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| FORMAL OPINION | ) | No. 99-5 and Modification of AGO 98-2 |
| of | ) | AG Alpha No. LO LG FBQPH |
| KEN SALAZAR<br>Attorney General | ) | July 30, 1999 |

This opinion is in response to a request from the Executive Director of the Department of Local Affairs requesting clarification of certain issues relating to a prior Colorado Attorney General Opinion, AGO 98-2 (October 26, 1998).

## QUESTIONS PRESENTED AND CONCLUSIONS

The three questions presented are as follows:

*Issue 1:* *Can a vote pursuant to § 29-1-302(2)(b), C.R.S., authorize a taxing entity to exceed the § 29-1-301(1)(a), C.R.S., 5.5% limitation on property tax revenues for any of its needs; or can the vote authorize exceeding the limitation only for certain purposes?*

*Answer 1*: Assuming that no provision of article X, section 20 of the Colorado Constitution is otherwise violated, a vote pursuant to § 29-1-302(2)(b), C.R.S., can authorize the entity to exceed the § 29-1-301(1)(a), C.R.S., 5.5% limitation on property tax revenues for any of its needs; there is no restriction as to purpose.

*Issue 2:* *Is a favorable vote by the affected local electorate pursuant to § 29-1-302(2)(b), C.R.S., sufficient to authorize the taxing entity to exceed the § 29-1-301(1)(a), C.R.S., 5.5% limitation on property tax*

*revenues, or must such an authorizing vote be obtained by means of a state-wide election?*

*Answer 2*: Assuming that no provision of article X, section 20 of the Colorado Constitution is otherwise violated and that the relevant provisions of § 29-1-302, C.R.S., are met, a favorable vote by the affected local electorate pursuant to § 29-1-302(2)(b), C.R.S., is sufficient authorization for the taxing entity to exceed the 5.5% statutory limitation of § 29-1-301(1)(a), C.R.S. A statewide vote is not necessary.

*Issue 3*: *For what period of time can a local electorate authorize a taxing entity to exceed the 5.5% statutory limitation of § 29-1-301(1)(a), C.R.S.?*

Answer 3: Assuming that no provision of article X, section 20 of the *Colorado Constitution* is otherwise violated, a favorable vote pursuant to the Colorado Constitution and § 29-1-302(2)(b), C.R.S., the local electorate of a taxing entity can authorize the entity to exceed the 5.5% statutory limitation of § 29-1-301(1)(a), C.R.S., for the period of time specified in the ballot question.

**ANALYSIS**

Article X, section 20, and article V of the Colorado Constitution are important in analyzing the three issues described above. In November, 1992, Colorado voters approved an initiated constitutional amendment entitled "The Taxpayer's Bill of Rights" (hereinafter "TABOR"), which became article X, section 20 of the Colorado Constitution. This provision "circumscribes the revenue, spending, and debt powers of state and local governments" by shifting fiscal decisions to a vote of the people. City of Wheat Ridge v. Cerveny, 913 P.2d 1110, 1115 (Colo. 1996). Subsection (1) of TABOR states that its provisions "supersede conflicting state constitutional, state statutory, charter, or other state or local provisions." The Colorado Supreme Court has held that TABOR affects certain government fiscal matters, and that it "was

intended to restrain government growth **by permitting voter control over** government revenue, spending, and debt." Zaner v. City of Brighton, 917 P.2d 280, 285 (Colo. 1996) (emphasis added).

Article V of the Colorado Constitution is also important to an analysis of these issues. Article V deals with the legislative power of the State. While vesting the State's legislative power in the General Assembly, article V, section 1 at the same time reserves to the people themselves the independent legislative powers of initiative and referendum, i.e., "the power to propose laws and amendments to the constitution and to enact or reject the same at the polls independent of the general assembly and . . . to approve or reject at the polls" any legislation promulgated by the General Assembly. [1] Colo. Const. article V, § 1(1).

The Colorado Supreme Court has recognized the enactment of TABOR as an example of the people's exercise of their article V constitutional rights, i.e., "their initiative power to enact laws in the specific context of state and local government finance, spending, and taxation." Zaner, 917 P.2d at 284. In support of its rejection of a construction of TABOR which would have restricted "the ability of electors to hold special elections on local issues in cases where other constitutional provisions expressly authorizes or requires special elections," the Court stated that TABOR "provides the people with greater direct control over government growth by, among other things, setting various spending and revenue limits and requiring voter approval of measures that would increase debt, spending, or taxes." Zaner, 917 P.2d at 284-85.

