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Robert M. Linz

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Researching Colorado Local Government Law

by Robert M. Linz

As citizens, our daily lives are directly affected by local law. For example, many of us consider the speed limit (and whether we'll get caught exceeding it) as we drive to work each day, as well as the amount of property tax we pay each year. Given the immediate impact of local laws on residents, it seems counterintuitive that the body of local law is obscure and difficult to research. This article presents an overview of Colorado local government organization and the resources available to help researchers find law by and about local government.

Local Government Organization in Colorado

Historically, our nation has favored local rule to national government. Indeed, the U.S. Constitution is designed to limit the power of the federal government and ensure that "the powers not delegated to the United States . . . are reserved to the States respectively, or to the people."¹ As such, local governance is regulated by the states. In the Colorado Constitution and in Titles 29 through 32 of the Colorado Revised Statutes, the citizens of Colorado and the Colorado General Assembly define the scope of authority exercised by local governments in such matters as budget and taxation, zoning and land use planning, and appointment of officers.

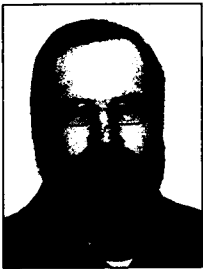
Local governments are unable to act without an explicit or implied grant of authority from the state.² In the past, this restrictive approach has interfered with local municipalities being able to respond to local problems. Thus, in the late 19th century, municipal governments pushed for greater autonomy in the form of "home rule" government. In these governments, local citizens have far greater control over the governance of their city.

In Colorado, both municipalities and counties can exercise home rule. For cities, this right of home rule is embodied in article XX of

the state constitution. Currently, eighty-nine of Colorado's cities are home rule municipalities.³ In CRS Title 30, the General Assembly also empowers counties to incorporate as home rule counties "to better meet and resolve the problems of growth and urbanization" and to realize other values.⁴ In addition to the authority granted to all county governments, home rule counties possess power to expend funds, incur indebtedness, build and maintain roads and parks, and establish hospitals and firehouses, among other activities.⁵

Colorado local government also can take the form of special districts. CRS Title 32 enumerates various special districts that act as governing entities for the provision of special services.⁶ These districts provide for football and baseball stadiums, as well as regional transportation to the services for specific groups of citizens of the various metropolitan districts. They also include the more familiar school and library districts. Special districts can be formed by state action or citizen initiative. In either case, the proposed district must create a service plan detailing the services the district will provide and how the services will be funded.⁷ These services can include trash removal, the provision for parks and recreation, fire protection, street maintenance, and many other common services. If a district provides two or more of these services, it is classified as a metropolitan district.⁸ The Highlands Ranch Metropolitan District in Douglas County is an example of such a district.

Denver is something of a special case. According to article XX of the Colorado Constitution, Denver is to be governed as a combined city-county government.⁹ It largely operates as a home rule municipality, but certain county functions fall under control of state government. Broomfield also is a combined city-county government, having been formed from parts of four counties when the Colorado Constitution was amended in 1998.¹⁰



About the Author

Robert M. Linz is the Associate Director and Head of Public Services at the University of Colorado William A. Wise Law Library. He has served as a professional librarian for more than thirteen years. He is licensed to practice law in Florida—robert.linz@colorado.edu.

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Research Issues

Similar to state and federal governments, local governments generally comprise legislative, executive, and judicial branches. At the local level, however, these branches may be less distinct. Local governments exercise authority pursuant to their plenary powers to regulate the health, safety, and conduct of the citizens, and generally to provide for their common welfare. Researchers need to be aware that local governments create law on a broad range of topics, albeit within the limits set by the U.S. and Colorado Constitutions and on topics not preempted by federal or state government. These laws can take the form of ordinances, resolutions, codes, orders, or court decisions. For home rule cities and counties, there also will be a charter that serves as the local government's constitution.

Researchers may need to locate building codes, land use plans, service plans, budgets, or other documents related to the provision of government services. For example, home purchasers or property developers may want to look up property records on a county's website; businesses and concerned citizens may be interested in regulations concerning the sale of tobacco or alcohol; or one simply may need to locate the names of local government officials or the dates and times that meetings are convened.

Research Tools

Regardless of form, each local government generates law and is required to publish its laws.¹¹ Depending on the query or object of

the search, the researcher will want to locate the primary authority. In addition, the researcher may need to locate commentary about the scope of and limitations on local government law. This secondary authority can be found in a variety of publications.

Colorado Revised Statutes

Perhaps the best place to start when researching local government law is the Colorado Constitution and CRS Titles 29 to 32. These resources delineate the scope of the authority granted to local governments by the Colorado legislature. They describe the range of existing activities, as well as what types of powers local government may exercise, and define local government's creation, expansion, and contraction.

