HOT TOPICS FOR COUNTIES

MARTHA THOMPSON, CLEVELAND COUNTY, NC

TODD STARR, MESA COUNTY, CO

MANAGING AWOL ELECTED OFFICIAL

THE STRANGE TALE OF TINA PETERS

THE COUNTY CLERK HAS BEEN CONSUMED BY ELECTION CONSPIRACY THEORIES, LIONIZED BY A MOVEMENT AND INDICTED IN A BIZARRE SCHEME. WILL REPUBLICANS NOMINATE HER TO RUN ELECTIONS IN COLORADO?

THE NEW YORK TIMES JUNE 26, 2022

AND THEY'RE IN THE GATE….

- ON AUGUST 17, 2021, THE SECRETARY ISSUED ELECTION ORDER 2021-03 APPOINTING MESA COUNTY TREASURER, SHEILA REINER, AS THE SUPERVISOR OF "ALL CONDUCT RELATED TO ELECTION IN MESA COUNTY OCCURRING UNDER THE AUTHORITY OF TITLE 1 OF THE COLORADO REVISED STATUTES."
- THE SECRETARY FURTHER ORDERED THE APPOINTMENT OF A THREE-PERSON ADVISORY COMMITTEE TO, "PARTICIPATE IN WEEKLY MEETINGS WITH MS. REINER DURING THE PREPARATION FOR AND EXECUTION OF AN ELECTION, UNLESS MS. REINER AND THE COMMITTEE DECIDE UPON ANOTHER FREQUENCY."
- AFTER ELECTION ORDER 2021-03 WAS ISSUED, ON AUGUST 17, 2021, THE BOCC PASSED A RESOLUTION APPOINTING WAYNE WILLIAMS AS DESIGNATED ELECTION OFFICIAL FOR MESA COUNTY'S NOVEMBER 2, 2021, COORDINATED ELECTION.
- C.R.S. § 1-1-104(8) PROVIDES THAT A COUNTY'S "DESIGNATED ELECTION OFFICIAL" IS EITHER "THE COUNTY CLERK AND RECORDER, OR OTHER PERSON DESIGNATED BY THE GOVERNING BODY AS THE PERSON WHO IS RESPONSIBLE FOR THE RUNNING OF AN ELECTION".

DID THE COUNTY HAVE THE AUTHORITY TO SUSPEND DEFENDANT'S ACCESS TO THE OFFICE AND COMPUTERS THEREIN?

- "THE COUNTY CLERK CANNOT INTERFERE WITH THE AFFAIRS OF THE COUNTY WHEN IT COMES TO THE COUNTY'S SUPERVISION OF, AND AUTHORITY OVER, ITS BUILDINGS AND PROPERTY. "
- THE COUNTY HAD AUTHORITY TO REMOVE DEFENDANT'S ACCESS DURING THE PENDENCY OF AN INVESTIGATION UNDER ITS AUTHORITY TO "[M]AKE SUCH ORDERS CONCERNING THE PROPERTY BELONGING TO THE COUNTY AS IT DEEMS EXPEDIENT." C.R.S. §30-11-107(1)(A).
- FURTHERMORE, THE AUTHORITY OF THE COUNTY CLERK TO APPOINT AND REMOVE DEFENDANT UNDER C.R.S. § 30-10-403 DOES NOT SUPERSEDE THE COUNTY'S AUTHORITY OVER ITS BUILDINGS AND PROPERTY AS AMATTER OF LAW.

COMPLAINT TO COMPEL PERFORMANCE

- C.R.S. § 30-10-405(1), "[T]HE COUNTY CLERK AND RECORDER SHALL ATTEND THE SESSIONS OF THE BOARD OF COUNTY COMMISSIONERS EITHER IN PERSON OR BY DEPUTY, KEEP THE COUNTY SEAL, RECORDS, AND PAPERS OF THE BOARD OF COUNTY COMMISSIONERS, AND KEEP A RECORD OF THE PROCEEDINGS OF THE BOARD, AS REQUIRED BY LAW, UNDER THE DIRECTION OF THE BOARD OF COUNTY COMMISSIONERS."
- MS. PETERS IS FAILING TO FULFILL HER DUTIES AS ELECTED CLERK AND RECORDER BY REFUSING TO SIGN THE ATTESTATION OF THE CHAIRWOMAN TO THE BOARD'S SIGNATURE ON THE RUNBECK ELECTION SERVICES, INC., CONTRACT AMENDMENT

