

COLORADO COURT OF APPEALS

NO. 81CA0704

BRIEF OF THE COLORADO MUNICIPAL LEAGUE AS AMICUS CURIAE

THE CITY OF COLORADO SPRINGS, CITY OF MONUMENT, THE CITY OF PALMER LAKE, THE CITY OF MANITOU SPRINGS, THE CITY OF RAMAH, THE CITY OF CALHAN, THE CITY OF GREEN MOUNTAIN FALLS, THE CITY OF FOUNTAIN,
Plaintiffs-Appellees

-vs-

THE BOARD OF COUNTY COMMISSIONERS OF EL PASO COUNTY, LEO VERVERS, TERRY HARRIS, TOM COLLIER, JR., CHARLES HEIM, TERRY SALT; as members of the Board of County Commissioners of El Paso County, SHARON L. SHIPLEY, as Treasurer of El Paso County, and WILLIAM FENCE, as El Paso County Budget Officer, Defendants-Appellants

Appeal from the District Court in and for the County of El Paso, State of Colorado, Honorable Hunter D. Hardeman, Judge.

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STATEMENT OF THE ISSUES

The Colorado Municipal League ("League") adopts the statement of the issues appearing in the brief of the Plaintiffs-Appellees ("cities").

STATEMENT OF THE CASE

The Colorado Municipal League adopts the statement of the case appearing in the brief of the cities.

SUMMARY OF THE ARGUMENT

The decision of the District Court should be affirmed. The transfer of revenue from the county general fund to the county road and bridge fund, as proposed by the Defendants-Appellants ("County" or "El Paso County"), would impair the General Assembly's purposes in enacting the road and bridge fund statutes. Moreover, the proposed transfer of revenue would directly violate the road and bridge statutes as well as the statutes prohibiting transfer of county general fund money for road and bridge fund purposes.

ARGUMENT

I. THE COUNTY MAY NOT TRANSFER ANY REVENUE FROM THE COUNTY GENERAL FUND TO THE COUNTY ROAD AND BRIDGE FUND.

This lawsuit developed from attempts by El Paso County to increase county revenue by circumventing a statute which requires the County to share with its municipalities the proceeds of the county road and bridge fund mill levy. The reasons for El Paso County's actions stem from two unrelated statutes: the county road and bridge fund statutes and the statutes restricting the amount of annual increases in county property tax revenue.

In 1970, the General Assembly amended the county road and bridge fund statutes to require each county to return to its municipalities, fifty percent of the revenue raised by applying the county road and bridge mill levy to property located within the county's municipalities. House Bill 1037, 1970 Colo. Sess. Laws 320-21 (reprinted in Appendix A of this brief).

H.B. 1037 resulted from a recommendation of the Highway Revenue Committee ("Highway Committee") of the Colorado General Assembly which met during 1969 to study highway revenues. The evidence received by the Committee and its findings and recommendations are set forth in the "Report to the Colorado General Assembly, Highway Revenue Committee, Research Publication No. 150, December 1969" (hereinafter "Highway Report"), a copy of which is attached hereto as Appendix D. The Highway Report notes that municipal residents were paying significant amounts of county taxes for road and bridge purposes, but that generally none of the tax money was being returned to the cities for their highway needs. Highway Report at 7 - 8. The Committee found that large increases in the assessed valuations of municipalities resulted in a windfall to the county road and bridge fund since the county road and bridge mill levy applied in both the incorporated and unincorporated areas:

Growth of the cities and towns has resulted in a large increase in their assessed valuations, at a rate fifty percent greater than the increase in valuation of property outside their boundaries. Such increase in municipal valuation has resulted in a windfall to the county road and bridge funds because of the county-wide application of the county road and bridge levy.

Generally, the counties have not shared this windfall with their cities and towns; only in Arapahoe and Jefferson Counties does there exist any

consistent policy of revenue sharing and this procedure (sic) is not sanctioned by law.

There exists a demonstrated need in cities and towns for a larger share of all taxes paid for road and highway purposes.

Highway Report at 9. Based in part on this evidence, the Committee recommended legislation requiring the fifty percent return to municipalities.

Highway Report at 10. The recommendation was embodied in H.B. 1037, and is now found in C.R.S. 1973, 43-2-202 and 43-2-203 (reprinted in Appendix B).