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[1] Subsection (4) of section 1 emphasizes the unique nature of the people's constitutionally-derived legislative powers: unlike legislation originating in the General Assembly, the governor's veto power "shall not extend to measures initiated or referred to the people." Colo. Const. art. V, § 1(4).

The extent of voter control over fiscal matters was summarized by the Supreme Court in Havens v. Board of County Comm'rs of the County of Archuleta, 924 P.2d 517 (Colo. 1996), which found that the voters, by passing TABOR, evinced a desire to exercise ultimate authority over matters of taxation. Id. at 522. Thus, any construction of article X, section 20 must not unduly restrict the electorate's franchise. Although each of the key limitations on revenue and spending in TABOR is contingent upon voter acquiescence, voters may remove the limits if they choose.

Colorado has long recognized and frequently applied the doctrine of *in pari materia*, the rule of statutory construction that requires various portions of a statute to be read together with all other constitutional and statutory provisions relating to the same subject or having the same general purpose so that the statute's intent may be ascertained and absurdities avoided. R.E.N. v. City of Colorado Springs, 823 P.2d 1359, 1364-65 (Colo. 1992). In determining how the provisions of Part 3 of Article 1 of Title 29 of the Colorado Revised Statutes should be interpreted, this doctrine must be applied, i.e., Part 3 must be read in conjunction with TABOR and article V of the Colorado Constitution. TABOR itself recognizes that in addition to its own provisions, there are "[o]ther limits on [governmental] revenue, spending, and debt," and that these limits may be weakened only by future voter approval. Colo. Const. art. X, § 20(1).

The language of §§ 29-1-301 and 29-1-302 is ambiguous.[2] Colorado Attorney General Opinion 98-2 (hereinafter "AGO 98-2) attempted to resolve the ambiguity, but mistakenly

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[2] Some of the terminology employed in part 3 does not have the expected conventional meaning. That is, § 29-1-301(1)(a) uses the term revenue "levied" to instead mean "revenue collected." Similarly, § 29-1-302 provides for the granting of an "increased levy" not in the conventional sense of a change in the mill levy **rate**; instead an increased levy is equated with "the amount of tax limited by § 301" that "will be insufficient for the [taxing entity's] needs ... for the current year." In other words, in the statute's terminology an "increased levy" is merely authorization for the taxing entity to collect and retain property tax revenues without reference to the § 301 limitation on the overall amount of property taxes; it does not relate to any change in the actual mill levy rate.

limited its analysis to the confines of these statutory sections. This opinion reconsiders some of the conclusions reached in AGO 98-2 and addresses the ambiguity of this statute in light of the constitutional goal of letting "the people" decide fiscal policy.

**Background Information**

In October, 1998, AGO 98-2 was issued in response to various questions submitted by the Department of Local Affairs. The questions dealt with §§ 29-1-301 and 29-1-302, C.R.S., and TABOR.

Section 29-1-301 sets the annual property tax limitation for covered taxing entities at 5.5% above the amount of revenue levied in the preceding year, while § 29-1-302 provides that in certain circumstances the § 29-1-301 5.5% limitation may be exceeded either through approval by the Division of Local Government (the "Division") or by a favorable vote of the electorate.

The specific provision at issue is § 29-1-302(2)(b), which authorizes the § 29-1-301 limitation to be exceeded if approved by a vote of the electorate. AGO 98-2 concluded that § 29-1-302(2)(b) "does not authorize a vote to exceed the 5.5% limit [established in § 29-1-301(a)] for **any** purpose," but only with regard to "the valuation for assessment of new oil and gas properties." *See Colorado Attorney General Opinion 98-2 (October 26, 1998), Discussion No. 5, ¶ d.* (emphasis in original). AGO 98-2 also concluded that TABOR mandates that a taxing entity "may not vote to eliminate the 5.5% tax revenue limit unless it is first granted the authority for such a local vote by the General Assembly" or unless the question is voted on by "the entire statewide electorate." *See Colorado Attorney General*

*Opinion 98-2 (October 26, 1998), Discussion No. 6.* Finally, AGO 98-2 referred to the periods of time for which a vote pursuant to § 29-1-302(2)(b) can authorize a taxing entity to exceed the § 29-1-301 limitation and concluded that certain taxing entities "may seek to retain revenues in excess of the 5.5% limit for any purpose **for one year** or for capital projects and capital purchases **for one or more years**...." *See Colorado Attorney General Opinion 98-2 (October 26, 1998), Summary, ¶5.* (emphasis added). These conclusions are re-examined in this Opinion.