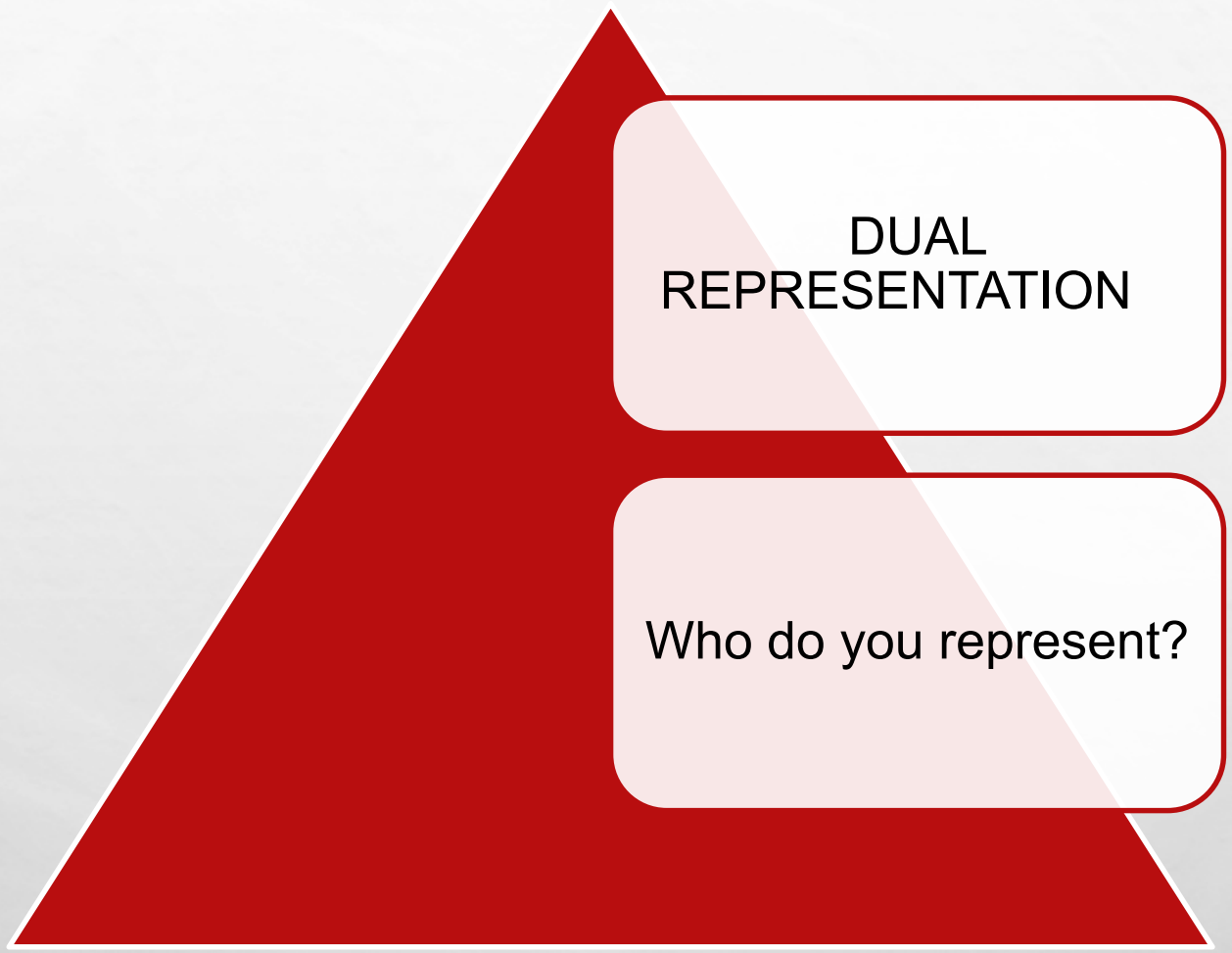
OPEN MEETINGS COMPLIANCE

- Elected officials
- Appointed boards
- Advisory boards

PROVIDING LEGAL COUNSEL TO APPOINTED BOARDS

OPEN MEETING COMPLIANCE:

- Notice to public
- No gathering of majority with discussion of business
  - Texts
  - Emails


DUAL REPRESENTATION
Who do you represent?

