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FORMAL
OPINION

No. 09-01

OF

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This opinion, requested by Mesa State College President Tim Foster, concerns whether any of the revenues raised under the recently-passed Amendment 50 would be available for Mesa State College and its students.

QUESTION PRESENTED AND CONCLUSION

Question: Whether under Amendment 50 any of the revenues raised under the measure would be available for Mesa State College and its students.

Answer: Yes. Mesa State College's community college students and programs are eligible to receive additional funding under the measure.

BACKGROUND

Amendment 50 allows residents of Central City, Black Hawk, and Cripple Creek to vote to extend casino hours, approve additional games, and increase the maximum single bet limit for legalized gaming. The new gaming tax revenues that will result from these expanded gaming limits are to be used to fund Colorado community colleges. Specifically, the text of Amendment 50 provides that the new tax revenues will be distributed to community colleges as follows:

- (A) Seventy-eight percent to the state's public community colleges, junior colleges, and local district colleges to supplement existing state funding for student financial aid programs and classroom instruction programs; provided that such revenue shall

be distributed to institutions that were operating on or after January 1, 2008, in proportion to their respective full-time equivalent student enrollments in the previous fiscal year.

Amendment 50, codified at Colo. Const. art. XVIII, section 9(7)(c)(III)(A).

Thus, the question of whether any of the additional gaming tax revenues from passage of Amendment 50 will go to Mesa State College turns on whether any part of Mesa State College meets the definition of the “state’s public community colleges, junior colleges, and local district colleges” as those terms are used in Amendment 50. I conclude that Mesa State College’s community college programs, offered through the College’s Western Colorado Community College Division, do meet these definitions and are thus eligible for Amendment 50 funding.

DISCUSSION

What is now Mesa State College was originally organized as a local junior college district known as Grand Junction Junior College. In 1937, the name of Grand Junction Junior College was changed to Mesa Junior College.¹ In 1972, the mission of Mesa Junior College was expanded and four-year programs were added to the College’s previous community college role and mission. *See* Colo. Rev. Stat. § 124-27-1 (1963); § 23-54-104, C.R.S. (1972) (transfer of property and assets of Mesa Junior College District to newly-authorized Mesa State College).

There is hereby established a college at Grand Junction, to be known as Mesa state college, which shall be a general baccalaureate and specialized graduate institution with moderately selective admission standards. Mesa state college shall offer undergraduate liberal arts and sciences, teacher preparation, and business degree programs and a limited number of graduate programs.

§ 23-53-101, C.R.S. (2008).

While the legislature expanded the role and mission of Mesa Junior College, however, it expressly declared that the school retained its prior role and mission as a community college as well: “Mesa state college shall also maintain a community college role and mission, including vocational and technical programs. Mesa state college shall receive resident credit for two-year course offerings in its commission-approved service area.” *Id.*

Thus, Mesa State College maintains its prior role and mission as a community college in addition to its newer role and mission as a general baccalaureate and specialized graduate institution. This community college role and mission is currently reflected in Mesa State College’s Western Colorado Community College Division, which is an open admission,

¹ <http://www.mesastate.edu/main/about/timeline/timeline.htm>

comprehensive community college offering higher education instruction, including certificate programs that can be completed in nine months, associate degree programs that average two years in length, and many skills courses for career upgrades.²

Mesa State College's continuing role and mission as a community college is recognized by the Colorado Commission on Higher Education, which is the state agency charged by statute with defining the geographic and programmatic service areas for Colorado public institutions of higher education, including the service areas for community college programs. § 23-1-109(2), C.R.S. (2008). The Colorado Commission on Higher Education's *Service Areas of Colorado Institutions of Higher Education, October, 1995*, Part N, defines the geographic service areas for all Colorado Community Colleges and area vocational schools. This regulation recognizes the dual role of Mesa State College, providing that "[t]wo four-year institutions, Adams State College and Mesa State College, have two-year roles and may conduct appropriate two-year programs in their defined service areas". The regulation goes on to define the Mesa State College community college service area as follows:

Mesa State College shall provide Resident instruction two-year academic programs in Mesa, Delta, Montrose, San Miguel and Ouray counties. It shall cooperate with Adams State College in providing any needed two-year academic programs, coordinated by the central office of The State Colleges in Colorado, in Gunnison and Hinsdale counties. The College's service area for vocational programs is Mesa County.

Service Areas of Colorado Institutions of Higher Education, October, 1995, Part N, § 2.13.

Additionally, state-supported institutions of higher education are prohibited from offering off-campus instruction or programs outside of their Commission-approved service areas unless approved by the Commission or otherwise provided by law. § 23-1-109(2), C.R.S. (2008). Thus, with the exception of Gunnison and Hinsdale Counties, where its authority overlaps with Adams State College, Mesa State College is the sole provider of community college resident two-year academic programs for its Commission designated service area.

In interpreting an initiative, a court must "determine and give effect to the will of the people in adopting the measure". *Bolt v. Arapahoe County Sch. Dist. No. Six*, 898 P.2d 525, 532 (Colo. 1995). In this case, the expressed intent of Amendment 50 is to provide additional gaming tax revenue to "the state's public community colleges, junior colleges, and local district colleges" that were operating on or after January 1, 2008 "in proportion to their respective student enrollments as of January 1 of each year". Colo. Const. art. XVIII, section 9(7)(c)(III)(A). Thus, the intent of the initiative is clearly to benefit community colleges in proportion to their student enrollment. Moreover, the deliberate use of the terminology "the state's public community colleges, junior colleges, and local district colleges" indicates an intent that the benefit extend beyond those public community colleges under the authority of the State Board for Community Colleges and Occupational Education, § 23-60-104, C.R.S. (2008) and be

² <http://www.mesastate.edu/wccc/>.

inclusive of all public colleges authorized to engage in a community college role and mission. If Mesa State College were excluded from eligibility for revenue under this Initiative, then those students receiving community college services either now or in the future in Mesa State College's Commission-designated service area would be excluded from the benefits of Amendment 50.

Such an interpretation is contrary to the intent of Amendment 50. Courts look to the Blue Book issued by the Colorado Legislative Council as an aid in interpreting initiated constitutional amendments. *Grossman v. Dean*, 80 P.3d 952, 962 (Colo. App. 2003). In this case, the 2008 Blue Book Colorado Ballot Analysis for Amendment 50 notes that "[i]ncreasing financial aid will help more Coloradoans benefit from the economic opportunities that community colleges can provide. The additional revenue also goes to recruiting and retaining qualified faculty so that Colorado can offer quality education throughout the state." Thus, an interpretation of the scope of Amendment 50 that would, in effect, exclude resident students within Mesa State College's exclusive geographic and programmatic service area would appear contrary to the intent of the Initiative to expand community college opportunities and access to qualified faculty for all of Colorado's citizens.

CONCLUSION

Based on the foregoing analysis, I conclude that Mesa State College's Western Colorado Community College Division and its students would be eligible to receive supplemental student financial aid and classroom instruction programmatic funding under the provisions of Amendment 50.

Issued this 28th day of January, 2009.

JOHN W. SUTHERS
Colorado Attorney General