**Discussion of Issue 1**

> *Can a vote pursuant to § 29-1-302(2)(b), C.R.S., authorize a taxing entity to exceed the § 29-1-301(1)(a), C.R.S., 5.5% limitation on property tax revenues for any of its needs; or can the vote authorize exceeding the limitation only for certain purposes?*

The first question is whether a vote pursuant to § 29-1-302(2)(b) can authorize a taxing entity to exceed the 5.5% statutory limitation of § 29-1-301(1)(a) for any of its needs, or whether the vote can authorize exceeding the limitation only for certain purposes. AGO 98-2 concluded that § 29-1-302(2)(b) authorized votes to exceed the 5.5% limitation in § 29-1-301[3] **only** with regard to the valuation for assessment of new oil and gas properties. For the reasons specified below, that portion of AGO 98-2, i.e., "Discussion No. 5, ¶ d,"[4] is withdrawn and this Colorado Attorney General Opinion is submitted in its place.

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[3] See text of footnote 2.

[4] The full text of AGO 98-2, "Discussion No. 5, ¶ d" is as follows:

> "Section 29-1-302(2)(b) allows any taxing entity to which section 29-1-301(1) applies to submit the question of an increased levy directly to its electors without first submitting the question to the Division of Local Government. Section 29-1-301(1) contains only one issue which is submitted to the Division of Local Government: the exclusion from the 5.5% limit of all or a portion of the increased valuation for assessment attributable to new primary oil or gas

In addressing these questions, not only must one analyze the interrelationship between the two statutory provisions, §§ 29-1-301 and 29-1-302, but also, these statutory provisions must be analyzed in a context which recognizes and considers the existence of both TABOR and article V of the Colorado Constitution.

Both §§ 29-1-301 and 29-1-302 deal with a statutory limit on the annual property tax levies that covered taxing entities can collect. Section 29-1-301(1) specifies the basic formula by which this limitation is calculated. Section 29-1-302 provides various means by which authorization to exceed the § 301 limitation can be approved, i.e., the means by which a taxing entity can obtain authorization for an increased levy.

The primary goal in statutory interpretation is to give effect to the legislature's intent in enacting the law. Bertrand v. Board of County Comm'rs, 872 P.2d 223, 228 (Colo. 1994). In order to construe a statute and give effect to the legislative intent,

> [C]ourts first look to the statutory language itself, giving words and phrases their commonly accepted and understood meaning. . . . [I]f courts can give effect to the ordinary meaning of the words adopted by a legislative body, the statute should be construed as written since it may be presumed that the General Assembly meant what it clearly said.

Resolution Trust Corp. v. Heiserman, 898 P.2d 1049, 1053-54 (Colo. 1995). Thus, a cardinal rule of statutory construction is that plain language needs no interpretation; alternative constructions that are contrary to the plain wording of the statute must be rejected. See also

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production for the proceeding year. Section 29-1-302(2)(b) does not authorize a vote to exceed the 5.5% limit for any purpose. Rather, it allows taxing entities to bypass the Division of Local Government when excluding the valuation for assessment of new oil and gas properties when calculating the 5.5% limit."

Rodriguez v. Schutt, 914 P.2d 921, 925 (Colo. 1996) ("[O]ur primary goal is to give effect to the intent of the General Assembly . . .. We will give effect to the plain meaning of the statute's words and phrases, unless the result is absurd or unconstitutional.").

The first step in construing the statutory provision at issue here is to examine the actual language that is contained in § 29-1-302(2)(b). That provision reads as follows:

> Any taxing entity to which section 29-1-301(1) applies may, at its discretion, submit the question of an increased levy directly to an election of the qualified electors without first submitting the question of an increased levy to the division of local government.

The issue of whether a § 302(2)(b) vote can authorize a taxing entity to exceed the § 301 limitation for any of its needs or only for certain purposes should be determined by reference to the plain language of the provision if the resulting construction is consistent with the legislature's intent in enacting the statute. Section 302(2)(b) provides that the question that may be submitted directly to a vote of the electors is "the question of an increased levy." The express language of this provision does not include any modifiers which limit or otherwise restrict the permissible purposes for which the increased levy can be sought. It is well established that when the express language of a statute does not contain limitations, no limits should be read into it. Safeway Stores 44, Inc. v. Industrial Claim Appeals Office, 973 P.2d 677 (Colo. App. 1998).

