

Appendix B – Constitution and Statutes on Five Commissioners

Colorado Constitution Article XIV

Section 6. County commissioners - election - term.

In each county having a population of less than seventy thousand there shall be elected, for a term of four years each, three county commissioners who shall hold sessions for the transaction of county business as provided by law; any two of whom shall constitute a quorum for the transaction of business. Two of said commissioners shall be elected at the general election in the year nineteen hundred and four, and at the general election every four years thereafter; and the other one of said commissioners shall be elected at the general election in the year nineteen hundred and six, and at the general election every four years thereafter; provided, that when the population of any county shall equal or exceed seventy thousand, the board of county commissioners may consist of five members, any three of whom shall constitute a quorum for the transaction of business. Three of said commissioners in said county shall be elected at the general election in the year nineteen hundred and four, and at the general election every four years thereafter; and the other two of said commissioners in such county shall be elected at the general election in the year nineteen hundred and six and every four years thereafter; and all of such commissioners shall be elected for the term of four years.

This section shall govern, except as hereafter otherwise expressly directed or permitted by constitutional enactment.

As amended November 4, 1902. (See Laws 1901, p. 112.); as amended November 7, 2000 -- Effective upon proclamation of the Governor, December 28, 2000. (See Laws 2000, p. 2776.)

Cross references: For number of county commissioners in counties over 70,000 population, see § 1-4-205 (3); for county commissioners, see part 3 of article 10 of title 30; for powers of board of county commissioners, see § 30-11-107.

ANNOTATIONS

Am. Jur.2d. See 56 Am. Jur.2d, Municipal Corporations, Counties, and Other Political Subdivisions, § § 218, 221.

C.J.S. See 20 C.J.S., Counties, § 63.

Law reviews. For comment, "Maximum Utilization Collides With Prior Appropriation in A-B Cattle Co. v. United States, 196 Colo. 539, 589 P.2d 57 (1978)", see 57 Den. L.J. 103 (1979).

This section is mandatory as to number of commissioners of counties of less than 70,000. Uzzell v. Anderson, 38 Colo. 32, 89 P. 785 (1906).

The provision of this section adopted at the general election in 1902, by which the number of commissioners in counties of less than 70,000 population was limited to three, did not operate to prevent commissioners elected at that election in counties of less than 70,000, having five commissioners, from qualifying and serving out their terms. Such commissioners were entitled to serve out their terms which by the amendment were extended so as to expire January, 1907, instead of January, 1906. People ex rel. Lankford v. Long, 32 Colo. 486, 77 P. 251 (1904); Long v. People ex rel. Low, 33 Colo. 159, 79 P. 1132 (1905).

But optional as to counties exceeding 70,000. This section, while mandatory as to the number of county commissioners of counties of less than 70,000, by the use of the word "may", when the population of any county shall exceed 70,000, leaves it optional with such counties to have three or five commissioners. Uzzell v. Anderson, 38 Colo. 32, 89 P. 785 (1906).

Language in section is sufficient to provide for county officers named. The language in this section and sections 8 and 11 of this article has been recognized (since its adoption in 1876) as sufficient to provide for the county officers named. *Thrush v. People ex rel. Elliott*, 53 Colo. 544, 127 P. 937 (1912).

Powers and duties of county commissioners are statutory. County commissioners are constitutional officers. Their duties and powers as a board, are statutory. The board possesses only such powers as are by the constitution and statutes expressly conferred upon it, and, in addition, such implied powers as are reasonably necessary to the proper execution of its express powers. *Robbins v. Hoover*, 50 Colo. 610, 115 P. 526 (1911); *Skidmore v. O'Rourke*, 152 Colo. 470, 383 P.2d 473 (1963).

The well-established rule of law is that county commissioners are officers with only delegated powers. *Skidmore v. O'Rourke*, 152 Colo. 470, 383 P.2d 473 (1963).