The other applicable statute is C.R.S. 1973, 29-1-301 (1977 Repl. Vol.), as amended, which imposes on each county and statutory (non-home rule) municipality an annual seven percent limit on property tax revenue increases.¹ The statute requires, in part, that all statutory tax levies of a county be reduced so as to prohibit the levying of a greater amount of property tax revenue than was levied in the preceding year plus seven percent, with certain exceptions or exclusions from the limit. An increase above the seven percent limit is allowed only if approved by the division of local government or by the electors. C.R.S. 1973, 29-1-301(2) (1977 Repl. Vol.).

By examining these separate statutes — the fifty percent sharing requirement of the county road and bridge fund mill levy and the annual seven percent limit on property tax revenue increases — some counties discovered that if moneys from sources other than the road and bridge mill levy are used for road and bridge purposes, the counties will not have to share any revenue with their municipalities. Instead,

¹C.R.S. 1973, 29-1-301 (1977 Repl. Vol.) was amended by legislation enacted in 1981. The seven percent limit was applied to home rule municipalities in 1983 only and certain new exemptions or exclusions from the limit were adopted. Nevertheless, the basic seven percent limit remains applicable. See S.B. 246, S.B. 459 and H.B. 1613 (1981).

the counties will receive increased revenue (the municipalities' fifty percent share from the levy previously imposed for the road and bridge fund) without exceeding or affecting the annual seven percent limit applied to the counties' property tax revenue. Assume, for example, a total county mill levy of four mills, with three mills allocated to the general fund and one mill to the county road and bridge fund. Also assume that these four mills raise an annual revenue of \$40,000. The county road and bridge fund statutes would require the county to share a portion of the one mill road and bridge fund levy (a portion of \$10,000) with the municipalities in the county. If, however, all four mills are allocated by the county to the county general fund and none to the road and bridge fund, no sharing requirement exists and the county's revenues are automatically increased by the amount it would otherwise have been required to share. Moreover, the seven percent limit would not have been affected or exceeded. The county general fund would retain all \$40,000 but would not have levied any greater amount of property tax revenue than the prior year. The county might then attempt to transfer or appropriate county general fund money to the road and bridge fund to pay necessary road and bridge expenses, but no municipal sharing requirement applies to county general fund money.

Unfortunately, the residents in the affected municipalities would receive no corresponding decrease in the total county mill levy applicable to their property or in the amount of taxes they pay to the county. (For example, it appears that neither Weld nor El Paso County reduced its total county mill levy even though each either eliminated or reduced its road and bridge fund mill levy in 1980 for the 1981 fiscal year.) Instead, the

municipal residents might be required to pay additional municipal taxes to replace the revenue previously received by the municipality from the county road and bridge fund mill levy but lost as a result of the county action.

In the instant case, El Paso County² sought to circumvent the municipal sharing requirement of the county road and bridge fund statutes by transferring or appropriating general fund money to the road and bridge fund. The District Court, however, ruled that action invalid, holding:

[O]nce the County adopts a road and bridge fund pursuant to Section 43-2-202, C.R.S. 1973, monies for the Road and Bridge Fund can come only from a mill levy pursuant to Section 43-2-202, C.R.S. 1973 and other sources of funding set forth in Section 43-2-202; that Section 30-25-106, C.R.S. 1973 prohibits the use, transfer or appropriation of monies either in or properly accruable to the County General Fund from that fund to the Road and Bridge Fund; that Section 29-1-111.5, C.R.S. 1973 does not permit the transfer of County General Funds to the Road and Bridge Fund after the beginning of the fiscal year.

²El Paso County is not the only county to attempt to finance the road and bridge fund from moneys not specified in 43-2-202. In City of Greeley v. Board of County Commissioners, Weld County District Court, Colorado Court of Appeals No. 81-CA-0377, the District Court enjoined Weld County from undertaking a similar course of action. (See Appendix C for a copy of the Weld County District Court's final order.) Consistent with the District Court of El Paso County, the Weld County District Court held:

That §43-2-202, C.R.S. 1973, as amended, limits the sources of revenue for funding to the end that municipalities receive back a portion of the taxes paid by their residents. To permit the County to fund the Road and Bridge Fund from sources not expressly authorized or designated for the purpose of road and bridge construction, maintenance, or administration to the end that real property tax revenue need not be channeled into the fund, is to permit the municipalities of Weld County to be deprived of any portion of
(continued next page)

