

30-11-101 Powers of Counties

(1) Each organized county within the state shall be a body corporate and politic and as such shall be empowered for the following purposes:

(a) To sue and be sued;

(b) To purchase and hold real and personal property for the use of the county, and acquire lands sold for taxes, as provided by law;

(c) To sell, convey, or exchange any real or personal property owned by the county and make such order respecting the same as may be deemed conducive to the interests of the inhabitants; and to lease any real or personal property, either as lessor or lessee, together with any facilities thereon, when deemed by the board of county commissioners to be in the best interests of the county and its inhabitants;

(d) To make all contracts and do all other acts in relation to the property and concerns necessary to the exercise of its corporate or administrative powers. Any such contract may by its terms exceed one year and shall be binding upon the parties thereto as to all of its rights, duties, and obligations.

(e) To exercise such other and further powers as may be especially conferred by law;

(f) To develop, maintain, and operate mass transportation systems, which power shall be vested either individually in the board of county commissioners or jointly with other political subdivisions or governmental entities formed pursuant to the provisions of part 2 of article 1 of title 29, C.R.S. Except as provided in paragraph (j) of this subsection (1), this provision shall not apply to any county or portion thereof encompassed by the regional transportation district as formed pursuant to the provisions of article 9 of title 32, C.R.S. Counties, by ordinance adopted, administered, and enforced in accordance with part 4 of article 15 of this title, shall have the authority: To fix, maintain, and revise passenger fees, rates, and charges, and terms and conditions for such systems; to prescribe the method of development, maintenance, and operation of such mass transportation systems; and to receive contributions, gifts, or other support from public and private entities to defray the operating costs of such systems.

(g) To provide for the payment of construction, installation, operation, and maintenance of street lighting by ordinance adopted, administered, and enforced in accordance with part 4 of article 15 of this title and to assess, either in whole or in part, the cost of constructing, installing, operating, and maintaining such street lighting against the property in the vicinity of such street lighting in proportion to the frontage of the property abutting the road, street, or alley where such street lighting is so constructed, installed, operated, and maintained;

(h) To enter into contracts with the executive director of the department of corrections pursuant to section 16-11-308.5, C.R.S., for the placement of persons under the custody of the executive director in county jails or adult detention centers;

(i) To dispose of abandoned personal property acquired by an elected county official or county employee in performing official duties. Said personal property may be disposed of only after the exercise of due diligence to determine the owner of such personal property. Such personal property may be sold, discarded, or used for county purposes as the board of county commissioners deems to be in the best interests of the county.

(j) For any county located in whole or in part within the boundaries of the regional transportation district, to provide transit services in cooperation with and pursuant to consultation with the board of directors of the district. For purposes of this paragraph (j), "county" means any county or city and county.

(k) To coordinate, pursuant to 43 U.S.C. sec. 1712, the "National Environmental Policy Act of 1969", 42 U.S.C. sec. 4321 et seq., 40 U.S.C. sec. 3312, 16 U.S.C. sec. 530, 16 U.S.C. sec. 1604, and 40 CFR parts 1500 to 1508, with the United States secretary of the interior and the United States secretary of agriculture to develop land management plans that address hazardous fuel removal and other forest management practices, water development and conservation measures, watershed protection, the protection of air quality, public utilities protection, and private property protection on federal lands within such county's jurisdiction.

(2) Counties have the authority to adopt and enforce ordinances and resolutions regarding health, safety, and welfare issues as otherwise prescribed by law. In addition to any other enforcement or collection method authorized by law, if a county passes an ordinance or resolution of which a violation would be a class 2 petty offense, the county may elect to apply the penalty assessment procedure set forth in section 16-2-201, C.R.S., and may adopt a graduated fine schedule for multiple offenses. If a specified offense would be an unclassified misdemeanor, a county may elect to downgrade the offense to a class 2 petty offense and apply the penalty assessment procedure under circumstances deemed appropriate and prescribed by the county in an ordinance or resolution.

