



JOHN W. SUTHERS  
Attorney General

CYNTHIA H. COFFMAN  
Chief Deputy Attorney General

DANIEL D. DOMENICO  
Solicitor General

**STATE OF COLORADO**  
**DEPARTMENT OF LAW**  
**OFFICE OF THE ATTORNEY GENERAL**

STATE SERVICES BUILDING  
1525 Sherman Street - 7th Floor  
Denver, Colorado 80203  
Phone (303) 866-4500

FORMAL	)	
OPINION	)	No. 10-03
	)	
OF	)	AG Alpha No. HE OB AGBDF
	)	
JOHN W. SUTHERS	)	May 21, 2010
Attorney General	)	

This opinion, requested by CollegeInvest Director Debra DeMuth on December 30, 2009, concerns CollegeInvest's authority to engage an outside vendor to provide legislative strategy and lobbying services.

**QUESTIONS PRESENTED AND CONCLUSIONS**

*Question 1:* Whether engaging an outside vendor to provide legislative strategy and lobbying services is within the legislative authority of CollegeInvest.

*Answer 1:* Yes. CollegeInvest is legislatively authorized to engage an outside vendor to provide legislative strategy and lobbying services.

*Question 2:* Whether § 24-6-303.5(1)(a), C.R.S. (2009) precludes CollegeInvest from engaging an outside vendor to provide legislative strategy and lobbying services.

*Answer 2:* No. Section 24-6-303.5(1)(a), C.R.S. (2009) does not preclude CollegeInvest from engaging an outside vendor to provide legislative strategy and lobbying services.

**DISCUSSION**

*Question 1:* Whether engaging an outside vendor to provide legislative strategy and lobbying services is within the legislative authority of CollegeInvest.

*Answer 1:* Yes. CollegeInvest is legislatively authorized to engage an outside vendor to provide legislative strategy and lobbying services. CollegeInvest, a division of the Department of Higher Education, differs from most State entities in terms of its history, statutory mission, and status. CollegeInvest was formerly an “independent body politic and corporate” created to “enhance the availability of student obligations and assist residents in meeting the expenses incurred in availing themselves of higher education opportunities” through the making and purchasing of student obligations.<sup>1</sup> In May 2000, CollegeInvest became a division within the Department of Higher Education as if it were transferred under a type 2 transfer under the Administrative Organization Act of 1968.<sup>2</sup> Its statutory mission remains the same.<sup>3</sup>

CollegeInvest’s powers and duties reflect the unique challenges of converting an independent body politic and corporate to a State entity while retaining its ability to operate effectively in private financial markets. As a result, CollegeInvest has certain powers not generally available to State entities. For instance, CollegeInvest may operate its business without regard to the State Procurement Code, may borrow money, and may organize entities and transfer funds to such entities for investment.<sup>4</sup> Additionally, its actions do not create a debt of the State.<sup>5</sup>

In furtherance of its purpose to improve access to and choice of higher education opportunities through the making and purchase of student obligations, CollegeInvest also has the authority to “engage the services of private consultants and legal counsel and to otherwise contract with providers to render professional and technical assistance, advice, and other services . . . .”<sup>6</sup> Although legislative strategy and lobbying services are not explicitly named, the scope of this authorization should be interpreted to include such services.

When interpreting a statute, the “goal is to determine and give effect to the intent of the legislature and adopt the statutory construction that best effectuates the purposes of the legislative scheme.”<sup>7</sup> To determine the intent of the legislature, “the language of the statute itself” must first be considered.<sup>8</sup> When the statutory language is unambiguous, courts assume that the legislature “meant what it clearly said.”<sup>9</sup> Only if the intent of the legislature cannot be ascertained through a plain

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<sup>1</sup> §§ 23-3.1-201-203(1), C.R.S. (1999).

<sup>2</sup> § 23-3.1-203(1), C.R.S. (2001).

<sup>3</sup> § 23-3.1-201, C.R.S. (2009).

<sup>4</sup> § 23-3.1-206, C.R.S. (2009).

<sup>5</sup> § 23-3.1-206, C.R.S. (2009).

