

LAW OFFICES OF
DEMUTH & EIBERGER

1600 WESTERN FEDERAL SAVINGS BUILDING
718 SEVENTEENTH STREET
DENVER, COLORADO 80202
TELEPHONE 303-629-1800

L. S. DEMUTH
AL F. EIBERGER
WILLIAM G. KEMP
ALAN C. DEMUTH
ROBERT A. BACKUS
ROBERT L. ROBERTS
WILLIAM F. SCHENKEIN
DONALD A. HOULEHAN
RUSSELL P. ROWE
J. H. SHEPHERD
OF COUNSEL

CHARLES A. HILLESTAD
DANIEL C. LYNCH
LORING E. HARKNESS III
JOHN L. TRAYLOR
RODNEY L. SMITH
DAN E. SPICER
DAVID F. DOUBLEOAY
DAVID H. STACY
RAYMOND W. MARTIN
PERRY L. GOORMAN
RAMONA THORSON ROCKWELL
PETER A. RICCIARDELLI

February 3, 1978

Mr. Jack Pepper
Boettcher & Company
828 17th Street
Denver, CO 80202

Re: Mesa County Sewer Project

Dear Mr. Pepper:

Pursuant to your request, we have outlined in this letter the steps required in establishing a Metropolitan Sewage Disposal District pursuant to C.R.S. 32-4-501 (1973) et seq. This type of District may be established without an election upon initiation of the formation proceedings by a specific municipality which in turn notifies other municipalities proposed to be included within the District of the proposed formation and which other municipalities then take official action with respect to joining the District.

The time for organizing this type of District from the date of the initial ordinance of the initiating municipality to the date of the organizational meeting of the Board of Directors thereof, could take as long as five months. This is, at best, a ball park estimate which may vary somewhat depending upon the number of different municipalities which must take official action on joining the proposed District and the ability of those districts to proceed with the required steps according to their own schedules.

C.R.S. 32-4-508 (1973) provides for the following steps in organizing a Metropolitan Sewage Disposal District:

1. (One week) The governing body of any municipality would give preliminary approval to an ordinance initiating proceedings for the organization of the proposed District. Under the

statute, the word "ordinance" means the formal action taken by the governing body, whether it is in the form of an ordinance, resolution, or other form. Among other things, the ordinance must set forth: (a) the name of the proposed District; (b) the municipalities proposed to be included in the proposed District; (c) the municipalities which shall be required to take action to be included within the District before the District becomes organized (this may be expressed either by designating specific municipalities which must consent to be included within the proposed District before the District shall be organized, or by designating alternative groups of municipalities which are required to give such consent, or by designating a percentage of the municipalities named which shall be required to give such consent); (d) the time limit within which action must be taken by the municipalities proposed to be included within the District, which time limit shall not exceed six months from the final adoption of the initiating ordinance.

2. (Four weeks) Publication of Notice of Public Hearing on initiating ordinance. Publication is required for three consecutive weekly publications in one newspaper having general circulation within the proposed District. Not less than 14 days shall intervene between the first and last publication.

3. (One week) Public hearing on initiating ordinance. Ten days must elapse between the date of the last publication of the Notice of Public Hearing and the day of the public hearing.

4. Governing body of municipality adopts initiating ordinance.

5. Clerk of governing body adopting initiating ordinance mails certified copy thereof to each municipality proposed to be included within the District and also mails a copy thereof to the Colorado Division of Local Government.

6. (Two to four weeks) The governing bodies of each municipality named in the initiating ordinance proposing formation of the District which desire to be included in the proposed District, hold a meeting and give initial approval to an ordinance consenting to being included in the proposed District.

7. (Four weeks) Each municipality adopting an ordinance consenting to inclusion within the proposed District shall publish

a Notice of Public Hearing on said consenting ordinance. Publication is required for three consecutive weekly publications in one newspaper having general circulation within the proposed District. Not less than 14 days shall intervene between the first and last publication.

8. (One week) Each municipality desiring to be included within the proposed District holds a public hearing on the question of final adoption of the ordinance consenting to such inclusion. Not less than 10 days must elapse between the date of the last publication of the Notice of Public Hearing and the date of the public hearing.

9. (One week) The Clerk of each municipality adopting an ordinance consenting to inclusion within the proposed District, upon the final adoption of each such ordinance, mails a certified copy thereof to the governing body of every other municipality named in the initiating ordinance, including the municipality which adopted the initiating ordinance, and also mails a copy thereof to the Colorado Division of Local Government.

10. (One week) Upon receipt of the certified copies of the various ordinances from sufficient municipalities to satisfy the requirements for organization as set forth in the initiating ordinance, the Colorado Division of Local Government issues a certificate stating that the District named in the ordinance has been duly organized and setting forth the names of the municipalities which are included within the District. The organization of the District shall be deemed effective upon the date of issuance of this certificate.

11. (One week) The Colorado Division of Local Government mails to each municipality included within the District, three copies of the certificate of organization, and the Clerk of each such municipality records a copy thereof with the County Clerk and Recorder and files copies thereof with the County Assessor and County Treasurer.

12. (One week) The executive of each municipality included within the District appoints the member or members representing such municipality to the Board of Directors of the District. Each such appointment must be approved by the governing body of each municipality. C.R.S. 32-4-509(2), (3), (5).

13. (One week) Written notice of the date and place of the organizational meeting of the Board of Directors of the District must be given by personal service to each Director at least five days prior to the meeting. C.R.S. 32-4-509(5).

14. Organizational meeting of Board of Directors of District.

Note: C.R.S. 32-4-508(1)(f)(I) provides that the validity of the organization of any such District shall be incontestable in any suit or proceedings which shall not be commenced within three months from the date of issuance of the certificate of organization by the Colorado Division of Local Government. This three month period would accordingly have to elapse before we could give an opinion that District contracts might not be set aside because of attacks on the validity of the organization of the District.

