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LEGAL CLASSIFICATION OF SPECIAL DISTRICT CORPORATE FORMS IN COLORADO

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As various problems and concerns of municipalities and counties have crossed legal boundary lines, formation of "special districts" by legislative enactment has become common. In a metropolitan area composed of several counties, sewage disposal, water drainage, fire protection, recreation and others are common concerns to which a special district governing body can better coordinate the common efforts. In this article, Mr. Novak considers the definitional problems of special districts as related to their powers and legal characteristics. The author limits himself to consideration of Colorado special districts and classifies them into various categories.

INTRODUCTION

FIFTY years ago, all special districts were thought to be essentially alike in legal nature, and differences among them relating to their functions or powers were considered only incidental.[1] This has been the generally prevalent view of special districts since that time.[2] Recently, however, writers on the subject have adverted to the need for a deeper analysis of the legal nature of special districts. Max Pock, in an excellent study, noted that special districts operate in a "definitional no man's land."[3] Referring to the practical problems of special district litigation, one lawyer complained that "[t]he problem of classifying districts by powers or legal characteristics has never been comprehensively attacked. . . ."[4] It is precisely this problem of classification which this article attempts to clarify.

Study of the special district enabling legislation and cases on special districts in Colorado reveals significant differences among several classes of special districts. For example, one class is deemed

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[1] "[O]ne fact now stands forth clearly: namely, that all these districts for special purposes are one in essential [legal] nature, regardless of the divergence of many of the individual districts from the standard type." Guild, *Special Municipal Corporations,* 12 AM. POL. SCI. REV. 678, 679 (1918).

[2] *See, e.g.,* ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS, THE PROBLEM OF SPECIAL DISTRICTS IN AMERICAN GOVERNMENT (1964); J. BANKS, COLORADO LAW OF CITIES AND COUNTIES § 1.6 (1959); GOVERNOR'S LOCAL AFFAIRS STUDY COMMISSION, FINAL REPORT: LOCAL GOVERNMENT IN COLORADO 45 (1966); Guild, *supra* note 1, and 18 NAT'L MUN. REV. 319 (1929); Tobin, *The Legal and Governmental Status of the Metropolitan Special District,* 13 U. MIAMI L. REV. 129 (1958).

[3] M. POCK, INDEPENDENT SPECIAL DISTRICTS: A SOLUTION TO THE METROPOLITAN AREA PROBLEMS 22 (1962).

[4] Perry, *The Lawyer and Special Districts,* 35 J. ST. B. CALIF. 21, 23 (1960).

to be so essentially private and nongovernmental in purpose and benefit that, without special statutory exemption, it is subjected to normal taxation by the state, counties, and other units of local government. This class includes, among others, irrigation[5] and drainage districts.[6] One group of districts has the power to levy general ad valorem taxes, while another group can levy only special benefit assessment taxes. Some of these differences, such as tax liability, have been judicially decided.[7] Others, such as taxing powers, are legislatively granted or withheld in the enabling statutes under which these districts are formed.

The thesis of this article is that these differences, and others like them, are neither random nor ad hoc. Rather, differences in purposes, organization, powers, and limitations indicate differences in corporate and governmental structure which can be classified so as to bring order to this confusing area of statutory law. Essentially, three major classes of districts can be distinguished, into which fall most of Colorado's special districts. A few kinds of districts are hard to definitively classify in one group or the other, and these will be noted. Two of the major classes will be discussed in this article and the reasons for their classification discussed in detail.

The discussion which follows will be limited to special districts in Colorado. Furthermore, it will not discuss school districts which, because of differences in character, function and purposes, lie beyond the scope of this article and warrant full and separate treatment elsewhere. Finally, this classification of special districts according to their legal and corporate characteristics is limited to those districts which possess an independent corporate existence, and separate organization, range of action and responsibility.[8] For this reason, districts such as disposal districts are not considered here as special

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[5] Organized under COLO. REV. STAT. ANN. §§ 150-1-1 to -60, 150-2-1 to -40, and 150-3-1 to -88 (1963). (A number of the Colorado Statutes cited in this article have been amended, as indicated in the 1965 and 1967 Supplements to Colorado Revised Statutes Annotated, 1963. However, the amendments do not alter or affect the author's discussion and have not been indicated.)