<sup>6</sup> § 23-3.1-206(1)(g), C.R.S. (2009).

<sup>7</sup> *People v. Yascavage*, 101 P.3d 1090, 1093 (Colo. 2004).

<sup>8</sup> *Id.*

<sup>9</sup> *United Airlines, Inc. v. Indus. Claim Appeals Office*, 993 P.2d 1152, 1157 (Colo. 2000).

reading of the statute, will a court resort to canons of statutory construction.<sup>10</sup> The plain language of section 23-3.1-206(1)(g), C.R.S. (2009) leaves little doubt that CollegeInvest is authorized to engage outside vendors for legislative strategy and lobbying services. Nonetheless, applying canons of statutory construction points to the same result.

Section 23-3.1-206(1)(g) allows CollegeInvest to contractually engage “the services of private consultants and . . . professional and technical assistance, [and] advice . . .” The plain meaning of these words demonstrates that the legislature intended to authorize CollegeInvest to engage a wide range of services, including those provided by outside vendors.<sup>11</sup> A consultant is commonly defined as “one who gives professional advice or services.”<sup>12</sup> Furthermore, outside vendors who engage in lobbying for pay or consideration are statutorily defined as “professional lobbyists.”<sup>13</sup> These definitions suggest that outside vendors performing lobbying and legislative services are private consultants who give professional assistance and advice as those words are used in § 206(1)(g).

Additionally, the statute allows CollegeInvest to contractually engage “other services,” which similarly suggests an expansive legislative intent.<sup>14</sup> Thus, even if legislative strategy and lobbying services are not construed to be those of a “private consultant,” or those in the nature of “professional and technical assistance” or “advice,” such services would be authorized as “other services” under § 23-3.1-206(1)(g).

If the language of § 206(1)(g) were deemed ambiguous, applying canons of statutory construction leads to the same conclusion regarding CollegeInvest’s authority to contract for legislative strategy and lobbying services. Under the canon of *expression unius est exclusion alterius* the listing of particular items, *without a more general or inclusive term*, excludes all items except those that are specifically enumerated.<sup>15</sup> Here, the list of authorized services is not specific. Legal counsel is the only item in the list identifying a specific service. The remaining authorized

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<sup>10</sup> *People v. District Court, Second Judicial Dist.*, 713 P.2d 918, 921 (Colo. 1986).

<sup>11</sup> See *Merriam-Webster Third New Int’l Dictionary of the English Language Unabridged* (1993) 2075 (defining “service” as “an act done for the benefit or at the command of another”); *id.* at 1805 (defining “private” as “not invested with or engaged in public office or employment”); *id.* at 1811 (defining “professional” as “relating to, or characteristic of a profession or calling”); *id.* at 2348 (defining “technical” as “having special usu. practical knowledge especially of a mechanical or scientific subject”); *id.* at 132 (defining “assistance” as “the act or action of assisting”); *id.* at 32 (defining “advice” as “recommendation regarding a decision or course of conduct”).

<sup>12</sup> *Id.* at 490.

<sup>13</sup> § 24-6-301(6), C.R.S. (2009).

<sup>14</sup> See *People v. Cunefare*, 102 P.3d 302, 312 (Colo. 2004) (observing that “[b]y creating [a] ‘catchall,’ . . . the General Assembly intended . . . to cover all . . . that were not otherwise specified”).

<sup>15</sup> *Garman v. Conoco, Inc.*, 886 P.2d 652, 664 (Colo. 1994).

services are all broadly descriptive, encompassing numerous types of service providers. Moreover, the list ends with the even more general and inclusive term “other services.” Therefore, applying the canon of *ejusdem generis* general words are construed to embrace only objects similar in nature to those objects enumerated by preceding words.<sup>16</sup> “Other services” would embrace providers of legislative strategy and lobbying services as services similar in nature to private consultants, legal counsel, and providers of professional and technical assistance and advice.<sup>17</sup>