In this appeal, El Paso County argues only that it is authorized by statute to transfer unanticipated and unneeded revenue from the county general fund to the county road and bridge fund after a proper road and bridge budget has been established and the fiscal year has commenced. The League, however, submits that the District Court's decision should be affirmed and the County's argument rejected for at least three reasons. First, the County's proposed transfer violates section 43-2-202 which limits sources of revenue to the county road and bridge fund to money received for road and bridge purposes. Second, the proposed transfer violates express statutory restrictions prohibiting the transfer of county general fund money to the road and bridge fund. Third, the proposed transfer would establish a means for El Paso and other Colorado counties to circumvent the road and bridge fund mill levy by using general fund money for road and bridge purposes, contrary to the express intent of the General Assembly.

the revenue apportioned to the cities by statute, and would permit the County to circumvent what the Court concludes is the clear intent of the Statute. The Court concludes that the term "... any other money ..." [as it appears in 43-2-202] applies to sources of revenue or funds which are designated by the source itself, by statute, or by case law, as funds earmarked for road and bridge or highway purposes. The interpretation offered by the Defendants, to the extent that the County may designate any source of revenue as being for the purposes defined in §43-2-202, C.R.S. 1973, as amended, is too broad.

A. Sources of revenue to the county road and bridge fund are limited to money received for road and bridge purposes.

The language of the county road and bridge fund statutes expressly limits the sources of revenue which may be used to finance the fund to moneys received specifically for road and bridge purposes from the state or federal governments or from other sources:³

43-2-202. County road and bridge fund-apportionment to municipalities. (1) A fund to be known as the "county road and bridge fund" is created and established in each county of this state. Such fund shall consist of the revenue derived from the tax authorized to be levied under section 43-2-203 for road and bridge construction, maintenance, and administration, all moneys received by the county from the state or federal governments for expenditure on roads and bridges, and any other moneys which may become available to the county for such purpose.

Moreover, the legislative history of 43-2-202, as it evolved from its original adoption in 1951 (by S.B. 146), supports a narrow construction of the sources of revenue available for the road and bridge fund. 1951 Colo. Sess. Laws 732 (hereinafter referred to as S.B. 146.) The road and bridge fund statutes originally provided as follows:

Section 1. *Fund Created--Consisting of.* A fund to be known as the "county road and bridge fund" is hereby created and established in each of the counties of the State of Colorado. The county road and bridge fund shall consist of all moneys received from state and federal sources to be expended by a county for road and bridge construction, maintenance and administration; appropriation by the county commissioners; and all other moneys available for road and bridge purposes.

³These specific revenue sources are repeated in C.R.S. 1973, 43-2-203, which requires each county to adopt annually a county road and bridge budget and authorizes the county to impose the road and bridge fund mill levy.

Section 2. *Tax Levy--Budget.* The county commissioners are hereby authorized to make a tax levy sufficient, when added to the estimated cash balance on hand at the beginning of the next fiscal year and the estimated revenue from all other sources except that derived from county taxation, to provide the necessary funds in accordance with the budget. As a part of the county budget and in conformity with the local budget law, a county road and bridge budget shall be adopted. (Emphasis added.)

Id.

House Bill 1037,⁴ adopted in 1970, amended these statutes, not only by imposing the fifty percent municipal sharing requirement on the proceeds of the road and bridge fund mill levy, but also by eliminating "appropriation by the county commissioners" as a source of revenue for the road and bridge fund. These two amendments were consistent and necessary to insure that the county assess the road and bridge mill levy if other earmarked road and bridge revenues were insufficient. If "county appropriations" had been retained as a means of financing the fund, a county could easily have circumvented the sharing requirement imposed on the road and bridge mill levy by appropriating or transferring other county revenue into the road and bridge fund.

Finally, settled rules of statutory construction support a narrow construction of the sources of revenue available for the road and bridge fund. An act must be read as a whole. In Re Interrogatories By the Governor as to Senate Bill No. 121, 163 Colo. 113, 429 P.2d 304 (1967). See also, Wheeler v. Rudolph, 162 Colo. 410, 426 P.2d 762 (1967); Clark v.

⁴H.B. 1037 pertained only to the calendar years 1971, 1972, and 1973. However, these limits were removed by S.B. 26, enacted in 1973. 1973 Colo. Sess. Laws 1230-1231.