As stated above, despite the plain language of the statute, AGO 98-2 reached a contrary conclusion. AGO 98-2 concluded that § 29-1-302(2)(b) authorized votes for increased levies only with regard to the valuation for assessment of new oil and gas

properties. In reaching this conclusion, AGO 98-2 focused on the opening phrase of § 29-1-302(2)(b) -- "Any taxing entity to which section 29-1-301 (1) applies" -- and read this opening phrase in conjunction with the concluding phrase of the paragraph, "without first submitting the question of an increased levy to the division of local government." AGO 98-2 incorrectly reasoned that, because the only issue that is submitted to the Division of Local Government pursuant to § 29-1-301(1) is the exclusion of certain oil and gas valuations from calculation of the 5.5% limitation, § 302(2)(b) must therefore authorize a vote to exceed the § 301(1) limitation only with regard to the valuation for assessment of new oil and gas properties. Not only does this construction ignore the express language of the statute, but it also ignores the provision's legislative history.

In construing § 302(2)(b), it is appropriate to consider the history of the provision's development over the years, including any prior statutes on the same subject, bill titles, and amendment history. Board of County Comm'rs v. IBM Credit Corp., 888 P.2d 250, 253 (Colo. 1995); City of Ouray v. Olin, 761 P.2d 784, 788 (Colo. 1988). The conclusion reached in this AGO -- that there is no restriction regarding the purposes for which the § 302(2)(b) increased levy may be sought -- is supported by an examination of the legislative history of the statutory language in question.

The current statutory language in § 302(2)(b) was first added to the law by House Bill No. 76-1139, as the second sentence in subsection (2). The phrase "The taxing district" was unqualified, and thus referred to **any** district covered by the § 29-1-301(1) limitation.

In 1986, House Bill No. 86-1003 divided the existing language in § 29-1-302(2) into paragraphs (a) and (b), and the phrase "The taxing district" was changed to "Any taxing entity to which section 29-1-301(1) applies." At that time, § 29-1-301(1) contained no paragraphs, i.e., there was only § 29-1-301(1) which contained the language that is now in paragraph (a) of § 29-1-301(1). As it appeared in House Bill 86-1003, § 302(2)(b)'s reference to "§ 29-1-301(1)" merely meant, as it did in 1976, all taxing entities covered by the § 301 limitation.

Paragraphs (1)(b) through (f) of § 301, referring to Division approval regarding certain oil and gas valuations, were not added to § 29-1-301 until 1991. However, the language in § 302(2)(b) concerning voting on an increased levy has been in the statute since 1976. Therefore, as it stands today, the phrase "Any taxing entity to which section 29-1-301 (1) applies" means simply, as it has since 1976, all taxing entities that are covered by the § 29-1-301 limitation on property tax revenues.

The conflicting interpretation suggested by AGO 98-2 is not supported by either the statute's express language or by its legislative history. Section 29-1-302(2)(b)'s reference to § 29-1-301(1) simply cannot have been intended by the legislature to refer only to oil and gas valuations approved by the Division because when the language at § 29-1-302(2)(b) was added to the law, § 29-1-301(1) did not contain any reference to Division approval of oil and gas valuations.[5]

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[5] The provisions relating to Division approval of oil and gas exclusions, which are now at § 29-1-301(1) (b) through (f), were adopted in 1991. House Bill No. 91-1052 amended § 29-1-301(1) by renumbering what had been subsection § 29-1-301(1) into paragraph § 29-1-301(1)(a) and adding new

Therefore, to the extent AGO 98-2 opined that § 29-1-302(2)(b) authorizes a vote to exceed the 5.5% limitation established in § 29-1-301 only with regard to "the valuation for assessment of new oil and gas properties," that opinion is superseded by the foregoing analysis. In summary, assuming that no provision of TABOR is otherwise violated, a vote pursuant to § 29-1-302(2)(b) can authorize the entity to exceed the §29-1-301 limitation on property tax revenues for any of its needs; there is no restriction as to purpose.

**Discussion of Issue 2**

> *Is a favorable vote by the affected local electorate pursuant to § 29-1-302(2)(b), C.R.S., sufficient to authorize the taxing entity to exceed the § 29-1-301(1)(a), C.R.S., 5.5% limitation on property tax revenues, or must such an authorizing vote be obtained by means of a statewide election?*

The second question is whether a favorable vote pursuant to § 29-1-302(2)(b), C.R.S., can be submitted to the affected local electorate of the taxing entity; or whether such an authorizing vote must be obtained by means of a statewide vote. This question in turn presents two issues: 1) whether the term "qualified electors" in § 29-1-302(2)(b) refers to the qualified electors of the taxing entity or to qualified electors state-wide; and 2) how TABOR affects § 29-1-302(2)(b).

AGO 98-2 opined, in part, that pursuant to TABOR, a taxing entity "may not vote to eliminate the 5.5% tax revenue limit unless it is first granted the authority for such a local vote by the General Assembly," or unless the question is voted on by "the entire statewide electorate." For the reasons specified below, that portion of AGO 98-2, i.e., "Answer No. 6"

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paragraphs (b) through (f) containing the provisions concerning Division approval for excluding new oil and gas production from the paragraph (1)(a) computation.

and "Discussion No. 6," is withdrawn and this Colorado Attorney General Opinion is submitted in its place.