Broad construction of § 23-3.1-206(1)(g) is also supported by the legislative declaration that statutes pertaining to CollegeInvest “shall be liberally construed to accomplish” its purposes, and by its power “to make and execute contracts, . . . necessary or convenient for the exercise of its powers and function” and “to do all things necessary and convenient” to carry out its purposes.<sup>18</sup> CollegeInvest operates the State’s student obligation bond program. The proceeds of its bonds are used to purchase, service, or make student loans so that residents will be better able to meet the expenses of higher education. To advance these purposes and functions, CollegeInvest operates in the worldwide financial market and must engage with legislative and executive branch authorities at the state and federal levels to assure that those responsible for such laws and regulations understand how their official actions impact CollegeInvest’s ability to fulfill its purposes. It is reasonable to conclude that this requires professional legislative strategy and lobbying expertise. Viewed through this lens of liberal construction and the unique history and statutory mission of CollegeInvest, the plain language of § 23-3.1-206(1)(g) should be interpreted to authorize CollegeInvest’s engagement of an outside vendor to provide legislative strategy and lobbying services in furtherance of its duty to “improve[ ] access to and choice of higher education opportunities in this state.”<sup>19</sup>

*Question 2:* Whether § 24-6-303.5(1)(a), C.R.S. (2009) precludes CollegeInvest from engaging an outside vendor to provide legislative strategy and lobbying services.

*Answer 2:* No. CollegeInvest’s authority to engage an outside vendor to provide legislative strategy and lobbying services is not precluded by § 24-6-303.5(1)(a), C.R.S. (2009). This statute does not apply to lobbying by outside vendors. Rather, it applies to lobbying by persons from principal departments. It requires each principal department to designate one person who shall be responsible for the lobbying efforts on behalf of the department by any “state official

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<sup>16</sup> *People v. One 1988 Mazda 232 VIN JM1BF232XJ0131664*, 857 P.2d 569, 571 (Colo. App. 1993).

<sup>17</sup> § 23-3.1-206(1)(g), C.R.S. (2009).

<sup>18</sup> § 23-3.1-201, C.R.S. (2009); § 23-3.1-206(1)(n),(o), C.R.S. (2009).

<sup>19</sup> § 23-3.1-201, C.R.S. (2009).

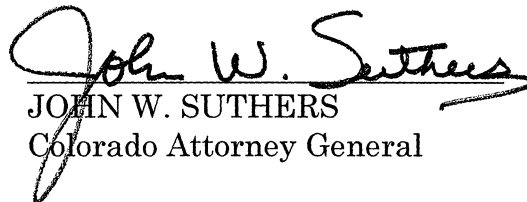
or employee,” and governs registration requirements for that designated person. The statute defines “state official or employee” as an “individual who is compensated by a State of Colorado warrant and receives State of Colorado employee benefits except a lobbyist hired on a contract basis if he is currently registered under sections 24-6-302 and 24-6-303 or a lobbyist who registers as a professional lobbyist pursuant to sections 24-6-302 and 24-6-303.”<sup>20</sup> Therefore, § 303.5 governs coordination of lobbying efforts *by state officials and employees* on behalf of a principal department. It has no bearing on and does not restrict CollegeInvest’s authority to engage outside vendors to provide legislative strategy and lobbying services. Authority to engage outside vendors to provide legislative strategy and lobbying services derives from statutory authority independent of § 303.5(1)(a), such as CollegeInvest’s enabling statutes.

While § 303.5 does not address coordination of lobbying activities by outside vendors, these activities are not without coordination. Executive Order D0069 88 addresses coordination of these outside vendor services, requiring that any contract with persons who are *not* state employees to perform lobbying services on behalf of any agency of the State of Colorado must be approved in writing by the Governor.<sup>21</sup>

## CONCLUSION

Based on the foregoing analysis, I conclude that CollegeInvest is legislatively authorized to engage an outside vendor to provide legislative strategy and lobbying services, and § 24-6-303.5(1)(a) does not preclude such engagement. However, such contracts must be approved by the Governor in writing in accordance with Executive Order D0069 88.

Issued this 21<sup>st</sup> day May, 2010.

  
JOHN W. SUTHERS  
Colorado Attorney General

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<sup>20</sup> § 24-6-303.5(3), C.R.S. (2009).

<sup>21</sup> See Exec. Order D0069 88 (May 10, 1988).