Fellin, 126 Colo. 519, 251 P.2d 940 (1952); 2A Sands, Sutherland on Statutory Construction §46.05 (4th ed. 1972); and C.R.S. 1973, 2-4-201 (1980 Repl.Vol.). A reviewing court must not look to isolated words and expressions. Public Utilities Commission v. Stanton Transportation Company, 153 Colo. 372, 386 P.2d 590 (1963). See also, In re Webb's Estate, 90 Colo. 470, 10 P.2d 947 (1932).

Applying these rules to the road and bridge fund statutes, section 43-2-202 must be given a limited construction. If it is interpreted to allow the county broad authority to appropriate or transfer any moneys into the road and bridge fund, the entire statutory scheme would be altered. There would be no reason to establish a specific fund for road and bridge purposes. There would be no reason to specifically designate the revenues which could be used to finance that fund. Furthermore, a broad interpretation destroys any incentive for financing the fund by the road and bridge mill levy. It would render unnecessary the requirement of 43-2-203 that counties share with municipalities the revenues stemming from imposition of the road and bridge mill levy. On the other hand, applying the statute to limit the sources of revenue to the road and bridge fund to those revenues earmarked for road and bridge purposes, renders nothing meaningless and instead furthers the statutory scheme.

B. State statutes prohibit any transfer of money from the county general fund to the road and bridge fund.

Colorado statutes closely and comprehensively regulate county funds and expenditures. See C.R.S. 1973, 30-25-105 and 30-25-106 (1977 Repl. Vol.). The clear intent and effect of these statutes is to prevent the

use of county general fund money for road and bridge expenditures, and to limit such expenditures to the sources of revenue set forth in the county road and bridge fund statutes, as previously described. The brief of the cities comprehensively discusses the legal authority which prohibits any transfer of money from the county general fund to the road and bridge fund. The League will not repeat that authority but will instead express its agreement with and adopt the cities' argument. However, an additional comment on the County's argument is necessary.

El Paso County argues that S.B. 270, enacted in 1979, should be interpreted to permit the County to transfer during the fiscal year "unanticipated and unneeded" revenues from the general fund to the road and bridge fund following the procedures set forth in C.R.S. 1973, 29-1-111.5, as amended. Pursuant to the substantial authority previously cited in the cities' brief and in this brief, such an interpretation of the statutes is unwarranted. Additionally, however, such an interpretation would establish a means whereby counties could circumvent use of the road and bridge fund mill levy. If El Paso County's interpretation is adopted, a county could, for one year, properly finance the road and bridge fund through the road and bridge mill levy and other appropriate sources of revenue. In that same year, the county could "not anticipate" various revenues which appear in the general fund during the fiscal year, transfer that revenue into the road and bridge fund, and hold it as surplus in the road and bridge fund for the next fiscal year. In the next fiscal year, a road and bridge mill levy would be unnecessary because the transferred "unanticipated" revenue from the prior fiscal year would appear

in the road and bridge fund as a balance on hand.⁵ Each year thereafter "unanticipated" general fund revenues could be transferred to the road and bridge fund, thereby avoiding the road and bridge fund mill levy. It is unfortunate that such a concern must exist. However, past efforts of El Paso and Weld Counties to avoid or substantially reduce the road and bridge fund mill levy warrant the concern.

Properly interpreted, S.B.270 permits transfers between county funds where there are no substantive limits on the use of the funds, and permits budgeting and appropriating of unanticipated or unneeded revenue during a fiscal year but only in accordance with any statutory restrictions placed on the use of particular revenue. Admittedly, this interpretation of the statutes does not grant El Paso County all of the flexibility it desires, but it does provide additional flexibility to counties for inter-fund transfers and for supplemental budgets and appropriations while retaining the effectiveness of each applicable statute. It also preserves the evident legislative intent of each statute.

II. THE CITIES HAVE STANDING TO ENSURE THAT THE ROAD AND BRIDGE FUND IS LEGALLY FINANCED.

As direct beneficiaries of the statutorily created road and bridge fund, the cities are significantly injured when the road and bridge fund is not legally financed and have standing to ensure that the road and bridge fund is legally financed. The cities' brief comprehensively discusses the legal authority supporting the cities' standing and the League will not repeat that authority.