The District should certify any general ad valorem tax mill levy to the Board of County Commissioners on or before November 1 of the year in which taxes are to be levied. A District is authorized to levy, during the first five years of the District's existence, general ad valorem taxes on all taxable property within the District, but the total tax levy for the five year period shall not exceed an aggregate total of three-fourths of one mill.

We have considered the question whether a Colorado County qualifies as a "municipality" under the Metropolitan Sewage Disposal District statute. Under the statute, only "municipalities" may establish such a District and be represented on the Board of Directors of the District. C.R.S. 32-4-502(19) defines a "Municipality" as:

". . . a city, a city and county, an incorporated town, a sanitation district, or a water and sanitation district, and any other political subdivision or public entity created under the laws of the state of Colorado having specific boundaries within which it is authorized to provide sewer service for the area within its boundaries, other than a metropolitan sewage disposal district."

Mr. Jack Pepper
February 3, 1978
Page Five

Colorado Counties are authorized to provide sewer facilities and service pursuant to C.R.S. 30-20-402 (1973); accordingly, it is our conclusion that Colorado Counties would fall within the definition of a "Municipality" under the Metropolitan Sewage Disposal District statute. However, there is a question concerning how a County should be represented on the Board of Directors of the District. Should only the unincorporated areas of the County outside the boundaries of towns, cities, and sanitation districts be considered in determining the representation of the County on the Board of Directors of the District? The statute does not answer this question. We would be available to assist you in determining the fairest method of establishing County representation on the Board, but we would first have to undertake legal research concerning the equal protection - constitutional law concepts involved.

We have also considered the question whether a bond election is required before the District may issue sewer revenue bonds. The statute raises a substantial question in this respect and we would not be in a position to render an approving opinion on revenue bonds issued without the prior approval of the electors. C.R.S. 32-4-523(5) (1973) authorizes this type of District to borrow money in anticipation of taxes or other revenues, or both, and to issue bonds to evidence the amounts so borrowed. This statute further provides that "No bonded indebtedness shall be created by a District without first submitting a proposition of issuing such bonds, and the maximum net effective interest rate at which such bonds may be issued, to the electors of the District and being approved, at an election held for that purpose" A Colorado Supreme Court case, Perl-Mack Civic Ass'n. vs. Board of Directors of Baker Metropolitan Sanitation District, 140 Colo. 371, 344 P.2d 685 (1959) held that an obligation to pay sewer revenue bonds solely out of the revenue of the sewer system was not an "indebtedness" within the meaning of the sanitation district statute which required an election to be held before an indebtedness was created in excess of \$5,000. The Court stated that the concept of "indebtedness" did not include the pledge of sewer revenues for paying revenue bonds because such obligation was not a "general public obligation" since the source of funds for payment of the bonds was limited to the revenues derived from the sewer system. The

Mr. Jack Pepper
February 3, 1978
Page Six

Court stated that a Colorado sanitation district was authorized by a separate statute, now C.R.S. 31-35-401 (1973) et seq. to issue sewer revenue bonds without an election and, accordingly, upheld the validity of the revenue bond issue. This same statute, C.R.S. 31-35-401 (1973) et seq. in the absence of any restriction under the Metropolitan Sewage Disposal District statute, would authorize a Metropolitan Sewage Disposal District to issue its sewer revenue bonds without an election. However, Section 504(1) of the Metropolitan Sewage Disposal District statute provides: "The provisions of no other law, either general or local, except as provided in this part 5, shall apply to doing of the things in this part 5 authorized to be done, and no Board, agency, bureau, commission, or official, other than the Board of Directors of a Metropolitan Sewage Disposal District or the governing body of a municipality, has any authority or jurisdiction over the doing of any of the acts in this part 5 authorized to be done." We believe that the first part of the foregoing quoted sentence, which we have underlined, raises a substantial question whether a Metropolitan Sewage Disposal District may issue sewer revenue bonds pursuant to C.R.S. 31-35-401 et seq. There is no specific authority in the Metropolitan Sewage Disposal District statute to issue revenue bonds without an election and it is our opinion that such express statutory authority to issue revenue bonds without an election is necessary before such bonds may legally be issued.

Because of the questions and ambiguities discussed above, we believe you should consider the possibility of either Mesa County or the City of Grand Junction issuing sewer revenue bonds. The County is authorized to issue sewer revenue bonds pursuant to C.R.S. 30-20-401 (1973) et seq. and the City may do so pursuant to C.R.S. 31-35-401 (1973) et seq. No election is required for the issuance of said revenue bonds under either statute. Both of these statutes authorize either the County or the City to enter into cooperative agreements with other municipalities for or concerning the provision and financing of sewage facilities and the maintenance and operation thereof. In addition, both statutes authorize such contracting entities to provide in any such contract for a board, commission or such other body as they may deem proper for the supervision and general management of the sewage facilities and for the operation thereof. Accordingly,

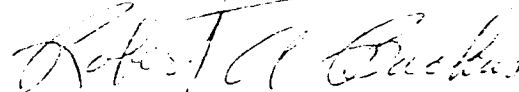
Mr. Jack Pepper
February 3, 1978
Page Seven

it would seem to us that, pursuant to such a contract, the cooperating municipal entities in Mesa County could govern, through a single Board, the sewer project.

Please feel free to contact us if you need additional information or have any questions concerning the matters discussed in this letter. I would also be available to meet with the interested people in Mesa County to discuss this matter with them.

Very truly yours,

DeMUTH & EIBERGER



Robert A. Backus

RAB/mol

cc: Mr. Gerry Ashby
City Attorney
Grand Junction, Colorado