Interrogatories by Governor, 99 Colo. 591, 65 P.2d 7 (1937).

And this section is self-executing as to establishment of specified fund; otherwise not, save that the fund so created becomes the fund out of which payments will be made under the laws heretofore in force until this article is otherwise effectuated by legislation. In re Interrogatories by Governor, 99 Colo. 591, 65 P.2d 7 (1937); Fairall v. Frisbee, 104 Colo. 553, 92 P.2d 748 (1939).

This amendment is not self-executing except as to the establishment of the pension fund. Bedford v. Sinclair, 112 Colo. 176, 147 P.2d 486 (1944).

This article has no application to proceeds of city sales and use tax; state taxation in the same field as that of a municipality can coexist. The old age pension and the

state sales and use tax statutes deal exclusively with state levies and have no application to taxes levied by home rule cities, which are purely local and municipal. Berman v. City & County of Denver, 156 Colo. 538, 400 P.2d 434 (1965).

Outstanding feature of pension fund program is its trust fund character. The Colorado supreme court has recognized that the beneficiaries have a high degree of interest in the preservation of the fund. Gonzales v. Shea, 318 F. Supp. 572 (D. Colo. 1970), vacated and remanded on other grounds, 403 U.S. 927, 91 S. Ct. 2259, 29 L. Ed. 2d 706 (1971).

Applied in City & County of Denver v. People, 103 Colo. 565, 88 P.2d 89 (1939).

Section 2. Moneys allocated to fund. There is hereby set aside, allocated and allotted to the old age pension fund sums and money as follows:

(a) Eighty-five percent of all net revenue accrued or accruing, received or receivable from any and all excise taxes now or hereafter levied upon sales at retail, or any other purchase transaction; together with eighty-five percent of the net revenue derived from any excise taxes now or hereafter levied upon the storage, use, or consumption of any commodity or product; together with eighty-five percent of all license fees imposed by article 26 of title 39, Colorado Revised Statutes, and amendments thereto; provided, however, that no part of the revenue derived from excise taxes now or hereafter levied, for highway purposes, upon gasoline or other motor fuel, shall be made a part of said old age pension fund.

(b) Eighty-five percent of all net revenue accrued or accruing, received or receivable from taxes of whatever kind upon all malt, vinous, or spirituous liquor, both intoxicating and non-intoxicating, and license fees connected therewith.

(c) (Deleted by amendment, L. 2006, p. 2956, effective upon proclamation of the Governor, L. 2007, p. 2964, December 31, 2006.)

(d) All grants in aid from the federal government for old age assistance.

(e) (Deleted by amendment, L. 2006, p. 2956, effective upon proclamation of the Governor, L. 2007, p. 2964, December 31, 2006.)

(f) Such other money as may be allocated to said fund by the general assembly.

Source: Initiated 56: Entire article R&RE, effective January 1, 1957, see **L. 57,** p. 554. **L. 2006:** (a) to (c) and (e) amended, p. 2956, effective upon proclamation of the Governor, **L. 2007,** p. 2964, December 31, 2006.

Cross references: For funds allocated to the old age pension fund, see § 26-2-113.

ANNOTATION

Amendment of section constitutional. This section and section 5 of this article are not invalid by reason of the fact that the 1936 amendment of the section attempted to extend or amend an act by reference to its title only, contrary to the provisions of § 24 of art. V, Colo. Const. In re Interrogatories of the Governor, 99 Colo. 591, 65 P.2d 7 (1937).

Amendment not retroactive. The amendment

providing, inter alia, that beginning January 1, 1937, 85 percent of the revenue derived from excise taxes on liquors shall become a part of the old-age pension fund, is not retroactive. City & County of Denver v. People, 103 Colo. 565, 88 P.2d 89, appeal dismissed, 307 U.S. 615, 59 S. Ct. 1044, 83 L. Ed. 1496, reh'g denied, 308 U.S. 633, 60 S. Ct. 69, 84 L. Ed. 527 (1939).

Provision self-executing. This section of the constitution sets aside 85 percent of license fees and allots them to the old-age pension fund, which provision is self-executing. Sheridan Hotel, Inc. v. Perkins, 118 Colo. 499, 197 P.2d 468 (1948).

Funds allocated but no tax levied under this amendment. While the pension amendment to the constitution directly allocates certain excise tax levies and license fees, and, contingently, other revenues, to the old-age pension fund, still, in and of its terms, such amendment does not operate to levy a tax of any kind upon anything. Bedford v. Sinclair, 112 Colo. 176, 147 P.2d 486 (1944).

Revenue from municipal tax not included. Subsection (a) contains no language which expressly or by reasonable inference refers to taxes or license fees that have been imposed by a municipality, or otherwise than by the usual legislative procedure of the state as a whole. State v. City & County of Denver, 106 Colo. 519, 107 P.2d 317 (1940).

The revenue from a cigarette tax collected under an ordinance of the city of Denver does not come within the purview of this section. State v. City & County of Denver, 106 Colo. 519, 107 P.2d 317 (1940).

A tax imposed on all liquor dealers in the city of Grand Junction by a city ordinance is not a tax upon liquor, but an occupational excise tax upon the business of selling liquor, and such taxes do not come within the purview of this section of the constitution. Post v. City of Grand Junction, 118 Colo. 434, 195 P.2d 958 (1948).

Mandamus will not lie to compel funding. Mandamus will not lie to compel state officers to set aside and place in old age pension fund 85 percent of net revenues from a public revenue service tax, although petitioner was not receiving minimum pension authorized. Conklin v. Armstrong, 106 Colo. 376, 105 P.2d 854 (1940).

Courts will not be responsible for diverting state funds in interest of particular fund. Since this amendment does not in terms segregate liquor values from values of other property, nor has the general assembly clothed the state taxing authority with power to make such segregation, or upon its value to levy a tax in behalf of the pension fund, nor has such authority attempted to take such steps, it was held that the courts would not assume responsibility for diverting legally established state funds in the interest of a particular fund, however worthy and appealing. Bedford v. Sinclair, 112 Colo. 176, 147 P.2d 486 (1944).

But certain percentage of all revenue from liquor taxes should go to pension fund. Since by this amendment a certain percentage of all revenue arising from taxes of whatever kind on liquor shall be allocated to the old age pension fund, to the extent funds resulting from ad valorem levies by the state, the counties, municipalities and school districts are augmented by the value of liquor included in total valuations, it was held that such percentage should be withheld from the funds of those several legal entities and allocated to the pension fund. Bedford v. Sinclair, 112 Colo. 176, 147 P.2d 486 (1944).

Where proceedings should have been dismissed by trial court. Where a county treasurer, perplexed as to his duty in relation to the allocation of revenues, sought a declaratory

judgment in the premises, and the trial court adjudged that subsection (b) of this section operates upon all taxes on liquor, including ad valorem taxes, but that such provision "is not self-executing", it was held that the trial court should have dismissed the proceedings. Bedford v. Sinclair, 112 Colo. 176, 147 P.2d 486 (1944).

Applied in People ex rel. Inter-Church Temperance Movement v. Baker, 133 Colo. 398, 297 P.2d 273 (1956).

Section 3. Persons entitled to receive pensions. Every citizen of the United States who has been a resident of the state of Colorado for such period as the general assembly may determine, who has attained the age of sixty years or more, and who qualifies under the laws of Colorado to receive a pension, shall be entitled to receive the same; provided, however, that no person otherwise qualified shall be denied a pension by reason of the fact that the person is the owner of real estate occupied by the person as a residence; nor for the reason that relatives may be financially able to contribute to the person's support and maintenance; nor shall any person be denied a pension for the reason that the person owns personal property which by law is exempt from execution or attachment; nor shall any person be required, in order to receive a pension, to repay, or promise to repay, the state of Colorado any money paid to the person as an old age pension.

Source: Initiated 56: Entire article R&RE, effective January 1, 1957, see **L. 57,** p. 555. **L. 2006:** Entire section amended, p. 2956, effective upon proclamation of the Governor, **L. 2007,** p. 2964, December 31, 2006.

Cross references: For eligibility for public assistance in the form of old age pensions, see § 26-2-111 (2).

ANNOTATION

Pension classifications unconstitutional. The establishment of two classes of needy citizens between the ages of 60 and 65, indistinguishable from each other except that one is composed of residents who have resided continuously in Colorado for 35 years, and the second for residents who have resided in Colorado less than 35 continuous years, which works to deny critically needed old-age pension benefits to those who have resided in Colorado less than 35 continuous years, is unconstitutional as violative of equal protection. Jeffrey v. Colo. State Dept. of Soc. Servs., 198 Colo. 265, 599 P.2d 874 (1979).

Exempt personal property determined under Colorado rather than federal law. Provision of this section excluding from calculations of need "personal property which by law is exempt from execution or attachment", refers to Colorado law, not federal law, by reason of section 26-2-109 implementing the constitution. Francis v. Colo. Bd. of Soc. Servs., 184 Colo. 136, 518 P.2d 1174 (1974).

Classification of railroad retirement annuity as income in computing need for old age pension does not conflict with this section. Francis v. Colo. Bd. of Soc. Servs., 184 Colo. 136, 518 P.2d 1174 (1974).

But income including railroad retirement annuities is not personal property within the meaning of this provision. Francis v. Colo. Bd. of Soc. Servs., 184 Colo. 136, 518 P.2d 1174 (1974).

Section 4. The state board of public welfare to administer fund. The state board of public welfare, or such other agency as may be authorized by law to administer old age pensions, shall cause all moneys deposited in the old age pension fund to be paid out as directed by this article and as required by statutory provisions not inconsistent with the provisions hereof, after defraying the expense of administering the said fund.

Source: Initiated 56: Entire article R&RE, effective January 1, 1957, see **L. 57,** p. 555.

Cross references: For the state agency authorized to administer or supervise the administration of public assistance programs, see § 26-2-104.

ANNOTATION

Intended effect of this section is that the pensioners shall receive all moneys that enter into the old age pension fund, except such as are required to defray the expense of administering the fund. Redmon v. Davis, 115 Colo. 415, 174 P.2d 945 (1946).

Balance of allocation for administrative expenses belongs to pensioners. The intended effect of this section is that the pensioners shall receive all moneys that enter into the old age pension fund except that allocated for administrative expenses, and if only a portion of the latter is used for the payment of such expenses, the balance belongs to the pensioners. Davis v. Pensioners Protective Ass'n, 110 Colo. 380, 135 P.2d 142 (1943).

Administration expenses of other relief schemes cannot be paid from old age fund. Insofar as money allocated from the old age pension fund is used to defray the expenses of administering relief schemes other than those of the old age pension plan of relief, this constitutes an unconstitutional diversion of pension funds from their constitutionally prescribed use. Davis v. Pensioners Protective Ass'n, 110 Colo. 380, 135 P.2d 142 (1943).

Authority to prorate fund. Under this article authority to prorate the old age pension fund is vested by necessary implication in state board of public welfare. Fairall v. Redmon, 107 Colo. 195, 110 P.2d 247 (1941).

Payment of funeral and burial expenses of deceased old age pensioners out of the old age pension fund is payment of a "pension" as the word is used in this article and does not violate this section or section 7 of this article. Redmon v. Davis, 115 Colo. 415, 174 P.2d 945 (1946).

Section 5. Revenues for old age pension fund continued. The excise tax on sales at retail, together with all license fees levied by article 26 of title 39, Colorado Revised Statutes, and amendments thereto, are hereby continued in full force and effect beyond the date on which said taxes and license fees would otherwise expire, and shall continue until repealed or amended; provided, however, that no law providing revenue for the old age pension fund shall be repealed, nor shall any such law be amended so as to reduce the revenue provided for the old age pension fund, except in the event that at the time of such repeal or amendment, revenue is provided for the old age pension fund in an amount at least equal to that provided by the measure amended or repealed during the calendar year immediately preceding the proposed amendment or

repeal.

Source: Initiated 56: Entire article R&RE, effective January 1, 1957, see **L. 57,** p. 555. **L. 2006:** Entire section amended, p. 2956, effective upon proclamation of the Governor, **L. 2007,** p. 2964, December 31, 2006.

ANNOTATION

Amendment of section constitutional. This section and § 2 of this article are not invalid by reason of the fact that the 1936 amendment of the section attempted to extend or amend an act by reference to its title only, contrary to the provisions of § 24 of art. V, Colo. Const. In re Interrogatories of the Governor, 99 Colo. 591, 65 P.2d 7 (1937).

Section prohibits repeal of any revenue act providing funds for old age pension unless a substitute revenue provision is enacted which furnishes an equal amount of money. Gonzales v. Shea, 318 F. Supp. 572 (D. Colo. 1970), vacated and remanded on other grounds, 403 U.S. 927, 91 S. Ct. 2259, 29 L. Ed. 2d 706 (1971).

Section 6. Basic minimum award. (a) Beginning on the effective date of this article, every person entitled to and receiving an old age pension from the state of Colorado under any former law or constitutional provision shall be entitled to receive the basic minimum award hereinafter provided for, without being required to make a new application therefor, and such basic minimum award shall be paid each month thereafter, so long as he remains qualified, to each person receiving an old age pension at the time of the adoption of this article, and such basic minimum award shall likewise be paid to each person who hereafter becomes qualified to receive an old age pension; subject, however, to the provisions of this article relating to net income from other sources.

(b) From and after the effective date of this article, the basic minimum award payable to those persons qualified to receive an old age pension shall be one hundred dollars monthly, provided, however, that the amount of net income, from whatever source, that any person qualified to receive a pension may have shall be deducted from the amount of the pension award unless otherwise provided by law.

(c) The state board of public welfare, or such other agency as may be authorized by law to administer old age pensions, shall have the power to adjust the basic minimum award above one hundred dollars per month if, in its discretion, living costs have changed sufficiently to justify that action.

Source: Initiated 56: Entire article R&RE, effective January 1, 1957, see **L. 57,** p. 556.

ANNOTATION

Receivable income deducted from pension. By this section and by statutes, particularly § 26-4-110, an old age pension recipient is chargeable with and shall have deducted from his pension any income receivable whether in cash or in kind. Colorado State Bd. of Pub. Welfare v. Champion, 141 Colo. 375, 348 P.2d 256 (1960).

Applicant living with employed spouse or with spouse of ample means who is sharing family necessaries for which the income of such spouse would be chargeable can be said to be receiving income in kind. The value thereof can be determined and the amount deducted from any pension to which the recipient may be entitled. Colorado State Bd. of Pub. Welfare v. Champion, 141 Colo. 375, 348 P.2d 256 (1960).

Section 7. Stabilization fund and health and medical care fund. (a) All the moneys deposited in the old age pension fund shall be first available for payment of basic minimum awards to qualified recipients, and no part of said fund shall be transferred to any other fund until such basic minimum awards shall have been paid.

(b) Any moneys remaining in the old age pension fund after full payment of such basic minimum awards shall be transferred to a fund to be known as the stabilization fund, which fund shall be maintained at the amount of five million dollars, and restored to that amount after any disbursements therefrom. The state board of public welfare, or such other agency as may be authorized by law to administer old age pensions, shall use the moneys in such fund only to stabilize payments of basic minimum awards.

(c) Any moneys remaining in the old age pension fund, after full payment of basic minimum awards and after establishment and maintenance of the stabilization fund in the amount of five million dollars, shall be transferred to a health and medical care fund. The state board of public welfare, or such other agency as may be authorized by law to administer old age pensions, shall establish and promulgate rules and regulations for administration of a program to provide health and medical care to persons who qualify to receive old age pensions and who are not patients in an institution for tuberculosis or mental disease; the costs of such program, not to exceed ten million dollars in any fiscal year, shall be defrayed from such health and medical care fund; provided, however, all moneys available, accrued or accruing, received or receivable, in said health and medical care fund, in excess of ten million dollars in any fiscal year shall be transferred to the general fund of the state to be used pursuant to law.

Source: Initiated 56: Entire article R&RE, effective January 1, 1957, see **L. 57,** p. 556.

ANNOTATION

Payment of funeral and burial expenses of deceased old age pensioners out of the old age pension fund is payment of a "pension" as the word is used in this article and does not violate this section or section 4 of this article. Redmon v. Davis, 115 Colo. 415, 174 P.2d 945 (1946).

Section 8. Fund to remain inviolate. All moneys deposited in the old age pension fund shall remain inviolate for the purpose for which created, and no part thereof shall be transferred to any other fund, or used or appropriated for any other purpose, except as provided for in this article.

Source: Initiated 56: Entire article R&RE, effective January 1, 1957, see **L. 57,** p. 557.

Section 9. Effective date. (Repealed)

Source: Initiated 56: Entire article R&RE, effective January 1, 1957, see **L. 57,** p. 557. **L. 2006:** Entire section repealed, p. 2957, effective upon proclamation of the Governor, **2007,** p. 2964, December 31, 2006.

ARTICLE XXV
Public Utilities

In addition to the powers now vested in the General Assembly of the State of Colorado, all power to regulate the facilities, service and rates and charges therefor, including facilities and service and rates and charges therefor within home rule cities and home rule towns, of every corporation, individual, or association of individuals, wheresoever situate or operating within the State of Colorado, whether within or without a home rule city or home rule town, as a public utility, as presently or as may hereafter be defined as a public utility by the laws of the State of Colorado, is hereby vested in such agency of the State of Colorado as the General Assembly shall by law designate.

Until such time as the General Assembly may otherwise designate, said authority shall be vested in the Public Utilities Commission of the State of Colorado; provided however, nothing herein shall affect the power of municipalities to exercise reasonable police and licensing powers, nor their power to grant franchises; and provided, further, that nothing herein shall be construed to apply to municipally owned utilities.

Source: L. 54: Entire article added, see **L. 55,** p. 693.

Cross references: For home rule cities and towns, see article XX of this constitution; for home rule counties, see article 35 of title 30; for home rule municipalities, see part 2 of article 2 of title 31; for public utilities, see title 40.

ANNOTATION

Law reviews. For article, "Utility Use of Renewable Resources: Legal and Economic Implications", see 59 U. Den. L.J. 663 (1982). For article, "Retail Competition in the Electric Utility Industry", see 60 Den. L.J. 1 (1982).

Power to regulate public utilities vested in public utilities commission. This article vests all power to regulate rates of public utilities within a home rule city, as well as elsewhere in the state, in the public utilities commission. Intermountain Rural Elec. Ass'n v. District Court, 160 Colo. 128, 414 P.2d 911 (1966); Pub. Utils. Comm'n v. City of Durango, 171 Colo. 553, 469 P.2d 131 (1970).

The addition of this article to the Colorado Constitution in 1954 granted the public utilities commission the authority to regulate privately owned public utilities within home-rule cities. City of Craig v. Pub. Utils. Comm'n, 656 P.2d 1313 (Colo. 1983).

Commission's jurisdiction is not limited by a public/private capacity distinction. Mountain States Telephone & Telegraph v. PUC, 763 P.2d 1020 (Colo. 1988).

Public utility commission's general authority to regulate does not preempt a home rule city's power to regulate its streets and utility poles and determine when a reasonable relocation of facilities is required. U S West Commc'ns v. City of Longmont, 948 P.2d 509 (Colo. 1997).

There is no requirement that company engage in every stage of manufacturing and distribution process in order to achieve the position of a utility. K.C. Elec. Ass'n v. Pub. Utils. Comm'n, 191 Colo. 96, 550 P.2d 871 (1976).

This article has granted to public utilities commission authority to issue certificates of public convenience and necessity. Miller Bros. v. Pub. Utils. Comm'n, 185 Colo. 414, 525 P.2d 443 (1974).

The public utilities commission's primary function and activity is certification, registration, and permitting of public utilities. The PUC does not offer, directly or indirectly, telephone services, electric services, motor vehicle services, or any other public utility services or programs to the public. Its function is limited to regulation of private entities and public utilities that offer such services. Reeves v. Queen City Transp., 10 F. Supp. 2d 1181 (D. Colo. 1998).

A public utility's activity does not become a "program or activity" of the PUC for purposes of the Americans with Disabilities Act merely because of the PUC's issuance of a certificate of public convenience and necessity. Reeves v. Queen City Transp., 10 F. Supp. 2d 1181 (D. Colo. 1998).

Authority of public utilities commission subject to general assembly restrictions. The authority of the public utilities commission has been made subject to restrictions which may be imposed by the general assembly. Peoples Natural Gas Div. v. Pub. Utils. Comm'n, 626 P.2d 159 (Colo. 1981); City of Montrose v. Pub. Utils. Comm'n, 732 P.2d 1181 (Colo. 1987).

Purpose of this article is to grant to general assembly authority to regulate privately owned public utilities within home rule cities, for without the grant of such power the regulation of service among the inhabitants of the city was a local matter, and laws of the state in conflict with ordinances and charter provisions enacted pursuant to art. XX, Colo. Const., had no force and effect within the municipality. City & County of Denver v. Pub. Utils. Comm'n, 181 Colo. 38, 507 P.2d 871 (1973).

Section 40-3-106 (4), which requires that a fixed public utility be ordered to increase rates charged customers in a municipality by adding a surcharge to recover the amount paid to the municipality under a franchise or license, does not violate this article as said section is a legislative restriction on the authority of the commission as authorized by this article. City of Montrose v. Pub. Utils. Comm'n, 732 P.2d 1181 (Colo. 1987).

Not municipally owned utilities operating within corporate boundaries. The public utilities commission has no jurisdiction to regulate or control the operation of a municipally owned utility which operates wholly within the territorial boundaries of a home rule city. City & County of Denver v. Pub. Utils. Comm'n, 181 Colo. 38, 507 P.2d 871 (1973).

The rationale of this article is that when a municipally owned utility operates within the municipality, there is no one who needs the protections of the public utilities commission. The electorate of the city exercises ultimate power and control over the city-run utility and if the people of the city are in any way dissatisfied with the operation of the utility, they may demonstrate their discontent at the next municipal election. K.C. Elec. Ass'n v. Pub. Utils. Comm'n, 191 Colo. 96, 550

P.2d 871 (1976).

This provision establishes that (1) the public utilities commission cannot interfere with towns and cities in the exercise of their police power, and (2) that the commission has no jurisdiction over municipally owned utilities. United States Disposal Sys. v. City of Northglenn, 193 Colo. 277, 567 P.2d 365 (1977).

Where a home rule city was not concerned with supplying anyone other than its own citizens, and, in purchasing power, it was acting strictly as a municipally owned utility for the benefit of its own residents, the public utilities commission had no jurisdiction to require the city to purchase its power from any particular utility. K.C. Elec. Ass'n v. Pub. Utils. Comm'n, 191 Colo. 96, 550 P.2d 871 (1976).

Where municipal utility refuses to provide a necessary service, private utility may be certificated to provide service within municipal boundaries. This article and section 35 of article V grant the public utilities commission authority to regulate public utilities throughout Colorado, including those that are located within home rule cities, but not municipally owned utilities operating within municipal boundaries. City of Fort Morgan v. Pub. Utils. Comm'n, 159 P.3d 87 (Colo. 2007).

Constitutional provision does not exempt municipalities from PUC regulation for extraterritorial delivery of water. Bd. of County Comm'rs v. Denver Bd. of Water Comm'rs, 718 P.2d 235 (Colo. 1986).

But statutes do provide for exemption. Bd. of County Comm'rs v. Denver Bd. of Water Comm'rs, 718 P.2d 235 (Colo. 1986).

County which provides mass transit within county boundaries is exempt from regulation by PUC. City of Durango v. Durango Transp., 807 P.2d 1152 (Colo. 1991); Durango Transp., Inc. v. City of Durango, 824 P.2d 48 (Colo. App. 1991).

This article does not affect the power of municipalities to exercise reasonable police and licensing powers or to grant franchises, nor does it apply to municipally-owned facilities. City of Greeley v. Poudre Valley R. Elec., 744 P.2d 739 (Colo. 1987), appeal dismissed for want of a properly presented federal question, 485 U.S. 949, 108 S. Ct. 1207, 99 L. Ed. 2d 409 (1988).

Public utilities commission may regulate rates fixed by contract. Unless otherwise provided by constitution or statute, a general grant of power to regulate rates authorizes a public utilities commission to regulate or modify rates fixed by contract, including those specified in franchise agreements, even though such contracts or agreements were executed prior to the passage of the statute by which the power is conferred, since they must be deemed to have been made subject to a proper exercise of the reserve police power of the state. Zelinger v. Pub. Serv. Co., 164 Colo. 424, 435 P.2d 412 (1967).