Broader powers must be conferred by proper authority. If broader powers are desirable for county officers, they must be conferred by the proper authority. They cannot be merely assumed by administrative officers; nor can they be created by the courts in the proper exercise of their judicial functions. *Skidmore v. O'Rourke*, 152 Colo. 470, 383 P.2d 473 (1963).

No consideration of public policy can properly induce a court to reject the statutory definition of the powers of a county officer. *Skidmore v. O'Rourke*, 152 Colo. 470, 383 P.2d 473 (1963).

County judge is not county officer. The proposal and adoption of this section and sections 8 and 11 of this article, art. XX, Colo. Const., dealing with the city and county of Denver, and § § 21 and 22 of art. VI, Colo. Const., dealing with district attorneys and county judges, as they now stand, evidence a legislative intent to exclude from the operation of art. XX, Colo. Const., as a county officer, that of county judge. *Dixon v. People ex rel. Elliott*, 53 Colo. 527, 127 P. 930 (1912).

Sections providing for election of county officers do not apply to city and county of Denver. This section and sections 8 and 11 of this article provide, in effect, that they shall not apply to the city and county of Denver, as the power is therein granted to the people of the city and county of Denver to designate the agencies to perform such functions within that territory. *Dixon v. People ex rel. Elliott*, 53 Colo. 527, 127 P. 930 (1912).

Applied in *People ex rel. Stidger v. Horan*, 34 Colo. 304, 86 P. 252 (1905); *Sherlock v. District Court*, 39 Colo. 41, 88 P. 396 (1906).

Statutes for Five County Commissioners

TITLE 30 GOVERNMENT - COUNTY ARTICLE 10 COUNTY OFFICERS

PART 3 COUNTY COMMISSIONERS

30-10-306. Commissioners' districts - vacancies. (1) Each county shall be divided into three compact districts by the board of county commissioners. Each district shall be as nearly equal in population as possible based on the most recent federal census of the United States minus the number of persons serving a sentence of detention or confinement in any correctional facility in the county as indicated in the statistical report of the department of corrections for the most recent fiscal year. Each district shall be numbered consecutively and shall not be subject to alteration more often than once every two years. One commissioner shall be elected from each of such districts by the voters of the whole county. If any commissioner, during his or her term of office, moves from the district in which he or she resided when elected, his or her office shall thereupon become vacant. All proceedings by the board of county commissioners in formation of such districts not inconsistent with this section are confirmed and validated.

(2) Each county having a population of seventy thousand or more which has chosen to increase the members of the board of county commissioners from three to five shall be divided into three or five districts by the board of county commissioners according to the

method of election described in section 30-10-306.5 (5) or (6) or section 30-10-306.7. The districts shall be as nearly equal in population as possible based on the most recent federal census of the United States minus the number of persons serving a sentence of detention or confinement in any correctional facility in the county as indicated in the statistical report of the department of corrections for the most recent fiscal year. Each district shall be numbered consecutively, and shall not be subject to alteration more often than once every two years; except that, notwithstanding subsection (3) of this section, the board may alter the districts to conform to precinct boundaries that are changed in accordance with section 1-5-103 (1), C.R.S., based on the division of the state into congressional districts or an approved plan for reapportionment of the members of the general assembly when necessary to ensure that no precinct is located in more than one district. Commissioners shall be elected at large or from districts according to the method of election described in section 30-10-306.5 (5) or (6) or section 30-10-306.7. If any commissioner required to be resident in a district moves during his term of office from the district in which he resided when elected, his office shall thereupon become vacant. All proceedings by the board of county commissioners in formation of such districts not inconsistent with this section are confirmed and validated.

(3) When a board of county commissioners determines to change the boundaries of commissioner districts or when new districts are created, such changes or additions shall be made only in odd-numbered years and, if made, shall be completed by July 1 of such year, except in cases of changes resulting from changes in county boundaries.

(4) Notwithstanding subsections (1) to (3) of this section, after each federal census of the United States, each district shall be established, revised, or altered to assure that such districts shall be as nearly equal in population as possible based on such census minus the number of persons serving a sentence of detention or confinement in any correctional facility in the county as indicated in the statistical report of the department of corrections for the most recent fiscal year. The establishment, revision, or alteration of districts required by this subsection (4) shall be completed by September 30 of the odd-numbered year following such census.