⁵The likelihood of this occurring is suggested on page 14 of El Paso County's opening brief; "Such a road and bridge mill levy must only be established when the board of county commissioners finds that further revenues are required, in addition to the estimated balance on hand at the beginning of the fiscal year and the other revenue sources provided by law." (Emphasis added.)

CONCLUSION

Based upon the foregoing arguments and authorities, the decision of the District Court should be affirmed.

Respectfully submitted,

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ROADS AND HIGHWAYS

COUNTY ROAD AND BRIDGE FUNDS

(House Bill No. 1037. By Representatives Burch, Edmonds, Jackson, Ed McCormick, Arnold, Baer, Braden, Bryant, Koster, Lamb, H. McCormick, Mullen, Newman, Sack, Sanchez, Shore, Showalter, Singer, Sonnenberg, and Younglund; also Senators Jackson, MacManus, Ohlson, and Stockton.)

A N A C T

CONCERNING COUNTY ROAD AND BRIDGE FUNDS AND THE APPORTIONMENT OF CERTAIN REVENUES ACCRUING TO SUCH FUNDS.

Be it enacted by the General Assembly of the State of Colorado:

Section 1. 120-1-2, Colorado Revised Statutes 1963, is REPEALED AND REENACTED, WITH AMENDMENTS, to read:

120-1-2. County road and bridge fund—apportionment to municipalities.—(1) A fund to be known as the “county road and bridge fund” is hereby created and established in each county of this state. Such fund shall consist of the revenue derived from the tax authorized to be levied under section 120-1-3 for road and bridge construction, maintenance, and administration, all moneys received by the county from the state or federal governments for expenditure on roads and bridges, and any other moneys which may become available to the county for such purpose.

(2) For the calendar years 1971, 1972, and 1973 only, each municipality located in any county of this state shall be entitled to receive from the county road and bridge fund of the county wherein it is located an amount equal to fifty percent of the revenue accruing to said fund from extension only of the levy authorized to be made under section 120-1-3 against the valuation for assessment of all taxable property located within its corporate boundaries; except, that by mutual agreement between such municipality and the board of county commissioners, such municipality may elect to receive the equivalent of such amount in the value of materials furnished, or work performed on roads and streets located within its corporate boundaries, by the county during the calendar year in which such revenue is actually collected; and except, that in all cases where the annual amount of revenue receivable by a municipality from the county road and bridge fund is estimated to be less than two thousand dollars, such estimated amount shall be receivable by such municipality only in the equivalent value of materials furnished, or work performed on roads and streets within its corporate boundaries, by the county during the calendar year in which such revenue is actually collected.

(3) In all cases where a municipality has not elected to receive its share of the county road and bridge fund in equivalent value of materials furnished or work performed by the county, under mutual agreement, it shall

be the duty of the county treasurer, beginning April 15, 1971, and on the fifteenth day of each July, October, January, and April thereafter, but not subsequent to January 15, 1974, to pay over to the treasurer of such municipality, out of the county road and bridge fund, the amount to which such municipality shall have become entitled during the preceding three calendar months.

(4) All moneys received by a municipality from the county road and bridge fund shall be credited to an appropriate fund, and shall be used by such municipality only for construction and maintenance of roads and streets located within its corporate boundaries.

Section 2. 120-1-3, Colorado Revised Statutes 1963, is REPEALED AND REENACTED, WITH AMENDMENTS, to read:

120-1-3. County road and bridge budget—tax levy.—(1) As a part of the total county budget, and in conformity with the "Local Government Budget Law of Colorado", each county shall annually adopt a county road and bridge budget for the ensuing fiscal year, which budget shall show: The aggregate amount estimated to be expended for county road and bridge construction, maintenance, and administration, and the aggregate amount estimated to be paid from the county road and bridge fund to municipalities located within the county, either in cash or in equivalent value of materials to be furnished or work to be performed under mutual agreements with such municipalities, during said fiscal year; the estimated balance in said fund at the beginning of said fiscal year; the aggregate amount estimated to be received from state, federal, or other sources during said fiscal year; and the amount necessary to be raised during said fiscal year from the levy authorized in subsection (2) of this section.

(2) The board of county commissioners in each county is authorized to levy such rate of tax on all taxable property located within the county as shall be required, when added to the estimated balance on hand at the beginning of said ensuing fiscal year and the amount of all revenues, other than property tax revenue, estimated to be received during said fiscal year, to defray all expenditures and payments estimated to be made from the county road and bridge fund during said fiscal year.