Unless suspension of power clearly and unmistakably shown. Assuming, without deciding, that at the time a franchise granting a gas company the right to operate a gas plant in a home rule city and to supply gas service to citizens of that city was entered into, art. XX, Colo. Const., gave a home rule city the power to establish by contract the rates to be charged by a public service corporation for a definite term and thereby suspend during the life of the contract the governmental power of fixing and regulating rates, yet it has been noted by the supreme court that it must clearly and unmistakably appear that the contract by its terms suspends the power of the state to regulate and all doubts must be resolved in favor of the continuance of the power of the state to regulate. Pub. Utils. Comm'n v. City of Durango, 171 Colo. 553, 469 P.2d 131

(1970).

Franchise ordinance did not suspend state's power to regulate. A franchise ordinance adopted by a home rule city granting to a gas company the right to operate a gas plant in the city and to supply gas service to citizens of that city did not suspend the power of the state to regulate and did not intend to do so. Pub. Utils. Comm'n v. City of Durango, 171 Colo. 553, 469 P.2d 131 (1970).

The phrase in a section of a franchise granting a gas company the right to operate a gas plant in a home rule city and to supply gas service to the citizens of that city, which specified that the rates shall remain in effect "unless and until changed in accordance with law" means not in accordance with due process but in accordance with the statutory or constitutional law of the state relating to rate fixing authority and jurisdiction. Pub. Utils. Comm'n v. City of Durango, 171 Colo. 553, 469 P.2d 131 (1970).

The public utilities commission cannot authorize a power company operating pursuant to a certificate of public convenience and necessity in an area annexed by a home rule municipality to expand its system and use city streets without obtaining a franchise from such municipality. City of Greeley v. Poudre Valley R. Elec., 744 P.2d 739 (Colo. 1987), appeal dismissed for want of a properly presented federal question, 485 U.S. 949, 108 S. Ct. 1207, 99 L. Ed. 2d 409 (1988).

The consent of both the municipality and the public utilities commission is necessary to operate a public utility within a home rule city, but neither the general assembly nor the public utilities commission is empowered to grant a franchise to a public utility to use the streets, alleys, and public places of a home rule municipality without the municipality's consent. City of Greeley v. Poudre Valley R. Elec., 744 P.2d 739 (Colo. 1987), appeal dismissed for want of a properly presented federal question, 485 U.S. 949, 108 S. Ct. 1207, 99 L. Ed. 2d 409 (1988).

The right of home rule cities to grant franchises is not unconstitutionally interfered with by § 40-3-106 (4), which results in the customers within a municipality which has granted a franchise paying the cost of the franchise fee as part of the rates for the service. City of Montrose v. Pub. Utils. Comm'n, 732 P.2d 1181 (Colo. 1987).

Section 40-3-106 (4) does not affect either a home rule city's ability to negotiate and grant franchises and to collect franchise fees or a fixed utility's obligation to pay to a municipality the entire amount of the franchise fee negotiated and, therefore, does not violate this article or §§ 4 and 6 of article XX of this constitution. City of Montrose v. Pub. Utils. Comm'n, 732 P.2d 1181 (Colo. 1987).

City had regulatory power to set rates only as long as it saw fit to exercise power. When it withdrew from the field of the regulation of rates charged by public utilities by a charter amendment, the law of the state became automatically effective, and the public utilities commission had jurisdiction to regulate the rates of a public service company from and after the date of the charter amendment without regard to the question of whether the company operations were of "local and municipal" or "statewide" concern. Zelinger v. Pub. Serv. Co., 164 Colo. 424, 435 P.2d 412 (1967).

But city may not regulate statewide telephone system. A statewide telephone system, with its need for coordinated intra and interstate communications is a matter of statewide concern heavily outweighing any possible municipal interest. City of Englewood v. Mountain States Tel. & Tel. Co., 163 Colo. 400, 431 P.2d 40 (1967).

The question as to whether a

city has the power to require a statewide telephone company to obtain a city franchise in order to maintain its facilities within the limits of the city is answered by saying that the company already has such a right granted to it by the state and need not seek a second one, and the city cannot force it to, either. City of Englewood v. Mountain States Tel. & Tel. Co., 163 Colo. 400, 431 P.2d 40 (1967).

Municipality's extension of electric service to new customers within annexed area does not constitute a taking without due process of law of a public utility's preexisting right to service a certificated area. Union Rural Elec. Ass'n v. Town of Frederick, 670 P.2d 4 (Colo. 1983).

Municipally owned utilities, not within the jurisdiction of the public utilities commission, are not precluded from providing electric service to new customers within their municipal limits. Union Rural Elec. Ass'n v. Town of Frederick, 670 P.2d 4 (Colo. 1983).

Viaduct construction within home-rule municipality subject to commission's preemptive jurisdiction. A municipality's authority to exercise reasonable police power does not encompass the right to regulate the construction of viaducts within a home-rule municipality because the construction of, and the apportionment of costs for viaducts is a matter of mixed local and statewide concern and subject therefore to the preemptive jurisdiction of the public utilities commission. Denver & R. G. W. R. R. v. City & County of Denver, 673 P.2d 354 (Colo. 1983).

Trash hauling matter of statewide concern. The constitution and the statutes of this state have given to the business of trash hauling the status of a matter of statewide concern, subject to the jurisdiction of the public utilities commission. Under such circumstances, a city has no power to pass an ordinance which is in conflict with the exercise by the commission of its statutory power. Givigliano v. Veltri, 180 Colo. 10, 501 P.2d 1044 (1972).

Acquisition of municipal utility determined by people. The acquisition by the city of the utility's facilities could not be prevented or interfered with by any agency once the people of the city determined by their vote that the system was to be acquired. City of Thornton v. Pub. Utils. Comm'n, 157 Colo. 188, 402 P.2d 194 (1965).

Jurisdiction over transfer of assets. The commission has jurisidiction to review telephone company's transfer of directory publishing assets to related corporation. Mountain States Telephone & Telegraph v. PUC, 763 P.2d 1020 (Colo. 1988).

Action pursuant to this constitutional provision and 40-5-105 requiring commission approval of transfer of utility's assets not made in the ordinary course of business does not constitute an unconstitutional taking. Mountain States Telephone & Telegraph v. PUC, 763 P.2d 1020 (Colo. 1988).

No jurisdiction over wellhead production of natural gas. The public utilities commission exercises no jurisdiction over the wellhead production of natural gas, which gas is then sold in intrastate commerce in Colorado. Its authority is limited to the regulation of "public utilities". Superior Oil Co. v. Western Slope Gas Co., 549 F. Supp. 463 (D. Colo. 1982).

Regulatory powers legislative, not judicial. The powers delegated to the commission on matters affecting the regulation of public utilities are legislative and not judicial. City of Montrose v. Pub. Utils. Comm'n, 629 P.2d 619 (Colo. 1981).

The commission's power to regulate utility rates is legislative in nature. CF&I Steel, L.P. v. Pub. Utils. Comm'n, 949 P.2d 577 (Colo. 1997).

The authority of the public utilities commission to grant certificates of public convenience and necessity is expressly limited by the constitution and statutes. City of Greeley v. Poudre Valley R. Elec., 744 P.2d 739 (Colo. 1987), appeal dismissed for want of a properly presented federal question, 485 U.S. 949, 108 S. Ct. 1207, 99 L. Ed. 2d 409 (1989).

PUC, acting as administrative agency, has been endowed with legislative authority in public utility matters, and judicial review of a PUC decision is generally limited to whether PUC has acted within its proper authority, whether its rulings are just and reasonable, and whether its conclusions are supported by the evidence presented to it. Integrated Network Servs., Inc. v. Pub. Utils. Comm'n, 875 P.2d 1373 (Colo. 1994); Pub. Serv. Co. of Colo. v. Van Wyk, 27 P.3d 377 (Colo. 2001).

Exercise of temporary authority by commission authorized. Even in the absence of an express delegation of legislative powers, the public utilities commission's exercise of temporary authority to provide airline transportation to the public appears fully authorized by this section's general grant to the commission of all power to regulate the service of public utilities. Aspen Airways, Inc. v. Rocky Mt. Airways, Inc., 196 Colo. 285, 584 P.2d 629 (1978).

But public utilities commission lacks authority to effect social legislation by ordering that pay phone rates be reduced according to age and indigency classifications. Colo. Mun. League v. Pub. Utils. Comm'n, 197 Colo. 106, 591 P.2d 577 (1979).

And restricted power to set preferential rates. Although the public utilities commission has been granted broad rate making powers by this section, the commission's power to effect social policy through preferential rate making is restricted by §§ 40-3-106(1) and 40-3-102 no matter how deserving the group benefiting from the preferential rate may be. Mountain States Legal Found. v. Pub. Utils. Comm'n, 197 Colo. 56, 590 P.2d 495 (1979).

Commission's discretion not limitless. The commission has considerable discretion in its choice of the means to accomplish its functions, but it does not have limitless legislative prerogative, as the general assembly may restrict the legislative authority delegated to it. City of Montrose v. Pub. Utils. Comm'n, 629 P.2d 619 (Colo. 1981).

Commission cannot impose monetary fines. The constitutional and statutory provisions which have created the public utilities commission and defined its powers do not authorize it to impose monetary fines. Haney v. Pub. Utils. Comm'n, 194 Colo. 481, 574 P.2d 863 (1978).

Authority of public utilities commission to order public utility to pay attorney's fees and costs of intervenor emanates from this article. Mountain States Tel. & Tel. Co. v. Pub. Utils. Comm'n, 195 Colo. 130, 576 P.2d 544 (1978); Colo. Ute Elec. Ass'n v. Pub. Utils. Comm'n, 198 Colo. 534, 602 P.2d 861 (1979).

Commission's standard for determining attorneys' fee or costs award has three criteria: (1) the representation and expenses incurred relate to general consumer interests; (2) the testimony, evidence and exhibits provided "materially assist the commission" in reaching its decision; and (3) the fees and costs incurred are reasonable. Colo. Ute Elec. Ass'n v. Pub. Utils. Comm'n, 198 Colo. 534, 602 P.2d 861 (1979).

Jurisdiction of district court extends only to review of commission's decision. Since jurisdiction over the adequacy, installation and extension of power services and facilities necessary to

supply, extend, and connect the same is vested exclusively in the public utilities commission, it follows that the jurisdiction of the district court extends only to a review of the decision of the public utilities commission in appropriate proceedings. Intermountain Rural Elec. Ass'n v. District Court, 160 Colo. 128, 414 P.2d 911 (1966).

Special expertise of commission in regulating utilities is given great deference in its selection of an appropriate remedy for telephone company's transfer of directory publishing assets. Mountain States Telephone & Telegraph v. PUC, 763 P.2d 1020 (Colo. 1988).

Remedy of undoing transfer made without prior approval of commission was appropriate. Mountain States Telephone & Telegraph v. PUC, 763 P.2d 1020 (Colo. 1988).

PUC is an administrative agency with considerable expertise in utility regulation and its decisions are to be accorded due deference. Review of the PUC's decisions are limited to the factors enumerated in § 40-6-115 (3), C.R.S. Integrated Network Servs. v. PUC, 875 P.2d 1373 (Colo. 1994); Silverado Communic. Corp. v. Pub. Utils. Comm'n, 893 P.2d 1316 (Colo. 1995).

PUC's approval of a line upgrade is a valid exercise of PUC's statutory authority, but such decision does not constitute an adjudication of the issue of property interests of affected parties. PUC does not have, and was never given, any authority to adjudicate property rights. Nor does the PUC have the authority to adjudicate questions related to damages stemming from property ownership and torts committed against either the property or the owner. Pub. Serv. Co. of Colo. v. Van Wyk, 27 P.3d 377 (Colo. 2001).

Applied in Denver Bar Ass'n v. Pub. Utils. Comm'n, 154 Colo. 273, 391 P.2d 467 (1964); Shoemaker v. Mountain States Tel. & Tel. Co., 38 Colo. App. 321, 559 P.2d 721 (1976); People v. Fierro, 199 Colo. 215, 606 P.2d 1291 (1980); Mountain View Elec. Ass'n v. Pub. Utils. Comm'n, 686 P.2d 1336 (Colo. 1984).

ARTICLE XXVI
Nuclear Detonations

Section 1. Nuclear detonations prohibited - exceptions. No nuclear explosive device may be detonated or placed in the ground for the purpose of detonation in this state except in accordance with this article.

Source: L. 74: Entire article was added, effective upon proclamation of the Governor, December 20, 1974, but does not appear in the session laws.

Section 2. Election required. Before the emplacement of any nuclear explosive device in the ground in this state, the detonation of that device shall first have been approved by the voters through enactment of an initiated or referred measure authorizing that detonation, such measure having been ordered, proposed, submitted to the voters, and approved as provided in section 1 of article V of this constitution.

Source: L. 74: Entire article was added, effective upon proclamation of the Governor, December 20, 1974, but does not appear in the session laws.

Section 3. Certification of indemnification required. Before the

detonation or emplacement for the purpose of detonation of any nuclear explosive device, a competent state official or agency designated by the governor shall first have certified that sufficient and secure financial resources exist in the form of applicable insurance, self-insurance, indemnity bonds, indemnification agreements, or otherwise, without utilizing state funds, to compensate in full all parties that might foreseeably suffer damage to person or property from ground motion, ionizing radiation, other pollution, or other hazard attributable to such detonation. Damage is attributable to such detonation without regard to negligence and without regard to any concurrent or intervening cause.

Source: L. 74: Entire article was added, effective upon proclamation of the Governor, December 20, 1974, but does not appear in the session laws.

Section 4. Article self-executing. This article shall be in all respects self-executing; but, the general assembly may by law provide for its more effective enforcement and may by law also impose additional restrictions or conditions upon the emplacement or detonation of any nuclear explosive device.

Source: L. 74: Entire article was added, effective upon proclamation of the Governor, December 20, 1974, but does not appear in the session laws.

Section 5. Severability. If any provision of this article, or its application in any particular case, is held invalid, the remainder of the article and its application in all other cases shall remain unimpaired.

Source: L. 74: Entire article was added, effective upon proclamation of the Governor, December 20, 1974, but does not appear in the session laws.

ARTICLE XXVII
Great Outdoors Colorado Program

Section 1. Great Outdoors Colorado Program. (1) The people of the State of Colorado intend that the net proceeds of every state-supervised lottery game operated under the authority of Article XVIII, Section 2 shall be guaranteed and permanently dedicated to the preservation, protection, enhancement and management of the state's wildlife, park, river, trail and open space heritage, except as specifically provided in this article. Accordingly, there shall be established the Great Outdoors Colorado Program to preserve, protect, enhance and manage the state's wildlife, park, river, trail and open space heritage. The Great Outdoors Colorado Program shall include:

(a) Wildlife program grants which:

(I) Develop wildlife watching opportunities;

(II) Implement educational programs about wildlife and wildlife environment;

(III) Provide appropriate programs for maintaining Colorado's diverse wildlife heritage;

(IV) Protect crucial wildlife habitats through the acquisition of lands, leases or easements and restore critical areas;

(b) Outdoor recreation program grants which:

(I) Establish and improve state parks and recreation areas throughout the State of Colorado;

(II) Develop appropriate public information and environmental education resources on Colorado's natural resources at state parks, recreation areas, and other locations throughout the state;

(III) Acquire, construct and maintain trails and river greenways;

(IV) Provide water for recreational purposes through the acquisition of water rights or through agreements with holders of water rights, all in accord with applicable state water law;

(c) A program to identify, acquire and manage unique open space and natural areas of statewide significance through grants to the Colorado Divisions of Parks and Outdoor Recreation and Wildlife, or municipalities, counties, or other political subdivision of the State, or non-profit land conservation organizations, and which will encourage cooperative investments by other public or private entities for these purposes; and

(d) A program for grants to match local investments to acquire, develop and manage open space, parks, and environmental education facilities, and which will encourage cooperative investments by other public or private entities for these purposes.

Source: Initiated 92: Entire article added, effective upon proclamation of the Governor, **L. 93,** p. 2169, January 14, 1993.

Cross references: For implementation of the great outdoors Colorado program, see article 60 of title 33.

ANNOTATION

I. GENERAL CONSIDERATION.

This article allocates the net proceeds of the state-supervised lottery to the Conservation Trust Fund, the Great Outdoors Colorado Trust Fund, and the Division of Parks and Outdoor Recreation. Submission of Interrogatories on Senate Bill 93-74, 852 P.2d 1 (Colo. 1993).

This article and section 20 of article X of the Colorado constitution are not in irreconcilable, material, and direct conflict since this article does not authorize what section 20 of article X forbids or forbid what that section authorizes. Submission of Interrogatories on Senate Bill 93-74, 852 P.2d 1 (Colo. 1993).

The sale of lottery tickets does not constitute a "property sale" under section 20 of article X of the Colorado constitution. Submission of Interrogatories on Senate Bill 93-74, 852 P.2d 1 (Colo. 1993).

Net lottery proceeds are not to be excluded from state fiscal year spending as "gifts" under section 20 of article X of the Colorado constitution. Submission of Interrogatories on Senate Bill 93-74, 852 P.2d 1 (Colo. 1993).

II. TRUST FUND.

Since the inclusion of all net lottery proceeds in the calculation of state fiscal year spending creates an implicit conflict between section 20 of article X of the Colorado constitution and this article, legislation exempting net lottery proceeds dedicated by this article to Great Outdoors Colorado purposes from that section and subjecting such proceeds dedicated to the capital construction fund and the excess that spill over into the general fund to that section represented a reasonable resolution of that implicit conflict. Submission of Interrogatories on Senate Bill 93-74, 852 P.2d 1 (Colo. 1993).

III. BOARD OF TRUST FUND.

It is erroneous to exclude net lottery proceeds from the purview of section 20 of article X of the Colorado constitution on the basis of a characterization of the Great Outdoors Colorado Trust Fund Board created under this article as a "district" or "non-district" for purposes of that section. Submission of Interrogatories on Senate Bill 93-74, 852 P.2d 1 (Colo. 1993).

Although the Great Outdoors Colorado Trust Fund Board is not a local government, private entity, agency of the state, or enterprise under section 20 of article X of the Colorado constitution, it is essentially governmental in nature and the best reading of that section is to exclude from state fiscal year spending limits only those entities that are non-governmental, since this interpretation is the interpretation that reasonably restrains most the growth of government. Submission of Interrogatories on Senate Bill 93-74, 852 P.2d 1, (Colo. 1993).

Section 2. Trust Fund created. A fund to be known as the Great Outdoors Colorado Trust Fund, referred to in this article as the "Trust Fund," is hereby created and established in the Treasury of the State of Colorado.

Source: Initiated 92: Entire article added, effective upon proclamation of the Governor, **L. 93,** p. 2170, January 14, 1993.

Section 3. Moneys allocated to Trust Fund. (1) Beginning with the proceeds from the fourth quarter of the State's Fiscal Year 1992-1993, all proceeds from all programs, including Lotto and every other state-supervised lottery game operated under the authority of Article XVIII, Section 2 of the Colorado Constitution, whether by the Colorado Lottery Commission or otherwise (such programs defined hereafter in this Article as "Lottery Programs"), net of prizes and expenses of the state lottery division and after a sufficient amount of money has been reserved, as of the end of any fiscal quarter, to ensure the operation of the lottery for the ensuing fiscal quarter (such netted proceeds defined hereafter in this Article as "Net Proceeds") are set aside, allocated, allotted, and continuously appropriated as follows, and the Treasurer shall distribute such proceeds no less frequently than quarterly, as follows:

(a) Repealed.

(b) For each quarter including and after the first quarter of the State's Fiscal Year 1998-1999:

(I) Forty percent to the Conservation Trust Fund for distribution to municipalities and counties and other eligible entities for parks, recreation and

open space purposes;

(II) Ten percent to the Division of Parks and Outdoor Recreation for the acquisition, development and improvement of new and existing state parks, recreation areas and recreational trails; and

(III) All remaining Net Proceeds in trust to the Board of the Trust Fund, provided, however, that in any state fiscal year in which the portion of the Net Proceeds which would otherwise be given in trust to the State Board of the Trust Fund exceeds the amount of $35 million, to be adjusted each year for changes from the 1992 Consumer Price Index-Denver, the Net Proceeds in excess of such amount or adjusted amount shall be allocated to the General Fund of the State of Colorado.

(c) to (e) Repealed.

(2) From July 1, 1993, the following sums of money and property, in addition to Net Proceeds as set forth in Section 3(1) above, are set aside, allocated, allotted, and continuously appropriated in trust to the Board of the Trust Fund:

(a) All interest derived from moneys held in the Trust Fund;

(b) Any property donated specifically to the State of Colorado for the specific purpose of benefitting the Trust Fund, including contributions, grants, gifts, bequests, donations, and federal, state, or local grants; and

(c) Such other moneys as may be allocated to the Trust Fund by the General Assembly.

Source: Initiated 92: Entire article added, effective upon proclamation of the Governor, **L. 93,** p. 2170, January 14, 1993. **L. 2002:** (1)(a) and (1)(c) to (1)(e) repealed, p. 3099, effective upon proclamation of the Governor, **L. 2003,** p. 3611, December 20, 2002.

ANNOTATION

Payments made under § 33-60-103 (1)(c) on the 1992 refunding of certain state obligations may be paid from net proceeds of the state lottery without violating this article. In re Great Outdoors Colo. Trust Fund, 913 P.2d 533 (Colo. 1996).

Savings resulting from the 1992 refunding of certain state obligations do not accrue to the great outdoors Colorado trust fund but instead to the capital construction fund. In re Great Outdoors Colo. Trust Fund, 913 P.2d 533 (Colo. 1996).

The general assembly's action in delaying the final payment on the Colorado convention center contract so that it would fall within the window prescribed by this article was constitutional. In re Great Outdoors Colo. Trust Fund, 913 P.2d 533 (Colo. 1996).

Section 4. Fund to remain inviolate. All moneys deposited in the Trust Fund shall remain in trust for the purposes set forth in this article, and no part thereof shall be used or appropriated for any other purpose, nor made subject to any other tax, charge, fee or restriction.

Source: Initiated 92: Entire article added, effective upon proclamation of the Governor, **L. 93,** p. 2172, January 14, 1993.

Section 5. Trust Fund expenditures. (1) (a) Expenditures from the Trust Fund shall be made in furtherance of the Great Outdoors Colorado Program, and shall commence in State Fiscal Year 1993-94. The Board of the Trust Fund shall have the duty to assure that expenditures are made for the purposes set forth in this section and in section 6, and that the amounts expended for each of the following purposes over a period of years be substantially equal:

(I) Investments in the wildlife resources of Colorado through the Colorado Division of Wildlife, including the protection and restoration of crucial wildlife habitats, appropriate programs for maintaining Colorado's diverse wildlife heritage, wildlife watching, and educational programs about wildlife and wildlife environment, consistent with the purposes set forth in Section 1(1)(a) of this article;

(II) Investments in the outdoor recreation resources of Colorado through the Colorado Division of Parks and Outdoor Recreation, including the State Parks System, trails, public information and environmental education resources, and water for recreational facilities, consistent with the purposes set forth in Section 1(1)(b) of this article;

(III) Competitive grants to the Colorado Divisions of Parks and Outdoor Recreation and Wildlife, and to counties, municipalities or other political subdivisions of the state, or non-profit land conservation organizations, to identify, acquire and manage open space and natural areas of statewide significance, consistent with the purposes set forth in Section 1(1)(c) of this article; and

(IV) Competitive matching grants to local governments or other entities which are eligible for distributions from the conservation trust fund, to acquire, develop or manage open lands and parks, consistent with the purposes set forth in Section 1(1)(d) of this article;

(b) Provided, however, that the State Board of the Great Outdoors Colorado Trust Fund shall have the discretion (a) to direct that any portion of available revenues be reinvested in the Trust Fund and not expended in any particular year, (b) to make other expenditures which it considers necessary and proper to the accomplishment of the purposes of this amendment.

(2) All funds provided to state agencies from the Trust Fund shall be deemed to be custodial in nature, and the expenditure of those funds shall not be subject to legislative appropriation or restriction.

Source: Initiated 92: Entire article added, effective upon proclamation of the Governor, **L. 93,** p. 2172, January 14, 1993.

Section 6. The State Board of the Great Outdoors Colorado Trust Fund. (1) There shall be established a State Board of the Great Outdoors Colorado Trust Fund. The Board shall consist of two members of the public from each congressional district, a representative designated by the State Board of Parks and Outdoor Recreation, a representative designated by the Colorado Wildlife Commission, and the Executive Director of the Department of Natural Resources. The public members of the Board shall be appointed by the Governor, subject to the consent of the Senate, for terms of four years -

provided, however, that when the first such members are appointed, one of the public members from each congressional district shall be appointed for a two-year term, to assure staggered terms of office thereafter. At least two members shall reside west of the Continental Divide. At least one member shall represent agricultural interests. The public members of the board shall be entitled to a reasonable per diem compensation to be determined by the Board plus their actual expenses for each meeting of the Board or a committee of the Board. The Board's composition shall reflect, to the extent practical, Colorado's gender, ethnic and racial diversity, and no two of the representatives of any one congressional district shall be members of the same political party. Members of the Board shall be subject to removal as provided in Article IV, Section 6 of this constitution.