Source: G.L. § 428. G.S. § 521. R.S. 08: § 1177. C.L. § 8658. CSA: C. 45, § 1. CRS 53: § 36-1-1. C.R.S. 1963: § 36-1-1. L. 73: pp. 465, 466, §§ 1, 1. L. 79: (1)(g) added, p. 1150, § 2, effective April 25. L. 88: (1)(h) added, pp. 677, 711, §§ 5, 12, effective July 1. L. 90: (1)(f) and (1)(g) R&RE, p. 1446, § 1, effective July 1. L. 92: (1)(i) added, p. 967, § 9, effective June 1. L. 93: (1)(h) amended, p. 407, § 6, effective April 19. L. 2002: (1)(f) amended and (1)(j) added, p. 733, § 3, effective August 7; (1)(f) amended and (1)(j) added, p. 713, § 3, effective August 7. L. 2003: (1)(k) added, p. 1036, § 10, effective April 17. L. 2008: (2) added, p. 57, § 2, effective August 5.

Cross references: For the legislative declaration contained in the 2003 act enacting subsection (1)(k), see section 1 of chapter 145, Session Laws of Colorado 2003.

ANNOTATION

Analysis

- I. General Consideration.
- II. Power to Sue and be Sued.
- III. Power to Deal in Real Property.
- IV. Power to Place Inmates Out of State.

I. GENERAL CONSIDERATION.

Am. Jur.2d. See 56 Am. Jur.2d, Municipal Corporations, Etc., §§ 167-170.

C.J.S. See 20 C.J.S., Counties, §§ 143, 150.

Law reviews. For article, "The Emerging Relationship Between Environmental Regulations and Colorado Water Law", see 53 U. Colo. L. Rev. 597 (1982).

A county is not an independent governmental entity existing by reason of any inherent sovereign authority of its residents, rather, it is a political subdivision of the state, existing only for the convenient administration of the state government, created to carry out the will of the state. *Stermer v. Bd. of Comm'rs*, 5 Colo. App. 379, 38 P. 839 (1895); *Colburn v. Bd. of Comm'rs*, 15 Colo. App. 90, 61 P. 241 (1900); *Bd. of County Comm'rs v. Love*, 172 Colo. 121, 470 P.2d 861 (1970).

A county in Colorado is nothing more than an agency of the state in the general administration of the state policy, and its powers are solely governmental. *Stermer v. Bd. of Comm'rs*, 5 Colo. App. 379, 38 P. 839 (1895); *Colburn v. Bd. of Comm'rs*, 15 Colo. App. 90, 61 P. 241 (1900).

And it does not, like a municipal corporation, possess a complete local government of its own, executive, legislative, and judicial. *Colburn v. Bd. of Comm'rs*, 15 Colo. App. 90, 61 P. 241 (1900).

Express and implied powers. As a political subdivision, a county, and its commissioners, possess only such powers as are expressly conferred upon them by the constitution and statutes, and such incidental implied powers as are reasonably necessary to carry out such express powers. *Stermer v. Bd. of Comm'rs*, 5 Colo. App. 379, 38 P. 839 (1895); *Colburn v. Bd. of Comm'rs*, 15 Colo. App. 90, 61 P. 241 (1900); *Farnik v. Bd. of County Comm'rs*, 139 Colo. 481, 341 P.2d 467 (1959); *Bd. of County Comm'rs v. Love*, 172 Colo. 121, 470 P.2d 861 (1970); *Bainbridge, Inc. v. Bd. of County Comm'rs*, 964 P.2d 575 (Colo. App. 1998).

Statutory taxing duties on behalf of others. Counties and county officers are charged with specific statutory duties in assessing property for tax purposes, levying taxes, collecting taxes, foreclosing tax liens when the taxes are not paid, acquiring title to tax delinquent property, and disposing of property so acquired, and in these matters the counties and their officers act in behalf of the state, towns and cities, school districts, conservancy districts, and other taxing authorities. *Farnik v. Bd. of County Comm'rs*, 139 Colo. 481, 341 P.2d 467 (1959).

General assembly may delegate authority to county based upon reasonableness standard in appropriate circumstances where, as in the case of setting fees for county building permits, flexibility is required for counties to operate effectively in addressing local concerns. *Bainbridge, Inc. v. Bd. of County Comm'rs*, 964 P.2d 575 (Colo. App. 1998).

II. POWER TO SUE AND BE SUED

A county is not sovereign in the sense in which the state is sovereign, exempt from suit except by its own consent. *Bd. of Comm'rs v. City of Colo. Springs*, 66 Colo. 111, 180 P. 301 (1919).

This section expressly authorizes counties to sue or be sued. *City & County of Denver v. Miller*, 151 Colo. 444, 379 P.2d 169 (1963).