Local Government Websites

Increasingly, the best and sometimes only place to find a local government's ordinances and other primary authority is on that local government's website. The best sites are designed with an understanding of how to most effectively provide answers to citizens' information needs. To use these websites, however, a researcher must be able to find them. The Colorado Department of Local Affairs, Division of Local Government, maintains a list of active Colorado municipalities on its website with a link to the local government's website, if there is one.¹² The Department of Local Affairs is an excellent source for additional local government information, as well. Of course, an easy and direct method of finding lo-

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cal government websites is to search for them on Google using a few keywords.

The extent of coverage on the websites may vary; however, the majority of them provide information about the community, its leaders, and the structure and type of local government. For example, the website for the City of Cortez reveals that the city has a home rule Council-Manager form of government and provides the names of the council members, the manager, and other officials.¹³ The City of Grand Junction provides community updates and news, including information about the American Recovery and Reinvestment Act of 2009 (Recovery Act) and what it plans to do with Recovery Act funds.¹⁴

In addition to public services information, most local government websites will publish the entity's charter and ordinances. These documents may be searchable online or may be provided as PDF documents. The websites also may contain a copy of the budget, land use codes and development plans, and building and zoning codes.

Commercial Websites

Not all local government websites host their charter and codes. Many municipalities outsource this task to commercial information providers. Two such providers are the Municipal Code Corporation (MCC) and the Colorado Code Publishing Company (CCPC). The MCC website, www.municode.com, contains the ordinances, charters, and land use codes of more than 1,600 local governments. This figure includes a number of Colorado local governments, such as Aurora, Englewood, and Wheat Ridge, as well as Larimer and Pueblo Counties. There is no fee to view the codes, but there are additional charges for premium services or to purchase the codes in print.

The CCPC website, www.colocode.com, contains codes for more Colorado cities and towns than the MCC website. Like the MCC website, it allows researchers to access codes free of charge or to purchase the codes in print.

Westlaw® and LexisNexis® databases have limited primary authority from the local governments. Currently, Westlaw only provides the local laws of New York City. Lexis's coverage is better, providing codes for more than 300 cities and counties, including a few Colorado cities.¹⁵

Local Government Case Law

Local government case law research falls into one of two areas. First, researchers may be trying to find judicial decisions rendered by local government courts. These courts will be trial courts, whether they exist as county courts or as municipal courts, the latter of which is charged with reviewing violations of municipal ordinances.¹⁶ Unfortunately, state trial court documents are rarely published either in print or through an online database or website. For these types of documents, the researcher should check availability by calling the clerk of the county or municipality for the court's jurisdiction.¹⁷

Second, researchers may need appellate court cases involving local government. To aid researchers, West publishes *Ordinance Law Annotations: A Comprehensive Digest of American Cases that Interpret or Apply City and County Ordinances*.¹⁸ A digest is a subject organization summary of case law. In thirteen volumes, this publication gathers case summaries on the broad range of subjects faced by local governments. In addition to the annotations, each topic in-

cludes an editorial comment and cross-references to *American Jurisprudence*¹⁹ and *American Law Reports*.²⁰

This publication also references West's Topic and Key Number System, which is implemented in West's digests, reporters, and other print and online publications. Researchers may find pertinent local government law issues in the topics of towns, municipal corporations, counties, schools, zoning, and planning and elections. To identify Colorado cases on Westlaw, researchers can run a Topic or Headnote search on these topics, narrowed with appropriate keywords for their particular issues in the Colorado Cases database (CO-CS). Alternatively, researchers can consult the Descriptive Word Index or Topics volumes in the print Colorado or Pacific digests.

Colorado Municipal League Publications

The Colorado Municipal League (CML), whose members include 265 of 271 Colorado municipalities, is a nonprofit, nonpartisan organization that advocates on behalf of its members and assists them in managing their local governments. To this end, CML publishes a number of local government law titles,²¹ including information on taxation, fees, and public financing; proper regulations of animals and nuisances; and guidance on conducting open meetings and making open records. The CML also publishes a matrix of home rule charters²² and a home rule handbook.²³ Last updated in 1998, the matrix compares the charter provisions of various home rule cities. The handbook, last updated in 1999, discusses how a municipality can establish and exercise home rule.

Scholarly Treatises

Beyond the Colorado research tools, researchers may need to consult a scholarly treatise on local government law. The first of the American treatises on the subject was written by Judge John Dillon and published in 1872.²⁴ Over the course of the next forty years, a number of other treatises on the topic were written by such authors as Charles B. Elliott,²⁵ John W. Smith,²⁶ Howard S. Abbott,²⁷ and Eugene McQuillin.²⁸ Currently, there are two core treatises that address this area of the law. The first is an update on McQuillin's

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*The Law of Municipal Corporations*²⁹; the other is *Antieau on Local Government Law*.³⁰ Both of these multi-volume treatises comprehensively cover all aspects of local government law. Although national in scope, they cite relevant Colorado law in footnotes.