(5) No less than thirty days before adopting any resolution to change the boundaries of commissioner districts or create new commissioner districts, the board of county commissioners shall hold a public hearing on the proposed district boundaries.

Source: G.L. § 438. L. 1881: p. 100, § 1. G.S. § 530. L. 01: p. 144, § 1. R.S. 08: § 1196. C.L. § 8672. CSA: C. 45, § 15. CRS 53: § 35-3-6. L. 63: p. 262, § 1. C.R.S. 1963: § 35-3-6. L. 75: Entire section R&RE, p. 190, § 2, effective April 24. L. 80: (3) added, p. 424, § 2, effective March 25; (2) amended, p. 411, § 18, effective January 1, 1981. L. 84: (3) amended and (4) added, p. 818, § 1, effective March 26. L. 88: (2) amended, p. 1113, § 2, effective April 9; (3) amended, p. 298, § 4, effective January 1, 1989. L. 2002: (1), (2), and (4) amended and (5) added, p. 135, § 1, effective August 7.

Editor's note: Subsections (1), (2), (4), and (5) were contained in a 2002 act that was passed without a safety clause. For further explanation concerning the effective date, see page vii of this volume.

C.J.S. See 20 C.J.S., Counties, § 64.

Intent of "by the county commissioners". When the general assembly in 1963 amended this statute by adding the words "by the county commissioners", the supreme court believed to be obvious that it was the general assembly's intent to make it clear and unmistakable that the county commissioners henceforth had the duty and responsibility to maintain their commission districts as compact districts with populations as nearly equal as possible. Board of County Comm'rs v. Edwards, 171 Colo. 499, 468 P.2d 857 (1970).

This section does, in fact, impose a positive duty upon the commissioners to redistrict. Board of County Comm'rs v. Edwards, 171 Colo. 499, 468 P.2d 857 (1970).

When the general assembly used the word "shall", it intended to impose upon the county commissioners a mandatory duty and not suggest merely a permissive or discretionary act. Board of County Comm'rs v. Edwards, 171 Colo. 499, 468 P.2d 857 (1970).

This section is tantamount to a command upon the county commissioners to properly apportion their commissioner districts, and either neglecting or refusing to obey this command amounts to a disregard of statutory duty in not taking affirmative action. Board of County Comm'rs v. Edwards, 171 Colo. 499, 468 P.2d 857 (1970).

The functions of a board of county commissioners under this section are administrative, and it cannot evade its responsibility to take the necessary affirmative action where such is required to correct malapportionment of commissioner districts. Board of County Comm'rs v. Edwards, 171 Colo. 499, 468 P.2d 857 (1970).

Failure or refusal to act proper basis for judicial intercession. Either the failure within a reasonable time or the refusal to act upon the petition of citizens when redistricting is required in order to comply with the law, is a proper basis for judicial intercession. Board of County Comm'rs v. Edwards, 171 Colo. 499, 468 P.2d 857 (1970).

And mandamus has been upheld as a remedy to require county commissioners to comply with this section. Board of County Comm'rs v. Edwards, 171 Colo. 499, 468 P.2d 857 (1970).

There is no reason to distinguish between "compact" in the constitutional provision relating to legislative districts and the same term in the statute concerning commissioner districts. Allen v. Board of County Comm'rs, 178 Colo. 354, 497 P.2d 1026 (1972).

And compactness concerns a geographic area whose boundaries are as nearly equidistant as possible from the geographic center. Allen v. Board of County Comm'rs, 178 Colo. 354, 497 P.2d 1026 (1972).

Compactness requirement satisfied. Where county was redistricted into three districts, one of which had an area of five square miles and the other two of which had areas of over 1200 square miles, but where the new districts were much more equal in population than the old, the requirement of compactness was satisfied. Allen v. Board of County Comm'rs, 178 Colo. 354, 497 P.2d 1026 (1972).