[6] Organized under COLO. REV. STAT. ANN. §§ 47-1-1 to -10-2 (1963). Drainage districts are, however, exempt from taxation by statutory provision. COLO. REV. STAT. ANN. § 47-2-7 (1963).

[7] *See, e.g.,* Logan Irrigation Dist. v. Holt, 110 Colo. 253, 133 P.2d 530 (1943).

[8] The criterion developed for inclusion in the 1962 Census of Governments was whether the district under consideration "is an organized entity which, in addition to having governmental character, has sufficient discretion in the management of its own affairs to distinguish it as separate from the administrative structure of any other administrative unit." U.S. BUREAU OF THE CENSUS, CENSUS OF GOVERNMENTS: 1962, VOL. I, GOVERNMENTAL ORGANIZATION 15. The definition used in this article is meant to be more exclusive than the Census Bureau criteria, requiring not only administrative freedom in the management of its own affairs, but a thoroughly separate corporate existence from any other state or local governmental body.

districts because they constitute little more than a department of county government.[9] For the same reason, districts formed under the chapter on Public Recreation and Playgrounds are excluded as being no more than administrative divisions of the town, city, county, or school district by which they may be formed.[10] Other districts which will not be discussed in detail are mentioned and distinguished below as special taxing districts.

The plan of this article is to present, in section I, a brief description of each class or type of special districts and its distinguishing characteristics, and to list those specific districts, such as sanitation and drainage, which fall into each class or type. This will be followed in sections II and III by a detailed legal analysis of the two major classes of districts under the headings of "Public Corporations," and "Quasi-Municipal Corporations." Each of these will be discussed separately and in depth according to its corporate nature and status as it has been recognized by the courts; and distinguished from private, municipal, and other types of corporations, and from each other, according to their characteristic legal powers and limitations.

I. Classification of Districts

There are several different criteria by which special districts can be classified. Usually this is done on a functional, operational, or even geographical basis, such as, for example, distinguishing between urban and predominantly rural districts. Each set of criteria has its own particular merits and purposes, and it is not the function of this article to analyze, criticize, or displace any other classification system. This article is concerned with only one set of criteria: the classification of districts by legal power characteristics. The classificatory terms used in this article, and the meanings accorded them, are those employed by the courts in decided cases.

Colorado has 29 enabling statutes under which districts can be formed. These can be divided into three main groups based upon their purposes, types of taxing and other public powers, tax liability, the degree of public or private interest involved in their functions, and their independent corporate existence and status.

In classifying special districts, two sets of terms have been used by the courts. The first is based upon the characteristic function of the districts. Under this classification special districts can be classified as local improvement districts, special service districts, and special

[9] Colo. Rev. Stat. Ann. §§ 89-11-1 to -5 (1963).
[10] *Id.* §§ 114-1-1 to -2-5.

taxing districts.[11] The second classification is based upon the status of the corporate entity involved in each type of district, and includes, respectively, public corporations, quasi-municipal corporations, and quasi-corporations whose corporate identity is indissolubly linked to that of the city, county, or agency of the state by which it was created.[12] The following is a brief outline of the distinguishing characteristics of each class of districts, and a listing of those districts which would appear to belong to each class, determined by their treatment in the courts, or by their essential statutory similarities.

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[11] The Governor's Local Affairs Commission, in its report on special district government in Colorado, distinguished only two types of districts — special service districts and local improvement districts. *See* GOVERNOR'S LOCAL AFFAIRS STUDY COMMISSION, *supra* note 2. The difference between their classification and this one is the breakdown on their special service districts classification into two distinct types which shall be dealt with here as special service districts and local improvement districts. What the Commission discussed as local improvement districts will be discussed here as special taxing districts.

