



GALE A. NORTON
Attorney General

STEPHEN K. ERKENBRACK
Chief Deputy Attorney General

TIMOTHY M. TYMKOVICH
Solicitor General

STATE OF COLORADO
DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL

STATE SERVICES BUILDING
1525 Sherman Street - 5th Floor
Denver, Colorado 80203
Phone (303) 866-4500
FAX (303) 866-5691

FORMAL)
OPINION)
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GALE A. NORTON)
Attorney General)

No. 95-5
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This opinion letter is in response to an inquiry from the Executive Director of the Department of Local Affairs concerning distribution of money from the Conservation Trust Fund to special districts which provide television relay and translator facilities.

QUESTIONS PRESENTED FOR REVIEW AND CONCLUSIONS

1. May a metropolitan district which provides television relay and translator facilities receive money from the Conservation Trust Fund?

Conclusion: Yes

2. May a metropolitan district receive money from the Conservation Trust Fund even when the boundaries of a park and recreation district overlap the boundaries of the metropolitan district, and the two districts provide the same or similar services?

Conclusion: Yes

ANALYSIS

Question 1

In Gunnison County both a park and recreation district and a metropolitan district provide television relay and translator facilities within one geographic area. The question

presented addresses whether money from the Conservation Trust Fund ("Fund") may be allocated to the television relay and translator facilities provided by a metropolitan district.

The question can be answered by applying tenets of statutory construction. Each statute must be read as a whole. McCarthy v. Blake, 874 P.2d 394, 398 (Colo. 1994). Statutory words and phrases must be given their plain and ordinary meaning. People v. Hampton, 876 P.2d 1236, 1239 (Colo. 1994). If the meaning of a statutory provision is plain and unambiguous on its face, the statute must be interpreted as written, without resorting to interpretation. People v. Zapotosky, 869 P.2d 1234, 1238 (Colo. 1994).

The Fund¹ is established in § 29-21-101, C.R.S. (1986 Repl. Vol.). The Fund consists of public money distributed to "eligible entities," which include special districts formed pursuant to Article 1 of title 32 providing park or recreation facilities or services.² Section 29-21-101(1)(b) and (g) (1986 Repl. Vol. and 1995 Cum. Supp.). Both metropolitan districts and park and recreation districts are organized pursuant to article 1 of Title 32. Section 32-1-1005, C.R.S. (1995 Cum. Supp.). Pursuant to § 32-1-1004(2)(c), C.R.S. (1995 Cum. Supp.) a metropolitan district may provide park and recreation facilities or programs as specified in § 32-1-103(14). Section 32-1-103(14), C.R.S. (1995 Cum. Supp.) defines a park and recreation district as a "special district which provides parks or recreational facilities or programs within said district." (emphasis added).

Park and recreation districts have the powers established in §§ 32-1-1001, and 32-1-1005, C.R.S. (1995 Cum. Supp.). The relevant portion of §§ 32-1-1005 provides:

(1) In addition to the powers specified in section 32-1-1001, the board of any park and recreation district has the following powers for and on behalf of such district:

¹The Fund is administered by the Division of Local Government in the Department of Local Affairs. Pursuant to § 29-21-101(2)(b), C.R.S. (1986 Repl. Vol.) the Division of Local Government must determine which counties, municipalities and special districts are entitled to disbursement from the Fund.

² For each quarter through the fourth quarter of fiscal year 1997-1998, the Fund receives the amounts allocable to it under statute as amended through January 1, 1992, Art. XXVII, § (3)(1)(a)(I), Colo. Const. Thereafter, the Fund receives forty percent (40%) of the net proceeds from the Great Outdoors Colorado Trust Fund. Art. XXVII, § (3)(b)(I), Colo. Const.

(a) To operate a system of television relay and translator facilities and to use, acquire, equip, and maintain land, buildings, and other recreational facilities therefor.

Moreover, a park and recreation district may exercise the power of eminent domain for purposes of providing television relay and translator facilities. Section 32-1-1005(1)(c), C.R.S. (1995 Cum. Supp.).

By definition, park and recreation districts provide park or recreational programs. Section 32-1-103(14). The General Assembly specifically authorized park and recreation districts to provide television relay and translator facilities. Therefore, it is fair to conclude that the General Assembly deemed television relay and translator facilities to be recreational facilities.

Section 29-21-101 does not limit the distribution of money from the Fund to park districts. Rather, money from the Fund may be distributed to special districts which provide park and recreation facilities or programs. A metropolitan district is a special district. Television relay and translator facilities are considered recreational facilities. If the metropolitan district provides facilities discussed above, it is eligible for money from the Fund.³

Question 2

Metropolitan districts, park and recreation districts and other special districts are formed upon the entry of an order declaring the special district organized. Section 32-1-305(7), C.R.S. (1995 Cum. Supp.). The entry of the court's order conclusively establishes "the regular organization of the special district against all persons except the State of Colorado in an action in the nature of quo warranto commenced by the attorney general within thirty days after entry of such order. . . ." *Id.* In the fact situation presented here, both the metropolitan district and the park and recreation district were formed pursuant to statute. Each has created a conservation trust fund and has certified to the Department of Local Affairs that it has created a conservation trust fund. Section 29-21-101(1)(b), C.R.S. (1986 Repl. Vol.).

The money in the Fund is distributed by the division of local government pursuant to a statutory formula, § 29-21-102(2)(a) and (b), C.R.S. (1995 Cum. Supp.). Each eligible

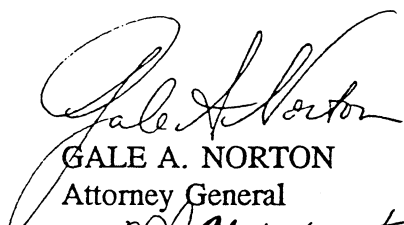
³ The conclusion reached here is necessitated by principles of statutory construction. The General Assembly may want to consider whether television relay and translator services are consistent with Art XXVII, section 1, Colo. Const.

entity is entitled to receive its proportionate share of the Fund unless the eligible entity is a special district which has been ordered dissolved. Section 29-21-101(2)(a) and (b). The statutes do not permit the division of local government to deny funds to a district because it provides the same type of service in the same geographic area that is provided by another, older district. Therefore, both the metropolitan district and the park and recreation district are entitled to receive their proportionate shares from the fund.⁴

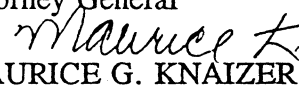
CONCLUSION

Metropolitan districts which offer television relay and translator facilities are eligible for money from the Fund. A park and recreation district and a metropolitan district which provide the same or similar services to the same geographical area are both entitled to their proportionate share of the Fund.

Sincerely,



GALE A. NORTON
Attorney General



MAURICE G. KNAIZER
Deputy Attorney General

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⁴ The conclusion rendered in this opinion is limited to an analysis of article 21 of title 29 and §§ 32-1-103 and -1005.