Commissioners may express views privately. Where, at an earlier private meeting, two of the county commissioners agreed to support a redistricting plan when it was proposed by residents of a city in one of the proposed districts, this conduct of the two commissioners did not invalidate the later action of the board in adopting the plan, because it is desirable for commissioners to seek the sentiments of various citizens and it is not improper for them to state their views on matters which will later come before them for action. Allen v. Board of County Comm'rs, 178 Colo. 354, 497 P.2d 1026 (1972).

No party affiliation required. The state constitution provides that any qualified voter is eligible to hold the office of county commissioner, and this section additionally requires one commissioner shall be

elected from each district by the voters of the entire county, but it is not necessary that one have any party affiliation in order to hold the office of county commissioner. *Andersen v. Smyth*, 146 Colo. 165, 360 P.2d 970 (1961); *Mohler v. Johnson*, 196 Colo. 330, 584 P.2d 1218 (1978).

But residency is. A person is not eligible for designation as a candidate for nomination to the office of county commissioner unless at the time of the designation he is a resident of the district he seeks to represent. *Spain v. Fischahs*, 143 Colo. 464, 354 P.2d 502 (1960).

Under this section, the designee of a political party for nomination to the office of county commissioner must be a resident of the district which he seeks to represent at the time of the county assembly of the political party at which candidates are designated. *Spain v. Fischahs*, 143 Colo. 464, 354 P.2d 502 (1960); *Mohler v. Johnson*, 196 Colo. 330, 584 P.2d 1218 (1978).

The "removal" contemplated by former section was not a mere temporary change of place of abode from one district to another, whether it be for pleasure, temporary convenience or for business reasons, and to work a vacancy in the office the removal which the general assembly had in mind must be with a fixed intention by the commissioner who goes from one district to another to give up his legal residence or home in the former, and at the same time to acquire a domicile or legal home in the latter. *People v. Espinoza*, 81 Colo. 198, 254 P. 778 (1927).

30-10-306.5. Procedure to increase number of county commissioners. (1) In any county having a population of seventy thousand or more, the membership of the board of county commissioners may be increased from three to five members pursuant to this section.

(2) Subject to referral as provided in this subsection (2), a board of county commissioners may pass a resolution increasing its membership to five members and designating not fewer than two of the methods of election set forth in subsection (5) or (6) of this section. The resolution shall be referred to the registered electors of the county at a general election. If a majority of votes cast are in favor of the referred resolution, the board of county commissioners shall take such action as is necessary to assure that the increased number of county commissioners are elected at the next general election according to the procedure for election contained in the referred resolution which received the largest number of votes cast.

(3) (a) In the alternative, a petition signed by at least eight percent of the total number of qualified electors of a county voting for all candidates for the office of secretary of state at the last preceding general election shall be sufficient to place on the ballot at a general election the question of whether to increase the membership to five members with a designation of not fewer than two of the methods of election set forth in subsection (5) or (6) of this section.

(b) If a majority of the votes cast on a question placed on the ballot pursuant to paragraph (a) of this subsection (3) are in favor of increasing the membership, the board of county commissioners shall pass a resolution increasing the membership to five members and providing for the election of the increased number of county commissioners at the next general election according to the procedure for election specified in such question which received the largest number of votes cast.

(4) (Deleted by amendment, L. 94, p. 1269, § 1, effective May 22, 1994.)

(5) (a) If three county commissioners are to be resident in districts and two elected by the voters of the whole county, they shall be elected as set forth in this subsection (5). Members resident in districts elected pursuant to this subsection (5) may be elected by the voters of the whole county or may be elected only by voters resident in the district from which the member runs for election.