A. ELECTED OFFICIALS

B. COUNTY

C. COUNTY EMPLOYEES

D. SHERIFF

E. QUASI-JUDICIAL BOARDS

F. ZONING ADMINSTRATOR/STAFF

G. APPELLATE BOARD SITTING IN REVIEW

PROVIDING LEGAL COUNSEL TO APPOINTED BOARDS

HYPOTHETICAL:

Planning Dept Zoning Officer is asked to make administrative decision whether new Stadium lights at Catch Fish in the Barrel pond in neighborhood violates Excessive Illumination Ordinance, which states: *"Lighting within any lot that unnecessarily illuminates any other lot and substantially interferes with the use or enjoyment of such other lot is prohibited."*

PROVIDING LEGAL COUNSEL TO APPOINTED BOARDS

HYPOTHETICAL:

- Administrator consults in-house counsel as to interpretation of subjective term “unnecessary”
- Attorney researches case law, Black’s Law Dictionary, writes opinion
- Administrator finds violation exists and issues notice of violation
- Violator appeals to Board of Adjustment

PROVIDING LEGAL COUNSEL TO APPOINTED BOARDS

HYPOTHETICAL:

- **Can Attorney Sit and Advise the Board of Adjustment on this Appeal of Administrator's Decision?**
- **What if the BOA's decision is appealed?**

PROVIDING LEGAL COUNSEL TO APPOINTED BOARDS

Some local govt entities hire outside counsel to represent our Zoning Board of Adjustment, which hears all quasi-judicial matters such as appeals.

In-house counsel represents staff/the County before that board.

This approach may seem overly cautious, but this ethics opinion (regarding school board attorneys) explains why some take this step: https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/2008-formal-ethics-opinion-2

PROVIDING LEGAL COUNSEL TO APPOINTED BOARDS

ROLES OF SCHOOL BOARD LAWYERS IN ADMINISTRATIVE PROCEEDINGS

Adopted: April 25, 2008

Opinion holds that a lawyer is not prohibited from advising a school board sitting in an adjudicative capacity in a disciplinary or employment proceeding while another lawyer from the same firm represents the administration; however, such dual representation is harmful to the public's perception of the fairness of the proceeding and should be avoided.