Contrary to the conclusion reached in AGO 98-2, there is no indication in the plain statutory language of § 29-1-302(2)(b) that the intended electorate is a "statewide" electorate.[6] In answering the question of what electorate the statute authorizes to vote in a § 302(2)(b) election, another principle of statutory construction is applicable -- the rule of consistent usage. In Colorado Common Cause v. Meyer, 758 P.2d 153, 161 (Colo. 1988), the Colorado Supreme Court explained the well-settled rule that "when . . . the legislature employs the same words or phrases in different parts of a statute, then, in the absence of any manifest indication to the contrary, the meaning attributed to the words or phrases in one part of the statute should be ascribed to the same words or phrases found elsewhere in the statute." The language, "the qualified electors," found in § 302(2)(b) "contains a repetition of that part of the immediately preceding language" in paragraph (2)(a). Id. Therefore, it must be assumed that the term "the qualified electors" in paragraph (2)(b) has the same meaning as the term "qualified electors" in paragraph (2)(a). That is, both refer to "the qualified electors of said district."

This construction of the term "the qualified electors" is also supported by the legislative history of this provision. House Bill No. 76-1139 first introduced the language of

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[6] In concluding that the term "qualified electors" in § 302(2)(b) refers to the statewide electorate, AGO 98-2 stated that, "A statewide vote is obviously well-suited to amending a state statute." In point of fact, when an election is held pursuant to § 29-1-302(2)(b), no state statute is being amended. Rather a distinctively local election is being held. If such an election (even if it were to be statewide) is successful, no "amendment" will ever appear in § 29-1-301 or elsewhere in the Colorado Revised Statutes. Instead, as discussed above, the provisions of §§ 301 and 302 are merely being implemented: § 301(1) establishes the 5.5% limitation and § 302 provides various means by which the limitation may be exceeded.

§ 29-1-302(2)(b) to part 3. Prior to the 1976 amendment of House Bill No. 76-1139, subsection 29-1-302(2) was not divided into paragraphs. Rather, subsection (2) contained essentially only the language now appearing as paragraph (2)(a). House Bill No. 76-1139 added a second sentence to subsection (2), so that the provision read as follows:

> In case the division of local government refuses or fails within ten days after submission to it of an adopted budget to grant such increased levy, the question may be submitted to **the qualified electors of said district** at a general or special election called for the purpose and in the manner provided by law for calling special elections in such special district. **The taxing district may at its discretion submit the question of an increased levy directly to an election of the qualified electors without first submitting the question of an increased levy to the division of local government.**

§ 29-1-302 (2), C.R.S. (1976) (emphasis added).

Thus, when the relevant language of paragraph (2)(b) was written into the law it was clear that the electorate referred to was the same as the electorate specified in the first sentence of subsection (2), i.e., "the qualified electors **of said district.**"

A statutory interpretation favoring local voter control of taxing and spending issues is consistent with the overall intent and operation of the Colorado Constitution and of TABOR. First, article V, section 1, paragraph (9) of the Constitution of Colorado specifies in very clear and unambiguous language that the

> The initiative and referendum powers reserved to the people by this section are hereby further reserved to the registered electors of every city, town, and municipality as to all local, special, and municipal legislation of every character in or for their respective municipalities.

Additionally, in a law implementing TABOR, the General Assembly stated:

> [TABOR] requires public votes on additional government taxes, spending, or debt; . . . the language of [TABOR] evinces the public's desire to have more opportunity to vote on government tax, spending, and debt proposals; . . . a construction of [TABOR] that limits **local government electors'** opportunities to vote on tax, spending, debt, or other proposals would be inconsistent with the ballot title of and the voters' intention in adopting said amendment . . ..

§ 1-41-101, C.R.S. (1998) (emphasis added).

The conclusion that the electorate referred to in § 302(2)(b) is the local electorate of the affected taxing entity is also in keeping with the Colorado Supreme Court's interpretation of TABOR. TABOR was designed to increase the electorate's ability to vote on tax (revenue), spending, and debt. In Havens v. Board of County Comm'rs of Archuleta County, 924 P.2d 517, 520-23 (Colo. 1996), the Colorado Supreme Court stated:

> [TABOR's] election provisions, by including a reference to referred measures, indicate the intent of this constitutional provision to allow voters to consider matters referred to them by state or **local government** . . . . [TABOR evinces a] clear pattern of . . . deferring to voter choice in the waiver of otherwise applicable limitations. (emphasis added).

