

Special Purpose Authorities

Pierce Lively
Office of Legislative Legal Services



Office of Legislative Legal Services
Colorado General Assembly



What is a Special Purpose Authority?

- Defined in § 24-77-102 (15), C.R.S.
- Not defined in the Colorado Constitution.
- A "special purpose authority" is an entity that is:
 - (1) Created pursuant to state law to serve a valid public purpose;
 - (2) Either a political subdivision of the state or an instrumentality of the state;
 - (3) Not an agency of the state; and
 - (4) Not subject to administrative direction by any department, commission, bureau, or agency of the state.



Office of Legislative Legal Services
Colorado General Assembly



Special Purpose Authorities

Examples:

- CHFA
- Colorado Health Facilities Authority
- PERA
- Statewide Internet Portal Authority



Office of Legislative Legal Services
Colorado General Assembly



What Limitations on State Government Do Special Purpose Authorities Address?

Three primary limits on state government in the Colorado Constitution that special purpose authorities are not subject to:

- Article XI, Section 3: limits the ability of state to “contract any debt by loan in any form”
- Article XII, Section 13: establishes state personnel system
- Article X, Section 20 (TABOR): limits state revenue and requires voter approval for new taxes, change in tax policy, and debt



Office of Legislative Legal Services
Colorado General Assembly



Debt and Credit - Limitation

- General Obligation Bonds
 - Bonds that are paid with nonspecific governmental income and are secured by the full faith and credit of the state.
 - Generally prohibited by article XI, section 3 of the Colorado Constitution
- Revenue Bonds
 - Bonds that are paid by specific income derived from a project and secured by a “special fund” that collects the revenue derived from a project.
 - Not prohibited by article XI, section 3 of the Colorado Constitution - *See, Colorado Ass’n of Public Employees v. Board of Regents of University of Colorado*, 804 P.2d 138, 147 (Colo. 1990).



Office of Legislative Legal Services
Colorado General Assembly



Debt and Credit - Resolution

- Financing entities that serve a public purpose: Colorado Housing and Financing Authority (1973)
- Colorado Housing and Financing Authority:
 - “In the beginning there were concerns, primarily about the state's liability in the event of default and about pledging the good faith of Colorado... which we didn't. We were charting new waters.” — Rep. Betty Ann Dittmore (Reflected in CHFA 1983 Annual Report)
 - “The board shall have the power ... to issue bonds and to secure the same by pledges of revenues upon the property of a housing facility or proposed facility.”
 - “**Nonliability of state for bonds.** The state of Colorado shall not be liable for bonds of the authority, and such bonds shall not constitute a debt of the state. The bonds shall contain on the face thereof a statement to such effect.”
 - “This court has long held that separate and distinct bodies corporate are solely responsible for their own obligations.” *In re Interrogatories by Colorado State Senate etc.*, 193 Colo. 298, 305



Office of Legislative Legal Services
Colorado General Assembly



Personnel - Limitation

- In 1989 the General Assembly attempted to convert the University of Colorado Hospital into a private non-profit corporation because the hospital was “unable to become and remain economically viable because it is subject to various kinds of government policy and regulation.”
- In 1990, the Colorado Supreme Court held that this conversion was unconstitutional because it was a legislative attempt to circumvent the civil service system in article XII, section 13 of the Colorado Constitution. Essentially, the Court held that the new entity was not so distinct from the old entity that its employees should not be subject to the civil service amendment.



Office of Legislative Legal Services
Colorado General Assembly



Personnel - Resolution

- The General Assembly recognized that the Supreme Court:
 - Would not likely recognize that the new entity was private and so not subject to the civil service amendment; but
 - Had held that political subdivision employees are not subject to the civil service amendment.
- In 1991, the General Assembly passed SB91-225, which “created the university of Colorado hospital authority, which shall be a body corporate and a **political subdivision of the state** ..., and which shall not be ... [an] agency of the state.” - § 23-21-503 (1), C.R.S.