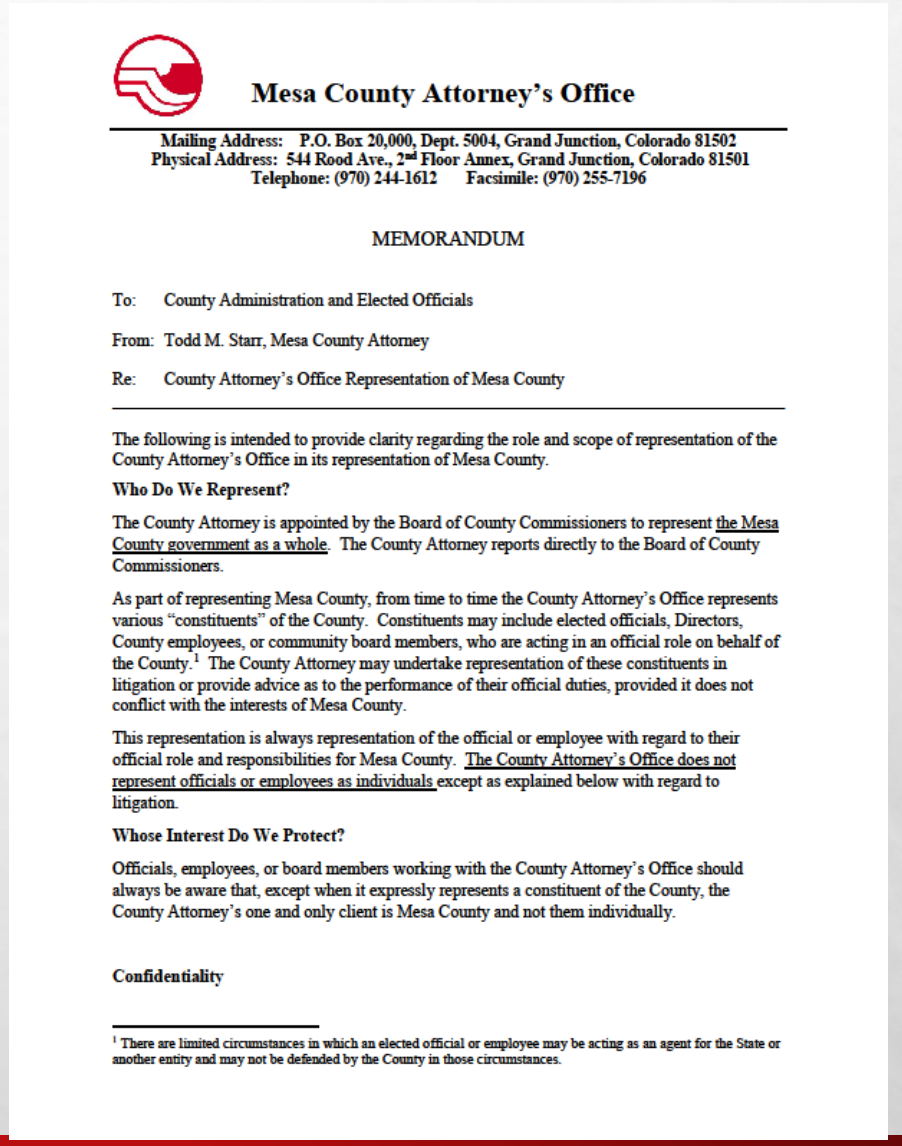
***NC ethics opinion**

MANAGING CONFLICTS AMONG ELECTED OFFICIALS

AS YOU KNOW, THE ROLE OF THE COUNTY ATTORNEY IS TO REPRESENT THE BOARD OF COUNTY COMMISSIONERS AND THE BEST INTERESTS OF MESA COUNTY AS A WHOLE. AN ATTORNEY CANNOT REPRESENT TWO PARTIES WHERE THERE MAY BE A CONFLICT OF INTEREST. I BELIEVE THERE IS A CONFLICT OF INTEREST WERE I (AND THE COUNTY ATTORNEY'S OFFICE) TO REPRESENT BOTH YOU AND THE BOARD IN THIS INVESTIGATIVE MATTER. AS SUCH, I CANNOT REPRESENT YOU (NOR CAN OTHER ATTORNEYS IN MY OFFICE) DURING THIS INVESTIGATION. AS AN ELECTED OFFICIAL, YOU CAN RETAIN OUTSIDE COUNSEL. IN CERTAIN CIRCUMSTANCES, THE COUNTY MAY PAY FOR ALL OR PART OF THE EXPENSE FOR OUTSIDE COUNSEL. HOWEVER, IF THERE IS INFORMATION THAT YOU HAVE ACTED OUTSIDE THE SCOPE OF YOUR OFFICIAL DUTIES, THE COUNTY IS NOT OBLIGATED TO PAY FOR OUTSIDE COUNSEL.

ADVANCE TOOLS

- Link to CA Representation Letter



Mesa County Attorney's Office

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Telephone: (970) 244-1612 Facsimile: (970) 255-7196

MEMORANDUM

To: County Administration and Elected Officials

From: Todd M. Starr, Mesa County Attorney

Re: County Attorney's Office Representation of Mesa County

The following is intended to provide clarity regarding the role and scope of representation of the County Attorney's Office in its representation of Mesa County.

Who Do We Represent?

The County Attorney is appointed by the Board of County Commissioners to represent the Mesa County government as a whole. The County Attorney reports directly to the Board of County Commissioners.

As part of representing Mesa County, from time to time the County Attorney's Office represents various "constituents" of the County. Constituents may include elected officials, Directors, County employees, or community board members, who are acting in an official role on behalf of the County.[1] The County Attorney may undertake representation of these constituents in litigation or provide advice as to the performance of their official duties, provided it does not conflict with the interests of Mesa County.

This representation is always representation of the official or employee with regard to their official role and responsibilities for Mesa County. The County Attorney's Office does not represent officials or employees as individuals except as explained below with regard to litigation.

Whose Interest Do We Protect?