Finally, the most reasonable interpretation of the statutory and constitutional provisions described above is that the people who vote on an issue should be the electors who are affected by the issue. This point is particularly important in the context of taxes: a vote on the question of increased taxes should be submitted to the voters who will ultimately pay the increased tax. If this were not the case, statewide electors, most of whom would not themselves be subject to the increased tax, might vote to impose increased taxes on the constituents of a local taxing entity who would themselves vote **against** such an increase.

Conversely, if local voters **favor** an increased tax, their will should not be defeated by statewide electors, most of whom would not themselves be subject to the increased tax.

The next issue is how TABOR affects § 29-1-302(2)(b). As discussed above, § 29-1-301, which establishes the limitation, and § 29-1-302, which provides methods by which the limitation may be exceeded, are closely related and must be read *in pari materia*. Statutory provisions "related to the same subject matter are construed *in pari materia*, in order to give consistent, harmonious, and sensible effect to all of their parts." Left Hand Ditch Co. v. Hill, 933 P.2d 1, 3 (Colo. 1997). The relevant provisions in § 302 that provide for Division or voter approval to exceed the § 301(1) limitation, i.e., subsections (1), (1.5), and (2), were part of the statute prior to the passage of TABOR. They do not violate TABOR, or constitute a "weakening" under TABOR unless the resultant increased revenue exceeds the taxing entity's limit pursuant to other provisions of TABOR.

This conclusion is consistent with the reasoning employed in another Attorney General Opinion, AGO 93-3 (April 6, 1993), which determined the effect of TABOR on certain unemployment tax rates as calculated pursuant to a pre-TABOR statute, §§ 8-76-102 and -103, C.R.S. AGO 93-3 opined that fluctuations in these tax rates do not require voter approval under Section 20(4) of TABOR, even though an employer's rates and taxes may increase in certain years. AGO 93-3 found that annual tax fluctuations resulting from the statutory scheme are "simply an annual computation" resulting from the pre-existing statutory "method of calculation." This same principle holds true for annual tax fluctuations that may result from implementation of §§ 29-1-301 and 302. While the property taxes

actually paid by a taxing entity's constituents may increase beyond the 5.5% limitation, they do so only within the pre-TABOR statutory confines for computing (and exceeding) the annual tax limitation increase for property tax revenues.[7]

To the extent AGO 98-2 opined that TABOR mandates that a taxing entity "may not vote to eliminate the 5.5% tax revenue limit unless it is first granted the authority for such a local vote by the General Assembly" or unless the question is voted on by "the entire statewide electorate," that opinion is superseded by the foregoing analysis. In summary, assuming that no provision of TABOR is otherwise violated and that the relevant provisions of § 29-1-302, C.R.S., are met, a favorable vote by the affected local electorate pursuant to § 29-1-302(2)(b), C.R.S., is sufficient authorization for the taxing entity to exceed the 5.5% limitation of § 29-1-301(1)(a). A statewide vote is not necessary.

**Discussion of Issue 3**

*For what period of time can a local electorate authorize a taxing entity to exceed the 5.5% statutory limitation imposed by § 29-1-301(1)(a), C.R.S.?*

The third question concerns the period of time for which a favorable vote pursuant to § 29-1-302(2)(b) can authorize a taxing entity to exceed the 5.5% statutory limitation of § 29-1-

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[7] The contrary conclusions reached in AGO 98-2 , i.e., that § 302(2)(b) requires a statewide election or authorizing legislation for a local vote were based on the assumptions that § 29-1-301 is a limitation on revenue, spending, or debt, and that a § 29-1-302(2)(b) vote "weakens" the § 301 limitation. Because TABOR § 1 states that limits on revenue, spending, and debt "may be weakened only by future voter approval," the AGO incorrectly concluded that future voter approval was necessary.
AGO 98-2 also concluded that other provisions in part 3 that operate in the same way as does § 29-1-302(2)(b) [that is, §§ 29-1-302(1), (1.5), and (2)(a)] do not constitute a "weakening" of § 301 for TABOR purposes, and thus do not require additional statutory authorization or a statewide election. This same finding is also applicable to § 29-1-302(2)(b). AGO 98-2 concluded that the provisions "were part of the statute pre-TABOR and do not violate TABOR if this increased revenue does not exceed the local district's TABOR § 7(c) limit." The same hold true for § 302(2)(b). In short, there is no principled reason to differentiate § 29-1-302(2)(b) from the other provisions of § 302, and conclude that only this singular provision is a weakening that requires future voter approval pursuant to TABOR.