(2) The Board shall be responsible for, and shall have the power to undertake the following actions:

(a) To direct the Treasurer to disburse expendable income from the Trust Fund as the Board may determine by resolution, and otherwise to administer the Trust Fund, provided, however, that the Board shall not have the power to acquire any interest in real property other than (I) temporarily to hold real property donated to it and (II) to acquire leased office space;

(b) To promulgate rules and regulations as are necessary or expedient for the conduct of its affairs and its meetings and of meetings of any committees and generally for the administration of this article, provided, however, that such rules and regulations shall give the public an opportunity to comment on the general policies of the Board and upon specific grant proposals before the Board;

(c) To cause to be published and distributed an annual report, including a financial report, to the citizens, the Governor and the General Assembly of Colorado, which will set out the Board's progress in administering the funds appropriated to it, and the Board's objectives and its budget for the forthcoming year, and to consult with the General Assembly from time to time concerning its objectives and its budget;

(d) To administer the distribution of grants pursuant to Sections 1(1)(c), 1(1)(d), 5(1)(a)(III), and 5(1)(a)(IV) of this article, with the expense of administering said grants to be defrayed from the funds made available to the program elements of said sections;

(e) Commencing July 1, 1993, to determine what portions, if any, of moneys allocated to the Trust Fund should be invested in an interest-bearing Trust Fund account by the Treasurer of the State of Colorado, to remain in the Trust Fund and available for expenditure in future years;

(f) To employ such staff and to contract for such office space and acquire such equipment and supplies and enter into such other contracts as it may consider necessary from time to time to accomplish its purposes, and to pay the cost thereof from the funds appropriated to the Board under this article, provided, however, that to the extent it is reasonably feasible to do so the Board shall (I) contract with the Colorado Department of Natural Resources or other state agency for necessary administrative support and (II) endeavor to keep the

level of administrative expense as low as may be practicable in comparison with its expenditures for the purposes set forth in Section 1 of this article, and the Board may contract with the State Personnel Board or any successor thereof for personnel services.

(3) The Board shall be a political subdivision of the state, and shall have all the duties, privileges, immunities, rights, liabilities and disabilities of a political subdivision of the state, provided, however, that its organization, powers, revenues and expenses shall not be affected by any order or resolution of the general assembly, except as provided in this constitution. It shall not be an agency of state government, nor shall it be subject to administrative direction by any department, commission, board, bureau or agency of the state, except to the extent provided in this constitution. The Board shall be subject to annual audit by the state auditor, whose report shall be a public document. The Board shall adopt rules permitting public access to its meetings and records which are no less restrictive than state laws applicable to state agencies, as such laws may be amended from time to time. The Board members, officers and directors of the Board shall have no personal liability for any actions or refusal to act by the Board as long as such action or refusal to act did not involve willful or intentional malfeasance or gross negligence.

Source: Initiated 92: Entire article added, effective upon proclamation of the Governor, **L. 93,** p. 2173, January 14, 1993.

Section 7. No effect on Colorado water law. Nothing in this article shall affect in any way whatsoever any of the provisions under Article XVI of the State Constitution of Colorado, including those provisions related to water, nor any of the statutory provisions related to the appropriation of water in Colorado.

Source: Initiated 92: Entire article added, effective upon proclamation of the Governor, **L. 93,** p. 2175, January 14, 1993.

Section 8. No substitution allowed. The people intend that the allocation of lottery funds required by this article of the constitution be in addition to and not a substitute for funds otherwise appropriated from the General Assembly to the Colorado Department of Natural Resources and its divisions.

Source: Initiated 92: Entire article added, effective upon proclamation of the Governor, **L. 93,** p. 2175, January 14, 1993.

Section 9. Eminent domain. No moneys received by any state agency pursuant to this article shall be used to acquire real property by condemnation through the power of eminent domain.

Source: Initiated 92: Entire article added, effective upon proclamation of the Governor, **L. 93,** p. 2175, January 14, 1993.

Section 10. Payment in lieu of taxes. Any acquisitions of real property made by a state agency pursuant to this article shall be subject to payments in lieu of taxes to counties in which said acquisitions are made. Such payments shall be made from moneys made available by the Trust Fund, and shall not exceed the rate of taxation for comparable property classifications.

Source: Initiated 92: Entire article added, effective upon proclamation of the Governor, **L. 93,** p. 2175, January 14, 1993.

Section 11. Effective date. This article shall become effective upon proclamation by the governor, and shall be self-implementing. This article shall apply to each distribution of net proceeds from the programs operated under the authority of Article XVIII, Section 2 of the Colorado Constitution, whether by the Colorado Lottery Commission or otherwise, made after July 1, 1993 and shall supersede any provision to the contrary in Article XVIII, Section 2 or any other provision of law.

Source: Initiated 92: Entire article added, effective upon proclamation of the Governor, **L. 93,** p. 2175, January 14, 1993.

ARTICLE XXVIII
Campaign and Political Finance

Editor's note: (1) Section 1(4) of article V of the state constitution provides that initiated and referred measures shall take effect from and after the official declaration of the vote thereon by the proclamation of the Governor. The Governor's proclamation on Amendment 27 implementing this article was issued on December 20, 2002; however, § 13 of this article provides that the effective date of this article is December 6, 2002. (See L. 2003, p. 3609.)

(2) (a) In 2008, Amendment 54 amended § 13 of this article creating an exception to the effective date stating that the provisions of this article amended or added by Amendment 54 concerning sole source government contracts are effective December 31, 2008; however, the Governor's proclamation date on Amendment 54 was January 8, 2009.

(b) In the case of **Dallman v. Ritter,** the Denver District Court declared Amendment 54, which amended certain provision of this article, unconstitutional and issued a preliminary injunction enjoining the enforcement of Amendment 54 (see **Dallman v. Ritter,** 225 P.3d 610 (Colo. 2010)). The Colorado Supreme Court affirmed the district court's ruling (see **Dallman v. Ritter,** 225 P.3d 610 (Colo. 2010)).

(3) In the case of **In re Interrogatories by Ritter,** the Supreme Court declared §§ 3(4) and 6(2) of this article unconstitutional in light of *Citizens United v. Federal Election Commission,* 558 U.S. __, 130 S.Ct. 876, 175 L. Ed.2d 753 (2010).

Cross references: For the "Fair Campaign Practices Act", see article 45 of title 1.

Law reviews: For article, "The Colorado Constitution in the New Century", see 78 U. Colo. L. Rev. 1265 (2007).

Section 1. Purposes and findings. The people of the state of Colorado hereby find and declare that large campaign contributions to political candidates create the potential for corruption and the appearance of corruption; that large campaign contributions made to influence election outcomes allow wealthy individuals, corporations, and special interest groups to exercise a disproportionate level of influence over the political process; that the rising costs of campaigning for political office prevent qualified citizens from running for political office; that because of the use of early voting in Colorado timely notice of independent expenditures is essential for informing the electorate; that in recent years the advent of significant spending on electioneering communications, as defined herein, has frustrated the purpose of existing campaign finance requirements; that independent research has demonstrated that the vast majority of televised electioneering communications goes beyond issue discussion to express electoral advocacy; that political contributions from corporate treasuries are not an indication of popular support for the corporation's political ideas and can unfairly influence the outcome of Colorado elections; and that the interests of the public are best served by limiting campaign contributions, establishing campaign spending limits, providing for full and timely disclosure of campaign contributions, independent expenditures, and funding of electioneering communications, and strong enforcement of campaign finance requirements.

Source: Initiated 2002: Entire article added, **L. 2003,** p. 3597. For the effective date of this article, see the editor's note following the article heading. **Initiated 2012:** Entire section amended, effective upon proclamation of the Governor, **L. 2013,** p. , January 1, 2013.

Section 2. Definitions. For the purpose of this article and any statutory provisions pertaining to campaign finance, including provisions pertaining to disclosure:

(1) "Appropriate officer" means the individual with whom a candidate, candidate committee, political committee, small donor committee, or issue committee must file pursuant to section 1-45-109 (1), C.R.S., or any successor section.

(2) "Candidate" means any person who seeks nomination or election to any state or local public office that is to be voted on in this state at any primary election, general election, school district election, special district election, or municipal election. "Candidate" also includes a judge or justice of any court of record who seeks to be retained in office pursuant to the provisions of section 25 of article VI. A person is a candidate for election if the person has publicly announced an intention to seek election to public office or retention of a judicial office and thereafter has received a contribution or made an expenditure in support of the candidacy. A person remains a candidate for purposes of this article so long as the candidate maintains a registered candidate committee. A

person who maintains a candidate committee after an election cycle, but who has not publicly announced an intention to seek election to public office in the next or any subsequent election cycle, is a candidate for purposes of this article.

(3) "Candidate committee" means a person, including the candidate, or persons with the common purpose of receiving contributions or making expenditures under the authority of a candidate. A contribution to a candidate shall be deemed a contribution to the candidate's candidate committee. A candidate shall have only one candidate committee. A candidate committee shall be considered open and active until affirmatively closed by the candidate or by action of the secretary of state.

(4) "Conduit" means a person who transmits contributions from more than one person, directly to a candidate committee. "Conduit" does not include the contributor's immediate family members, the candidate or campaign treasurer of the candidate committee receiving the contribution, a volunteer fund raiser hosting an event for a candidate committee, or a professional fund raiser if the fund raiser is compensated at the usual and customary rate.

(4.5) "Contract holder" means any non-governmental party to a sole source government contract, including persons that control ten percent or more shares or interest in that party; or that party's officers, directors or trustees; or, in the case of collective bargaining agreements, the labor organization and any political committees created or controlled by the labor organization;

Editor's note: Subsection (4.5) was declared unconstitutional (see the editor's note following this section).

(5) (a) "Contribution" means:

(I) The payment, loan, pledge, gift, or advance of money, or guarantee of a loan, made to any candidate committee, issue committee, political committee, small donor committee, or political party;

(II) Any payment made to a third party for the benefit of any candidate committee, issue committee, political committee, small donor committee, or political party;

(III) The fair market value of any gift or loan of property made to any candidate committee, issue committee, political committee, small donor committee or political party;

(IV) Anything of value given, directly or indirectly, to a candidate for the purpose of promoting the candidate's nomination, retention, recall, or election.

(b) "Contribution" does not include services provided without compensation by individuals volunteering their time on behalf of a candidate, candidate committee, political committee, small donor committee, issue committee, or political party; a transfer by a membership organization of a portion of a member's dues to a small donor committee or political committee sponsored by such membership organization; or payments by a corporation or labor organization for the costs of establishing, administering, and soliciting funds from its own employees or members for a political committee or small donor committee.

(6) "Election cycle" means either:

(a) The period of time beginning thirty-one days following a general election for the particular office and ending thirty days following the next general election for that office;

(b) The period of time beginning thirty-one days following a general election for the particular office and ending thirty days following the special legislative election for that office; or

(c) The period of time beginning thirty-one days following the special legislative election for the particular office and ending thirty days following the next general election for that office.

(7) (a) "Electioneering communication" means any communication broadcasted by television or radio, printed in a newspaper or on a billboard, directly mailed or delivered by hand to personal residences or otherwise distributed that:

(I) Unambiguously refers to any candidate; and

(II) Is broadcasted, printed, mailed, delivered, or distributed within thirty days before a primary election or sixty days before a general election; and

(III) Is broadcasted to, printed in a newspaper distributed to, mailed to, delivered by hand to, or otherwise distributed to an audience that includes members of the electorate for such public office.

(b) "Electioneering communication" does not include:

(I) Any news articles, editorial endorsements, opinion or commentary writings, or letters to the editor printed in a newspaper, magazine or other periodical not owned or controlled by a candidate or political party;

(II) Any editorial endorsements or opinions aired by a broadcast facility not owned or controlled by a candidate or political party;

(III) Any communication by persons made in the regular course and scope of their business or any communication made by a membership organization solely to members of such organization and their families;

(IV) Any communication that refers to any candidate only as part of the popular name of a bill or statute.

(8) (a) "Expenditure" means any purchase, payment, distribution, loan, advance, deposit, or gift of money by any person for the purpose of expressly advocating the election or defeat of a candidate or supporting or opposing a ballot issue or ballot question. An expenditure is made when the actual spending occurs or when there is a contractual agreement requiring such spending and the amount is determined.

(b) "Expenditure" does not include:

(I) Any news articles, editorial endorsements, opinion or commentary writings, or letters to the editor printed in a newspaper, magazine or other periodical not owned or controlled by a candidate or political party;

(II) Any editorial endorsements or opinions aired by a broadcast facility not owned or controlled by a candidate or political party;

(III) Spending by persons, other than political parties, political committees and small donor committees, in the regular course and scope of their business or payments by a membership organization for any communication solely to members and their families;

(IV) Any transfer by a membership organization of a portion of a member's dues to a small donor committee or political committee sponsored by such membership organization; or payments made by a corporation or labor organization for the costs of establishing, administering, or soliciting funds from its own employees or members for a political committee or small donor committee.

(8.5) "Immediate family member" means any spouse, child, spouse's child, son-in- law, daughter-in-law, parent, sibling, grandparent, grandchild, stepbrother, stepsister, stepparent, parent-in-law, brother-in-law, sister-in-law, aunt, niece, nephew, guardian, or domestic partner;

Editor's note: Subsection (8.5) was declared unconstitutional (see the editor's note following this section).

(9) "Independent expenditure" means an expenditure that is not controlled by or coordinated with any candidate or agent of such candidate. Expenditures that are controlled by or coordinated with a candidate or candidate's agent are deemed to be both contributions by the maker of the expenditures, and expenditures by the candidate committee.

(10) (a) "Issue committee" means any person, other than a natural person, or any group of two or more persons, including natural persons:

(I) That has a major purpose of supporting or opposing any ballot issue or ballot question; or

(II) That has accepted or made contributions or expenditures in excess of two hundred dollars to support or oppose any ballot issue or ballot question.

(b) "Issue committee" does not include political parties, political committees, small donor committees, or candidate committees as otherwise defined in this section.

(c) An issue committee shall be considered open and active until affirmatively closed by such committee or by action of the appropriate authority.

(11) "Person" means any natural person, partnership, committee, association, corporation, labor organization, political party, or other organization or group of persons.

(12) (a) "Political committee" means any person, other than a natural person, or any group of two or more persons, including natural persons that have accepted or made contributions or expenditures in excess of $200 to support or oppose the nomination or election of one or more candidates.

(b) "Political committee" does not include political parties, issue committees, or candidate committees as otherwise defined in this section.

(c) For the purposes of this article, the following are treated as a single political committee:

(I) All political committees established, financed, maintained, or controlled by a single corporation or its subsidiaries;

(II) All political committees established, financed, maintained, or controlled by a single labor organization; except that, any political committee established, financed, maintained, or controlled by a local unit of the labor organization which has the authority to make a decision independently of the state and national units as to which candidates to support or oppose shall be

deemed separate from the political committee of the state and national unit;

(III) All political committees established, financed, maintained, or controlled by the same political party;

(IV) All political committees established, financed, maintained, or controlled by substantially the same group of persons.

(13) "Political party" means any group of registered electors who, by petition or assembly, nominate candidates for the official general election ballot. "Political party" includes affiliated party organizations at the state, county, and election district levels, and all such affiliates are considered to be a single entity for the purposes of this article, except as otherwise provided in section 7.

(14) (a) "Small donor committee" means any political committee that has accepted contributions only from natural persons who each contributed no more than fifty dollars in the aggregate per year. For purposes of this section, dues transferred by a membership organization to a small donor committee sponsored by such organization shall be treated as pro-rata contributions from individual members.

(b) "Small donor committee" does not include political parties, political committees, issue committees, or candidate committees as otherwise defined in this section.

(c) For the purposes of this article, the following are treated as a single small donor committee:

(I) All small donor committees established, financed, maintained, or controlled by a single corporation or its subsidiaries;

(II) All small donor committees established, financed, maintained, or controlled by a single labor organization; except that, any small donor committee established, financed, maintained, or controlled by a local unit of the labor organization which has the authority to make a decision independently of the state and national units as to which candidates to support or oppose shall be deemed separate from the small donor committee of the state and national unit;

(III) All small donor committees established, financed, maintained, or controlled by the same political party;

(IV) All small donor committees established, financed, maintained, or controlled by substantially the same group of persons.

(14.4) "Sole source government contract" means any government contract that does not use a public and competitive bidding process soliciting at least three bids prior to awarding the contract. This provision applies only to government contracts awarded by the state or any of its political subdivisions for amounts greater than one hundred thousand dollars indexed for inflation per the United States bureau of labor statistics consumer price index for Denver-Boulder-Greeley after the year 2012, adjusted every four years, beginning January 1, 2012, to the nearest lowest twenty five dollars. This amount is cumulative and includes all sole source government contracts with any and all governmental entities involving the contract holder during a calendar year. A sole source government contract includes collective bargaining agreements with a labor organization representing employees, but not employment contracts with individual employees. Collective bargaining

agreements qualify as sole source government contracts if the contract confers an exclusive representative status to bind all employees to accept the terms and conditions of the contract;

Editor's note: Subsection (14.4) was declared unconstitutional (see the editor's note following this section).

(14.6) "State or any of its political subdivisions" means the state of Colorado and its agencies or departments, as well as the political subdivisions within this state including counties, municipalities, school districts, special districts, and any public or quasi-public body that receives a majority of its funding from the taxpayers of the state of Colorado.

Editor's note: Subsection (14.6) was declared unconstitutional (see the editor's note following this section).

(15) "Unexpended campaign contributions" means the balance of funds on hand in any candidate committee at the end of an election cycle, less the amount of all unpaid monetary obligations incurred prior to the election in furtherance of such candidacy.

Source: Initiated 2002: Entire article added, **L. 2003,** p. 3597. For the effective date of this article, see the editor's note following the article heading. **Initiated 2008:** (4.5), (8.5), (14.4), and (14.6) added, effective December 31, 2008, see **L. 2009,** p. 3381.

Editor's note: (1) In 2008, Amendment 54 amended § 13 of this article creating an exception to the effective date stating that the provisions of this article amended or added by Amendment 54 concerning sole source government contracts are effective December 31, 2008; however the Governor's proclamation date on Amendment 54 was January 8, 2009.

(2) In the case of **Dallman v. Ritter,** the Denver District Court declared the provisions of subsections (4.5), (8.5), (14.4), and (14.6) unconstitutional and issued a preliminary injunction enjoining the enforcement of Amendment 54 (see **Dallman v. Ritter,** 225 P.3d 610 (Colo. 2010)). The Colorado Supreme Court affirmed the district court's ruling (see **Dallman v. Ritter,** 225 P.3d 610 (Colo. 2010)).

Cross references: For the definition of "major purpose", as used in subsection (10)(a)(I), see § 1-45-103 (12)(b).

ANNOTATION

The phrase "a major purpose" in subsection (10)(a) is not inherently vague or overbroad on its face. Independence Inst. v. Coffman, 209 P.3d 1130 (Colo. App. 2008); Cerbo v. Protect Colo. Jobs, Inc., 240 P.3d 495 (Colo. App. 2010).

Definition of issue committee contained in subsection (10)(a) is not unconstitutionally vague on its face. Administrative law judge considered the length of time nonprofit policy research organization that engaged in ballot advocacy had been in existence, its original purpose and organizational structure, the various issues with which it had been involved, and the amount of money it expended on radio ads. Constitutional provisions need not be so exact as to eliminate any need for such fact-specific analysis. The obvious relevance and ready availability of such information means that any multi-purpose issue committee can assess the burden on its rights to free

speech and free association and make an informed decision before undertaking ballot advocacy. Accordingly, organization failed to prove that the term "a major purpose" is invalid in all respects or that it cannot be constitutionally applied to any multi-purpose issue committee. Independence Inst. v. Coffman, 209 P.3d 1130 (Colo. App. 2008), cert. denied, __ U.S. __, 130 S. Ct. 625, 175 L. Ed. 2d 479 (2009).

Definition of issue committee contained in subsection (10)(a) is not unconstitutionally overbroad on its face. A law is facially overbroad if it sweeps within its reach a substantial amount of activity that is constitutionally protected. People v. Shepard, 983 P.2d 1 (Colo. 1999); Independence Inst. v. Coffman, 209 P.3d 1130 (Colo. App. 2008), cert. denied, __ U.S. __, 130 S. Ct. 625, 175 L. Ed. 2d 479 (2009).

Secretary of state had promulgated rules to limit the disclosure and termination requirements for mutli-purpose issue committees. Those rules, which define a multi-purpose issue committee, combined with the fact-specific inquiry that was part of the court's vagueness analysis, provide sufficient guidance as to when a multi-purpose issue committee has "a major purpose" of supporting or opposing a ballot measure. As so interpreted, subsection (10)(a) does not sweep a substantial amount of protected speech within its application. Therefore, the definition is not unconstitutionally overbroad on its face. Independence Inst. v. Coffman, 209 P.3d 1130 (Colo. App. 2008), cert. denied, __ U.S. __, 130 S. Ct. 625, 175 L. Ed. 2d 479 (2009).

Registration and disclosure requirements are unconstitutional as applied to ballot-initiative committee. There is virtually no proper governmental interest in imposing disclosure requirements on ballot-initiative committees that raise and expend minimal money, and limited interest cannot justify the burden that disclosure requirements impose on such a committee. Sampson v. Buescher, 625 F.3d 1247 (10th Cir. 2010).

The financial burden of state regulation on ballot initiative committee member's freedom of association approaches or exceeds the value of their financial contributions to their political effort; and the governmental interest in imposing those regulations is minimal, if not nonexistent, in light of the small size of the contributions. Therefore it is unconstitutional to impose that burden on the committee members. Sampson v. Buescher, 625 F.3d 1247 (10th Cir. 2010).

Rule 4.27, raising threshold requirement for registration and disclosure of issue committees from $200 to $5,000, exceeds secretary of state's rule-making authority and must be set aside as void. Rule 4.27 conflicts with subsection (10)(a)(II) of this section and § 1-45-108 (1)(a)(I). Colo. Common Cause v. Gessler, 2012 COA 147, __ P.3d __.

Although in promulgating rule 4.27, the secretary was attempting to clarify the registration and reporting requirements in light of Sampson v. Buescher, 625 F.3d 1247 (10th Cir. 2010), Sampson did not facially invalidate any provision of the campaign finance law, and, to the extent Sampson impacts the future application of campaign finance laws on issue committees in a similar factual context, rule 4.27 exceeds the scope of Sampson. Colo. Common Cause v. Gessler, 2012 COA 147, __ P.3d __.

Under definition of issue committee in subsection (10)(a), an organization has a "major purpose" of supporting a ballot issue if such support "constitutes a considerable or principal portion of the organizations's total activities". Cerbo v. Protect Colo. Jobs, Inc., 240

P.3d 495 (Colo. App. 2010).

Facts in record demonstrate that nonprofit organization had a major purpose of supporting proposed ballot issue. Cerbo v. Protect Colo. Jobs, Inc., 240 P.3d 495 (Colo. App. 2010).

Administrative law judge (ALJ) erred in her analysis of major purpose issue by (1) placing undue weight on fact organization had purposes other than supporting a proposed initiative; (2) giving too much weight to activities that organization merely considered undertaking while giving too little weight to what it actually did; and (3) failing to give weight to other factors relevant to the inquiry. Cerbo v. Protect Colo. Jobs, Inc., 240 P.3d 495 (Colo. App. 2010).

Nonprofit organization has a "major purpose" of supporting a ballot issue when it is created at same time ballot issue is conceived, is operated and represented by individuals otherwise intimately involved in drafting and promoting the ballot issue individually and through other organizations, spends its entire first year promoting the ballot issue to the exclusion of almost all other activities, and spends three-fourths of all the funds it has ever expended promoting the ballot issue. Cerbo v. Protect Colo. Jobs, Inc., 240 P.3d 495 (Colo. App. 2010).

Definition of a political committee in subsection (12)(a) is unconstitutional as applied to non-profit ideological corporation because it fails to incorporate Buckley v. Valeo's "major purpose" test. Colo. Right to Life Comm. v. Coffman, 498 F.3d 1137 (10th Cir. 2007).