Despite the weighty authority offered by these treatises, a researcher may need only an introduction to or a general overview of this area of law. Basic coverage can be found in the legal encyclopedias *American Jurisprudence* and *Corpus Juris Secundum*,³¹ Chapter 54 of the Colorado Practice Series,³² and treatises such as *Understanding Local Government Law*³³ or the *Handbook of Local Government Law*.³⁴

Additional Research Tools

Although all types of legal research can be broadened by asking for help, local government research may be more easily accomplished through telephone research. In searching for some local government materials, a researcher may need to contact the county or city clerk to determine and obtain what is currently and historically available.

Of course, researchers always are encouraged to contact their local library. Most public libraries have a copy of the local government charter and ordinances. Academic and government law libraries also may have primary and secondary source materials, in addition to librarians who can guide researchers in using these materials.

Conclusion

Researching the laws by and about local governments is somewhat more challenging than researching those of state and federal jurisdictions; however, with diligence, the researcher can successfully locate the appropriate materials. For additional resources on Colorado local government law and other Colorado resources, readers should consult *Colorado Legal Resources: An Annotated Bibliography*, compiled by Robert C. Richards and Barbara Bintliff.³⁵

Notes

1. U.S. Const. amend. X.
2. Colorado Municipal League, *Home Rule Handbook: An Introduction to the Establishment and Exercise of Municipal Home Rule* 1 (1999).
3. Colorado Department of Local Affairs, Active Colorado Local Governments by Type as of June 17, 2009 (78 Types), available at www.dola.state.co.us/dlg/local_governments/lgtypes.html.
4. CRS § 30-35-102.
5. CRS § 30-35-201.
6. CRS § 32-1-102(1).
7. CRS § 32-1-202(2)(a) and (b).
8. CRS § 32-1-103(10).
9. Colo. Const. art. XX, § 1.
10. Colo. Const. art. XX, § 10.

11. CRS § 30-15-405.

12. Colorado Department of Local Affairs, Active Colorado Municipalities as of June 17, 2009 (271 municipalities), available at www.dola.state.co.us/dlg/local_governments/municipalities.html.

13. City of Cortez, Mayor and City Council, available at www.cityofcortez.com/government/mayor_city_council.

14. City of Grand Junction, The American Recovery and Reinvestment Act of 2009, available at www.gjcity.org/CityDeptWebPages/AdministrativeServices/BudgetingAccounting/StimulusBill.htm.

15. On Westlaw,[®] the database is NYC-MUN. In LexisNexis,[®] the filename is COMCDE.

16. 1B Krendl, *Colorado Methods of Practice*, § 23.8 at 285 (Thomson West, 2004).

17. Contact information for a given clerk's office usually can be attained from the county or municipality's website.

18. *Ordinance Law Annotations: A Comprehensive Digest of American Cases that Interpret or Apply City and County Ordinances* (Thomson West, 2003).

19. *American Jurisprudence: A Modern Comprehensive Text Statement of American Law* (Thomson West). It is currently in the second edition. The year varies by volume.

20. *American Law Reports* (Thomson West).

21. The Colorado Municipal League's (CML) website is www.cml.org/about/about.aspx. County governments are represented by a similar organization, Colorado Counties, Inc., www.ccionline.org/index.cfm/ID/1/Home.

22. *Matrix of Colorado Home Rule Charters* (CML, 1998).

23. *Home Rule Handbook: An Introduction to the Establishment and Exercise of Municipal Home Rule* (CML, 1999).

24. Dillon, *Treatise on the Law of Municipal Corporations XV* (1872).

25. Elliott, *The Principles of the Law of Public Corporations* (1898).

26. Smith, *Commentaries on the Modern Law of Municipal Corporations* (1903).

27. Abbott, *A Treatise on the Law of Municipal Corporations* (1905).

28. McQuillin, *A Treatise on the Law of Municipal Corporations* (1911).

29. Silvestri and Nelson, *McQuillin, The Law of Municipal Corporations* (West Group, 1999).

30. Stevenson, *Antieau on Local Government Law* (2d ed., Matthew Bender, 1999).

31. Both legal encyclopedias treat this subject under the topic of municipal corporations, which appears in volume 56 in *American Jurisprudence* (West Group, 2000) and volumes 62 to 64A of *Corpus Juris Secundum* (West Group, 1999).

32. 1C Krendl, *Colorado Methods of Practice* 655 (5th ed., Thomson West, 2006). Chapter 54, entitled "Municipal Law and Practice," was authored by Kathleen K. Harrington.

33. Stevenson, *Understanding Local Government Law* (LexisNexis, 2003).

34. Reynolds, *Handbook of Local Government Law* (2d ed., Thomson West, 2001). For a more general overview of the topic, see McCarthy and Reynolds, *Local Government Law in a Nutshell* (5th ed., Thomson West 2003).

35. Richards and Bintliff, *Colorado Legal Resources: An Annotated Bibliography* (Occasional Papers, American Association of Law Libraries, 2004). ■

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