(b) If the first general election after the voters' approval of such increase is held in 1976 or any fourth year thereafter, two members resident in districts and one at-large member shall be elected to four-year terms at said election, and one at-large member shall be elected to fill the vacancy until the next general election, and two members, one resident in a district and one at large, shall be elected to four-year terms at said next general election. Thereafter, three members, two resident in districts and one at large, shall be elected at the general elections which occur each four years after the first general election following such resolution, and two members, one resident in a district and one at large, shall be elected at the general election which occurs two years after the first general election following such resolution and every fourth year thereafter.

(c) If the first general election after the voters' approval of such increase is held in 1978 or any fourth year thereafter, two members, one resident in a district and one at large, shall be elected to four-year terms at said election, and one at-large member shall be elected to fill the vacancy until the next general election, and three members, two resident in districts and one at large, shall be elected to four-year terms at said next general election. Thereafter, two members, one resident in a district and one at large, shall be elected at the general elections which occur each four years after the first general election following such resolution, and three members, two resident in districts and one at large, shall be elected at the general election which occurs two years after the first general election following such resolution and every fourth year thereafter.

(d) Prior to March 1 of the election year, the board of county commissioners shall designate the at-large position from which a commissioner is to be elected to a two-year term to fill a vacancy described in paragraph (b) or (c) of this subsection (5).

(6) (a) If five county commissioners resident in districts are to be elected, they shall be elected as set forth in this subsection (6). Members elected pursuant to this subsection (6) may be elected by the voters of the whole county or may be elected only by voters resident in the district from which the member runs for election.

(b) If the first general election after the voters' approval of such increase is held in 1982 or any fourth year thereafter, two members resident in districts shall be elected to four-year terms at said election, and one member resident in a district shall be elected to fill the vacancy until the next general election, and three members resident in districts shall be elected to four-year terms at said next general election. Thereafter, two members resident in districts shall be elected at the general elections which occur each four years after the first general election following such resolution, and three members resident in

districts shall be elected at the general election which occurs two years after the first general election following such resolution and every fourth year thereafter.

(c) If the first general election after the voters' approval of such increase is held in 1984 or any fourth year thereafter, three members resident in districts shall be elected to four-year terms at said election, and one member resident in a district shall be elected to fill the vacancy until the next general election, and two members resident in districts shall be elected to four-year terms at said next general election. Thereafter, three members resident in districts shall be elected at the general elections which occur each four years after the first general election following such resolution, and two members resident in districts shall be elected at the general election which occurs two years after the first general election following such resolution and every fourth year thereafter.

(d) The board of county commissioners shall designate the district from which a commissioner is to be elected to a two-year term to fill a vacancy described in paragraph (b) or (c) of this subsection (6).

Source: L. 80: Entire section added, p. 411, § 19, effective January 1, 1981. **L. 94:** (2) to (4) amended and (5)(d) added, pp. 1269, 1270, § § 1, 2, effective May 22.

30-10-306.7. Procedure for electing county commissioners. (1) In any county having a population of seventy thousand or more which has increased the membership of the board of county commissioners to five pursuant to sections 1-4-205 (3) (a), C.R.S., and 30-10-306.5, the registered electors may, either by referendum or by initiative, change the method of electing said members or reduce the membership of the board of county commissioners to three, pursuant to the procedures in this section.

(2) (a) In any such county, the method of electing members of the board of county commissioners may be changed to any one of the following methods:

(I) Five commissioners resident in five districts, elected by the voters of the whole county or elected only by voters resident in the district from which the member runs for election. In such case, the procedures for election shall be in accordance with section 30-10-306.5 (6). The county clerk and recorder shall make any other necessary provision to effectuate the change in method of election.

(II) Three commissioners resident in three districts, elected by the voters of the whole county or elected only by voters resident in the district from which the member runs for election. In such case, the procedures for election shall be in accordance with subsection (5) of this section.

(III) Five commissioners elected as follows: Three commissioners resident in three districts and elected by voters resident in those districts and two commissioners elected at large; or three commissioners resident in districts and elected by voters of the whole

county and two commissioners elected at large. In such case, the procedures for election shall be in accordance with paragraph (a) of subsection (5) of this section.