"Expressly advocating" for purposes of the definition of expenditure in subsection (8) of this section is limited to speech that explicitly exhorts the viewer or reader to vote for or against a candidate in an upcoming election using either the "magic words" described in Buckly v. Valeo, 424 U.S. 1, 44 n.52 (1976), or substantially similar words. The court declined to adopt a functional equivalence test for "express advocacy" that would be difficult to apply and unconstitutionally chill political speech. None of the 17 ads at issue contained any of the magic words or substantially similar synonyms. Accordingly, because none of the ads constituted "expenditures", neither of the two political organizations that distributed the ads were subject to regulation as "political committees". Colo. Ethics v. Senate Majority Fund, LLC, 2012 CO 12, 269 P.3d 1248.

Administrative law judge (ALJ) did not err in concluding that definition of "expenditures" did not apply to metropolitan district boards. Respondents had argued that the metropolitan districts qualified as "persons" that could expend payments on behalf of issue committee supporting ballot issue. Even if the definition of "person" could be stretched to cover political subdivisions of the state such as metropolitan districts, respondents failed to explain how the payments at issue were "made with the prior knowledge and consent of an agent" of the issue committee that was not yet formed in order to bring such payments within the definition of "expenditure". Skruch v. Highlands Ranch Metro. Dists., 107 P.3d 1140 (Colo. App. 2004).

ALJ did not err by interpreting "expenditure" to occur when a payment is made and when there is a contractual agreement and the amount is determined. The use of the disjunctive "or" in the definition of "expenditure" indicates that an expenditure is made if either criterion is met after the ballot title is submitted. Skruch v. Highlands Ranch Metro. Dists., 107 P.3d 1140 (Colo. App. 2004).

Payment by unions of staff salaries for time spent organizing walks to distribute political literature

and payments of other costs associated with related political activities did not constitute prohibited expenditures in violation of section 3(4)(a) of this article. Whether payments made by the union are prohibited as "expenditures" depends upon whether they are exempt from regulation by the membership communication exception in subsection (8)(b)(III) of this section as payments for "any communication solely to members and their families". The membership communication exception must be construed broadly to reflect the plain language of this constitutional provision and to satisfy the demands of the first amendment. The membership communication exception as construed applies to most of the union's activities in this case. To the extent that the challenged union activities are not embraced by the membership communication exception, the administrative law judge correctly held that person filing campaign finance complaint failed to prove facts demonstrating that an expenditure was made. Colo. Educ. Ass'n v. Rutt, 184 P.3d 65 (Colo. 2008).

The membership communication exception found in subsection (8)(b)(III) must be extended to and embraced within the definition of "contribution". To hold otherwise nullifies the exception. The same conduct may not be protected by the membership communication exception to expenditures, that is, treated as an exempt expenditure, yet, at the same time, be prohibited as a non-exempt contribution. Such a result would be contrary to the intent of the electorate and constitute an unreasonable and disharmonious application of this article. Colo. Educ. Ass'n v. Rutt, 184 P.3d 65 (Colo. 2008).

Unions' challenged conduct does not meet the pertinent definitions of a contribution under subsection (5)(a)(II) and (5)(a)(IV) of this section and § 1-45-103 (6). Facts may reasonably be viewed in two contradictory ways: One advancing the union's argument that the payment of union staff salaries for organizing political events were paid for the benefit of the unions and their members and thus exempt from regulation; the other that the payments constituted payments made to a third party for the benefit of the candidate or anything of value given indirectly to the candidate and, thus, were prohibited contributions. When the first amendment is at stake, the tie goes to the speaker rather than to censorship and regulation. On the facts of this case, the unions did not make any prohibited contributions in violation of section 3(4)(a) of this article. Colo. Educ. Ass'n v. Rutt, 184 P.3d 65 (Colo. 2008).

Because coordination, as a concept or as a matter of law, is not required to protect the rights of the maker of a contribution under the circumstances of this case, court declines to impose a requirement of coordination on the definition of contribution to satisfy first amendment requirements. While a finding of coordination may be necessary to protect the recipient of an indirect contribution from unwittingly violating this article, that issue is not raised by this case. Colo. Educ. Ass'n v. Rutt, 184 P.3d 65 (Colo. 2008).

Order by ALJ assessing penalty against nonprofit association engaging in political advocacy based upon determination by ALJ that association was a political committee is vacated and case remanded. Under controlling precedent, regulation under campaign finance laws should be tied to groups controlled by candidates or which have a "major purpose" of electing candidates. Here, record does not permit a determination of whether major purpose test satisfied as to association. On remand, ALJ instructed to determine whether association's

"major purpose" in 2004 was the nomination or election of candidates. Alliance for Colorado's Families v. Gilbert, 172 P.3d 964 (Colo. App. 2007).

Court rejects interpretation of subsection (5)(a)(IV) and § 1-45-103 (6)(a) under which a city employee would be barred from providing to a candidate for elected office anything of value that had the effect of promoting the candidate's election. ALJ correctly construed the relevant phrase "for the purpose of" in subsection (5)(a)(IV) in accordance with its plain meaning to indicate an anticipated result that is intended or desired. Court rejects construction under which phrase would mean "with the effect of". Such a construction would improperly conflate the distinct concepts of purpose and effect. Such an interpretation would also lead to unintended consequences far beyond the scope of issues presented in the case. CEW v. City & County of Broomfield, 203 P.3d 623 (Colo. App. 2009).

Since effect of city employees' actions, rather than their intent, is to be examined, court further rejects argument that intent is to be gauged by objective rather than subjective criteria. Inquiry into purpose requires examination of the intent of the person alleged to have made a campaign contribution. ALJ considered evidence concerning the city employees' intent and determined, on the basis of substantial evidence in the record, that organization bringing campaign finance complaint had not met its burden of proving that the employees provided services for the purpose of promoting a campaign even though employees knew information would be helpful to the candidates to whom the information was provided. Organization's interpretation improperly equates knowledge of the possible effects of one's actions with an intent to achieve a particular result. Accordingly, ALJ correctly determined that city's contribution of staff time was not "for the purpose of" promoting a political campaign. CEW v. City & County of Broomfield, 203 P.3d 623 (Colo. App. 2009).

Television advertisements urging voters to oppose incumbent member met the definition of electioneering communications under subsection (7)(a). Unambiguous reference to "any communication" in definition does not distinguish between express advocacy and advocacy that is not express. Further, subsection (7)(a) is triggered when a communication is made within 30 days before a primary election or 60 days before a general election, without regard to the communication's purpose. Colo. Citizens for Ethics in Gov't v. Comm. for the Am. Dream, 187 P.3d 1207 (Colo. App. 2008).

Regular business exception in subsection (7)(b)(III) is limited to persons whose business is to broadcast, print, publicly display, directly mail, or hand deliver candidate-specific communications within the named candidate's district as a service rather than to influence elections. Wording of exception shows that the phrase "in the regular course and scope of their business" does not apply to political committees. Accordingly, political committee does not come within the regular business exception. Colo. Citizens for Ethics in Gov't v. Comm. for the Am. Dream, 187 P.3d 1207 (Colo. App. 2008).

A judicial officer seeking retention is a candidate for purposes of the definition of "candidate" in subsection (2). Further, a judicial retention vote is an election for purposes of the definition of "political committee" in subsection (12)(a). Colo. Ethics Watch v. Clear the Bench, 2012 COA 42, 277 P.3d 931.

An organization that supports or opposes the retention of a judicial officer is a political

committee because it supports or opposes the election of a candidate and because it is recognized as such by § 1-45-109 (1)(a)(I). Organization accepted contributions and made expenditures of over $200 to oppose the retention of three justices of the Colorado supreme court. It is, therefore, a political committee. Organization cannot be both a political committee and issue committee because the two are defined under subsections (10) and (12) to be mutually exclusive. Colo. Ethics Watch v. Clear the Bench, 2012 COA 42, 277 P.3d 931.

The language in art. VI, § 3, stating that "a question shall be placed on the . . . ballot" does not render judicial retention a "ballot question" for purposes of the Fair Campaign Practices Act (FCPA). A judicial retention vote is not a "ballot question" because it does not involve a citizen petition or referred measure. Because a judicial retention vote does not meet the definition of a "ballot issue" or "ballot question" contained in the FCPA, organization opposing retention of three justices is not an issue committee under subsection (10). Colo. Ethics Watch v. Clear the Bench, 2012 COA 42, 277 P.3d 931.

Because amendment 54's prohibitions do not serve a sufficiently important interest in this case, its organized labor provisions, specifically subsections (4.5) and (14.4), violate the first amendment. Subsection (4.5) leaves labor organizations involved in collective bargaining with no political voice either through their own direct contributions or through any affiliated political committee. Because there are other, more discrete options to limit corruption without completely stifling speech, subsection (4.5) is not closely drawn. Moreover, the attributes of a negotiated collective bargaining agreement make the potential of pay-to-play corruption in connection with such agreement exceedingly remote, so the government lacks a sufficiently important interest to justify this sort of heavy-handed regulation. Dallman v. Ritter, 225 P.3d 610 (Colo. 2010).

Because there is no compelling governmental interest underlying the disparate treatment of different sole source contractors, amendment 54's provisions applying to labor organizations also violate the fourteenth amendment's equal protection clause. Under subsection (4.5), amendment 54 prohibits contributions by a labor organization or any of its affiliated political committees, but it does not restrict contributions by political committees affiliated with any other type of donor, such as private corporations. By prohibiting both unions and their political committees from making contributions, amendment 54 completely strips unions of any political voice, while still allowing corporations to particulate through their own political committees. Dallman v. Ritter, 225 P.3d 610 (Colo. 2010).

Restriction in section 15 on contributions from "immediate family members" as defined in subsection (8.5) is unconstitutionally overbroad. State law already prohibits one of the main concerns of this section -- that a family member will make a contribution in his or her own name while using the funds of another. Section 15 expands the scope of prohibited conduit contributions and increases the penalty in a manner disproportionate to its purpose. Therefore, amendment 54's prohibition on contributions made on behalf of immediate family members serves to substantially chill speech and does little to further its purpose of eliminating the appearance of impropriety. Dallman v. Ritter, 225 P.3d 610 (Colo. 2010).

Court required to sever all of amendment 54's additions to this section. Both subsections (8.5) and

(14.6) overbroadly apply amendment to families and government. Court required to strike as unconstitutional the application of subsection (4.5) to organized labor. Subsection (14.4) uses phrases that are overbroad as written. Also, its application to collective bargaining agreements is improperly tailored. These breadth and tailoring problems leave subsection (14.4) with no cognizable application. Amendment 54's purposes provide no standard by which to rewrite defective definitions. Court is in no position to arbitrarily decide to whom and to what types of government contracts amendment 54 should apply -- that is the role of the lawmaking body, the people in this case. Dallman v. Ritter, 225 P.3d 610 (Colo. 2010).

Deficiencies in amendment 54 so pervasive as to render it wholly unconstitutional. Despite the constitutionality of some limited phrases and portions, amendment 54 is so incomplete or riddled with omissions that it cannot be salvaged as a meaningful legislative enactment. Dallman v. Ritter, 225 P.3d 610 (Colo. 2010).

Section 3. Contribution limits. (1) Except as described in subsections (2), (3), and (4) of this section, no person, including a political committee, shall make to a candidate committee, and no candidate committee shall accept from any one person, aggregate contributions for a primary or a general election in excess of the following amounts:

(a) Five hundred dollars to any one:

(I) Governor candidate committee for the primary election, and governor and lieutenant governor candidate committee, as joint candidates under 1-1-104, C.R.S., or any successor section, for the general election;

(II) Secretary of state, state treasurer, or attorney general candidate committee; and

(b) Two hundred dollars to any one state senate, state house of representatives, state board of education, regent of the university of Colorado, or district attorney candidate committee.

(2) No small donor committee shall make to a candidate committee, and no candidate committee shall accept from any one small donor committee, aggregate contributions for a primary or a general election in excess of the following amounts:

(a) Five thousand dollars to any one:

(I) Governor candidate committee for the primary election, and governor and lieutenant governor candidate committee, as joint candidates under 1-1-104, C.R.S., or any successor section, for the general election;

(II) Secretary of state, state treasurer, or attorney general candidate committee; and

(b) Two thousand dollars to any one state senate, state house of representatives, state board of education, regent of the university of Colorado, or district attorney candidate committee.

(3) (a) No political party shall accept aggregate contributions from any person, other than a small donor committee as described in paragraph (b) of this subsection (3), that exceed three thousand dollars per year at the state, county, district, and local level combined, and of such amount no more than twenty-five hundred dollars per year at the state level;

(b) No political party shall accept aggregate contributions from any small donor committee that exceed fifteen thousand dollars per year at the state, county, district, and local level combined, and of such amount no more than twelve thousand, five hundred dollars at the state level;

(c) No political party shall accept contributions that are intended, or in any way designated, to be passed through the party to a specific candidate's candidate committee;

(d) In the applicable election cycle, no political party shall contribute to any candidate committee more than twenty percent of the applicable spending limit set forth in section 4 of this article.

(e) Any unexpended campaign contributions retained by a candidate committee for use in a subsequent election cycle shall be counted and reported as contributions from a political party in any subsequent election for purposes of paragraph (d) of this subsection (3);

(4) (a) It shall be unlawful for a corporation or labor organization to make contributions to a candidate committee or a political party, and to make expenditures expressly advocating the election or defeat of a candidate; except that a corporation or labor organization may establish a political committee or small donor committee which may accept contributions or dues from employees, officeholders, shareholders, or members.

(b) The prohibition contained in paragraph (a) of this subsection (4) shall not apply to a corporation that:

(I) Is formed for the purpose of promoting political ideas and cannot engage in business activities; and

(II) Has no shareholders or other persons with a claim on its assets or income; and

(III) Was not established by and does not accept contributions from business corporations or labor organizations.

Editor's note: Subsection (4) was declared unconsitutional (see editor's note following this section).

(5) No political committee shall accept aggregate contributions or pro-rata dues from any person in excess of five hundred dollars per house of representatives election cycle.

(6) No candidate's candidate committee shall accept contributions from, or make contributions to, another candidate committee, including any candidate committee, or equivalent entity, established under federal law.

(7) No person shall act as a conduit for a contribution to a candidate committee.

(8) Notwithstanding any other section of this article to the contrary, a candidate's candidate committee may receive a loan from a financial institution organized under state or federal law if the loan bears the usual and customary interest rate, is made on a basis that assures repayment, is evidenced by a written instrument, and is subject to a due date or amortization schedule. The contribution limits described in this section shall not apply to a loan as described in this subsection (8).

(9) All contributions received by a candidate committee, issue

committee, political committee, small donor committee, or political party shall be deposited in a financial institution in a separate account whose title shall include the name of the committee or political party. All records pertaining to such accounts shall be maintained by the committee or political party for one-hundred eighty days following any general election in which the committee or party received contributions unless a complaint is filed, in which case they shall be maintained until final disposition of the complaint and any consequent litigation. Such records shall be subject to inspection at any hearing held pursuant to this article.

(10) No candidate committee, political committee, small donor committee, issue committee, or political party shall accept a contribution, or make an expenditure, in currency or coin exceeding one hundred dollars.

(11) No person shall make a contribution to a candidate committee, issue committee, political committee, small donor committee, or political party with the expectation that some or all of the amounts of such contribution will be reimbursed by another person. No person shall be reimbursed for a contribution made to any candidate committee, issue committee, political committee, small donor committee, or political party, nor shall any person make such reimbursement except as provided in subsection (8) of this section.

(12) No candidate committee, political committee, small donor committee, or political party shall knowingly accept contributions from:

(a) Any natural person who is not a citizen of the United States;

(b) A foreign government; or

(c) Any foreign corporation that does not have the authority to transact business in this state pursuant to article 115 of title 7, C.R.S., or any successor section.

(13) Each limit on contributions described in subsections (1), (2), (3) (a), (3) (b) and (5) of this section, and subsection (14) of section 2, shall be adjusted by an amount based upon the percentage change over a four year period in the United States bureau of labor statistics consumer price index for Denver-Boulder-Greeley, all items, all consumers, or its successor index, rounded to the nearest lowest twenty-five dollars. The first adjustment shall be done in the first quarter of 2007 and then every four years thereafter. The secretary of state shall calculate such an adjustment in each limit and specify the limits in rules promulgated in accordance with article 4 of title 24, C.R.S., or any successor section.

Source: Initiated 2002: Entire article added, **L. 2003,** p. 3601. For the effective date of this article, see the editor's note following the article heading.

Editor's note: In the case of **In re Interrogatories by Ritter,** the Supreme Court declared subsection (4) of this section unconstitutional in light of *Citizens United v. Federal Election Commission,* 558 U.S. __, 130 S.Ct. 876, 175 L. Ed.2d 753 (2010).

ANNOTATION

Law reviews. For article, "Campaign Finance and 527 Organizations: Keeping Big Money in Politics", see 34 Colo. Law. 71 (July 2005).

To the extent that

subsection (4) makes it unlawful for a corporation or labor organization to make expenditures expressly advocating the election or defeat of a candidate, it violates the dictates of the first amendment of the United States constitution in light of the decision of the United States supreme court in Citizens United v. Fed. Election Comm'n, 558 U.S. 310, 130 S. Ct. 876, 175 L. Ed. 2d 753 (2010).

Sections 3(4)(a) and (6)(2) of this article regulating corporate expenditures and electioneering communications are unconstitutional as applied to non-profit ideological corporation because corporation meets supreme court-approved exemption requirements for a voluntary ideological corporation that seeks to engage in political speech. Colo. Right to Life Comm. v. Coffman, 498 F.3d 1137 (10th Cir. 2007).

Candidate's disclosure report not required to report unexpended campaign funds at the end of an election cycle as contributions from a political party. To accomplish the purpose of subsection (3)(e), it is necessary only that a candidate committee report the amount of unexpended campaign funds on hand at the end of an election cycle. To report money already on hand as a fictional, new contribution from an unidentified political party would artificially inflate the amount of funds reportedly available to a candidate committee and would be confusing to those who read the report. Williams v. Teck, 113 P.3d 1255 (Colo. App. 2005).

Payment by unions of staff salaries for time spent organizing walks to distribute political literature and payments of other costs associated with related political activities did not constitute prohibited expenditures in violation of subsection (4)(a) of this section. Whether payments made by the union are prohibited as "expenditures" depends upon whether they are exempt from regulation by the membership communication exception in section 2(8)(b)(III) of this article as payments for "any communication solely to members and their families". The membership communication exception must be construed broadly to reflect the plain language of this constitutional provision and to satisfy the demands of the first amendment. The membership communication exception as construed applies to most of the union's activities in this case. To the extent that the challenged union activities are not embraced by the membership communication exception, the administrative law judge correctly held that person filing campaign finance complaint failed to prove facts demonstrating that an expenditure was made. Colo. Educ. Ass'n v. Rutt, 184 P.3d 65 (Colo. 2008).

The membership communication exception found in section 2(8)(b)(III) must be extended to and embraced within the definition of "contribution". To hold otherwise nullifies the exception. The same conduct may not be protected by the membership communication exception to expenditures, that is, treated as an exempt expenditure, yet, at the same time, be prohibited as a non-exempt contribution. Such a result would be contrary to the intent of the electorate and constitute an unreasonable and disharmonious application of this article. Colo. Educ. Ass'n v. Rutt, 184 P.3d 65 (Colo. 2008).

Unions' challenged conduct does not meet the pertinent definitions of a contribution under section 2(5)(a)(II) and (5)(a)(IV) of this article and § 1-45-103 (6). Facts may reasonably be viewed in two contradictory ways: One advancing the union's argument that the payment of union staff salaries for organizing political events were paid for the benefit of the unions and their members

and thus exempt from regulation; the other that the payments constituted payments made to a third party for the benefit of the candidate or anything of value given indirectly to the candidate and, thus, were prohibited contributions. When the first amendment is at stake, the tie goes to the speaker rather than to censorship and regulation. On the facts of this case, the unions did not make any prohibited contributions in violation of subsection (4)(a) of this section. Colo. Educ. Ass'n v. Rutt, 184 P.3d 65 (Colo. 2008).

Because coordination, as a concept or as a matter of law, is not required to protect the rights of the maker of a contribution under the circumstances of this case, the court declines to impose a requirement of coordination on the definition of contribution to satisfy first amendment requirements. While a finding of coordination may be necessary to protect the recipient of an indirect contribution from unwittingly violating this article, that issue is not raised by this case. Colo. Educ. Ass'n v. Rutt, 184 P.3d 65 (Colo. 2008).

Under section 9(2)(a) of this article, a complaint alleging that a contribution exceeds the applicable limit, either on its own or when aggregated with previous contributions, must be filed within 180 days of that excess contribution. Lambert v. Ritter Inaugural Comm., Inc., 218 P.3d 1115 (Colo. App. 2009).

To give effect to both the contribution limit in this section and the time limit in section 9(2)(a), a complaint may seek relief only as to contributions which--standing alone or aggregated--exceed the limit and are made within the preceding 180-day period, and the relief available under section 10(1) of this article or § 1-45-103.7 (7)(b) is limited to those excess contributions as to which the complaint is timely. Lambert v. Ritter Inaugural Comm., Inc., 218 P.3d 1115 (Colo. App. 2009).

Section 4. Voluntary campaign spending limits. (1) Candidates may certify to the secretary of state that the candidate's candidate committee shall not exceed the following spending limits for the applicable election cycle:

(a) Two and one-half million dollars combined for a candidate for governor and governor and lieutenant governor as joint candidates under 1-1-104, C.R.S., or any successor section;

(b) Five hundred thousand dollars for a candidate for secretary of state, attorney general, or treasurer;

(c) Ninety thousand dollars for a candidate for the state senate;

(d) Sixty-five thousand dollars for a candidate for the state house of representatives, state board of education, regent of the university of Colorado, or district attorney.

(2) Candidates accepting the campaign spending limits set forth above shall also agree that their personal contributions to their own campaign shall be counted as political party contributions and subject to the aggregate limit on such contributions set forth in section 3 of this article.

(3) Each candidate who chooses to accept the applicable voluntary spending limit shall file a statement to that effect with the secretary of state at the time that the candidate files a candidate affidavit as currently set forth in section 1-45-110(1), C.R.S., or any successor section. Acceptance of the applicable voluntary spending limit shall be irrevocable except as set forth in

subsection (4) of this section and shall subject the candidate to the penalties set forth in section 10 of this article for exceeding the limit.

(4) If a candidate accepts the applicable spending limit and another candidate for the same office refuses to accept the spending limit, the accepting candidate shall have ten days in which to withdraw acceptance. The accepting candidate shall have this option of withdrawing acceptance after each additional non-accepting candidate for the same office enters the race.

(5) The applicable contribution limits set forth in section 3 of this article shall double for any candidate who has accepted the applicable voluntary spending limit if:

(a) Another candidate in the race for the same office has not accepted the voluntary spending limit; and

(b) The non-accepting candidate has raised more than ten percent of the applicable voluntary spending limit.

(6) Only those candidates who have agreed to abide by the applicable voluntary spending limit may advertise their compliance. All other candidates are prohibited from advertising, or in any way implying, their acceptance of voluntary spending limits.

(7) Each spending limit described in subsection (1) of this section shall be adjusted by an amount based upon the percentage change over a four year period in the United States bureau of labor statistics consumer price index for Denver-Boulder-Greeley, all items, all consumers, or its successor index, rounded to the nearest lowest twenty-five dollars. The first adjustment shall be done in the first quarter of 2007 and then every four years thereafter. The secretary of state shall calculate such an adjustment in each limit and specify the limits in rules promulgated in accordance with article 4 of title 24, C.R.S., or any successor section.

Source: Initiated 2002: Entire article added, **L. 2003,** p. 3604. For the effective date of this article, see the editor's note following the article heading.

Section 5. Independent expenditures. (1) Any person making an independent expenditure in excess of one thousand dollars per calendar year shall deliver notice in writing to the secretary of state of such independent expenditure, as well as the amount of such expenditure, and a detailed description of the use of such independent expenditure. The notice shall specifically state the name of the candidate whom the independent expenditure is intended to support or oppose. Each independent expenditure in excess of one-thousand dollars shall require the delivery of a new notice. Any person making an independent expenditure within thirty days of a primary or general election shall deliver such notice within forty-eight hours after obligating funds for such expenditure.

(2) Any person making an independent expenditure in excess of one thousand dollars shall disclose, in the communication produced by the expenditure, the name of the person making the expenditure and the specific statement that the advertisement of material is not authorized by any candidate. Such disclosure shall be prominently featured in the communication.