Office of Legislative Legal Services
Colorado General Assembly



Taxpayer's Bill of Rights - Limitation

- Article X, section 20 (7)(a) - limits state fiscal year spending



Office of Legislative Legal Services
Colorado General Assembly



Taxpayer's Bill of Rights

- Implementing statutes for TABOR defined “state” to exclude “any special purpose authority.” - § 24-77-102 (16)(b)(II), C.R.S.
 - This does not insulate state revenue transferred to the special purpose authority (fiscal year spending when the revenue is originally collected by the state) or money that is transferred from the special purpose authority to the state (fiscal year spending when the money gets to the state)
- Defined “special purpose authority” to include specific existing authorities. - § 24-77-102 (15), C.R.S.
- This definition does not prevent TABOR from applying to a special purpose authority. It only prevents a special purpose authority from being considered as part of the state for TABOR purposes.



Office of Legislative Legal Services
Colorado General Assembly



Similarities & Differences Between Special Purpose Authorities and Enterprises

- **TABOR Impact:** TABOR does not apply to enterprises because they are not districts. TABOR's limitation on **state** fiscal year spending does not apply to special purpose authorities because those authorities are not part of the state.
- **Qualification:** An enterprise has to satisfy the elements of the definition of an enterprise in the constitution. A special purpose authority has to satisfy the elements of the definition of a special purpose authority in statute.
- **Administration:** Enterprises can be administered by state employees. Special purpose authorities cannot be subject to administrative direction by those same employees.



Office of Legislative Legal Services
Colorado General Assembly



What is a Special Purpose Authority?

- Defined in § 24-77-102 (15), C.R.S.
- Not defined in the Colorado Constitution.
- A "special purpose authority" is an entity that is:
 - (1) Created pursuant to state law to serve a valid public purpose;
 - (2) Either a political subdivision of the state or an instrumentality of the state;
 - (3) Not an agency of the state; and
 - (4) Not subject to administrative direction by any department, commission, bureau, or agency of the state.



Office of Legislative Legal Services
Colorado General Assembly



Created Pursuant to State Law

- **What does this mean:** A special purpose authority must be created in statute or the constitution and cannot be created by local government ordinance or resolution (like an Urban Renewal Authority) or by private individuals filing incorporation papers (like a private business).
- **What does this do:** A special purpose authority only has the powers granted to it by state law, unlike a private business.



Office of Legislative Legal Services
Colorado General Assembly



Serves a public purpose

- **What does this mean:** The special purpose authority must benefit the health, safety, or welfare of the people of Colorado.
- **What does this do:** Article XI, section (2) of the Colorado Constitution prohibits the state from aiding corporations, but the Supreme Court has created a “public purpose exception.” Presumably, since a special purpose authority serves a public purpose, if the state provides aid to a special purpose authority, that aid would qualify for the “public purpose exception.”



Office of Legislative Legal Services
Colorado General Assembly





Either a Political Subdivision of the State or an Instrumentality of the State

- **What does this mean:** The special purpose authority must be either a political subdivision of the state or an instrumentality of the state. (Almost all special purpose authorities besides PERA are political subdivisions, while PERA is an instrumentality of the state.)
- **What does this do:** Depends on whether the special purpose authority is a political subdivision of the state or an instrumentality of the state.



Office of Legislative Legal Services
Colorado General Assembly



Not an Agency of the State

- **What does this mean:** The state law that creates a special purpose authority must explicitly state that the authority is “not an agency of state government.”
- **What does this do:** This separation ensures that a special purpose authority is not counted as part of the state for purposes of TABOR and that authority employees are not subject to the civil service amendment.



Office of Legislative Legal Services
Colorado General Assembly



Not Subject to Administrative Direction

- **What does this mean:** A special purpose authority's powers must be vested in a board of directors and an executive branch department may not direct the authority's day-to-day operations, personnel decisions, or budget.
- **What does this do:** This essentially ensures that an entity is not just an extension of the state and has the necessary independence to be treated as a special purpose authority.



Office of Legislative Legal Services
Colorado General Assembly



State Oversight of Special Purpose Authorities

- Given prohibition on “administrative direction by any department, commission, bureau, or agency of the state”, how can the state exert oversight over special purpose authorities?

Oversight Mechanism	Authorization
Performance Audit	§ 2-3-103 (1)(b), C.R.S.
Legislative Restructuring	Plenary Power
Board Removal	Organic Statutes



Office of Legislative Legal Services
Colorado General Assembly



Questions?



Office of Legislative Legal Services
Colorado General Assembly

