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**STATE OF COLORADO**  
**DEPARTMENT OF LAW**

FORMAL )  
OPINION )  
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of )  
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PHILIP J. WEISER )  
Attorney General )

No. 26-001

4/13/2026

Philip J. Weiser, Attorney General of the State of Colorado, as chief legal representative for the State, issues this Formal Opinion pursuant to his authority under § 24-31-101(1)(a) & (d), C.R.S. (2025), following a request from the State Treasurer.

**QUESTION PRESENTED AND SHORT ANSWER**

*Question Presented.*

(1) Does article XI, section 2 of the Colorado Constitution limit the State from investing in financial instruments that would make the State a subscriber to or a shareholder in a corporation, or a joint owner with any person, company, or corporation, public or private, in or out of the state?

*Short Answer.*

(1) Yes. Although article XI, section 2 does not directly address the State's investment authority, it generally prohibits state ownership of stock in a corporation, subject to recognized exceptions. Whether an investment in a particular type of financial instrument other than direct ownership of stock in a corporation would violate the prohibition requires a fact-specific analysis that is beyond the scope of this Opinion.

**ANALYSIS**

Article XI, section 2 of the Colorado Constitution prohibits state ownership of stock in a corporation. While this prohibition has recognized exceptions, none of those exceptions apply to the situation described in the question presented.

## **I. Article XI, section 2 prohibits state ownership of stock in a corporation.**

The answer to the question presented hinges on the meaning of the “anti-ownership clause” of article XI, section 2 of the constitution. Interpreting a Colorado constitutional provision is guided by a dual-pronged obligation: to prevent an evasion of the constitution’s legitimate operation and to effectuate the intentions of the constitution’s framers and the people of the State of Colorado. *Markwell v. Cooke*, 2021 CO 17, ¶ 33. To determine the framers’ intent, the words are given their “ordinary and popular meaning.” *Id.*

The anti-ownership clause provides in relevant part:

Neither the state, nor any county, city, town, township, or school district shall . . . become a subscriber to, or shareholder in any corporation or company or a joint owner with any person, company, or corporation, public or private, in or out of the state. . . .

COLO. CONST. art. XI, § 2. This text is unambiguous: the State may not become a subscriber, shareholder, or joint owner of a corporation. *Id.* As relevant here, a “shareholder” is “one that holds or owns a share in property; especially: stockholder.” *Shareholder*, MERRIAM-WEBSTER DICTIONARY, <https://www.merriam-webster.com/dictionary/shareholder>. Plainly, the State is prohibited from directly owning stock in a corporation.<sup>1</sup>

Consistent with this plain meaning, the Colorado Supreme Court has summarily observed that this provision “prohibits state ownership of corporate stock.” *Se. Colo. Water Conservancy Dist. v. Fort Lyon Canal Co.*, 720 P.2d 133, 142 (Colo. 1986). In *Southeastern*, the Colorado Supreme Court analyzed whether the State was prohibited by article XI, section 2 from purchasing stock in a mutual ditch company. *Id.* at 136. In doing so, the Colorado Supreme Court noted the long line of Colorado cases holding that mutual ditch companies (i) are not “true” corporations in a legal sense but merely vehicles for individual ownership of water rights, (ii) are incorporated and operated under different statutory provisions than corporations,

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<sup>1</sup> While the question presented uses the term “financial instruments,” that term is not part of the constitutional text. Instead, article XI, section 2 addresses situations where the State becomes a subscriber, shareholder, or joint owner of a company or corporation. Modern financial markets provide a broad range of financial instruments with their own terms and conditions, each of which would need to be analyzed on its own merits to determine if it falls within the constitutional prohibition. Given that variety, this Opinion addresses only the direct ownership of stock in a corporation, which is most clearly within article XI, section 2’s scope.

and (iii) receive different constitutional and statutory protections. Based on these considerations, the Court concluded that stock ownership in a mutual ditch company constituted ownership of a real property interest (which did not violate the constitutional prohibition), rather than a personal property interest in stock. *Id.* at 141–42.

This interpretation aligns with the framers’ intent. “The provision was originally enacted to prevent state ownership of, and financial support for, new railroads within the state.” *Id.* at 141 (citing *Colo. Cent. R.R. Co. v. Lea*, 5 Colo. 192 (1879)); accord *McNichols v. City & Cnty. of Denver*, 74 P.2d 99, 106 (Colo. 1937) (“Section 2 prohibits the state from becoming a joint owner with any private person or corporation.” (citation omitted)); cf. *State v. Nw. Mut. Ins. Co.*, 340 P.2d 200, 201 (Ariz. 1959) (interpreting nearly identical provision in the Arizona Constitution adopted for the same reason and remarking that “the evil to be avoided was the depletion of the public treasury or inflation of public debt by engagement in non-public enterprises”).

That article XI, section 2 prohibits stock ownership in a corporation by the State is bolstered by persuasive authority from other jurisdictions with analogous constitutional provisions. Those courts largely conclude that, unless the ban against the State being a shareholder or stockholder is textually limited to ownership that aids the corporation, such ownership is plainly prohibited. Compare *State ex rel. Gainer v. W. Va. Bd. of Invests.*, 459 S.E.2d 531, 533–34 (W. Va. 1995) & *Sprague v. Straub*, 451 P.2d 49, 52–55 (Or. 1969), with *Almond v. Day*, 91 S.E.2d 660, 667–68 (Va. 1956). To this end, several states with provisions nearly identical to Colorado’s have since amended their constitutions to expressly permit state investments in corporate stock. See ARIZ. CONST. art. IX, § 7; see also MONT. CONST. art. VIII, § 13.

Taken together, by its plain text, article XI, section 2 prohibits the State from directly owning stock in a corporation.

## **II. The recognized exceptions to article XI, section 2 do not apply to the purchase of stock in a corporation when motivated by the State’s voluntary investment decisions.**

The constitutional prohibition, however, is not absolute. Baked into article XI, section 2 itself are two enumerated exceptions for state ownership of a corporation or company:

- if the ownership accrues “to the state by escheat, or by forfeiture, by operation or provision of law”; or

- if the ownership accrues to the state “by forfeiture or sale of real estate for nonpayment of taxes, or by donation or devise for public use, or by purchase . . . under execution in cases of fines, penalties, or forfeiture of recognizance, breach of condition of official bond, or of bond to secure public moneys, or the performance of any contract in which . . . [the state] may be jointly or severally interested.”<sup>2</sup>

The question presented, however, appears to assume that the State would voluntarily engage in investments resulting in State ownership of stock in a corporation. Neither exception would apply to that situation.

### CONCLUSION

Article XI, section 2 does not expressly address the State’s investment authority. But, by its plain text and as interpreted by the Colorado Supreme Court, it generally prohibits the State from directly owning stock in a corporation. Further, none of the recognized exceptions to that prohibition would apply to the circumstances at issue in the question presented.

Issued this 13<sup>th</sup> day of April, 2026.

/s/ Philip J. Weiser  
PHILIP J. WEISER  
Colorado Attorney General

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<sup>2</sup> The Colorado Supreme Court has recognized a public purpose exception to other prohibitions contained in article XI, section 2. *In re Interrogatory Propounded by Governor Roy Romer on House Bill 91S-1005*, 814 P.2d 875, 882–83 (Colo. 1991) (regarding the public purpose exception to the anti-donation clause in article XI, section 2); *City of Aurora v. Pub. Util. Comm’n.*, 785 P.2d 1280, 1289 (Colo. 1990). Colorado appellate courts have yet to consider whether that exception similarly applies to the anti-ownership provision at issue here, and it remains an open question.