(b) The registered electors of such a county may, either by referendum or by initiative, decrease the members of the board of county commissioners from five to three. In such case, the term of office of all members serving on the board shall expire at the time the next duly elected board takes the oath of office following the first general election after the voters' approval of such decrease, and three new members shall be elected in accordance with sections 1-4-205 (2), C.R.S., and 30-10-306. Two seats, as determined by lot, shall be elected for four-year terms and the remaining seat shall be elected for a two-year term of office in accordance with sections 1-4-205 (2), C.R.S., and 30-10-306. The county clerk and recorder shall make any necessary changes to effectuate the decrease in membership.

(3) Subject to referral as provided in this subsection (3), a board of county commissioners may pass a resolution changing the method of electing the members of the board or decreasing the membership of the board, as provided in subsection (2) of this section. Prior to the ninetieth day before the next general election, the board of county commissioners shall request that the county clerk and recorder place the resolution on the ballot for referral to the registered electors of the county at the next general election.

(4) In the alternative, a petition signed by at least eight percent of the total number of qualified electors of a county voting for all candidates for the office of secretary of state at the last preceding general election shall be sufficient to place on the ballot at a general election the question of whether to change the method of electing members of the board or to decrease the membership of the board. In the case of a petition to change the method of electing members of the board, such petition shall specify the method of election according to subsection (2) of this section. Such a petition, shall be delivered to the county clerk and recorder prior to the ninetieth day before the next general election with a request that the question be placed on the ballot for referral to the registered electors of the county at the next general election.

(5) (a) If a majority of the votes cast on the question are in favor of changing the method of electing the five commissioners or providing for three commissioners, as provided in subparagraph (II) or subparagraph (III) of paragraph (a) of subsection (2) of this section, the board of county commissioners shall change the boundaries of the commissioner districts so as to create three districts as nearly equal in population as possible based on the most recent federal census of the United States minus the number of persons serving a sentence of detention or confinement in any correctional facility in the county as indicated in the statistical report of the department of corrections for the most recent fiscal year. The districts shall be numbered consecutively and shall not be subject to alteration more often than once every two years; except that, notwithstanding section 30-10-306 (3), the board may alter the districts to conform to precinct boundaries that are changed in accordance with section 1-5-103 (1), C.R.S., based on the division of the state into congressional districts or an approved plan for reapportionment of the members of the general assembly when necessary to ensure that no precinct is located in more than one district. All other provisions of sections 1-4-205 (3) (a), C.R.S., and 30-10-

306 (2) and (3) relating to the method of electing members, as provided in this paragraph (a), shall be applicable; except that, when districts are created, such changes shall be completed by July 1 of the odd-numbered year immediately preceding the general election.

(b) (I) Upon adoption of the boundaries of the three commissioner districts pursuant to subsection (2) of this section, it shall be decided by lot which of the five presently elected commissioners shall serve each of the three commissioner districts and which two commissioners shall serve the county at large.

(II) If more than one presently elected commissioner resides within the boundaries of the same newly created commissioner district, those commissioners shall first determine by lot which of them will serve that district and which of them will represent the county at large. The remaining commissioners shall then determine by lot which of them will serve the two remaining districts and which of them will serve as the second commissioner at large.

(III) The county clerk and recorder shall establish the time, place, and manner in which such lots shall be conducted and shall declare the official results of such lots immediately thereafter.

(c) In the event that the registered electors of a county vote to change the method of election pursuant to this subsection (5), the terms of office of the five presently elected commissioners shall not be affected.

(d) Thereafter, the method of election in such counties shall be as provided in sections 1-4-205 (3) (a), C.R.S., and 30-10-306.5 (5).

Source: L. 88: Entire section added, p. 1111, § 1, effective April 9; (5)(a) amended, p. 1436, § 36, effective June 11. L. 2002: (5)(a) amended, p. 136, § 2, effective August 7.

Editor's note: Subsection (5)(a) was contained in a 2002 act that was passed without a safety clause. For further explanation concerning the effective date, see page vii of this volume.