This undoubtedly carries with it the right when sued to interpose every defense, legal and equitable, which it may have, including the statute of limitations. *Schloss v. Bd. of County Comm'rs*, 1 Colo. App. 145, 28 P. 18 (1891).

The right "to sue" relates to the county's function as a body corporate and can only be exercised within the framework of the specific powers granted counties and boards of county commissioners, such does not grant a general power to sue in any and all situations. *Bd. of County Comm'rs v. Love*, 172 Colo. 121, 470 P.2d 861 (1970).

But no express limitation is put upon the class of subject matter in respect to which that power can be exercised. *City & County of Denver v. Miller*, 151 Colo. 444, 379 P.2d 169 (1963).

And it cannot be that a county must submit to have such portion of its territory unlawfully taken from it and transferred to another county, without being able to contest the legality of the proceeding. *City & County of Denver v. Miller*, 151 Colo. 444, 379 P.2d 169 (1963).

The state is not liable in damages for the negligence of its servants, nor are other governmental corporate entities liable for the tortious acts of their servants performing duties in furtherance of a governmental function, as distinguished from a proprietary function. *Liber v. Flor*, 143 Colo. 205, 353 P.2d 590 (1960); *M. & M. Oil Transp., Inc. v. Bd. of County Comm'rs*, 143 Colo. 309, 353 P.2d 613 (1960).

Therefore, counties are not liable for the tortious acts of their servants performing duties in furtherance of a governmental function as distinguished from a proprietary function. *Liber v. Flor*, 143 Colo. 205, 353 P.2d 590 (1960).

Also the doctrine of respondeat superior applicable to the relation of master and servant does not apply to a public county officer so as to render him responsible for the acts or omissions of subordinates whether appointed by him or not, unless he, having the power of selection, has failed to use ordinary care therein, or unless he has been negligent in supervising the acts of such subordinates, or has directed or authorized the wrong. *Liber v. Flor*, 143 Colo. 205, 353 P.2d 590 (1960).

But where servants or employees of a county are the actual tort-feasors, and the evidence establishes this fact, they should be held liable in all respects as other tort-feasors. *Liber v. Flor*, 143 Colo. 205, 353 P.2d 590 (1960).

Since counties are quasi and not municipal corporations, they are not liable to garnishment. *Stermer v. Bd. of Comm'rs*, 5 Colo. App. 379, 38 P. 839 (1895).

Because counties, not their various subsidiary departments, exist as bodies corporate empowered to sue and be sued, naming a county department as a defendant is not an appropriate means of pleading a § 1983 action against a county. *Stump v. Gates*, 777 F. Supp. 808 (D. Colo. 1991).

III. POWER TO DEAL IN REAL PROPERTY

A county does not have blanket authority to deal in real estate. Its authority is to purchase and hold real and personal estate for the use of the county, and lands sold for taxes, as provided by law. *Farnik v. Bd. of County Comm'rs*, 139 Colo. 481, 341 P.2d 467 (1959).

And a county has no power to acquire real or personal property as a speculation or an investment, nor does it have the power to retain property lawfully acquired for the use of the county when the use therefor no longer exists, and it may acquire and retain such property as it now reasonable needs, or in the foreseeable future may reasonably need, but no more, and such needed property is exempt from taxation, however, other not needed property should be on the tax rolls as provided by law. *Farnik v. Bd. of County Comm'rs*, 139 Colo. 481, 341 P.2d 467 (1959).

A statutory right to reserve the minerals therein means only that it may reserve and sell the minerals separately. *Farnik v. Bd. of County 78*, 139 Colo. 481, 341 P.2d 467 (1959).

Where a husband and wife executed and delivered their warranty deed to property to the county subject to encumbrances, and the consideration for the conveyance was financial assistance theretofore and in the future to be advanced by the county for their needs, it was held the county carried out its agreement and acquired a good and sufficient title under the deed. *Bainbrich v. Boies*, 113 Colo. 458, 158 P.2d 736 (1945).

IV. POWER TO PLACE INMATES OUT OF STATE

Subsection (1)(h) should not be interpreted to limit placement of Colorado inmates only to county jails and this section does not affect authority of director of department of corrections to transfer inmates out of state. *People v. Wood*, 999 P.2d 227 (Colo. App. 2000).