Section 3. Safety clause.—The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: April 10, 1970

APPENDIX B

43-2-202. County road and bridge fund - apportionment to municipalities.

(1) A fund to be known as the "county road and bridge fund" is created and established in each county of this state. Such fund shall consist of the revenue derived from the tax authorized to be levied under section 43-2-203 for road and bridge construction, maintenance, and administration, all moneys received by the county from the state or federal governments for expenditure on roads and bridges, and any other moneys which may become available to the county for such purpose.

(2) Each municipality located in any county of this state is entitled to receive from the county road and bridge fund of the county wherein it is located an amount equal to fifty percent of the revenue accruing to said fund from extension only of the levy authorized to be made under section 43-2-203 against the valuation for assessment of all taxable property located within its corporate boundaries; except that, by mutual agreement between such municipality and the board of county commissioners, such municipality may elect to receive, in part or in full, the equivalent of such amount in the value of materials furnished or work performed on roads and streets located within its corporate boundaries by the county either during the calendar year in which such revenue is actually collected or by mutual agreement during any succeeding calendar year. A board of county commissioners may, at its option, provide additional money, furnish additional materials, or perform additional work for a municipality located in the county in excess of the money or equivalent materials or work entitled to be received by such municipality under this section.

Source: Amended, L. 75, p. 1573, § 1.

(3) In all cases where a municipality has not elected to receive its share of the county road and bridge fund in equivalent value of materials furnished or work performed by the county, under mutual agreement, it is the duty of the county treasurer, on the fifteenth day of each July, October, January, and April, to pay over to the treasurer of such municipality, out of the county road and bridge fund, the amount to which such municipality has become entitled during the preceding three calendar months.

(4) All moneys received by a municipality from the county road and bridge fund shall be credited to an appropriate fund and shall be used by such municipality only for construction and maintenance of roads and streets located within its corporate boundaries.

Source: L. 51, p. 752, § 1; CSA, C. 143, § 9(1); CRS 53, § 120-1-2; C.R.S. 1963, § 120-1-2; L. 70, p. 320, § 1; L. 73, p. 1230, § 1.

43-2-203. County road and bridge budget - tax levy. (1) As a part of the total county budget and in conformity with the "Local Government Budget Law of Colorado", each county shall annually adopt a county road and bridge budget for the ensuing fiscal year, which budget shall show: The aggregate amount estimated to be expended for county road and bridge construction, maintenance, and administration and the aggregate amount estimated to be paid from the county road and bridge fund to municipalities located within the county, either in cash or in equivalent value of materials to be furnished or work to be performed under mutual agreements with such municipalities, during said fiscal year; the amount being carried over for equivalent materials to be furnished or work to be performed from any prior fiscal year for any municipality within the county pursuant to section 43-2-202 (2); the estimated balance in said fund at the beginning of said fiscal year; the aggregate amount estimated to be received from state, federal, or other sources during said fiscal year; and the amount necessary to be raised during said fiscal year from the levy authorized in subsection (2) of this section.

Source: Amended, L. 75, p. 1574, § 2.

(2) The board of county commissioners in each county is authorized to levy such rate of tax on all taxable property located within the county as required, when added to the estimated balance on hand at the beginning of said ensuing fiscal year and the amount of all revenues, other than property tax revenue, estimated to be received during said fiscal year, to defray all expenditures and payments estimated to be made from the county road and bridge fund during said fiscal year.

Source: L. 51, p. 732, § 2; CSA, C. 143, § 9(2); CRS 53, § 120-1-3; C.R.S. 1963, § 120-1-3; L. 70, p. 321, § 2.

APPENDIX C

DISTRICT COURT
COUNTY OF WELD
STATE OF COLORADO

Case No. 80CV1091

ORDER

CITY OF GREELEY, COLORADO; TOWN OF AULT, COLORADO; TOWN OF DACONO, COLORADO; TOWN OF ERIE, COLORADO; CITY OF EVANS, COLORADO; TOWN OF FIRESTONE, COLORADO; TOWN OF FREDERICK, COLORADO; CITY OF FORT LUPTON, COLORADO; TOWN OF GILCREST, COLORADO; TOWN OF HUDSON, COLORADO; TOWN OF JOHNSTOWN, COLORADO; TOWN OF KEENESBURG, COLORADO; TOWN OF LASALLE, COLORADO; TOWN OF LOCHBUIE, COLORADO; TOWN OF MEAD, COLORADO; TOWN OF MILLIKEN, COLORADO; TOWN OF PIERCE, COLORADO; TOWN OF PLATTEVILLE, COLORADO; TOWN OF SEVERANCE, COLORADO,

Plaintiffs,

vs.