(3) Expenditures by any person on behalf of a candidate for public office that are coordinated with or controlled by the candidate or the candidate's agent, or political party shall be considered a contribution to the candidate's candidate committee, or the political party, respectively.

(4) This section 5 applies only to independent expenditures made for the purpose of expressly advocating the defeat or election of any candidate.

Source: Initiated 2002: Entire article added, **L. 2003,** p. 3605. For the effective date of this article, see the editor's note following the article heading.

Section 6. Electioneering communications. (1) Any person who expends one thousand dollars or more per calendar year on electioneering communications shall submit reports to the secretary of state in accordance with the schedule currently set forth in 1-45-108 (2), C.R.S., or any successor section. Such reports shall include spending on such electioneering communications, and the name, and address, of any person that contributes more than two hundred and fifty dollars per year to such person described in this section for an electioneering communication. In the case where the person is a natural person, such reports shall also include the occupation and employer of such natural person. The last such report shall be filed thirty days after the applicable election.

(2) Notwithstanding any section to the contrary, it shall be unlawful for a corporation or labor organization to provide funding for an electioneering communication; except that any political committee or small donor committee established by such corporation or labor organization may provide funding for an electioneering communication.

Editor's note: Subsection (2) was declared unconsitutional (see editor's note following this section).

Source: Initiated 2002: Entire article added, **L. 2003,** p. 3605. For the effective date of this article, see the editor's note following the article heading.

Editor's note: In the case of **In re Interrogatories by Ritter,** the Supreme Court declared subsection (2) of this section unconstitutional in light of *Citizens United v. Federal Election Commission,* 558 U.S. __, 130 S.Ct. 876, 175 L. Ed.2d 753 (2010).

ANNOTATION

To the extent that subsection (2) makes it unlawful for a corporation or labor organization to provide funding for an electioneering communication, it violates the dictates of the first amendment of the United States constitution in light of the decision of the United States supreme court in Citizens United v. Fed. Election Comm'n, 558 U.S. 310, 130 S. Ct. 876, 175 L. Ed. 2d 753 (2010).

Sections 3(4)(a) and 6(2) of this article regulating corporate expenditures and electioneering communications are unconstitutional as applied to non-profit ideological corporation because corporation meets supreme court-approved exemption requirements for a voluntary ideological corporation that seeks to engage in political speech. Colo. Right to Life Comm. v. Coffman, 498 F.3d 1137 (10th Cir. 2007).

Telephone opinion poll was not "electioneering" and, thus, did

not constitute an "electioneering communication" within the meaning of this article. In giving effect to the intent of the electorate, court gives term "communication" its plain and ordinary meaning. Court relies upon dictionary definitions of "communication" that contemplate imparting a message to, rather than having mere contact with, another party. In reviewing scripts used by telephone opinion pollster,"communication" occurred because "facts, information, thoughts, or opinions" were "imparted, transmitted, interchanged, expressed, or exchanged" by pollster to those it called. Telephone opinion pollster, therefore, communicated information to members of the electorate during its opinion poll. Harwood v. Senate Majority Fund, LLC, 141 P.3d 962 (Colo. App. 2006).

Telephone opinion poll, however, did not satisfy meaning of electioneering. Colorado electorate intended this article to regulate communication that expresses "electorate advocacy" and tends to "influence the outcome of Colorado elections". This conclusion is reinforced by plain and ordinary meaning of term "electioneering". Court relies upon dictionary definitions suggesting that "electioneering" is defined by such activities as taking an active part in an election campaign, campaigning for one's own election, or trying to sway public opinion especially by the use of propaganda and that "campaigning" means influencing the public to support a particular candidate, ticket, or measure. Here, telephone opinion poll did not seek to influence voters or sway public opinion but instead merely asked neutral questions to collect data and measure public opinion. Accordingly, telephone opinion poll did not constitute an "electioneering communication" under this article. Harwood v. Senate Majority Fund, LLC, 141 P.3d 962 (Colo. App. 2006).

Television advertisements urging voters to oppose incumbent member met the definition of electioneering communications under section 2(7)(a). Unambiguous reference to "any communication" in definition does not distinguish between express advocacy and advocacy that is not express. Further, section 2(7)(a) is triggered when a communication is made within 30 days before a primary election or 60 days before a general election, without regard to the communication's purpose. Colo. Citizens for Ethics in Gov't v. Comm. for the Am. Dream, 187 P.3d 1207 (Colo. App. 2008).

Regular business exception in section 2(7)(b)(III) is limited to persons whose business is to broadcast, print, publicly display, directly mail, or hand deliver candidate-specific communications within the named candidate's district as a service rather than to influence elections. Wording of exception shows that the phrase "in the regular course and scope of their business" does not apply to political committees. Accordingly, political committee does not come within the regular business exception. Colo. Citizens for Ethics in Gov't v. Comm. for the Am. Dream, 187 P.3d 1207 (Colo. App. 2008).

Section 7. Disclosure. The disclosure requirements relevant to candidate committees, political committees, issue committees, and political parties, that are currently set forth in section 1-45-108, C.R.S., or any successor section, shall be extended to include small donor committees. The disclosure requirements of section 1-45-108, C.R.S., or any successor section, shall be extended to require disclosure of the occupation and employer of each person who has made a contribution of one hundred dollars or more to a candidate committee, political committee, issue committee, or political party. For purposes

of this section and 1-45-108, C.R.S., or any successor section, a political party shall be treated as separate entities at the state, county, district, and local levels.

Source: Initiated 2002: Entire article added, **L. 2003,** p. 3606. For the effective date of this article, see the editor's note following the article heading.

Section 8. Filing - where to file - timeliness. The secretary of state shall promulgate rules relating to filing in accordance with article 4 of title 24, C.R.S., or any successor section. The rules promulgated pursuant to this section shall extend section 1- 45-109, C.R.S., or any successor section to apply to small donor committees.

Source: Initiated 2002: Entire article added, **L. 2003,** p. 3606. For the effective date of this article, see the editor's note following the article heading.

Section 9. Duties of the secretary of state - enforcement. (1) The secretary of state shall:

(a) Prepare forms and instructions to assist candidates and the public in complying with the reporting requirements of this article and make such forms and instructions available to the public, municipal clerks, and county clerk and recorders free of charge;

(b) Promulgate such rules, in accordance with article 4 of title 24, C.R.S., or any successor section, as may be necessary to administer and enforce any provision of this article;

(c) Prepare forms for candidates to declare their voluntary acceptance of the campaign spending limits set forth in section 4 of this article. Such forms shall include an acknowledgment that the candidate voluntarily accepts the applicable spending limit and that the candidate swears to abide by those spending limits. These forms shall be signed by the candidate under oath, notarized, filed with the secretary of state, and available to the public upon request;

(c) Maintain a filing and indexing system consistent with the purposes of this article;

(e) Make the reports and statements filed with the secretary of state's office available immediately for public inspection and copying. The secretary of state may charge a reasonable fee for providing copies of reports. No information copied from such reports shall be sold or used by any person for the purpose of soliciting contributions or for any commercial purpose;

(f) Refer any complaints filed against any candidate for the office of secretary of state to the attorney general. Any administrative law judge employed pursuant to this section shall be appointed pursuant to part 10 of article 30 of title 24, C.R.S., or any successor section. Any hearing conducted by an administrative law judge employed pursuant to subsection (2) of this section shall be conducted in accordance with the provisions of section 24-4-105, C.R.S., or any successor section.

(2) (a) Any person who believes that a violation of section 3, section 4, section 5, section 6, section 7, or section 9 (1) (e), of this article, or of sections

1-45-108, 1-45-114, 1-45-115, or 1-45-117 C.R.S., or any successor sections, has occurred may file a written complaint with the secretary of state no later than one hundred eighty days after the date of the alleged violation. The secretary of state shall refer the complaint to an administrative law judge within three days of the filing of the complaint. The administrative law judge shall hold a hearing within fifteen days of the referral of the complaint, and shall render a decision within fifteen days of the hearing. The defendant shall be granted an extension of up to thirty days upon defendant's motion, or longer upon a showing of good cause. If the administrative law judge determines that such violation has occurred, such decision shall include any appropriate order, sanction, or relief authorized by this article. The decision of the administrative law judge shall be final and subject to review by the court of appeals, pursuant to section 24-4-106 (11), C.R.S., or any successor section. The secretary of state and the administrative law judge are not necessary parties to the review. The decision may be enforced by the secretary of state, or, if the secretary of state does not file an enforcement action within thirty days of the decision, in a private cause of action by the person filing the complaint. Any private action brought under this section shall be brought within one year of the date of the violation in state district court. The prevailing party in a private enforcement action shall be entitled to reasonable attorneys fees and costs.

(b) The attorney general shall investigate complaints made against any candidate for the office of secretary of state using the same procedures set forth in paragraph (a) of this subsection (2). Complainant shall have the same private right of action as under paragraph (a) of this subsection (2).

(c) A subpoena issued by an administrative law judge requiring the production of documents by an issue committee shall be limited to documents pertaining to contributions to, or expenditures from, the committee's separate account established pursuant to section 3(9) of this article to support or oppose a ballot issue or ballot question. A subpoena shall not be limited in this manner where such issue committee fails to form a separate account through which a ballot issue or ballot question is supported or opposed.

Source: Initiated 2002: Entire article added, **L. 2003,** p. 3606. For the effective date of this article, see the editor's note following the article heading.

Editor's note: In subsection (1) of this section, it appears that the fourth paragraph should have been lettered as paragraph (d) instead of (c); however, the original document filed with the secretary of state contains the lettering reflected in this section.

ANNOTATION

District court did not abuse its discretion by entering preliminary injunction against secretary of state enjoining implementation of administrative rule defining "member" for purposes of constitutional provisions governing small donor committees. Proposed rule would force labor and other covered organizations to get written permission before using an individual's dues or contributions to fund political campaigns. Plaintiffs demonstrated reasonable probability of success on the merits in challenging secretary's authority to enact proposed rule.

Secretary's "definition" of term "member" in proposed rule is much more than an effort to define term. It can be read effectively to add, modify, and conflict with constitutional provision by imposing new condition not found in text of this article. Secretary's stated purpose in enacting proposed rule not furthered by "definition" contained in proposed rule. Proposed rule does not further secretary's stated goal of achieving transparency of political contributions. Sanger v. Dennis, 148 P.3d 404 (Colo. App. 2006).

Plaintiffs demonstrated reasonable probability of success on the merits in alleging that administrative rule promulgated by secretary of state violated their constitutional rights to freedom of association as applied to them. Secretary's immediate enforcement of administrative rule forcing labor and other covered organizations to get written permission before using an individual's dues or contributions to fund political campaigns would have effectively prevented plaintiffs from exercising their first amendment rights in general election. Administrative rule was not narrowly tailored. Rationale justifying administrative rule was based upon speculation there would be dissenters, thereby impermissibly penalizing constitutional rights of the many for the speculative rights of the few. Accordingly, district court did not abuse its discretion by entering preliminary injunction against implementation of administrative rule. Sanger v. Dennis, 148 P.3d 404 (Colo. App. 2006).

Administrative law judge (ALJ) proceeding under a privately filed complaint under this section need not be "the appropriate officer" described in § 10 of this article to have the authority to impose a sanction. This section is applicable when "any person" files a complaint alleging violations of certain provisions and allows an ALJ to sanction violations, and § 10 applies when "the appropriate officer" determines to sanction a violation when a report is not filed by the close of business on the day due. Patterson Recall Comm., Inc. v. Patterson, 209 P.3d 1210 (Colo. App. 2009).

ALJ had authority to impose appropriate sanction under subsection (2)(a). The appropriate officer may either directly sanction the offending party under § 10(2)(b) of this article or initiate a complaint under subsection (2)(a). Patterson Recall Comm., Inc. v. Patterson, 209 P.3d 1210 (Colo. App. 2009).

Subsection (2)(a) authorizes ALJ to render a decision upon a complaint and, if ALJ concludes that a violation has occurred, "such decision shall include any appropriate order, sanction, or relief authorized by this article". Nothing in the article, however, recognizes or grants a defense of "good faith", and an ALJ is not at liberty to engraft any limitation or restriction not specifically provided. Patterson Recall Comm., Inc. v. Patterson, 209 P.3d 1210 (Colo. App. 2009).

While this section requires ALJ to include in the decision an appropriate order, sanction, or relief as authorized by the terms of this article, ALJ has discretion to impose no sanction at all if he or she reasonable concludes one would not be appropriate. Patterson Recall Comm., Inc. v. Patterson, 209 P.3d 1210 (Colo. App. 2009).

Adoption of rule 9.3 of the Colorado secretary of state's rules concerning campaign and political finance requiring the name of the candidate unambiguously referred to in the electioneering communication to be included in the electioneering report was within the rulemaking authority of the secretary of state under subsection (1)(b) and § 1-45-111.5 (1). Colo. Citizens for

Ethics in Gov't v. Comm. for the Am. Dream, 187 P.3d 1207 (Colo. App. 2008).

ALJ had jurisdiction to impose penalty for violation of rule 9.3 and did not err by imposing a $1000 penalty on political committee. Subsection (2)(a) grants an ALJ authority to conduct hearings on alleged violations of the article and the Finance Campaign Practices Act and to impose penalties if a violation has occurred. Rule 9.3 is necessary to implement former § 1-45-109 (5), and, under § 10(2)(a), sanctions can be imposed for violations of § 1-45-109. Colo. Citizens for Ethics in Gov't v. Comm. for the Am. Dream, 187 P.3d 1207 (Colo. App. 2008).

Subsection (2)(a) does not create a constitutional right for complainants to insist upon a hearing within 45 days of referral to the ALJ, absent a finding of good cause. Rather, language in subsection (2)(a) is directory. Nothing in the constitutional language suggests that failure to conduct a hearing within the 45 days following referral divests the ALJ of jurisdiction to decide the matter. Unlike various other constitutional and statutory provisions related to election matters, subsection (2)(a) does not grant precedence over other ALJ business. When no statute or rule of court entitles a claim to preferential scheduling, the decision whether to grant priority is left to the sound discretion of the trial court. Johnson v. Griffin, 240 P.3d 404 (Colo. App. 2009).

Under subsection (2)(a), a complaint alleging that a contribution exceeds the applicable limit, either on its own or when aggregated with previous contributions, must be filed within 180 days of that excess contribution. Lambert v. Ritter Inaugural Comm., Inc., 218 P.3d 1115 (Colo. App. 2009).

To give effect to both the contribution limit in section 3 of this article and the time limit in subsection (2)(a), a complaint may seek relief only as to contributions which--standing alone or aggregated--exceed the limit and are made within the preceding 180-day period, and the relief available under section 10(1) of this article or § 1-45-103.7 (7)(b) is limited to those excess contributions as to which the complaint is timely. Lambert v. Ritter Inaugural Comm., Inc., 218 P.3d 1115 (Colo. App. 2009).

Because Colorado Springs, as a home rule municipality, enacted a campaign practices ordinance, § 1-45-116 expressly provides that neither this article nor the Fair Campaign Practices Act applies to a complaint submitted to the secretary of state (secretary) alleging that certain candidates for city council had violated the ordinance. Accordingly, an administrative law judge to whom the complaint had been forwarded by the secretary lacks subject matter jurisdiction over campaign practices arising out of the city's elections and properly dismissed the complaint. The attempted referral of the complaint to the secretary conflicts with the clear intent of the general assembly to exclude home rule municipality elections from state disclosure requirements when the home rule municipality has adopted its own ordinances regulating campaign practices. In re City of Colo. Springs, 2012 COA 55, 277 P.3d 937.

Section 10. Sanctions. (1) Any person who violates any provision of this article relating to contribution or voluntary spending limits shall be subject to a civil penalty of at least double and up to five times the amount contributed, received, or spent in violation of the applicable provision of this article. Candidates shall be personally liable for penalties imposed upon the candidate's

committee.

(2) (a) The appropriate officer shall impose a penalty of fifty dollars per day for each day that a statement or other information required to be filed pursuant to section 5, section 6, or section 7 of this article, or sections 1-45-108, 1-45-109 or 1-45-110, C.R.S., or any successor sections, is not filed by the close of business on the day due. Upon imposition of a penalty pursuant to this subsection (2), the appropriate officer shall send the person upon whom the penalty is being imposed proper notification by certified mail of the imposition of the penalty. If an electronic mail address is on file with the secretary of state, the secretary of state shall also provide such notification by electronic mail. Revenues collected from fees and penalties assessed by the secretary of state or revenues collected in the form of payment of the secretary of state's attorney fees and costs pursuant to this article shall be deposited in the department of state cash fund created in section 24-21-104 (3), C.R.S., or any successor section.

(b) (I) Any person required to file a report with the secretary of state and upon whom a penalty has been imposed pursuant to this subsection (2) may appeal such penalty by filing a written appeal with the secretary of state no later than thirty days after the date on which notification of the imposition of the penalty was mailed to such person's last known address in accordance with paragraph (a) of this subsection (2). Except as provided in paragraph (c) of this subsection (2), the secretary shall refer the appeal to an administrative law judge. Any hearing conducted by an administrative law judge pursuant to this subsection (2) shall be conducted in accordance with the provisions of section 24-4-105, C.R.S., or any successor section. The administrative law judge shall set aside or reduce the penalty upon a showing of good cause, and the person filing the appeal shall bear the burden of proof. The decision of the administrative law judge shall be final and subject to review by the court of appeals pursuant to section 24-4-106 (11), C.R.S., or any successor section.

(II) If the administrative law judge finds that the filing of an appeal brought pursuant to subparagraph (I) of this paragraph (b) was frivolous, groundless, or vexatious, the administrative law judge shall order the person filing the appeal to pay reasonable attorney fees and costs of the secretary of state in connection with such proceeding.

(c) Upon receipt by the secretary of state of an appeal pursuant to paragraph (b) of this subsection (2), the secretary shall set aside or reduce the penalty upon a showing of good cause.

(d) Any unpaid debt owing to the state resulting from a penalty imposed pursuant to this subsection (2) shall be collected by the state in accordance with the requirements of section 24-30-202.4, C.R.S., or any successor section.

(3) Failure to comply with the provisions of this article shall have no effect on the validity of any election.

Source: Initiated 2002: Entire article added, **L. 2003,** p. 3608. For the effective date of this article, see the editor's note following the article heading.

Administrative law judge (ALJ) correctly dismissed appellants' agency appeal under subsection (2)(b)(I) for lack of subject matter jurisdiction. No question that appellants were required to file reports with secretary of state under § 1-45-109 (1) once appellant-candidate became a candidate for the general assembly. This does not mean, however, appellants acquired right to appeal penalty to secretary of state. Report at issue was filed not in connection with appellant-candidate's candidacy for the general assembly but solely in connection with position as a county commissioner. Thus, ALJ correctly determined that, for purposes of report and penalty at issue, appellants were persons required to file appeal with county clerk and recorder, not with secretary of state. Sullivan v. Bucknam, 140 P.3d 330 (Colo. App. 2006).

Although appellants could have been required to file a report with the secretary of state in certain circumstances, those circumstances were not present in instant case. Appellants do not qualify as persons required to file with secretary of state under subsection (2)(b)(I) for purposes of underlying action merely because they could have been required to so file in other circumstances. Sullivan v. Bucknam, 140 P.3d 330 (Colo. App. 2006).

Subsection (1) only sanctions violations of this article relating to contribution or voluntary spending limits. Plaintiff's sole argument to administrative law judge was that special district violated § 1-45-117 (1)(b)(I) by urging voters to support ballot issue. Plaintiff made no argument that expenditure violated a contribution or spending limit nor did plaintiff make any other argument concerning the amount district spent. Accordingly, § 1-45-117 (4) provided the basis for sanctions against district. Sherritt v. Rocky Mtn. Fire Dist., 205 P.3d 544 (Colo. App. 2009).

Administrative law judge (ALJ) proceeding under a privately filed complaint under § 9 of this article need not be "the appropriate officer" described in this section to have the authority to impose a sanction. Section 9 is applicable when "any person" files a complaint alleging violations of certain provisions and allows an ALJ to sanction violations, and this section applies when "the appropriate officer" determines to sanction a violation when a report is not filed by the close of business on the day due. Patterson Recall Comm., Inc. v. Patterson, 209 P.3d 1210 (Colo. App. 2009).

ALJ had authority to impose appropriate sanction under § 9(2)(a) of this article. The appropriate officer may either directly sanction the offending party under subsection (2)(b) or initiate a complaint under § 9(2)(a). Patterson Recall Comm., Inc. v. Patterson, 209 P.3d 1210 (Colo. App. 2009).

Section 9(2)(a) authorizes ALJ to render a decision upon a complaint and, if ALJ concludes that a violation has occurred, "such decision shall include any appropriate order, sanction, or relief authorized by this article". Nothing in the article, however, recognizes or grants a defense of "good faith", and an ALJ is not at liberty to engraft any limitation or restriction not specifically provided. Patterson Recall Comm., Inc. v. Patterson, 209 P.3d 1210 (Colo. App. 2009).

While § 9(a)(2) of this article requires ALJ to include in the decision an appropriate order, sanction, or relief as authorized by the terms of this article, ALJ has discretion to impose no section at all if he or she reasonably concludes one would not be appropriate. Patterson Recall Comm., Inc. v. Patterson, 209

P.3d 1210 (Colo. App. 2009).

ALJ had jurisdiction to impose penalty for violation of rule 9.3 and did not err by imposing a $1000 penalty on political committee. Section (2)(a) of article XXVIII of the state constitution grants an ALJ authority to conduct hearings on alleged violations of the article and the Finance Campaign Practices Act and to impose penalties if a violation has occurred. Rule 9.3 is necessary to implement former § 1-45-109 (5), and, under subsection (2)(a) of this section, sanctions can be imposed for violations of § 1-45-109. Colo. Citizens for Ethics in Gov't v. Comm. for the Am. Dream, 187 P.3d 1207 (Colo. App. 2008).

Subsection (1) provides sanctions for violations of §§ 3 and 4 of this article related to limits on contributions and spending, while subsection (2) relates to violations of disclosure requirements. Johnson v. Griffin, 240 P.3d 404 (Colo. App. 2009).

Under § 9(2)(a) of this article, a complaint alleging that a contribution exceeds the applicable limit, either on its own or when aggregated with previous contributions, must be filed within 180 days of that excess contribution. Lambert v. Ritter Inaugural Comm., Inc., 218 P.3d 1115 (Colo. App. 2009).

To give effect to both the contribution limit in § 3 of this article and the time limit in subsection 9(2)(a), a complaint may seek relief only as to contributions which--standing alone or aggregated--exceed the limit and are made within the preceding 180-day period, and the relief available under subsection (1) of this section or § 1-45-103.7 (7)(b) is limited to those excess contributions as to which the complaint is timely. Lambert v. Ritter Inaugural Comm., Inc., 218 P.3d 1115 (Colo. App. 2009).

Section 11. Conflicting provisions declared inapplicable. Any provisions in the statutes of this state in conflict or inconsistent with this article are hereby declared to be inapplicable to the matters covered and provided for in this article.

Source: Initiated 2002: Entire article added, **L. 2003,** p. 3609. For the effective date of this article, see the editor's note following the article heading.

Section 12. Repeal of conflicting statutory provisions. Sections 1-45-103, 1-45-105.3, 1-45-107, 1-45-111, and 1-45-113 are repealed.

Source: Initiated 2002: Entire article added, **L. 2003,** p. 3609. For the effective date of this article, see the editor's note following the article heading.

Section 13. APPLICABILITY AND EFFECTIVE DATE. The provisions of this article shall take effect on December 6, 2002, and be applicable for all elections thereafter, except that the provisions of this article concerning sole source government contracts shall take effect on December 31, 2008. Legislation may be enacted to facilitate its operation, but in no way limiting or restricting the provisions of this article or the powers herein granted.

Editor's note: This section was declared unconstitutional (see the editor's note following this section).

Source: Initiated 2002: Entire article added, **L. 2003,** p. 3609. For the

effective date of this article, see the editor's note following the article heading. **Initiated 2008:** Entire section amended, effective December 31, 2008, see **L. 2009,** p. 3381.

Editor's note: (1) In 2008, Amendment 54 amended § 13 of this article creating an exception to the effective date stating that the provisions of this article amended or added by Amendment 54 concerning sole source government contracts are effective December 31, 2008; however the Governor's proclamation date on Amendment 54 was January 8, 2009.

