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SDA Virtual Workshops

The Special District Association and Collins Cockrel & Cole are pleased to provide a virtual workshop this year in lieu of the annual regional workshops. SDA Members can access the materials and videos for this year's version of the virtual workshop on the SDA webpage at the following link:



<https://www.sdaco.org/board-member-workshops>

Jim Collins, Bob Cole and Allison Ulmer cover a wide variety of issues in the virtual workshop and it is a fantastic resource and opportunity for both newly elected and experienced board members and managers. We were disappointed not to have the opportunity to present in-person and connect with many of you as usual, but hope you will find the virtual workshops to be a highly effective resource.

November 3, 2020 Election

It is not too late to consider submitting a ballot issue to eligible electors for the November 3rd election. Participation in a coordinated election required notice being given to the County Clerk and Recorder by July 24th, so if that notice has not already been provided, your local government can still conduct an independent mail ballot election. Regardless, the ballot content must be certified on or before September 4th. Therefore, an Election Resolution must be adopted prior to that time. Please contact our office if you are thinking about conducting a November election.



Gallagher Proposal for 2020 Election and 2021 Residential Assessment Rate

At the end of the 2020 Legislative Session, the Legislature passed SCR20-001, a question which will appear on the November 2020 ballot asking Colorado voters to repeal the Gallagher Amendment from the Colorado Constitution. In the companion bill, SB20-223, which only takes effect if voters approve SCR20-001, the Legislature placed a moratorium on any changes in the ratio of valuation for any class of property for purposes of property taxation. This would freeze the rate of assessment for all classes of property. Under TABOR, any effort to raise the rate of assessment of any class of property would require voter approval. Because SCR20-001 would be an amendment to the Colorado Constitution, it will require 55% of voters to approve in order to pass.

If the Constitutional Amendment does not pass, the Residential Assessment Rate is anticipated to drop from 7.15% to 5.88% in 2021, representing nearly an 18% drop in residential property taxes. If you have not already received voter approval to offset the Gallagher Amendment, consider asking your voters to do so this November to prevent any impact on your property tax revenues from a drop in the Residential Assessment Rate. Be conscious of the election deadlines mentioned above and call us soon with any questions.

Wrap-up of 2020 Legislation



Due to COVID-19, the 2020 Legislative Session was suspended in March, reconvened in May, and finally adjourned in June. Below is a select list of bills we monitored that could affect you:

- HB20-1421 – Waiver or suspension of interest on unpaid 2020 property taxes. Allows waiver or suspension of interest due on unpaid property taxes between June 15, 2020 and October 1, 2020. Requires approval of county commissions or city councils in cities and counties with advance

notice to local governments. Provides for advances on property taxes owed in case local governments need property tax revenue to make bond and debt payments.

- HB20-1415 – Whistleblower protection in public health emergencies. Prohibits retaliation or adverse action against an employee who, in good faith, raises reasonable concerns about workplace violations of government health or safety rules during a public health emergency. Employers will have to post notice in the workplace of employees' rights under this law. The law will be enforced by the Division of Labor Standards and Statistics, and aggrieved employees will have the right to sue for damages in court, including reinstatement.
- HB20-1293 – E-911 updates. Replaces a statutory cap on local emergency telephone charges with a cap determined each year by the Colorado Public Utilities Commission ("PUC"). Changes procedures for payment of such local charges and permits local E-911 entities to audit collections. Establishes a new statewide 911 surcharge as a collection by the PUC for local governing bodies. The amount of the surcharge is established each year by the PUC based on needs of local governing bodies. Surcharge money is transmitted to local governing bodies within 60 days of collection based on the number of concurrent sessions maintained in the governing bodies' jurisdictions. Clarifies the allowed uses by governing bodies of the money collected from the emergency telephone charge, 911 surcharge newly established in HB20-1293, and prepaid wireless 911 charges.

Spotlight on the Healthy Families and Workplaces Act

In addition to the legislation summarized above, we would like to highlight Senate Bill 20-205 specifically, the Healthy Families and Workplaces Act (the "Act"), which requires all employers, including special districts, municipalities, and authorities, to provide paid sick leave.

Effective now until December 31, 2020, employers (regardless of size) are required to provide paid sick leave in the amount and for the purposes provided in the federal Emergency Paid Sick Leave Act in the Families First Coronavirus Response Act. The Emergency Paid Sick Leave Act requires paid sick time for an employee who is unable to work (or unable to telework) due to specified reasons related to COVID-19. Full-time employees are eligible for 80 hours of paid sick leave, and part-time employees are eligible for the number of hours the employee works, on average, over a two-week period.

Effective January 1, 2021, employers are required to provide paid sick leave for all employees at a rate of one hour of leave for every 30 hours worked by the employee, not to exceed 48 hours each year. Employers with fewer than 16 employees are exempt until January 1, 2022. An employee will begin to accrue paid sick leave when his or her employment begins and can use the sick leave as soon as it is accrued. The Act currently does not differentiate between part-time and full-time employees. If an employee is rehired by the

same employer within six months, the employer must reinstate any unused paid sick leave from the previous employment. Employees may use accrued paid leave due to a medical condition preventing them from working, preventative medical care or certain reasons relating to domestic abuse, sexual assault or harassment. Employees can also use accrued paid leave for such scenarios mentioned relating to their family members. Employers may require an employee to provide documentation that the paid leave is for an authorized purpose only if the sick leave is four or more consecutive days.