301(1)(a), C.R.S. While AGO 98-2 did not address this question directly, the opinion contains certain statements regarding the periods of time associated with a § 302 vote, e.g., certain taxing entities "may seek to retain revenues in excess of the 5.5% limit for any purpose **for one year** or for capital projects and capital purchases **for one or more years**...." *Colorado Attorney General Opinion 98-2, Summary, ¶ 5* (emphasis added). For the reasons specified below, these statements in AGO 98-2 are withdrawn and the following analysis in this Colorado Attorney General Opinion is submitted in their place. Based on this analysis and pursuant to the Colorado Constitution and § 29-1-302(2)(b), a local electorate can authorize a local taxing entity to retain revenues in excess of the 5.5% limitation for the period of time specified in the ballot question approved by the taxing entity's voters.

As in the analysis of *Issue 1* above, the starting point for reaching this conclusion is with an examination of the actual statutory language at issue. Except for § 302(2)(b), all the statute's provisions allowing taxing entities to exceed the § 301 limitation contain certain preconditions and explicit requirements that must be met before authorization to exceed the limitation is obtained. In particular, with respect to periods of time for which the § 301 limitation can be exceeded, the statute is consistent in § 301(1.2), § 302(1), and § 302(1.5): if the authorization is to provide for general operating needs, it covers "the current year"; and if the authorization is to provide for a capital expenditure, it can be extended beyond one year to cover "two or more years," but only as necessary to pay for the specified expenditure. Paragraph (2)(b) of § 302, on the other hand, provides only that the question of an increased levy may be submitted directly to the qualified electors. There is no explicit restriction concerning the amount of time for which an increased levy to exceed the § 301 limitation may be authorized. Because the express language

of this provision does not include any modifiers which limit or otherwise restrict the period of time for which an increased levy can be authorized, reference to the plain language of this provision indicates that there is no restriction on the amount of time for which the affected electorate can authorize such an increased levy.

This conclusion, that the authorization is not restricted to one year, is also supported by the language of § 29-1-302(3), which provides that "[i]f a majority of the votes cast at any such election is in favor of the increased levy, then the officers charged with levying taxes may make such increased levy for the **year or years** voted upon it." (emphasis added).

Moreover, reading § 29-1-301 and § 29-1-302 in conjunction with the Colorado Constitution, including TABOR, also leads to the conclusion that the local electorate of a taxing entity can vote not only to increase the tax levy, but also can authorize a taxing entity to exceed the § 301 limitation for any number of years as approved by the entity's electorate. As noted previously in this opinion, both the Colorado Constitution and the General Assembly have expressly authorized local voters to waive constitutional and statutory limits on local revenue, spending and debt. Such an interpretation is consistent with what the Colorado courts have identified as TABOR's central purpose:

> A central purpose of Amendment 1 is **to require voter approval** for certain state and local government tax increases. Amendment 1 also places limits on the growth of government revenues**, without prior voter approval**, as a whole. (emphasis added).

Submission of Interrogatories on Senate Bill 93-74, 852 P.2d 1, 8 (Colo. 1993). See also Havens v. Board of County Comm'rs., 924 P.2d 517, 522 (Colo. 1996) ("[T]he evident

purpose of Amendment 1 ... is to limit the discretion of governmental officials to take certain taxing, revenue, and spending actions **in the absence of voter approval.**") (emphasis added); and Property Tax Adjustment Specialists, Inc. v. Mesa County Board of Comm'rs, 956 P.2d 1277, 1280 (Colo. App. 1998) ("The principal purpose of [TABOR] . . . is to require that the voters decide for themselves the necessity for imposing new tax burdens. Accordingly, that constitutional provision . . . acts to limit the discretion of government officials to take certain actions pertaining to taxing, revenue, and **spending in the absence of voter approval.**") (emphasis added).

The conclusion that the local electorate can vote to authorize a taxing entity to exceed statutorily or constitutionally imposed limitations for more than one year is also supported by the Colorado Supreme Court's opinion in Havens v. Board of County Comm'rs., 924 P.2d 517 (Colo. 1996). In Havens, the Colorado Supreme Court approved a TABOR referred measure pursuant to which the voters had authorized the county to retain and use revenue in excess of limitations imposed by TABOR for a period that spanned four years ("during 1994 and expiring after 1997"). 924 P.2d at 519. Havens also concluded that TABOR contains a "pattern of deferral to the electorate," citing sections (4)(a), (4)(b), (7)(b), (7)(c), and (7)(d), and "a pattern of voter approved measures as exceptions to otherwise applicable limitations," citing sections (3)(c), (4)(a), (4)(b), and (7)(d). 924 P.2d at 521, 523. Reading the Colorado Constitution and § 302(2)(b) in *pari materia* leads to the conclusion that a taxing entity's voters can authorize the taxing entity to exceed the § 301 limitation on tax revenues for whatever period of time the electorate determines is appropriate. This conclusion is in accord with the Colorado Supreme

Court's interpretation that TABOR contains a "pattern of deferral to the electorate" and that otherwise applicable limitations are subject to exceptions approved by the people.