(2) In the case of **Dallman v. Ritter,** the Denver District Court declared the provisions of this section unconstitutional and issued a preliminary injunction enjoining the enforcement of Amendment 54 (see **Dallman v. Ritter,** 225 P.3d 610 (Colo. 2010)). The Colorado Supreme Court affirmed the district court's ruling (see **Dallman v. Ritter,** 225 P.3d 610 (Colo. 2010)).

Section 14. Severability. If any provision of this article or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the article which can be given effect without the invalid provision or application, and to this end the provisions of this article are declared to be severable.

Source: Initiated 2002: Entire article added, **L. 2003,** p. 3609. For the effective date of this article, see the editor's note following the article heading.

Section 15. Because of a presumption of impropriety between contributions to any campaign and sole source government contracts, contract holders shall contractually agree, for the duration of the contract and for two years thereafter, to cease making, causing to be made, or inducing by any means, a contribution, directly or indirectly, on behalf of the contract holder or on behalf of his or her immediate family member and for the benefit of any political party or for the benefit of any candidate for any elected office of the state or any of its political subdivisions.

Editor's note: This section was declared unconstitutional (see the editor's note following this section).

Source: Initiated 2008: Entire section added, effective December 31, 2008, see **L. 2009,** p. 3380.

Editor's note: (1) In 2008, Amendment 54 amended § 13 of this article creating an exception to the effective date stating that the provisions of this article amended or added by Amendment 54 concerning sole source government contracts are effective December 31, 2008; however the Governor's proclamation date on Amendment 54 was January 8, 2009.

(2) In the case of **Dallman v. Ritter,** the Denver District Court declared the provisions of this section unconstitutional and issued a preliminary injunction enjoining the enforcement of Amendment 54 (see **Dallman v. Ritter,** 225 P.3d 610 (Colo. 2010)). The Colorado Supreme Court affirmed the district court's ruling (see **Dallman v. Ritter,** 225 P.3d 610 (Colo. 2010)).

(3) This section did not contain a headnote as it appeared on the ballot.

ANNOTATION

Limited record insufficient to allow determination of whether amendment 54's absolute ban on contributions from sole source

contractors is so stringent that it will undermine the potential for robust and effective discussion of candidates and campaign issues, bearing on the issue of whether the amendment is narrowly tailored. Although anecdotal evidence was presented to trial court that contribution limits restricted candidates' ability to raise funds for their campaigns, it is too conjectural to form the basis of court's decision. Speculation into whether candidates will be able to mount effective campaigns is unwise. Record is insufficient to assess contribution limits' cumulative monetary effect. Dallman v. Ritter, 225 P.3d 610 (Colo. 2010).

The plainly legitimate sweep of amendment 54 is the elimination of an appearance of impropriety in the process of awarding no-bid government contracts. Dallman v. Ritter, 225 P.3d 610 (Colo. 2010).

Application of section to any government contract that does not solicit three bids is overbroad. Contribution limits, as written, apply to a substantial number of state contracts where competitive bidding is neither feasible nor appropriate. The purpose of amendment 54 is not furthered by such an over-inclusive definition of sole source contract. Its broad application to all contracts that do not solicit three bids is not sufficiently directed toward eliminating the appearance of impropriety. Dallman v. Ritter, 225 P.3d 610 (Colo. 2010).

Prohibition on all contributions from sole source government contractors for the benefit of any political party or for the benefit of any candidate for any elected office of the state or any of its political subdivisions is over-inclusive in light of its plainly legitimate sweep. Dallman v. Ritter, 225 P.3d 610 (Colo. 2010).

Judged in relation to amendment 54's purpose of eliminating appearance of impropriety, an absolute contribution ban oversteps its legitimate sweep and restricts a substantial amount of protected speech. This section fails to tailor its prohibitions toward those who have some control over awarding no-bid contracts, which would be directly correlated to its purpose of preventing the appearance of impropriety. Dallman v. Ritter, 225 P.3d 610 (Colo. 2010).

Ban on contributions for a two-year period after a contract's expiration or termination is similarly overbroad. The two-year ban on contributions after a contract expires inhibits a substantial amount of free speech, especially considering the overbreadth of amendment 54's other restrictions. Dallman v. Ritter, 225 P.3d 610 (Colo. 2010).

Restrictions in section on contributions from "immediate family members" are unconstitutionally overbroad. State law already prohibits one of the main concerns of this section -- that a family member will make a contribution in his or her own name while using the funds of another. This section expands the scope of prohibited conduit contributions and increases the penalty in a manner disproportionate to its purpose. Therefore, amendment 54's prohibitions on contributions made on behalf of immediate family members of sole source contract holders serves to substantially chill speech and does little to further its purpose of eliminating the appearance of impropriety. Dallman v. Ritter, 225 P.3d 610 (Colo. 2010).

Court lacks confidence that, under permutations of this section, a contract holder can make an informed decision before acting. Accordingly, the possible applications of this section render it unconstitutionally vague with respect to prohibited contributions of family members. Dallman v. Ritter, 225 P.3d 610 (Colo. 2010).

Restriction on first amendment activity for those that serve a nonprofit falls outside of amendment 54's plainly legitimate

sweep. This section prohibits directors and officers of nonprofit organizations holding sole source government contracts from contributing to any candidate or party in the state. Nonprofit board members must choose between remaining on the board and exercising their first amendment rights, creating a perverse incentive to refrain from charitable activity that does not comport with amendment 54's purpose. Dallman v. Ritter, 225 P.3d 610 (Colo. 2010).

By restricting all contributions from labor organizations and their political committees, this section impermissibly abridges union members' first amendment rights to associate in order to amplify their political voice. Without creating an outlet for small contributions, amendment 54's solution to the pay-to-play problem is not closely drawn under first amendment analysis. Dallman v. Ritter, 225 P.3d 610 (Colo. 2010).

By treating unions differently than other entities, amendment 54 violates union members' fourteenth amendment equal protection clause guarantees. By prohibiting both unions and their political action committees (PACs) from making contributions, amendment 54 completely strips unions of any political voice, while allowing corporations to participate through their own PACs. Because there is no compelling governmental interest underlying the disparate treatment of different sole source contractors, amendment 54's provisions applying to labor organizations violate the fourteenth amendment's equal protection clause. Dallman v. Ritter, 225 P.3d 610 (Colo. 2010).

Given that necessary nullifications of this section would leave the section completely eviscerated, court is left with no choice but to sever all of this section. After striking all unconstitutional sections, it is impossible to achieve amendment 54's legitimate purpose without substantially rewriting the amendment from the bench. Dallman v. Ritter, 225 P.3d 610 (Colo. 2010).

Deficiencies in amendment 54 so pervasive as to render it wholly unconstitutional. Despite the constitutionality of some limited phrases and portions, amendment 54 is so incomplete or riddled with omissions that it cannot be salvaged as a meaningful legislative enactment. Dallman v. Ritter, 225 P.3d 610 (Colo. 2010).

Section 16. To aid in enforcement of this measure concerning sole source contracts, the executive director of the department of personnel shall promptly publish and maintain a summary of each sole source government contract issued. Any contract holder of a sole source government contract shall promptly prepare and deliver to the executive director of the department of personnel a true and correct "Government Contract Summary," in digital format as prescribed by that office, which shall identify the names and addresses of the contract holders and all other parties to the government contract, briefly describe the nature of the contract and goods or services performed, disclose the start and end date of the contract, disclose the contract's estimated amount or rate of payment, disclose the sources of payment, and disclose other information as determined by the executive director of the department of personnel which is not in violation of federal law, trade secrets or intellectual property rights. The executive director of the department of personnel is hereby given authority to promulgate rules to facilitate this section.

Editor's note: This section was declared unconstitutional (see the editor's note following this section).

Source: Initiated 2008: Entire section added, effective December 31, 2008, see **L. 2009,** p. 3380.

Editor's note: (1) In 2008, Amendment 54 amended § 13 of this article creating an exception to the effective date stating that the provisions of this article amended or added by Amendment 54 concerning sole source government contracts are effective December 31, 2008; however the Governor's proclamation date on Amendment 54 was January 8, 2009.

(2) In the case of **Dallman v. Ritter,** the Denver District Court declared the provisions of this section unconstitutional and issued a preliminary injunction enjoining the enforcement of Amendment 54 (see **Dallman v. Ritter,** 225 P.3d 610 (Colo. 2010)). The Colorado Supreme Court affirmed the district court's ruling (see **Dallman v. Ritter,** 225 P.3d 610 (Colo. 2010)).

(3) This section did not contain a headnote as it appeared on the ballot.

ANNOTATION

Court severs this section. After obligatory striking of sections 15 and 17 and subsections (3.5), (8.5), (14.4), and (14.6) of section 2, this section's government contracts summary is the only portion that retains any substance. But this section is dependent on amendment 54's definition of "sole source contract", which is unconstitutionally overbroad. Furthermore, standing alone this section cannot effectuate the purpose behind the passage of amendment 54, and court's goal must be to give effect to the law's overall intent, not specific sections. Dallman v. Ritter, 225 P.3d 610 (Colo. 2010).

Deficiencies in amendment 54 so pervasive as to render it wholly unconstitutional. Despite the constitutionality of some limited phrases and portions, amendment 54 is so incomplete or riddled with omissions that it cannot be salvaged as a meaningful legislative enactment. Dallman v. Ritter, 225 P.3d 610 (Colo. 2010).

Section 17. (1) Every sole source government contract by the state or any of its political subdivisions shall incorporate article XXVIII, section 15, into the contract. Any person who intentionally accepts contributions on behalf of a candidate committee, political committee, small donor committee, political party, or other entity, in violation of section 15 has engaged in corrupt misconduct and shall pay restitution to the general treasury of the contracting governmental entity to compensate the governmental entity for all costs and expenses associated with the breach, including costs and losses involved in securing a new contract if that becomes necessary. If a person responsible for the bookkeeping of an entity that has a sole source contract with a governmental entity, or if a person acting on behalf of the governmental entity, obtains knowledge of a contribution made or accepted in violation of section 15, and that person intentionally fails to notify the secretary of state or appropriate government officer about the violation in writing within ten business days of learning of such contribution, then that person may be contractually liable in an amount up to the above restitution.

(2) Any person who makes or causes to be made any contribution intended to promote or influence the result of an election on a ballot issue shall not be qualified to enter into a sole source government contract relating to that particular ballot issue.

(3) The parties shall agree that if a contract holder intentionally violates section 15 or section 17 (2), as contractual damages that contract holder shall be ineligible to hold any sole source government contract, or public employment with the state or any of its political subdivisions, for three years. The governor may temporarily suspend any remedy under this section during a declared state of emergency.

(4) Knowing violation of section 15 or section 17 (2) by an elected or appointed official is grounds for removal from office and disqualification to hold any office of honor, trust or profit in the state, and shall constitute misconduct or malfeasance.

(5) A registered voter of the state may enforce section 15 or section 17 (2) by filing a complaint for injunctive or declaratory relief or for civil damages and remedies, if appropriate, in the district court.

Editor's note: This section was declared unconstitutional (see the editor's note following this section).

Source: Initiated 2008: Entire section added, effective December 31, 2008, see **L. 2009,** p. 3380.

Editor's note: (1) In 2008, Amendment 54 amended § 13 of this article creating an exception to the effective date stating that the provisions of this article amended or added by Amendment 54 concerning sole source government contracts are effective December 31, 2008; however the Governor's proclamation date on Amendment 54 was January 8, 2009.

(2) In the case of **Dallman v. Ritter,** the Denver District Court declared the provisions of this section unconstitutional and issued a preliminary injunction enjoining the enforcement of Amendment 54 (see **Dallman v. Ritter,** 225 P.3d 610 (Colo. 2010)). The Colorado Supreme Court affirmed the district court's ruling (see **Dallman v. Ritter,** 225 P.3d 610 (Colo. 2010)).

(3) This section did not contain a headnote as it appeared on the ballot.

ANNOTATION

Apart from restitutionary penalty of subsection (1), every subsection of this section penalizes protected first amendment expression in a manner disproportionately severe to the section's purpose. The disproportionate punishment serves to chill protected speech and is insufficiently related to eliminating the appearance of impropriety. Dallman v. Ritter, 225 P.3d 610 (Colo. 2010).

Subsection (1) imposes a restitutionary penalty that compensates the government for expenses associated with prohibited contributions. This provision is proportionate to and consistent with the legitimate sweep of amendment 54. Dallman v. Ritter, 225 P.3d 610 (Colo. 2010).

Subsection (3) prohibits a contract holder who intentionally violates section 15 from holding any government contract and from holding public employment for three years. Irrespective of the amount of the prohibited contribution or the ability of the recipient to award contracts, any person violating section 15 faces a severe economic penalty as well as a

harsh restriction on employment. This excessive punishment oversteps amendment 54's plainly legitimate sweep. Dallman v. Ritter, 225 P.3d 610 (Colo. 2010).

Subsection (4), which removes any elected or appointed official from office if he or she knowingly violates section 15 and disqualifies the official from holding any office in the state, is similar to subsection (3) in its overbreadth. A one-size-fits-all penalty may be appropriate when the penalty is a monetary fine, but the severity of the penalty is disproportionate to amendment 54's purpose. Dallman v. Ritter, 225 P.3d 610 (Colo. 2010).

Although subsection (5), which allows any registered voter to enforce section 15 or subsection (2) of this section through various remedies, poses an undeniable risk of harassment, that alone is insufficient to invalidate its provisions. Dallman v. Ritter, 225 P.3d 610 (Colo. 2010).

Because there is an insufficient link between a ballot issue contribution and a contract award, state's interest under subsection (2) is not sufficiently compelling to justify ban on "any person" who contributes to a ballot issue from entering into a sole source contract with respect to that issue. Any reading of this section would be an unconstitutional prohibition under the first amendment. Dallman v. Ritter, 225 P.3d 610 (Colo. 2010).

Court required to sever all of this section. Striking section 15 renders the rest of subsection (1) of this section meaningless because the remaining section attempts to prescribe a penalty without any corollary offense. Subsection (2) is entirely unconstitutional because it is not closely drawn to a compelling government interest. Similarly subsections (3) and (4) impose unconstitutionally severe penalties for contract holders and government officials, leaving no option but to entirely excise each as well. Although subsection (5) is constitutionally sufficient, with the excising of the other parts of this section, it no longer represents any sort of "meaningful legislative enactment". Dallman v. Ritter, 225 P.3d 610 (Colo. 2010).

Deficiencies in amendment 54 so pervasive as to render it wholly unconstitutional. Despite the constitutionality of some limited phrases and portions, amendment 54 is so incomplete or riddled with omissions that it cannot be salvaged as a meaningful legislative enactment. Dallman v. Ritter, 225 P.3d 610 (Colo. 2010).

ARTICLE XXIX
Ethics in Government

Law reviews: For article, "The Colorado Constitution in the New Century", see 78 U. Colo. L. Rev. 1265 (2007); for article, "The Practitioner's Guide to Amendment 41 and the Colorado Independent Ethics Commission", see 38 Colo. Law. 37 (October 2009); for article, "Amendment 41: Ethics in Government", see 39 Colo. Law. 29 (December 2010).

Section 1. Purposes and findings. (1) The people of the state of Colorado hereby find and declare that:

(a) The conduct of public officers, members of the general assembly, local government officials, and government employees must hold the respect and confidence of the people;

(b) They shall carry out their duties for the benefit of the people of the state;

(c) They shall, therefore, avoid conduct that is in violation of their public trust or that creates a justifiable impression among members of the public that such trust is being violated;

(d) Any effort to realize personal financial gain through public office other than compensation provided by law is a violation of that trust; and

(e) To ensure propriety and to preserve public confidence, they must have the benefit of specific standards to guide their conduct, and of a penalty mechanism to enforce those standards.

(2) The people of the state of Colorado also find and declare that there are certain costs associated with holding public office and that to ensure the integrity of the office, such costs of a reasonable and necessary nature should be born by the state or local government.

Source: Initiated 2006: Entire article added, effective upon proclamation of the Governor, **L. 2007,** p. 2955, December 31, 2006.

ANNOTATION

It would not violate this section for the secretary of state to serve as a member of the board of directors of a nonprofit entity registered with and regulated by the secretary of state's office, provided there is full disclosure and recusal where appropriate; however, this could create an appearance of impropriety as a result. Independent Ethics Commission Advisory Opinion 09-06.

It would not pose any violation of the public trust or any principles in this article for a retired community college accounting professor to enter into a contract with the college since he was not involved in the accounting procedures at the college when he was employed there and the proposed contract does not involve a matter in which he was directly involved as a professor. Independent Ethics Commission Advisory Opinion 10-08.

It would not pose a violation of the public trust or any principles of this article for a former employee of the department of health care policy and financing to enter into a contract with a consulting company to work on project management issues relating to a major health care provider. Independent Ethics Commission Letter Ruling 10-02.

The appearance that access to members of the general assembly is available for a price and invitations from members to corporate donors to attend a fund-raising luncheon could be perceived as creating a justifiable impression among members of the public that the public trust is being violated. Independent Ethics Commission Advisory Opinion 10-14.

No violation of the public trust would occur if the housing division of the department of local affairs hired a qualified individual whose business has outstanding loans with the division, provided the individual would not have oversight or authority over his own contracts and his position would not be a "decision-making" or managerial position. Independent Ethics Commission Advisory Opinion 11-11.

In order to avoid the appearance of impropriety, local government officials who contract with the entity they serve in a public capacity should be removed from any involvement in the procurement

process when his or her business is a potential bidder by erecting a wall between himself or herself and the local government purchasing or contracting for the goods or services to be provided by the official's business. Independent Ethics Commission Advisory Opinion 12-01.

Section 2. Definitions. As used in this article, unless the context otherwise requires:

(1) "Government employee" means any employee, including independent contractors, of the state executive branch, the state legislative branch, a state agency, a public institution of higher education, or any local government, except a member of the general assembly or a public officer.

(2) "Local government" means county or municipality.

(3) "Local government official" means an elected or appointed official of a local government but does not include an employee of a local government.

(4) "Person" means any individual, corporation, business trust, estate, trust, limited liability company, partnership, labor organization, association, political party, committee, or other legal entity.

(5) "Professional lobbyist" means any individual who engages himself or herself or is engaged by any other person for pay or for any consideration for lobbying. "Professional lobbyist" does not include any volunteer lobbyist, any state official or employee acting in his or her official capacity, except those designated as lobbyists as provided by law, any elected public official acting in his or her official capacity, or any individual who appears as counsel or advisor in an adjudicatory proceeding.

(6) "Public officer" means any elected officer, including all statewide elected officeholders, the head of any department of the executive branch, and elected and appointed members of state boards and commissions. "Public officer" does not include a member of the general assembly, a member of the judiciary, any local government official, or any member of a board, commission, council or committee who receives no compensation other than a per diem allowance or necessary and reasonable expenses.

Source: Initiated 2006: Entire article added, effective upon proclamation of the Governor, **L. 2007,** p. 2955, December 31, 2006.

ANNOTATION

Term "independent contractor" means those who enter into "personal services" contracts as that term is defined in part 5 of article 50 of title 24, including their employees and members of their immediate families. Independent Ethics Commission Position Statement 09-07.

Public officials who are elected, but who have not yet been sworn in, are not under the jurisdiction of the independent ethics commission. Independent Ethics Commission Advisory Opinion 10-18.

A government agency is a "person" under this section, and a public official or employee therefore may not accept gifts valued in excess of $50 from governmental agencies or institutions, unless the gift falls under another specified exception. Independent Ethics Commission Position Statement 09-04.

Term "public officer" does not include the commissioner of the Colorado lottery since that individual is

Section 3. Gift ban. (1) No public officer, member of the general assembly, local government official, or government employee shall accept or receive any money, forbearance, or forgiveness of indebtedness from any person, without such person receiving lawful consideration of equal or greater value in return from the public officer, member of the general assembly, local government official, or government employee who accepted or received the money, forbearance or forgiveness of indebtedness.

(2) No public officer, member of the general assembly, local government official, or government employee, either directly or indirectly as the beneficiary of a gift or thing of value given to such person's spouse or dependent child, shall solicit, accept or receive any gift or other thing of value having either a fair market value or aggregate actual cost greater than fifty dollars ($50) in any calendar year, including but not limited to, gifts, loans, rewards, promises or negotiations of future employment, favors or services, honoraria, travel, entertainment, or special discounts, from a person, without the person receiving lawful consideration of equal or greater value in return from the public officer, member of the general assembly, local government official, or government employee who solicited, accepted or received the gift or other thing of value.

(3) The prohibitions in subsections (1) and (2) of this section do not apply if the gift or thing of value is:

(a) A campaign contribution as defined by law;

(b) An unsolicited item of trivial value less than fifty dollars ($50), such as a pen, calendar, plant, book, note pad or other similar item;

(c) An unsolicited token or award of appreciation in the form of a plaque, trophy, desk item, wall memento, or similar item;

(d) Unsolicited informational material, publications, or subscriptions related to the recipient's performance of official duties;

(e) Admission to, and the cost of food or beverages consumed at, a reception, meal or meeting by an organization before whom the recipient appears to speak or to answer questions as part of a scheduled program;

(f) Reasonable expenses paid by a nonprofit organization or other state or local government for attendance at a convention, fact-finding mission or trip, or other meeting if the person is scheduled to deliver a speech, make a presentation, participate on a panel, or represent the state or local government, provided that the non-profit organization receives less than five percent (5%) of its funding from for-profit organizations or entities;

(g) Given by an individual who is a relative or personal friend of the recipient on a special occasion.

(h) A component of the compensation paid or other incentive given to the recipient in the normal course of employment.

(4) Notwithstanding any provisions of this section to the contrary, and excepting campaign contributions as defined by law, no professional lobbyist, personally or on behalf of any other person or entity, shall knowingly offer, give, or arrange to give, to any public officer, member of the general assembly,

local government official, or government employee, or to a member of such person's immediate family, any gift or thing of value, of any kind or nature, nor knowingly pay for any meal, beverage, or other item to be consumed by such public officer, member of the general assembly, local government official or government employee, whether or not such gift or meal, beverage or other item to be consumed is offered, given or paid for in the course of such lobbyist's business or in connection with a personal or social event; provided, however, that a professional lobbyist shall not be prohibited from offering or giving to a public officer, member of the general assembly, local government official or government employee who is a member of his or her immediate family any such gift, thing of value, meal, beverage or other item.

(5) The general assembly shall make any conforming amendments to the reporting and disclosure requirements for public officers, members of the general assembly and professional lobbyists, as provided by law, to comply with the requirements set forth in this section.

(6) The fifty-dollar ($50) limit set forth in subsection (2) of this section shall be adjusted by an amount based upon the percentage change over a four-year period in the United States bureau of labor statistics consumer price index for Denver- Boulder-Greeley, all items, all consumers, or its successor index, rounded to the nearest lowest dollar. The first adjustment shall be done in the first quarter of 2011 and then every four years thereafter.

Source: Initiated 2006: Entire article added, effective upon proclamation of the Governor, **L. 2007,** p. 2956, December 31, 2006.

Editor's note: In Position Statement 11-01, released April 8, 2011, the Independent Ethics Commission increased the fifty-dollar gift-ban limit set forth in § 3 (2) to fifty-three dollars, effective until the first quarter of 2015.

ANNOTATION

I. CONSTITUTIONALITY.

As personification of state, governor proper party defendant in suit contesting constitutionality of this article at time of its filing. The evaluation of whether a person or entity is a proper party in a lawsuit must be determined in light of relevant facts and circumstances. Here, there was no alternative entity for plaintiffs to sue in order to challenge this article. Colorado has long recognized the practice of naming the governor, in his role as state's chief executive, as proper defendant in cases where a party seeks to "enjoin or mandate enforcement of a statute, regulation, ordinance, or policy". The only appropriate state agent for litigation purposes was the governor. Prior to creation of the independent ethics commission

(commission), the governor was appropriate party defendant in a constitutional challenge. Developmental Pathways v. Ritter, 178 P.3d 524 (Colo. 2008).

Because preliminary injunction issued before commission came into existence and before it had opportunity to act in furtherance of this article, plaintiffs failed to present a ripe as-applied constitutional challenge. Relief plaintiffs seek is only available in a successful facial challenge, not in an as-applied challenge. In order for plaintiffs to obtain a declaration that article is unconstitutional as applied, there must be an actual application or at least a reasonable possibility of enforcement or threat of enforcement. As of the time of suit, the commission was not yet in existence, and it had not yet acted to enforce the gift bans. No enforcement or threat of enforcement of the gift bans had occurred. Therefore, concerns expressed by plaintiffs were merely speculative interpretations of what might occur once commission is operative. As such, district court did not have jurisdiction to grant preliminary injunction. Developmental Pathways v. Ritter, 178 P.3d 524 (Colo. 2008).