1. BOARD OF COUNTY COMMISSIONERS, COUNTY OF WELD, STATE OF COLORADO;
2. NORMAN C. CARLSON; LYDIA DUNBAR; C. W. KIRBY; LEONARD L. ROE; JUNE K. STEINMARK, as members of the Board of County Commissioners of Weld County;
3. JOHN "CHUCK" CARLSON; and JOHN T. MARTIN, as immediate future members of the Board of County Commissioners of Weld County;
4. FRANCIS M. LOUSTALET, as Treasurer of Weld County;
5. DONALD WARDEN, Director of Finance and Administrative Services of Weld County,

Defendants.

THIS MATTER coming before the Court on the Plaintiffs request for Declaratory Relief and Permanent Injunction, and the Court having considered the file, Motions, Briefs, and arguments of Counsel FINDS as follows:

1. That under the evidence and allegations, the Plaintiffs have sufficiently demonstrated an injury in fact to a legally protected interest to support their standing to sue.

2. That §29-1-111.5, C.R.S. 1973, as amended, by its own terms, authorizes inter-agency and inter-fund transfers of money during the fiscal year for the purpose of giving the governmental units certain flexibility when projected budgets have proven inaccurate, to the end that they may reallocate from over-funded agencies or funds to under-funded agencies or funds. The Statute does not relate to the original sources of revenue or alter the statutory restrictions on revenue sources available to specific governmental units or spending agencies. The Defendants reliance on §29-1-111.5, C.R.S. 1973, as amended, in enacting the Resolution of November 5, 1980, was misplaced.

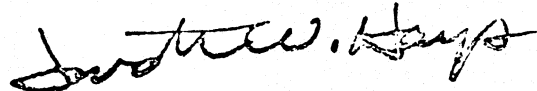
3. That §43-2-202, C.R.S. 1973, as amended, limits the sources of revenue for funding to the end that municipalities receive back a portion of the taxes paid by their residents. To permit the County to fund the Road and Bridge Fund from sources not expressly authorized or designated for the purpose of road and bridge construction, maintenance, or administration to the end that real property tax revenue need not be channeled into the fund, is to permit the municipalities of Weld County to be deprived of any portion of the revenue apportioned to the cities by statute, and would permit the County to circumvent what the Court concludes is the clear intent of the Statute. The Court concludes that the term "...any other money..." applies to sources of revenue or funds which are designated by the source itself, by statute, or by case law, as funds earmarked for road and bridge or highway purposes. The interpretation offered by the Defendants, to the extent that the County may designate any source of revenue as being for the purposes defined in §43-2-202, C.R.S. 1973, as amended, is too broad.

4. That the first category of revenue designated in the Resolution of November 5, 1980, specific ownership tax, is permitted to be applied to the Road and Bridge Fund.

WHEREFORE, the Court ORDERS that the Plaintiffs request for Declaratory Judgment be granted, decreeing that with the exception of the specific ownership tax, the Resolution of November 5, 1980, was contrary to statute. The Court further orders that the request for Injunctive Relief be granted, enjoining the transfer of any funds designated by the November 5, 1980, Resolution, with the exception of the specific ownership tax, and

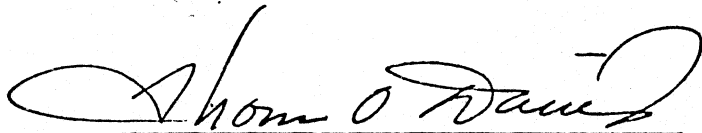
prohibiting the expenditure of funds from the Road and Bridge Fund to the extent that those funds were derived from the prohibited sources.

DONE And ORDERED this 28 day of January, 1981.

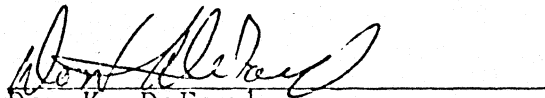


District Court Judge

APPROVED AS TO FORM:



Thomas O. David
County Attorney of Weld County



Don K. DeFord
Assistant City Attorney
Greeley, Colorado