

M E M O R A N D U M

DRAFT

TO: MESA COUNTY BOARD OF COUNTY COMMISSIONERS
FROM: MAURICE LYLE DECHANT, MESA COUNTY ATTORNEY
RE: ESTABLISHMENT OF A "COUNTY-WIDE SEWER DISTRICT"
DATE: SEPTEMBER 9, 1983

Following a meeting regarding a proposed utilization of recent legislation regarding local improvement districts to enable installation of sewer facilities, you requested that I review and comment upon the possibility of formation by Mesa County of a "Sewer District" which might ultimately be County-wide and the various methods by which the same might be accomplished.

In discussing the matter with staff and with the Board, I have ascertained that certain parameters should be maintained if at all possible:

1. Formation and expansion without a vote of the electorate.
2. Front-end financing capability.
3. Control over policy and facility extension to remain in the County Commissioners, if possible.

Prior to 1971, the authority of a County to create and operate sewer or water systems did not exist. Essentially, such authority was reserved to municipalities or special districts. Beginning in 1971, counties were authorized to acquire and operate sewerage facilities, water facilities, or both. This authority is today codified at 1973 C.R.S. 30-2-401 et seq.

The grant of authority in 30-2-401 et seq. is very broad and does not require the formation of any additional governmental entities such as a special district. The County is simply empowered to acquire, construct, and operate sewerage facilities, both within and without the County, without any limitation on the procedure to be followed or the administrative structure to be established. A copy of 1973 C.R.S. 30-20-402 and 416 is attached for your review.

The statute is specific that all powers granted the County may be exercised without a vote of the qualified electors. This fact allows considerable latitude in the actions of the Board of County Commissioners in exercising the grant of powers.

Conversely, although the broad powers of the County may be exercised without a vote of the qualified electors, the financing

mechanism is thus limited to revenue bonds which do not constitute a debt of Mesa County, but which are secured by revenues of the sewerage system. Although revenue bonds provide a method of front-end financing, it is my understanding that they are considerably less attractive to investors than bonds of a general obligation or hybrid nature, and, therefore, saleable only at higher interest rates. The County may, however, have an established "track record" as a result of the Persigo Wash Treatment Plant revenue bonds.

It is unclear exactly what procedure is to be followed in developing a sewerage system under 30-20-401, et seq. No "district" is authorized and no separate governmental entity is created, except, in the event the County contracts with another county or municipality concerning sewerage facilities, a governing board or entity may be formed by contract. Such a situation is attractive because it retains control over policy and facility extension in the Board of County Commissioners, which is the planning and zoning entity.

The second method of developing sewerage facilities involves formation and utilization of a local improvement district (LID). House Bill 1033, passed and approved in March, 1983, expanded County statutory powers concerning LIDs to include the construction of sewerage facilities. Specifically, HB1033 added 30-20-603(1)(b) which states as follows:

"Additionally, the improvements authorized by this part six may consist of constructing, installing, or otherwise improving the whole or any part of any system for the transmission or distribution of water or for the collection or transmission of sewage, or both such systems."

The procedure to be followed in this instance is that which is followed in the creation of any LID pursuant to 30-20-601, et seq. The district may be initiated by resolution of the Board of County Commissioners or by petition of a majority of the owners of property fronting the improvement. Although public notice and hearing are required, no election of the qualified electorate or owners is required for formation of an LID.

Utilization of the LID concept requires formation of a "district", but not the creation of a separate governmental entity. It enables a method of front-end financing which is secured by direct property assessments rather than by revenues and, therefore, probably viewed more favorably by the financial community.

Since the "district" exists merely for provision of front-end financing for improvements, and since no additional governmental entity is created, control of the LID remains in the Board of County Commissioners. However, the concept does not lend itself well to the ongoing operation of a sewerage system.

No provision is made for ongoing administration and operation of the system or for expansion of the LID. The statute does not appear to contemplate enlargement of an LID, but, rather, the initial designation of a smaller, well-defined area in which a specific improvement is to be constructed. This concept works well with regard to paving of roads or the installation of curbs and gutters,

since the administration of roadways and appurtenant facilities is a well established County responsibility and the County is staffed and funded to undertake such responsibility.

The same is not true for the administration of a sewage collection and treatment system. Utilization of the LID concept for creation and operation of a sewerage system, without the assistance of additional statutory authority, would place the County in a position of accepting ownership and maintenance responsibility for sewerage facilities without any administrative provisions for fees, rates, maintenance and repairs, engineering specifications, etc.

The Colorado Statutes regarding the formation of special districts do not, in my opinion, provide any assistance in the formation of a "County-wide sewer district". Although the specialized districts, whether water and sanitation district, sanitation district, or metropolitan district, have extensive powers and latitude of decision, I do not believe that the statutory scheme for establishing such districts is compatible with the first and third parameters listed above. An election is normally required for formation of a special district and, once formed, the district boards tend to be extremely independent of any control by County government. It has been my experience in the Denver metropolitan area that the districts and their boards are very often in conflict with the planning and zoning goals of County planners and commissioners.

One of the most important questions facing the County regarding formation of a County-wide sewer district is that of whether or not the Board of County Commissioners can prevent the independent formation of LIDs or other special districts during the period of formation of a County-wide district. This is particularly important in light of the fact that the County has already received a petition for formation of an LID for sewer purposes.

Regarding the formation of a special district, it appears that the Commissioners have significant power to disprove such district. 1973 C.R.S. 32-1-203(2) sets forth eight (8) bases upon which the Commissioners may disprove a service plan of a proposed district and, thereby, veto formation of the district. Such veto may only be overruled by the District Court upon a finding that the action was arbitrary, capricious, or unreasonable.

Regarding formation of an LID, the board does not appear to have the same statutorily mandated powers. Although House Bill 1033 expanded the County's statutory powers concerning LIDs to include the construction of sewerage facilities, the Bill did not set out a procedure by which the facilities created by an LID could be accepted by and administered by the County. Although such procedure is not particularly important with regard to roads and curbs or gutters, it is extremely important with regard to sewerage facilities.

It would normally be my opinion that the County Commissioners

cannot refuse to establish an LID when the same has been duly petitioned in accordance with the statute. However, since the County will accrue to ownership of sewerage facilities which it is not prepared to administer, it is my opinion that the County could refuse to authorize such LID for a period of time during which preparations for administering the facilities can be made.

I am available to provide any additional assistance which you may require and to answer any questions which you may have.

Maurice Lyle Dechant
Mesa County Attorney

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Attachments