This is the essence of government by the people as embodied in Colorado's Constitution:

> Since 1910 the citizens of Colorado have reserved to themselves "the power to propose laws and amendments to the constitution and to enact or reject the same at the polls independent of the general assembly." Colo. Const. art. V, § 1. Amendment 1 is a perfect example of the people exercising their initiative power to enact laws in the specific context of state and local government finance, spending, and taxation. Thus, Amendment 1's requirement of electoral approval is not a grant of new powers or rights to the people, but is more properly viewed as a limitation on the power of the people's elected representatives.

Bickel v. City of Boulder, 885 P.2d 215, 226 (Colo. 1994).

In enacting TABOR the people of Colorado have spoken and have indicated that it is their intent to restrain the growth of government, including the proliferation of taxes, unless otherwise explicitly approved by the electorate. Bolt v. Arapahoe County School Dist. No. Six, 898 P.2d 525, 537 (Colo. 1995) ("The overriding scheme of Amendment 1 with respect to taxes evidences an intent on the part of the voters to limit tax increases that do not receive prior voter approval"). The voters of a taxing entity should be allowed to remove the 5.5% limitation for as long as they themselves see fit:

> The requirement of voter approval fosters greater citizen involvement in government and weakens the influence of special interest groups in the current political process. The voters should be the ultimate authority on matters of taxation and should be trusted to exercise sound judgment.

Legislative Council of the Colo. Gen. Assembly, An Analysis of 1992 Ballot Proposals, Amendment 1 - Constitutional Amendment Initiated by Petition, Arguments For, page 10, paragraph 5 (1992).

There does not appear to be any legal or equitable basis for an interpretation of § 29-1-301 or § 29-1-302(2)(b) which would defeat the will of local voters who pass a referred measure that is unambiguously expressed on the ballot. However, care must be taken to ensure that the language of any such referred measure provides the taxing entity's voters with a clear understanding of the impact of the measure, e.g., that if passed, the measure would authorize the taxing entity to collect, retain, and spend all revenues and other funds received from any source during that year and for such period of years as is approved by the voters, notwithstanding the limitations of section 29-1-301, C.R.S., or any other statutory or constitutional provision.

Therefore, if a taxing entity's electorate votes to authorize removal of the § 301 limitation on taxes for a period of time longer than one year, then the voters' decision should be respected. An interpretation of § 302(2)(b) that would require annual or multiple year votes to re-authorize such a decision would be inconsistent with the overarching goals of the Colorado Constitution and would violate two of the central tenets of TABOR: it be contrary to the expressed will of the taxing entity's electors and it would waste governmental resources, i.e., such a construction would result in an increased expenditure of government resources to subsidize duplicative elections.

In summary, assuming that no TABOR provision is otherwise violated, the local electorate of a taxing entity can, pursuant to the Colorado Constitution and § 29-1-302(2)(b), C.R.S., authorize the local taxing entity to collect, retain, and spend all revenues received from any source for the period of time specified in the ballot question approved by the taxing entity's voters, notwithstanding the 5.5% limitation contained in § 29-1-301(1)(a), C.R.S.

**SUMMARY**

Assuming that no provision of article X, section 20 of the Colorado Constitution is otherwise violated, a vote pursuant to § 29-1-302(2)(b), C.R.S., can authorize the entity to exceed the § 29-1-301 limitation on property tax revenues for any of its needs; there is no restriction as to purpose. Assuming that no provision of article X, section 20 of the Colorado Constitution is otherwise violated and that the relevant provisions of § 29-1-302, C.R.S., are met, a favorable vote by the affected local electorate pursuant to § 29-1-302(2)(b), C.R.S., is sufficient authorization for the taxing entity to exceed the 5.5% statutory limitation of § 29-1-301(1)(a); a statewide vote is not necessary. Assuming that no provision of article X, Section 20 of the Colorado Constitution is otherwise violated, pursuant to the Colorado Constitution and § 29-1-302(2)(b), C.R.S., the local electorate of a taxing entity can vote to authorize the local taxing entity to exceed the § 29-1-301(1)(a), C.R.S., 5.5% limitation for the period of time specified in the ballot question.

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