II. GIFTS.

A. Generally.

It is not a violation of this article for a covered individual or that person's spouse or dependent child to accept a scholarship provided the scholarship was awarded using objective criteria and is available to all those who meet those criteria; nor is the receipt of a scholarship a direct or indirect benefit to a public employee or official because there is no legal obligation to pay for a college education. Independent Ethics Commission Position Statement 08-01.

Covered individuals may accept honoraria for speaking before business or civic groups or writing publications when: (1) Delivering the speech or writing the publication is not part of the public official's or employee's official duties; (2) public resources are not used in the preparation of the speech or publication; (3) government time is not used for the preparation of the speech or publication; (4) the amount of the honorarium is reasonably related to the services the public employee or official is being asked to perform; and (5) neither the sponsor of the speech nor the source of the honorarium is a person or entity with whom the public official or employee has had, or reasonably expects to have, dealings in his or her official capacity. Independent Ethics Commission Position Statement 08-01.

Covered individuals may accept insurance proceeds where they have paid premiums to an insurance company like other customers or because the payment is based upon the personal relationship of the parties. Independent Ethics Commission Position Statement 08-01.

It is not a breach of the public trust for a covered individual to accept a prize if the competition was fair, open to everyone similarly situated, not rigged in favor of the public employee or official, and there was no evidence that the prize was being given based upon the covered individual's government status. Independent Ethics Commission Position Statement 08-01.

A government employee may accept a prize with a monetary value over $50 from a professional organization in the employee's area of employment. Independent Ethics Commission Advisory Opinion 09-07.

Acceptance of winnings in raffles, lotteries, or silent auctions does not violate the public trust and is therefore permissible provided the contests are not rigged in favor of the

public employee or official based upon his or her governmental status. Independent Ethics Commission Position Statement 08-01.

Receipt of an inheritance does not violate the public trust because of the close personal relationship of the people involved provided there is no undue influence, coercion, or other circumstances that would cause a breach of the public trust. Independent Ethics Commission Position Statement 08-01.

A covered person may accept discounts that are available to the general public or to all government employees and officials, or to a subset of government employees and officials, so long as the opportunity is uniformly offered and the group is large enough that it is unlikely the discount would in any way influence the recipients in the performance of their official duties. "Special discounts" targeted at a particular government official or employee, or a small group of government officials or employees, where there is potential to influence government action is impermissible. Independent Ethics Commission Position Statement 08-03.

A professor may accept an "examination copy" of a textbook that sells for more than $50 if it is unsolicited. Solicited copies may also be accepted as a gift to the university. Independent Ethics Commission Advisory Opinion 09-01.

A state agency may accept a gift of code books from a national professional organization without cost because the code books remain with the state agency's program and are not, therefore, gifts to covered individuals personally. Independent Ethics Commission Advisory Opinion 11-05.

An employee of the department of law may accept the Richard Marden Davis award from the Denver bar association where she is being honored because of her contributions to the community, not because of her position as a government employee and because there is no indication that the award was being offered to influence an official act. Independent Ethics Commission Advisory Opinion 10-01.

It would not be a violation of this article for the Colorado bureau of investigation to accept a voucher for a free conference and travel expenses where an employee won the voucher in a fair and impartial raffle. Furthermore, the gift does not inure to the personal benefit of the employee, but rather to the Colorado bureau of investigation and therefore is not a gift to a covered individual for purposes of this section. Independent Ethics Commission Advisory Opinion 11-10.

Pursuant to § 3(6), the $50 gift limit is increased to $53 until the first quarter of 2015. Independent Ethics Commission Position Statement 11-01.

It would not be a violation of this section for the state of Colorado to accept an electric vehicle from a for-profit entity since the benefit of the vehicle's use does not inure personally to one covered individual but to any insured and trained employee of the executive branch who, when using the vehicle, must also maintain and transmit certain performance data. Independent Ethics Commission Advisory Opinion 12-09.

All proscriptions contained in this article are applicable and in effect when covered individuals attend political events and political conventions. Covered individuals must comply with this article at all times, including during attendance at national political conventions. Independent Ethics Commission Position Statement 12-02.

B. Admission or Registration Fee.

Commissioner of the public utilities commission (PUC) may

accept the waiver of the registration fee for a three-day conference since he will be participating on panels throughout the conference; however, the commissioner should be cautious to avoid the appearance of impropriety in meeting with organizations at private networking events or dinners sponsored or hosted by companies that are regulated by the PUC. Independent Ethics Commission Advisory Opinion 12-04.

Not a violation for the director of Colorado lottery to accept the waiver of the registration fee for a conference from a professional association of state lotteries (NAASPL) since Colorado lottery is a dues-paying member of NAASPL and the reimbursement to the lottery director for NAASPL conferences is included in the membership benefits. Independent Ethics Commission Advisory Opinion 12-07.

Nor is it a violation for a PUC commissioner to accept the waiver of the registration fee for an out-of-state forum at which the commissioner is an official speaker on the agenda; however, the commissioner may not accept the payment of travel and lodging expenses or the waiver of the registration fee for the entire conference at which he is not a speaker. Independent Ethics Commission Advisory Opinion 12-08.

Nor would it be a violation of this section for Colorado state patrol members assigned to the security detail of the governor, lieutenant governor, or any governor-elect to accept free admission to events with an admission price in excess of $50 when they are attending such events with any of those officials as part of their official duties. Independent Ethics Commission Advisory Opinion 09-03.

Nor would it be a violation of this section for members of the governor's cabinet and staff to accept free admission to events with an admission price in excess of $50 when they are attending such events with the governor as part of their official duties and so long as the five criteria set out in Position Statement 08-02 are met. Independent Ethics Commission Advisory Opinion 09-09 (Position Statement 08-02 overturned in Position Statement 12-01). But see Letter Ruling 10-01 annotated in D. below.

C. Cost of Food or Beverages.

A university professor or employee may accept tickets to an annual banquet provided that he or she is speaking or answering questions as part of the scheduled program. Tickets may also be accepted if they are from a nonprofit organization that receives less than five percent of its funding from for-profit sources. Independent Ethics Commission Advisory Opinion 09-01.

An employee of the department of law may accept a free dinner sponsored by the Denver bar association under exception in subsection (3)(e) since he was scheduled to speak at the dinner to present his colleague as the recipient of an award. Independent Ethics Commission Advisory Opinion 10-01.

Members of the general assembly who are speaking at a fund-raiser luncheon may accept admission to the event from a political subdivision of the state under exception in subsection (3)(e). Independent Ethics Commission Advisory Opinion 10-14.

Members of the general assembly who are not featured speakers at a fund-raiser luncheon may not solicit for or accept admission to the event from a political subdivision of the state. Independent Ethics Commission Advisory Opinion 10-14.

Exception in subsection (3)(e) requires active participation as a speaker or panelist; merely "allowing" the public employee to say a few words or to answer one or two

questions is not sufficient. Independent Ethics Commission Letter Ruling 09-06.

Where the value of the meal at a fund-raiser luncheon is $30 but the cost of admission is $100, the value of the gift consists of the cost of admission to the event, not the value of the meal. Independent Ethics Commission Advisory Opinion 10-14. But see Letter Ruling 12-01 annotated below.

In determining the value of a complimentary ticket to a luncheon for purposes of the gift ban, the appropriate valuation is the lowest price at which the ticket is available to the general public, and, where the actual ticket price is higher than the gift limit, but close, a public employee may pay the difference between the gift limit and the price of the ticket. Independent Ethics Commission Letter Ruling 12-01.

Under subsection (3)(e) a member of the general assembly being honored at an out-of-state banquet may accept the cost of the meal and a plaque from the nonprofit organization that receives more than five percent of its funding from for-profit sources since he will be speaking at the event; however, he may not accept travel expenses to get there. Independent Ethics Commission Advisory Opinion 11-03.

A not-for-profit, non-lobbyist entity may host public officials and employees at an annual luncheon provided the value of the meal is $50 or less and provided the aggregate value of all gifts from the entity is $50 or less for the entire calendar year or if the recipient is appearing to speak or to answer questions as part of the scheduled program. Independent Ethics Commission Letter Ruling 09-02.

A nonprofit, non-lobbyist entity may provide a meal to its board members who are concurrently government employees or officials or to the board members' spouses or dependent children provided the meal is being provided to all board members during a meeting and is reasonably priced, because lawful consideration is being given from the government officials or employees who are serving as a board members of the nonprofit entity in accepting meals during meetings in exchange for his or her service on the board. Independent Ethics Commission Letter Ruling 09-03.

An employee of the governor's office may not accept a complimentary ticket to a dinner to accept a laureate award given to the office by a for-profit professional organization where the employee is not scheduled to speak or answer questions as part of the scheduled program. Independent Ethics Commission Advisory Opinion 11-09.

D. Travel.

Gifts of travel are permissible only if they are to a governmental entity rather than to an individual public employee or official and if they are supported by consideration of equal or greater value or they fall under an enumerated exception. Independent Ethics Commission Position Statement 12-01, overturning Position Statement 08-02.

Covered individuals should consider the following factors when weighing whether to accept offers of payment or reimbursement for travel expenses: (1) Whether the offer is to a specific individual or to a designee of an agency or governmental entity; (2) whether the offer is ex officio; (3) whether the event is related to the public duties of the covered individual; (4) whether there is an existing or potential conflict of interest or appearance of impropriety; and (5) whether the purpose of the trip or conference is for educational purposes or to conduct the governmental

business of the agency or entity. Independent Ethics Commission Position Statement 12-01, overturning Position Statement 08-02.

Travel that is not expressly exempted may be considered a gift to the state or local government rather than to the public official or employee and is therefore permissible when the following five conditions are met: (1) The travel is for a legitimate state or local government purpose; (2) the travel arrangements are appropriate to that purpose; (3) the trip is no longer than reasonably necessary to accomplish the business that is its purpose; (4) the government official or employee who will be traveling is not currently, was not in the recent past, and will not in the reasonably foreseeable future, be in a position to take direct official action with respect to the donor; and (5) the government official or employee verifies compliance with the first four conditions. Independent Ethics Commission Position Statement 08-02 (overturned in Position Statement 12-01). But see Letter Ruling 10-01 annotated below.

Acceptance of travel expense reimbursement offered to the secretary of state ex officio to attend an out-of-state election law symposium is not a gift to a covered individual and therefore does not violate this article, because the secretary of state, by virtue of his role as the chief elections official of Colorado, is uniquely positioned to discuss the subject matter of the educational symposium. Nor does it present a conflict of interest or an appearance of impropriety. Independent Ethics Commission Advisory Opinion 13-02.

Permission for the secretary of state to accept reimbursement for travel expenses to attend an elections law symposium does not mean permission to attend entertainment, partisan, or social events unrelated to the symposium, if the cost of the event exceeds $53. Independent Ethics Commission Advisory Opinion 13-02.

The term "nonprofit" as used in subsection (3)(f) can be defined as in 13-21- 115.7 (1)(b). Independent Ethics Commission Position Statement 10-01.

Under exception in subsection (3)(f), a nonprofit organization must receive less than five percent of its funding from for-profit sources. Independent Ethics Commission Position Statement 10-01.

A member of the general assembly may accept travel-related expenses to Turkey from a nonprofit even though the exception in subsection (3)(f) does not apply, if the five conditions are met, and the travel would be a gift to the state rather than to the individual government official. Independent Ethics Commission Advisory Opinion 09-04 (Position Statement 08-02, which established the five conditions, overturned in Position Statement 12- 01). But see Advisory Opinion 10-12 and Letter Ruling 10-01 annotated below.

A university professor or employee may be reimbursed by a nonprofit organization for the reasonable travel-related expenses of attending a meeting or fact- finding mission even though that nonprofit organization receives five percent or more of its funding from a for-profit entity, provided that the five conditions set out in Position Statement 08-02 are met. Independent Ethics Commission Advisory Opinion 09-01 (Position Statement 08-02 overturned in Position Statement 12-01). But see Letter Ruling 10-01 annotated below.

A nonprofit foundation that receives more than five percent of its funding from for- profit sources may not give scholarships to members of the general assembly to participate in a two-day educational tour of the state's river basins. Independent Ethics

Commission Letter Ruling 10-01.

Under subsection (3)(f), a member of the general assembly being honored at an out- of-state banquet may not accept travel-related expenses from the nonprofit that receives more than five percent of its funding from for-profit sources to attend the banquet; however, he may accept the cost of the meal and a plaque. Independent Ethics Commission Advisory Opinion 11-03.

A member of the general assembly may not accept travel-related expenses paid from an educational fund that does not accept donations from for-profit sources but which fund is within a nonprofit organization that does receive more than five percent of its funding from for-profit sources. Independent Ethics Commission Advisory Opinion 11-06.

An executive agency employee may not accept travel-related expenses to Turkey from a nonprofit that receives more than five percent of its funding from for-profit sources. Independent Ethics Commission Advisory Opinion 10-12; Position Statement 12-01.

Under exception in subsection (3)(f) the governor and selected members of his cabinet and staff may accept travel-related expenses from a nonprofit that receives less than five percent of its funding from for-profit sources to participate in an economic development and trade mission to Israel. Independent Ethics Commission Advisory Opinion 10-10.

The executive director of a state agency may accept travel expenses from a nonprofit entity that receives less than five percent of its funding from for-profit sources to go on a fact-finding trip to Israel for purposes within his area of expertise and responsibility and directly related to his duties. Independent Ethics Commission Advisory Opinion 12-11.

Members of the general assembly may accept travel expenses to an Eastern European country from a nonprofit that receives less than five percent of its funding from for-profit sources where foreign officials ("fellows") from those countries will visit Colorado and work in the legislators' offices and observe the workings of the Colorado general assembly and, in turn, the legislators may receive travel expenses for a reciprocal trip. Independent Ethics Commission Advisory Opinion 11-02.

Members of the general assembly may accept travel expenses to attend a conference sponsored by a nonprofit organization that receives less than five percent of its funding from for-profit sources. Independent Ethics Commission Advisory Opinion 11-07.

It would not violate this section for a member of the general assembly and staff to attend educational events sponsored by a nonprofit health institute, including meals, lodging, and travel, where the expenses are reasonable, the events qualify as a convention, fact-finding mission or trip, or other meeting and the nonprofit receives less than five percent of its funding from for-profit sources. Independent Ethics Commission Advisory Ruling 09- 05.

A nonprofit health institute may not provide a per diem amount, in addition to reasonable expenses, to members of the general assembly who attend the nonprofit's educational events. Independent Ethics Commission Advisory Ruling 09-05.

A member of the general assembly may not accept travel-related expenses from a for-profit entity to attend the entity's conference since the gift does not meet the five conditions set out in Position Statement 08-02 and does not present a legitimate state purpose. Independent Ethics Commission Advisory Opinion 10-06 (Position Statement 08-02 overturned in Position Statement

12-01).

A state government employee may not accept travel-related expenses from a for-profit entity that does business in Colorado to speak at a workshop out of state. Independent Ethics Commission Advisory Opinion 10-17.

It would be a violation of this article for the state to accept reimbursement from a national for-profit news organization for the governor's travel-related expenses to participate in a televised panel discussion in New York. Independent Ethics Commission Advisory Opinion 11-12; Position Statement 12-01.

The governor may accept payment of expenses to attend the annual meeting of the national governors association, even though it receives more than five percent of its funding from for-profit sources, since it is a nonprofit entity primarily funded by membership dues, including dues paid by the state. If the dues cover the cost of the conference, there is lawful consideration for the expenses, and the trip may also be viewed as a gift to the state rather than a gift to the governor, since the five conditions set out in Position Statement 08- 02 are met. Independent Ethics Commission Advisory Opinion 10-03 (Position Statement 08- 02 overturned in Position Statement 12-01). But see Letter Ruling 10-01 annotated above.

Employees of the state purchasing office (SPO) may accept travel reimbursement from the subset of a nonprofit, multi-state cooperative purchasing association for the following reasons: (1) The source of the travel funding is contractually allocated to the state and is, therefore, not a gift to the covered individual but rather an expenditure by the SPO; (2) Colorado pays dues to the entity, a portion of which may be considered as consideration for the travel reimbursement if specifically invoiced to reflect that fact; and (3) the state provides valid consideration of equal or greater value for the travel reimbursement by participating in the multi-state contracts sponsored by the entity. Independent Ethics Commission Advisory Opinion 12-02; Position Statement 12-01.

State treasurer may accept travel-related expenses from nonprofit to which state paid dues 10 years ago. Since there has not been any fundraising by the organization for at least 10 years, the payment of expenses would be by a nonprofit organization that receives less than five percent of its funding from for-profit organizations or entities. Independent Ethics Commission Advisory Opinion 11-01.

It would not be a violation for the director of the Colorado lottery to accept travel reimbursement and waiver of the registration fee by NAASPL to attend a conference since the Colorado lottery is a dues-paying member of NAASPL and the travel reimbursement to the lottery director for NAASPL conferences is included in the membership benefits. Independent Ethics Commission Advisory Opinion 12-07.

Where governmental exchange organizations require member governmental entities to pay membership dues and such dues are invoiced expressly to cover travel and other expenses for representatives from the member entity to attend government exchange organization (GEO) events, the payment of such expenses would be supported by consideration and, therefore, not prohibited by this section. Independent Ethics Commission Position Statement 10-01.

When dues paid to government exchange organizations by state agencies and local government members of the organizations include travel allowances, reimbursement to covered

individuals attending the conferences hosted by the organizations is permissible. Independent Ethics Commission Position Statement 12-01.

A member of the general assembly may accept travel expenses from a GEO and a nonprofit organization to attend a legislative leaders' study tour of Israel since the state is a dues-paying member of the GEO and the nonprofit receives less than five percent of its funding from for-profit sources. Independent Ethics Commission Advisory Opinion 10-19; Position Statement 12-01.

Employees of Colorado lottery may accept travel reimbursement from NAASPL to attend a conference since the Colorado lottery is a member of NAASPL and pays $15,000 annually in dues to that organization. Independent Ethics Commission Advisory Opinion 12-06.

Director of Colorado lottery may accept travel reimbursement and waiver of registration fee by NAASPL to attend conference since Colorado lottery is a dues- paying member of NAASPL and the travel reimbursement to the lottery director for NAASPL conferences is included in the membership benefits. Independent Ethics Commission Advisory Opinion 12-07.

Employees of a state agency may accept travel-related expenses from a nonprofit national professional organization whose funding comes from data report registrations, shop reviews and surveys, the sale of code books and reference materials, accreditation and training programs, and testing and certification fees and not from government or industry. Independent Ethics Commission Advisory Opinion 11-05.

Joint governmental agencies are not "state or local governments" under subsection (3)(f). Independent Ethics Commission Position Statement 10-01.

An authority statutorily created as a political subdivision of the state does not qualify as a "state or local government" under exception in subsection (3)(f), even though it was formed as a political subdivision of the state and receives state funds to operate. Independent Ethics Commission Advisory Opinion 10-14.

Exception in subsection (3)(f) does not include local governments of a foreign country, and, therefore, a member of the general assembly may not accept travel-related expenses from a local government in Poland to participate in an economic development mission to that foreign city because resources from foreign governments and political subdivisions of foreign governments are not subject to the same degree of scrutiny and accountability as domestic state and local governments. Independent Ethics Commission Advisory Opinion 10-11.

Employees of the department of education (DOE) may accept payment of travel expenses from the government of Taiwan for a teacher exchange program where the "gift" is not to covered individuals since it was offered to the "highest ranking education official" and another person of DOE's choosing; it is not an invitation for a sight-seeing or pleasure trip but rather a trip to take official action; it fulfills a legitimate state purpose; there is no indication that the trip will entail the solicitation of business or lobbying opportunities; and the purpose of the trip to expand educational opportunities is within the purview of the DOE. Independent Ethics Commission Advisory Opinion 12-03.

County commissioner may accept travel reimbursement from the county to attend the annual county leadership institute in Washington D.C. sponsored by the national association of counties, a nonprofit organization that receives

more than five percent of its funding from for-profit sources and to which the county pays annual dues. Reimbursement by the county is permissible under the "other state or local government" exception in subsection (3)(f). Because there is no indication that either the selection process for attendees or the conference itself present issues of conflict of interest or appearance of impropriety, acceptance of the reimbursement from the county is permissible. Independent Ethics Commission Advisory Opinion 12-05.

It would not be a violation of this article for employees of the Colorado lottery to accept travel reimbursement from its for-profit vendors to attend a conference where the contracts for services with the vendors include a provision for this type of travel and, therefore, the lottery is paying consideration to the vendors in exchange for the promise of conference travel reimbursement. Independent Ethics Commission Advisory Opinion 12-06.

A university professor or employee may be reimbursed by the federal government for reasonable travel-related expenses to testify before a congressional committee or attend a meeting with federal government officials where lawful consideration is being given in the form of testimony before the congressional committee, an important civic act, and the individual testifying is making available his or her expertise and experience to further Congress' ability to act. Independent Ethics Commission Advisory Opinion 09-01; Position Statement 12-01.

Employees of the division of emergency management may accept travel-related expenses from the federal government even though the exception in subsection (3)(f) does not apply if the five conditions set out in Position Statement 08-02 are met. Independent Ethics Commission Advisory Opinion 10-02 (Position Statement 08-02 overturned in Position Statement 12-01). But see Letter Ruling 10-01 annotated above.

A PUC commissioner may not accept the payment of travel and lodging expenses to attend a three-day conference, or the days of the conference at which he is not a speaker even though the commissioner may accept the waiver of the registration fee for the day of the forum at which the commissioner is an official speaker. Independent Ethics Commission Advisory Opinion 12-08.

If payment of employment recruiting travel and related expenses is reasonable and is offered in the course of bona fide recruitment process and the expenses do not create either a conflict of interest or a perception of a conflict of interest, it would not be a violation of this article for a covered individual to accept such payment. Independent Ethics Commission Advisory Opinion 10-15.

A government employee may accept a fellowship from a nonprofit entity to attend the John F. Kennedy school of government at Harvard university since the nonprofit does not accept any contributions from for-profit sources. Independent Ethics Commission Advisory Opinion 09-05.

A member of the general assembly may accept a fellowship from a nonprofit entity to attend a twenty-four-month leadership program offered by the Aspen institute and the Rodel foundation since the nonprofit does not receive funding from for-profit sources. Independent Ethics Commission Advisory Opinion 09-08.

Although reimbursement for travel to a conference or event may be permissible under this article and may include dinner with a guest speaker, other portions of the conference such as golf trips, sightseeing, cruises, and other recreational activities are never considered part of a conference, and the covered individual should either not

attend those events or attend but pay his or her own way if the cost exceeds $53. Independent Ethics Commission Position Statement 12-01.

E. Relative or Personal Friend.

Term "special occasion" as used in subsection (3)(g) should be broadly construed so as not to preclude public employees and officials from enjoying social situations available to other citizens. Independent Ethics Commission Position Statement 08-01.

Gifts and other things of value given by relatives or personal friends are not a breach of the public trust, provided that: (1) It can be shown under all of the relevant circumstances that it is a family or personal relationship rather than the governmental position that is the controlling factor; and (2) the public official's or employee's receipt of the gift or other thing of value would not result in or create the appearance of using his or her office for personal benefit, giving preferential treatment to any person or entity, losing independence or impartiality, or accepting gifts or favors for performing official duties. Independent Ethics Commission Position Statement 08-01.

A member of the general assembly and his family may accept disbursements from a blind trust created to help defray medical and related expenses and to which relatives and personal friends made contributions. Independent Ethics Commission Advisory Opinion 11-08.

F. Component of Compensation.

Administrative law judges' acceptance of free membership in the Colorado bar association is permissible because it is a component of the compensation paid or other incentive given to the recipients in the normal course of employment under exception in subsection (3)(h). Independent Ethics Commission Advisory Opinion 09-02.

It would not be a violation of this section for employees of state agencies to donate to a financial assistance program for the benefit of other state employees who are experiencing financial difficulties due to the mandatory furloughs and budget reductions since the program is directly tied to the employment of the covered employees. Independent Ethics Commission Advisory Opinion 10-04.

G. Promises or Negotiations of Future Employment.

A university professor employee may be recruited and may negotiate consulting contractual arrangements otherwise permitted by the university if the compensation to be paid is commensurate with the value of the work to be performed. Independent Ethics Commission Advisory Opinion 09-01.

Whether negotiations for future employment are barred under this section for want of lawful consideration of equal or greater value, the totality of the circumstances should be considered with particular focus on the following factors: (1) Whether the remuneration that is being offered to the public official or employee is appropriate or patently excessive; and (2) whether the offer of solicitation is made in circumstances indicative of a conflict of interest. Independent Ethics Commission Advisory Opinion 09-03.