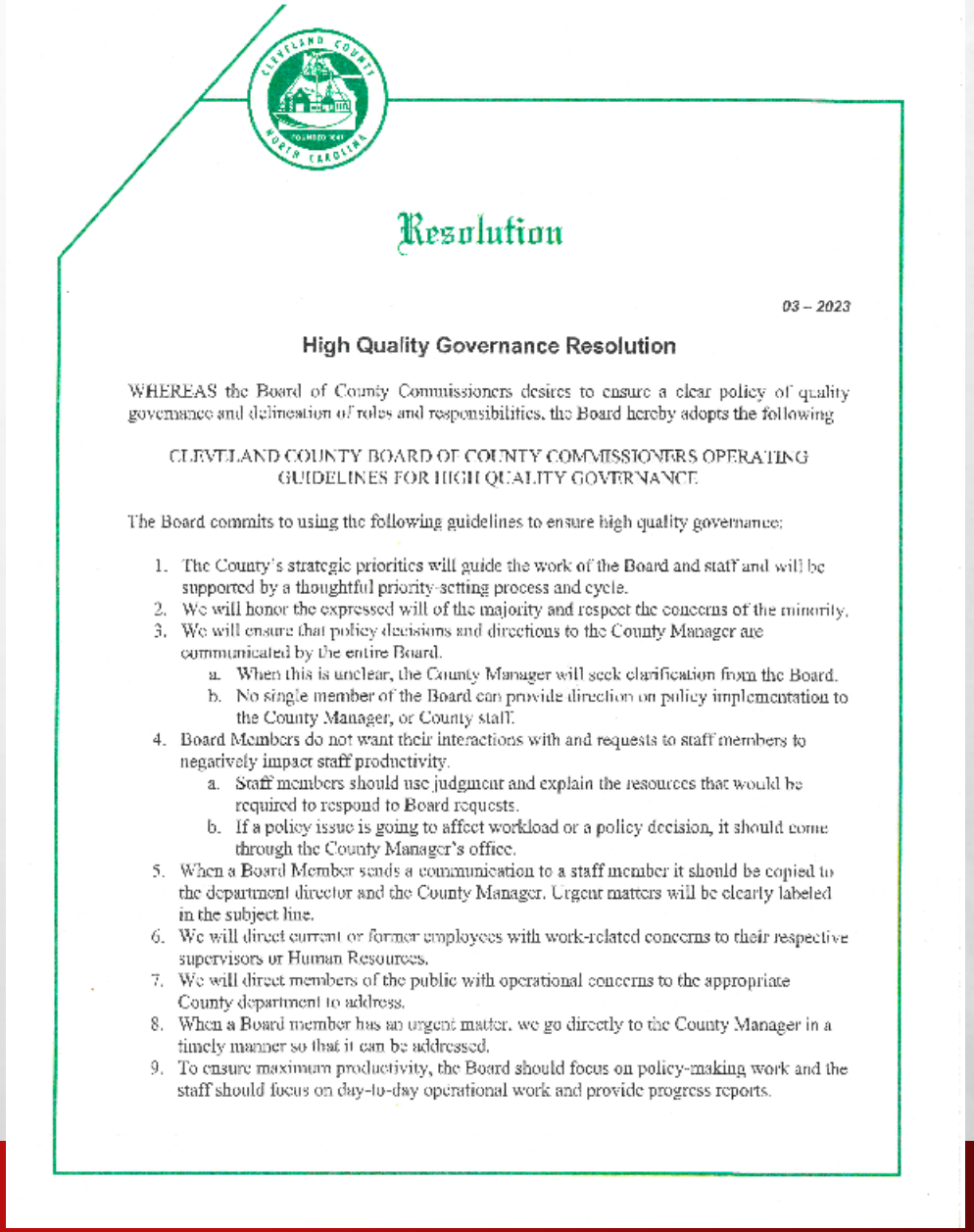
Officials, employees, or board members working with the County Attorney's Office should always be aware that, except when it expressly represents a constituent of the County, the County Attorney's one and only client is Mesa County and not them individually.

Confidentiality

[1] There are limited circumstances in which an elected official or employee may be acting as an agent for the State or another entity and may not be defended by the County in those circumstances.

Advance Tools

[Link to Resolution]



Resolution

03 – 2023

High Quality Governance Resolution

WHEREAS the Board of County Commissioners desires to ensure a clear policy of quality governance and delineation of roles and responsibilities, the Board hereby adopts the following

CLEVELAND COUNTY BOARD OF COUNTY COMMISSIONERS OPERATING GUIDELINES FOR HIGH QUALITY GOVERNANCE

The Board commits to using the following guidelines to ensure high quality governance:

1. The County's strategic priorities will guide the work of the Board and staff and will be supported by a thoughtful priority-setting process and cycle.
2. We will honor the expressed will of the majority and respect the concerns of the minority.
3. We will ensure that policy decisions and directions to the County Manager are communicated by the entire Board.
   a. When this is unclear, the County Manager will seek clarification from the Board.
   b. No single member of the Board can provide direction on policy implementation to the County Manager, or County staff.
4. Board Members do not want their interactions with and requests to staff members to negatively impact staff productivity.
   a. Staff members should use judgment and explain the resources that would be required to respond to Board requests.
   b. If a policy issue is going to affect workload or a policy decision, it should come through the County Manager's office.
5. When a Board Member sends a communication to a staff member it should be copied to the department director and the County Manager. Urgent matters will be clearly labeled in the subject line.
6. We will direct current or former employees with work-related concerns to their respective supervisors or Human Resources.
7. We will direct members of the public with operational concerns to the appropriate County department to address.
8. When a Board member has an urgent matter, we go directly to the County Manager in a timely manner so that it can be addressed.
9. To ensure maximum productivity, the Board should focus on policy-making work and the staff should focus on day-to-day operational work and provide progress reports.