The recently created State Division of Local Government has developed a more complex and operationally oriented classification system in which four types of districts are distinguished. These are (1) single purpose districts; (2) multipurpose districts; (3) local improvement districts; and (4) special taxing districts. Letter from J.D. Arehart, Director, Division of Local Government, State of Colorado, to Benjamin Novak, June 22, 1967. It is difficult, if not impossible, to correlate an operational, functional, or other classification scheme with a legal one. First, from a legal point of view, whether a district is authorized to provide for two functions, such as, for example, sanitation and fire protection, or only one of these, is normally immaterial. In a legal context, it is the powers given to the district to perform its activities, and not the number of activities, that determine a district's classification.

The problem of reconciling this terminology to the courtroom is relatively easy, for single and multipurpose mean the same things in the courtroom and out. However, a real problem arises where different groups develop classifications using the same terms, but with different meanings. The Division of Local Government's last two categories present a problem on this score. For example, the terms local improvement districts and special taxing districts do not mean the same things in the courtroom as they do in the public administrator's office. The Division of Local Government distinguishes between a local improvement district and a special taxing district on the basis of whether, respectively, a single improvement is to be built by a municipality and paid for by special assessment of the benefited landowners, with operation and maintenance costs appropriated from the city's general fund, or whether a service is to be provided by a city or county to the residents of a defined area within the city's or county's jurisdiction to be paid for on a continuous basis by ad valorem taxes. *Id.* The first of these, local improvement disticts, are legally special taxing districts, *i.e.,* quasi-corporate entities through which funds are raised to finance construction of the improvement. The second, which the Division calls a special taxing district, is not an independent district entity, but merely an authorization to the city or county to provide a service to those parts of its jurisdiction in which the landowners are willing and able to pay for it. On the other hand, the courts have generally used the term local improvement district to denote an independent corporate entity formed by landowners to construct, maintain, and operate an improvement, not as a part or function of any other local or state governmental unit, but merely as a group of landowners incorporated for their own, predominantly private, benefit.

These differences in terminology can create confusion. This is unfortunate, but should not be new to the lawyer. In this article, the terms local improvement district and special taxing district will be used in the manner in which they have been used by the courts. It is suggested that this terminology be retained and used more consistently by lawyers and the courts, regardless of the value of other classification schemes in other contexts.

[12] All special districts in this class were said by the Governor's Local Affairs Study Commission to be quasi-municipal corporations. GOVERNOR'S LOCAL AFFAIRS STUDY COMMISSION, *supra* note 2.

A. *Local Improvement Districts: Public Corporations*

Local improvement districts are formed by landowners to construct, maintain, and operate improvements which affect the value of the lands included within the district. They are full corporations, independent from outside control except where they are regulated by the legislature.

Local improvement districts are formed under general enabling laws, usually by a petition to the district court or to the board of county commissioners by the owners of the lands to be included in the district. After hearings on the question, normally an election is ordered on the question of whether the district is to be organized. The districts are governed by a board of directors who are normally elected by the taxpaying landowners.

Local improvement districts are granted such common and municipal powers as eminent domain, the power to issue bonds, and the power to levy special benefit assessment taxes.

Local improvement districts are public corporations. Their distinguishing characteristics are

(1) Independent corporate existence;
(2) Private benefit nature of the district;
(3) Liability for state, county and other public taxes;
(4) Limited public powers bestowed upon this class of districts, particularly the power to levy special benefit assessment taxes and eminent domain; and
(5) Territoriality.

The following districts appear to possess the characteristics of public corporations as outlined above: conservancy districts for flood control,[13] drainage districts,[14] voluntary drainage districts,[15] soil conservation and soil erosion districts,[16] internal improvement districts,[17] and irrigation districts formed under the laws of 1905[18] and 1921.[19]

Local improvement districts will be discussed further as public corporations.