H. Solicitation.

Directors and supervisors may solicit donations to an employee financial assistance program provided they do not know who is participating in the project and at what level and provided that any solicitations made are in the form of a letter or email to all employees and not personal or face to face with individuals.

Independent Ethics Commission Advisory Opinion 10-04.

A legislator may solicit private donations to a legislative caucus, as an organization that the legislator supports, if the legislator avoids an appearance of impropriety by refraining from soliciting contributions from a lobbyist or from any organization or individual who is either actively supporting proposed legislation or for whom the caucus members are in a position to take direct official action while the general assembly is in session. Independent Ethics Commission Advisory Opinion 10-07.

A personal invitation to a fund-raising event is not distinguishable from soliciting a donation and therefore it would not be appropriate for members of the general assembly to invite persons, lobbyists, or corporations to a fund-raising luncheon. Independent Ethics Commission Advisory Opinion 10-14.

Concerns relating to the solicitation of donations and fund-raising ticket sales to benefit a quasi-governmental body include: Soliciting professional lobbyists and corporations; personal solicitation of ticket purchases by members of the general assembly; seating legislators at tables around the room to assure they sit with those who purchased tickets; or creating the appearance of a climate in which interested parties donate to the quasi-governmental body in exchange for support of legislation. Independent Ethics Commission Advisory Opinion 10-14.

Covered individuals may not solicit gifts on behalf of nonprofit entities from registered lobbyists or their principals, entities that have business pending before the state, or in circumstances that suggest the covered individual would ultimately and personally benefit from the gift. Independent Ethics Commission Advisory Opinion 10-18.

Creation of a nonprofit organization to solicit and accept contributions for the provision of transition services between governors would not violate this article. However, the commission urges full and timely disclosure and transparency practices and the preclusion of contributions by lobbyists and persons or businesses with matters pending before the state. Independent Ethics Commission Advisory Opinion 10-18.

A county commissioner may not solicit or accept monetary contributions to support his candidacy for an officer position in a private national county association, including money raised by a statewide county organization. Independent Ethics Commission Advisory Opinion 11-04.

I. Lawful Consideration.

When reimbursement of travel expenses to covered individuals is supported by lawful consideration of equal or greater value, such reimbursement does not constitute a gift under this section. Independent Ethics Commission Position Statement 12-01.

The governor may accept payment of expenses to attend the annual meeting of the national governors association, even though it receives more than five percent of its funding from for-profit sources, since it is a nonprofit entity primarily funded by membership dues, including dues paid by the state. If the dues cover the cost of the conference, there is lawful consideration for the expenses. Independent Ethics Commission Advisory Opinion 10-03.

It is permissible for the attorney general to participate in a public service announcement paid for by a nonprofit organization since there is valid consideration -- use of his time, name, likeness, and prestige -- for

whatever benefit he receives from the publicity of the announcement. Independent Ethics Commission Advisory Opinion 10-05.

When dues paid to government exchange organizations by state agencies and local government members of the organizations include travel allowances, reimbursement to covered individuals attending the conferences hosted by the organizations is permissible. Independent Ethics Commission Position Statement 12-01.

If attendance at conferences and other events is provided for in a contract or grant agreement entered into by a state or local agency or other governmental entity and there is sufficient consideration, reimbursement for travel expenses are permissible. Independent Ethics Commission Position Statement 12-01.

J. Gifts from Lobbyists.

A professional lobbyist may not give gifts or things of value to government officials or employees at all, in any amount. Independent Ethics Commission Position Statement 09-01.

The gift prohibition on professional lobbyists does not extend to organizations or groups that might be represented by a professional lobbyist or whose industry may be represented by a professional lobbyist. Independent Ethics Commission Position Statement 09-01.

A corporation that retains professional lobbyists and employs an in-house lobbyist may provide a bus tour and lunch to members of the general assembly so long as the aggregate value of the gifts provided in any calendar year does not exceed $50. Independent Ethics Commission Letter Ruling 09-06.

Government officials and employees may accept gifts from organizations or groups represented by a professional lobbyist, provided the aggregate value of the entire gift is under $50 and is not allocated among the officials and employees. Independent Ethics Commission Position Statement 09-01.

Prohibition on lobbyist gift-giving also applies to gifts given to groups that are composed of covered individuals so that gifts from a professional lobbyist to an office or a group of public officials or employees should be deemed to be gifts to the individuals, and thus prohibited in any amount and in whatever form. Independent Ethics Commission Position Statement 09-01.

The trustee of a blind trust created to defray medical expenses incurred by a legislator's ill wife should not accept donations to the trust from professional lobbyists. Independent Ethics Commission Advisory Opinion 11-08.

It would be a violation of this section for a professional lobbyist to have lunch with a public official or employee at a venue where the public official or employee is not allowed to pay for his or her own meal. Independent Ethics Commission Letter Ruling 09-01.

Section prohibits professional lobbyists from giving a gift or thing of value to a covered individual, regardless of the value of the gift, with no exceptions for covered individuals attending political events or political conventions. Independent Ethics Commission Position Statement 12-02.

Section 4. Restrictions on representation after leaving office. No statewide elected officeholder or member of the general assembly shall personally represent another person or entity for compensation before any other statewide elected officeholder or member of the general assembly, for a period

of two years following vacation of office. Further restrictions on public officers or members of the general assembly and similar restrictions on other public officers, local government officials or government employees may be established by law.

Source: Initiated 2006: Entire article added, effective upon proclamation of the Governor, **L. 2007,** p. 2958, December 31, 2006.

ANNOTATION

The term "personally represent" was intended to mean that elected officeholders and members of the general assembly are prohibited from serving as professional lobbyists for two years following leaving office. Independent Ethics Commission Position Statement 09-02.

If employment will require registration with the secretary of state's office as a professional lobbyist pursuant to § 24-6-301 or as a legislative liaison for a state agency pursuant to § 24-6-303.5, the former elected officeholder or member of the general assembly may not accept the employment for two years after leaving elected office. Independent Ethics Commission Position Statement 09-02.

However, a former elected officeholder or member of the general assembly may accept a position in the governor's cabinet within two years after leaving elected office. Independent Ethics Commission Position Statement 09-02.

Section 5. Independent ethics commission. (1) There is hereby created an independent ethics commission to be composed of five members. The purpose of the independent ethics commission shall be to hear complaints, issue findings, and assess penalties, and also to issue advisory opinions, on ethics issues arising under this article and under any other standards of conduct and reporting requirements as provided by law. The independent ethics commission shall have authority to adopt such reasonable rules as may be necessary for the purpose of administering and enforcing the provisions of this article and any other standards of conduct and reporting requirements as provided by law. The general assembly shall appropriate reasonable and necessary funds to cover staff and administrative expenses to allow the independent ethics commission to carry out its duties pursuant to this article. Members of the commission shall receive no compensation for their services on the commission.

(2) (a) Members of the independent ethics commission shall be appointed in the following manner and order:

(I) One member shall be appointed by the Colorado senate;

(II) One member shall be appointed by the Colorado house of representatives;

(III) One member shall be appointed by the governor of the state of Colorado;

(IV) One member shall be appointed by the chief justice of the Colorado supreme court; and

(V) One member shall be either a local government official or a local government employee appointed by the affirmative vote of at least three of the four members appointed pursuant to subparagraphs (I) to (IV) of this paragraph

(a).

(b) No more than two members shall be affiliated with the same political party.

(c) Each of the five members shall be registered Colorado voters and shall have been continuously registered with the same political party, or continuously unaffiliated with any political party, for at least two years prior to appointment to the commission.

(d) Members of the independent ethics commission shall be appointed to terms of four years; except that, the first member appointed by the Colorado senate and the first member appointed by the governor of the state of Colorado shall initially serve two year terms to achieve staggered ending dates.

(e) If a member is appointed to fill an unexpired term, that member's term shall end at the same time as the term of the person being replaced.

(f) Each member shall continue to serve until a successor has been appointed, except that if a member is unable or unwilling to continue to serve until a successor has been appointed, the original appointing authority as described in this subsection shall fill the vacancy promptly.

(3) (a) Any person may file a written complaint with the independent ethics commission asking whether a public officer, member of the general assembly, local government official, or government employee has failed to comply with this article or any other standards of conduct or reporting requirements as provided by law within the preceding twelve months.

(b) The commission may dismiss frivolous complaints without conducting a public hearing. Complaints dismissed as frivolous shall be maintained confidential by the commission.

(c) The commission shall conduct an investigation, hold a public hearing, and render findings on each non-frivolous complaint pursuant to written rules adopted by the commission.

(d) The commission may assess penalties for violations as prescribed by this article and provided by law.

(e) There is hereby established a presumption that the findings shall be based on a preponderance of evidence unless the commission determines that the circumstances warrant a heightened standard.

(4) Members of the independent ethics commission shall have the power to subpoena documents and to subpoena witnesses to make statements and produce documents.

(5) Any public officer, member of the general assembly, local government official, or government employee may submit a written request to the independent ethics commission for an advisory opinion on whether any conduct by that person would constitute a violation of this article, or any other standards of conduct or reporting requirements as provided by law. The commission shall render an advisory opinion pursuant to written rules adopted by the commission.

Source: Initiated 2006: Entire article added, effective upon proclamation of the Governor, **L. 2007,** p. 2958, December 31, 2006.

Editor's note: In Position Statement 11-01, released April 8, 2011, the

Independence Ethics Commission increased the fifty-dollar gift-ban limit set forth in § 3 (2) to fifty-three dollars, effective until the first quarter of 2015.

ANNOTATION

Law reviews. For article, "The Colorado Independent Ethics Commission: Colorado's New 'Super-Agency'", see 38 Colo. Law. 43 (March 2009).

Considering both language of this article (amendment 41) and voters' intent in initiating it, this article is self-executing in that it does not require any further action by the legislature to be effective. A constitutional provision is self-executing when the provision appears to take immediate effect and no further action by the legislature is required to implement the right given. Here, article can take effect without any further action by the legislature. Its provisions do not merely lay out bare principles without any means of implementation; rather, article has a built-in mechanism for operation. It provides for the creation of the independent ethics commission (commission) that, once in existence, will be independent of the general assembly and will promulgate necessary rules to implement and enforce gift bans and other ethical standards. There is no indication that voters intended to require further legislative action with respect to this article. To the contrary, voters used initiative process to avoid possibility that general assembly would prevent them from establishing commission that would enforce gift bans against general assembly's members as well as other government employees. Developmental Pathways v. Ritter, 178 P.3d 524 (Colo. 2008).

Section 6. Penalty. Any public officer, member of the general assembly, local government official or government employee who breaches the public trust for private gain and any person or entity inducing such breach shall be liable to the state or local jurisdiction for double the amount of the financial equivalent of any benefits obtained by such actions. The manner of recovery and additional penalties may be provided by law.

Source: Initiated 2006: Entire article added, effective upon proclamation of the Governor, **L. 2007,** p. 2960, December 31, 2006.

Section 7. Counties and municipalities. Any county or municipality may adopt ordinances or charter provisions with respect to ethics matters that are more stringent than any of the provisions contained in this article. The requirements of this article shall not apply to home rule counties or home rule municipalities that have adopted charters, ordinances, or resolutions that address the matters covered by this article.

Source: Initiated 2006: Entire article added, effective upon proclamation of the Governor, **L. 2007,** p. 2960, December 31, 2006.

Section 8. Conflicting provisions declared inapplicable. Any provisions in the statutes of this state in conflict or inconsistent with this article are hereby declared to be preempted by this article and inapplicable to the matters covered by and provided for in this article.

Source: Initiated 2006: Entire article added, effective upon proclamation of the Governor, **L. 2007,** p. 2960, December 31, 2006.

Section 9. Legislation to facilitate article. Legislation may be enacted to facilitate the operation of this article, but in no way shall such legislation limit or restrict the provisions of this article or the powers herein granted.

Source: Initiated 2006: Entire article added, effective upon proclamation of the Governor, **L. 2007,** p. 2960, December 31, 2006.

SCHEDULE

Editor's note: The entire schedule was added, effective August 1, 1876, see L. 1877, pp. 75 through 85.

That no inconvenience may arise by reason of the change in the form of government, it is hereby ordained and declared:

Section 1. All laws remain till repealed. That all laws in force at the adoption of this constitution shall, so far as not inconsistent therewith, remain of the same force as if this constitution had not been adopted, until they expire by their own limitation or are altered or repealed by the general assembly; and all rights, actions, prosecutions, claims and contracts of the territory of Colorado, counties, individuals or bodies corporate (not inconsistent therewith) shall continue as if the form of government had not been changed and this constitution adopted.

ANNOTATION

This section and following section are necessary saving clauses, and proper to be inserted in a constitution; for, while it is not the business of the framers of a constitution like ours to prepare and submit to the people a code of laws, it is their duty to preserve existing laws until the legislature, the proper law-making body, can be convened to amend or repeal such existing laws as they think proper, and to prepare such new laws as appear to them necessary for the benefit of the new state. Packer v. People, 8 Colo. 361, 8 P. 564 (1885).

And has force of saving clause in statute. The saving clause inserted in a constitution for the purpose stated is of the same force as a saving clause in a statute. Packer v. People, 8 Colo. 361, 8 P. 564 (1885).

Section continued in force laws concerning office of county assessor. As the office of county assessor existed at and prior to the adoption of the constitution, and the functions and duties thereof were defined by territorial laws, and this section continued in force such laws, so far as not inconsistent with the constitution, until they should expire by their own limitation or were altered or repealed by the general assembly, the duties pertaining to such office may be changed and modified as held in People ex rel. State Bd. of Equalization v. Pitcher, 56 Colo. 343, 138 P. 509 (1914); State Bd. of Equalization v.

Bimetallic Inv. Co., 56 Colo. 512, 138 P. 1010 (1914), aff'd, 239 U.S. 441, 36 S. Ct. 141, 60 L. Ed. 372 (1915).

Applied in Wilson v. People, 3 Colo. 325 (1877); People v. Bd. of County Comm'rs, 6 Colo. 202 (1882); People v. Gibson, 53 Colo. 231, 125 P. 531 (1912).

Section 2. Contracts - recognizances - indictments. That all recognizances, obligations and all other instruments entered into or executed before the admission of the state, to the territory of Colorado, or to any county, school district or other municipality therein, or any officer thereof, and all fines, taxes, penalties and forfeitures due or owing to the territory of Colorado, or any such county, school district or municipality, or officer; and all writs, prosecutions, actions and causes of action, except as herein otherwise provided, shall continue and remain unaffected by the change of the form of government. All indictments which shall have been found, or may hereafter be found, and all informations which shall have been filed, or may hereafter be filed, for any crime or offense committed before this constitution takes effect, may be proceeded upon as if no change had taken place, except as otherwise provided in the constitution.

Cross references: See the preceding section and the notes thereto.

ANNOTATION

This section preserved law concerning murder as it existed before the adoption of the constitution, so as to enable the courts to punish crimes of that character committed under the territorial organization. Packer v. People, 8 Colo. 361, 8 P. 564 (1885).

Section 3. Territorial property vests in state. That all property, real and personal, and all moneys, credits, claims and choses in action, belonging to the territory of Colorado at the adoption of this constitution, shall be vested in and become the property of the state of Colorado.

Section 4. Duty of general assembly. The general assembly shall pass all laws necessary to carry into effect the provisions of this constitution.

Section 5. Supreme and district courts - transition. Whenever any two of the judges of the supreme court of the state elected or appointed under the provisions of this constitution shall have qualified in their office, the causes theretofore pending in the supreme court of the territory, and the papers, records and proceedings of said court, and the seal and other property pertaining thereto, shall pass into the jurisdiction and possession of the supreme court of the state; and until so superseded the supreme court of the territory and the judges thereof shall continue with like powers and jurisdiction as if this constitution had not been adopted. Whenever the judge of the district court of any district elected or appointed under the provisions of this constitution, shall have qualified in his office, the several causes theretofore pending in the district court of the territory, within any county in such district, and the records, papers and proceedings of said district court, and the seal and other property pertaining thereto shall pass

into the jurisdiction and possession of the district court of the state, for such county, and until the district courts of the territory shall be superseded in manner aforesaid, the said district courts and the judges thereof shall continue with the same jurisdiction and powers to be exercised in the same judicial districts respectively as heretofore constituted under the laws of the territory.

Section 6. Judges - district attorneys - term commence on filing oath. The terms of office of the several judges of the supreme and district courts and the district attorneys of the several judicial districts first elected under this constitution, shall commence from the day of filing their respective oaths of office in the office of the secretary of state.

Section 7. Seals of supreme and district courts. Until otherwise provided by law, the seals now in use in the supreme and district courts of this territory are hereby declared to be the seals of the supreme and district courts respectively of the state.

Section 8. Probate court - county court. Whenever this constitution shall go into effect, the books, records, papers and proceedings of the probate court in each county, and all causes and matters of administration pending therein, shall pass into the jurisdiction and possession of the county court of the same county, and the said county court shall proceed to final decree or judgment, order or other determination, in the said several matters and causes, as the said probate court might have done if this constitution had not been adopted. And until the election of the county judges provided for in this constitution, the probate judges shall act as judges of the county courts within their respective counties, and the seal of the probate court in each county shall be the seal of the county court therein until the said court shall have procured a proper seal.

ANNOTATION

County courts replaced probate courts. By this and the following section county judges and county courts are made successors to probate judges and probate courts, throughout the state. In re Compensation of County Judges, 18 Colo. 272, 32 P. 549 (1893).

And have all powers of probate courts. Under this provision, upon the adoption of the constitution, the county courts created thereby were immediately clothed with all the powers theretofore possessed by the probate courts. Keystone Mining Co. v. Gallagher, 5 Colo. 23 (1879).

Section does not confer jurisdiction of probate matters claimed by county courts prior to June 22, 1877. Keystone Mining Co. v. Gallagher, 5 Colo. 23 (1879).

Section 9. Terms probate court, probate judge, apply to county court, county judge. The terms "Probate Court" or "Probate Judge", whenever occurring in the statutes of Colorado territory, shall, after the adoption of this constitution, be held to apply to the county court or county judge, and all laws specially applicable to the probate court in any county, shall be construed to apply to and be in force as to the county court in the same county, until repealed.

Section 10. County and precinct officers. All county and precinct officers, who may be in office at the time of the adoption of this constitution, shall hold their respective offices for the full time for which they may have been elected, and until such time as their successors may be elected and qualified in accordance with the provisions of this constitution, and the official bonds of all such officers shall continue in full force and effect as though this constitution had not been adopted.

Section 11. Vacancies in county offices. All county offices that may become vacant during the year eighteen hundred and seventy-six by the expiration of the term of the persons elected to said offices, shall be filled at the general election on the first Tuesday in October in the year eighteen hundred and seventy-six, and, except county commissioners, the persons so elected shall hold their respective offices for the term of one year.

Section 12. Constitution takes effect on president's proclamation. The provisions of this constitution shall be in force from the day on which the president of the United States shall issue his proclamation declaring the state of Colorado admitted into the Union; and the governor, secretary, treasurer, auditor and superintendent of public instruction of the territory of Colorado shall continue to discharge the duties of their respective offices after the admission of the state into the Union, until the qualification of the officers elected or appointed under the state government; and said officers, for the time they may serve, shall receive the same compensation as the state officers shall by law be paid for like services.

Editor's note: The proclamation declaring the state of Colorado admitted into the United States of America was signed by President Ulysses S. Grant on August 1, 1876. See General Laws of Colorado, November 1877, pages 85 and 86.

Section 13. First election, contest. In case of a contest of election between candidates, at the first general election under this constitution, for judges of the supreme, district or county courts, or district attorneys, the evidence shall be taken in the manner prescribed by territorial law; and the testimony so taken shall be certified to the secretary of state, and said officer, together with the governor and attorney-general, shall review the testimony and determine who is entitled to the certificate of election.

Section 14. First election - canvass. The votes at the first general election under this constitution for the several officers provided for in this constitution who are to be elected at the first election shall be canvassed in the manner prescribed by the territorial law for canvassing votes for like officers. The votes cast for the judges of the supreme and district courts and district attorneys shall be canvassed by the county canvassing board in the manner prescribed by the territorial law for canvassing the votes for members of the general assembly; and the county clerk shall transmit the abstracts of votes to the secretary of the territory acting as secretary of state, under the same

regulations as are prescribed by law for sending the abstracts of votes for territorial officers; and the aforesaid acting secretary of state, auditor, treasurer, or any two of them, in the presence of the governor, shall proceed to canvass the votes, under the regulations of sections thirty-five and thirty-six of chapter twenty-eight of the Revised Statutes of Colorado Territory.

Section 15. Senators - representatives - districts. Senators and members of the house of representatives shall be chosen by the qualified electors of the several senatorial and representative districts as established in this constitution until such districts shall be changed by law; and thereafter by the qualified electors of the several districts as the same shall be established by law.

Section 16. Congressional election - canvass. The votes cast for representatives in congress at the first election held under this constitution shall be canvassed and the result determined in the manner provided by the laws of the territory for the canvass of votes for delegate in congress.

Section 17. General assembly, first session - restrictions removed. The provision of the constitution that no bill, except the general appropriation bill introduced in either house after the first twenty-five days of the session shall become a law, shall not apply to the first session of the general assembly; but no bill introduced in either house at the first session of the general assembly after the first fifty days thereof shall become a law.

Section 18. First general election - canvass. A copy of the abstracts of the votes cast at the first general election held under this constitution shall by the county clerks of the several counties be returned to the secretary of the territory immediately after the canvass of said votes in their several counties; and the secretary, auditor and treasurer of the territory, or any two of them, shall on the twenty-fifth day after the election, meet at the seat of government and proceed to canvass the votes cast for members of the general assembly and determine the result thereof.

Section 19. Presidential electors, 1876. The general assembly shall, at their first session, immediately after the organization of the two houses and after the canvass of the votes for officers of the executive department, and before proceeding to other business, provide by act or joint resolution for the appointment by said general assembly of electors in the electoral college, and such joint resolution or the bill for such enactment may be passed without being printed or referred to any committee, or read on more than one day in either house, and shall take effect immediately after the concurrence of the two houses therein, and the approval of the governor thereto shall not be necessary.

Section 20. Presidential electors after 1876. The general assembly shall provide that after the year eighteen hundred and seventy-six the electors of the electoral college shall be chosen by direct vote of the people.

Section 21. Expenses of convention. The general assembly shall have power at their first session to provide for the payment of the expenses of this convention if any there be then remaining unpaid.

Section 22. Recognizances, bonds, payable to people continue. All recognizances, bail bonds, official bonds and other obligations or undertakings, which have been, or at any time before the admission of the state shall be made or entered into, and expressed to be payable to the people of the territory of Colorado, shall continue in full force notwithstanding the change in the form of government, and any breach thereof, whenever occurring, may after the admission of the state be prosecuted, in the name of the people of the state.

Done in Convention at the city of Denver, Colorado, this fourteenth day of March in the year of our Lord one thousand eight hundred and seventy-six, and of the Independence of the United States the one hundredth.

In Witness Whereof, we have hereunto subscribed our names.
J. C. WILSON, *President.*

H. P. H. BROMWELL,
CASIMIRO BARELA,
GEORGE BOYLES,
W. E. BECK,
BYRON L. CARR,
WM. H. CUSHMAN,
WILLIAM M. CLARK,
A. D. COOPER,
HENRY R. CROSBY,
ROBERT DOUGLAS,
LEWIS C. ELLSWORTH,
CLARENCE P. ELDER,
F. J. EBERT,
WILLARD B. FELTON,
JESUS Ma GARCIA,

DANIEL HURD,
JOHN S. HOUGH,
LAFAYETTE HEAD,
WM. H. JAMES,

WM. R. KENNEDY,
WM. LEE,
ALVIN MARSH,
WM. H. MEYER,
S. J. PLUMB,
GEO. PEASE,
ROBERT A. QUILLIAN,
LEWIS C. ROCKWELL,
WILBUR F. STONE,
WILLIAM C. STOVER,
HENRY C. THATCHER,
AGAPITO VIGIL,
W. W. WEBSTER,
GEORGE G. WHITE,
EBENEZER T. WELLS,

P. P. WILCOX,
JOHN S. WHEELER,
J. W. WIDERFIELD,
ABRAM KNOX YOUNT.

Attest:

W. W. COULSON, *Secretary.*
HERBERT STANLEY, *1st Assistant Secretary.*
H. A. TERPENNING, *2nd Assistant Secretary.*