In addition, upon declaration of a public health emergency, employers are required to supplement each employee's accrued paid sick leave in an amount equivalent to a fourteen-day work period— meaning for an employee who regularly works a 40-hour week, the employer must supplement the employee's accrued paid sick leave to provide at least 80 hours of paid sick leave. This supplemental paid sick leave has to be used in a manner related to the public health emergency, such as for self-isolation, obtaining medical care, seeking preventative care, or caring for a child due to school or childcare closures. Employees are not required to provide documentation to take public health emergency sick leave. Employees are only eligible for the supplemental paid sick leave once during a public health emergency, even if the emergency is extended or prolonged.

Employers can satisfy the leave requirements under the Healthy Families and Workplaces Act through paid time off (PTO) policies that do not restrict the purpose of the time off, so long as the policy provides employees with as much time off as required under the Act and employees can take time off for all the reasons permitted under the Act.

The Colorado Department of Labor and Employment (CDLE) will be issuing regulations with additional details to further clarify the law. The Act will likely have a significant impact on your paid time off and leave policies. Employee Handbooks will need to be updated accordingly. In addition, note that employers must give written notice to employees that they are entitled to paid sick leave under the Act, and employers must display a poster created by CDLE in the workplace.

Please contact us if you would like assistance with updating your policies to comply with the Act.

2020 Court Decisions of Note

Several court opinions of note for local governments have been issued by the United States Supreme Court and Colorado courts which are summarized below. If you have questions about these or other court decisions please contact us.



1. **Bostock v. Clayton County, 590 U.S. ____ (2020).** Title VII of Federal Civil Rights Act of 1964 (the “Civil Rights Act”) Prohibits Employment

Discrimination on the Basis of Sexual Orientation or Gender Identity. The United States Supreme Court recently held that the Civil Rights Act prohibits employment discrimination based on sexual orientation or gender identity. The Court held that the plain meaning of the Civil Rights Act supports this conclusion. Since 2007, Colorado's Antidiscrimination Act ("CADA") has prohibited this type of discrimination. However, CADA's damages are more limited than those allowed under the Civil Rights Act, which includes the recovery of attorney fees.

2. **Espinoza v. Montana Department of Revenue, 590 U.S. ____ (2020).** The Montana Constitution, along with at least 37 other state constitutions including Colorado, contain so-called Blaine Amendments in reference to a failed proposal for a U.S. Constitutional amendment by a 19th Century U.S. Senator from Missouri. Blaine Amendments were enacted largely to prevent government funding and aid to parochial schools based on widespread anti-Catholic bias in the 19th Century. The Colorado Blaine Amendment prohibits direct state or local government aid to religious institutions. The United States Supreme Court recently held that Blaine Amendments violate the Free Exercise Clause of the First Amendment of the United States Constitution by evincing hostility to religion. The Court's ruling found that the Montana scholarship program providing public funds to allow students to attend private schools cannot discriminate against religious schools under the Free Exercise Clause. Going forward, any disbursement of funds to religious entities must still serve a non-sectarian purpose and stay within the bounds of the Establishment Clause of the First Amendment.

3. **Guy v. Whitsett, 2020 COA 93 (Colo. App. 2020).** The Colorado Court of Appeals issued an opinion in June holding that the Colorado Open Meeting Law ("OML") requirement to announce the purpose of an executive session with as much detail as possible without compromising the purpose for which the executive session is authorized requires more than indicating the purpose for an executive session is a "personnel matter" or a "matter of attorney-client privilege." In this case the Town of Basalt tried to argue that announcing the fact that an executive session was to talk about the town manager might have compromised a confidentiality agreement with the town manager. However, the Colorado Court of Appeals held that the Town could not contract away its obligation to comply with the OML.

SEC Guidance on Public Statements of Bond Issuers

The Office of Municipal Securities for the Securities and Exchange Commission recently released a guidance document (Staff Legal Bulletin No. 21) clarifying that the antifraud provisions of federal securities laws apply to "any statement of a municipal issuer that is reasonably expected to reach investors and the trading markets." This guidance underscores the importance of local governments' press releases, public announcements or other statements for local governments which have issued bonds, specifically identifying that



omission of a material fact or making any manipulative or deceptive statements in any public setting could be a violation of the antifraud provisions of Section 10(b) of the Securities Exchange Act of 1934. Importantly, the guidance states that even if a statement is not “published for purposes of informing the securities markets [it] does not alter the mandate that they not violate the antifraud provisions.”

For more information on this SEC guidance and to review a copy of the Staff Legal Bulletin No. 21, you can follow the link below:

<https://www.sec.gov/municipal/application-antifraud-provisions-staff-legal-bulletin-21>

We encourage you to engage with us and with your other consultants working on a public bond issuance to understand what information you can and should include in press releases or public statements relating to bonds.

Visit our website

Collins Cockrel & Cole | 390 Union Boulevard, Suite 400, Denver, CO 80228

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