Tyler v. Hennepin County 143 S.Ct. 1369 (2023)

- Taxpayer brought action against county in state court alleging county's retention of the $25,000 in excess proceeds from the sale of her condominium for $40,000 to satisfy her delinquent $15,000 property tax bill was a taking of property without just compensation, in violation of the Fifth Amendment. Following removal, the United States District Court for the District of Minnesota, Patrick J. Schiltz, Chief Judge, 505 F.Supp.3d 879, granted county's motion to dismiss, and taxpayer appealed. The United States Court of Appeals for the Eighth Circuit, Colloton, Circuit Judge, 26 F.4th 789, affirmed. Certiorari was granted.

Tyler v. Hennepin County, 143 S.Ct. 1369 (2023)

Colorado Attorney General Formal Opinion No. 23-01, dated July 27, 2023

PHIL WEISER
Attorney General

NATALIE HANLON LEH
Chief Deputy Attorney General

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Solicitor General

TANJA WHEELER
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STATE OF COLORADO
DEPARTMENT OF LAW

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Office of the Attorney General

FORMAL OPINION OF PHILIP J. WEISER Attorney General	No. 23-01 July 27, 2023

Philip J. Weiser, Attorney General of the State of Colorado, as chief legal representative for the State, issues this Formal Opinion *sua sponte* pursuant to his authority under § 24-31-101(1)(a), (d), C.R.S. (2023).

QUESTIONS PRESENTED AND SHORT ANSWERS

Question Presented.

(1) Are Colorado laws governing the process to recover unpaid property taxes on real property and mobile homes unconstitutional, in part or in full, following the recently decided U.S. Supreme Court decision, *Tyler v. Hennepin County*, 143 S. Ct. 1369 (2023)?

Short Answer.

(1) Yes, in part. Under Colorado law, in rare circumstances, a taxpayer may lose all rights to their real property or mobile home as a result of unpaid property tax and have no right to receive any compensation if the value of the property or mobile home exceeds the amount of the tax debt. In those rare circumstances, following *Tyler*, Colorado's statutory process for both real property and mobile homes may be found to result in deprivations of property that constitute an unconstitutional taking in violation of the Fifth Amendment Takings Clause of the U.S. Constitution.

LAND USE TRENDS: LOCAL V STATE CONTROL

COLORADO'S GOVERNOR, JARED POLIS, PROPOSED A BILL COMPELLING LOCAL GOVERNMENTS TO ADJUST THEIR LAND-USE POLICIES TO MEET HOUSING GOALS, A PROCESS THAT STATE OFFICIALS WOULD OVERSEE. THE BILL ADDRESSED CLIMATE, INFRASTRUCTURE, AND EQUITY CONCERNS; INCLUDED PROVISIONS FOR INCREASING AND PRESERVING AFFORDABLE AND MULTIFAMILY HOUSING; ENCOURAGED DEVELOPMENT NEAR TRANSIT; AND REMOVED ONEROUS PARKING REQUIREMENTS.

POLIS'S ORIGINAL PROPOSAL WAS GREETED BY FIERCE OPPOSITION FROM LOCAL GOVERNMENTS, THOUGH NOT BECAUSE OF OBJECTIONS TO OPEN SPACE, AFFORDABILITY, OR NEW PARKING RULES. THE FIGHT WAS OVER WHERE THE POWER TO MAKE LAND-USE DECISIONS SHOULD LIE.

The Atlantic Article

- Afterward, the governor told me he intends to keep fighting. States that have passed land-use reforms, such as California and Washington, suffered multiple defeats before seeing a first victory. Polis told me he's frustrated by communities that said, *No,* we *should do it*. "The thing is, they're not doing it!" he said with a laugh. Polis returned again to his central argument: "It's beyond the capabilities of [local government] even if there's a city council or mayor with the best of intentions … We have to figure this out together."

- Resource: The Atlantic, "Colorado's Ingenious Idea For Solving the Housing Crisis", July/August 2023 Issue Link to article

JAILS: WORKING WITH YOUR MEDICAL PROVIDER

- **Select this link to view Common Interest Agreement among Mesa County and NaphCare**

Issues From the Floor

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