B. *Special Service Districts: Quasi-Municipal Corporations*

Special service districts are full corporations, normally referred to as bodies-corporate and politic. They are formed under general enabling laws for the purpose of providing such normal governmental services as fire protection, sanitation, and hospitals to all of

[13] COLO. REV. STAT. ANN. §§ 29-1-1 to -8-1 (1963).
[14] *Id.* §§ 47-1-1 to -10-2.
[15] *Id.* §§ 47-9-1 to -2.
[16] *Id.* §§ 128-1-1 to -21.
[17] *Id.* §§ 150-4-1 to -48.
[18] *Id.* §§ 150-1-1 to -60.
[19] *Id.* §§ 150-2-1 to -40.

the residents of the district. Special service districts are governed by a board of directors which is usually elected by the resident electors of the district but which is sometimes appointed by other public bodies, such as the county commissioners, municipal governing bodies, or the district courts.

Three general methods for forming special service districts are found among the various enabling acts for special service districts. First, organization of a district may be initiated by a petition of a certain percentage of the taxpaying electors of the proposed district. This petition is normally submitted to the district court or board of county commissioners who hold hearings and then call for an election to decide whether or not the district will be formed. Under some of the statutes, however, if the petition is approved by the court or the board of commissioners there will be no election unless a protesting petition is presented demanding an election. A protesting petition signed by a majority of the taxpaying electors of the district is sufficient under some of the statutes to have the petition for organization dismissed. A second method of initiating the organization of a special service district is by ordinance of a municipal governing body. Under this method, the governing body of one municipality will pass an ordinance calling for the creation of a district including several other municipalities. The district will come into being upon certification to the Secretary of State that a majority of the governing bodies of the other municipalities named in the initiating ordinance approve of the creation of the district including them. A third method of forming special service districts is the creation of a specific district directly by the legislature. When the district is created by direct legislative enactment, the taxpaying electors of the district are given the right to protest its formation and cause its dissolution.

Special service districts are normally granted such public and municipal powers as eminent domain, the power to issue municipal bonds, and the power to levy ad valorem property taxes in addition to special benefit assessment taxes.

Special service districts are quasi-municipal corporations. Their distinguishing characteristics are

(1) Independent corporate existence;

(2) Public character as agencies of the state created for the benefit of the inhabitants of the district and not only the landowners; and, as a result,

(3) Power to levy general, ad valorem taxes, as well as special assessments;

(4) Tax-exempt status as agencies of the state and quasi-municipal corporations; and, finally,

(5) Absence of the power of local government, which distinguishes quasi-municipal corporations from municipal corporations.

The following districts appear to possess the characteristics of quasi-municipal corporations outlined above: domestic water works districts,[20] metropolitan districts,[21] water and sanitation districts,[22] fire protection districts,[23] metropolitan recreation districts,[24] metropolitan water districts,[25] hospital districts,[26] metropolitan sewage disposal districts,[27] the metropolitan stadium district,[28] mine drainage districts,[29] and water conservancy districts.[30]

Special service districts will be discussed further as quasi-municipal corporations.

C. *Special Taxing Districts*

Special taxing districts are districts which are organized "within municipal limits, [and are] usually created and operated under the supervision of the municipal governing body."[31] They can also be organized for some purposes by counties within the boundaries of the creating county. They are used for the purpose of constructing, providing, or maintaining an improvement or service (*e.g.,* curbs, gutters, cemeteries, or waterworks) for the use or benefit of the landowners or residents of the district.

Special taxing districts are not full corporate entities. Their legal existence is almost indistinguishable from the parent city, town, or county which created them. Usually they are created by a petition to the municipal or county governing body which then, by ordinance or resolution, creates the district. Sometimes the municipal or county governing body acts as the board of directors for the district, while at other times the board of directors is appointed by them. Usually a separate budget is maintained for the district, although, in some cases, surpluses from one special tax district can be used by another special taxing district within the same creating unit. In some cases, there is not a separate tax levy for the district, but funds are appro-

[20] *Id.* §§ 89-1-1 to -31.
[21] *Id.* §§ 89-3-1 to -33.
[22] *Id.* §§ 89-5-1 to -49.
[23] *Id.* §§ 89-6-1 to -45.
[24] *Id.* §§ 89-12-1 to -35.
[25] *Id.* §§ 89-13-1 to -15.
[26] *Id.* §§ 89-14-1 to -16.
[27] *Id.* §§ 89-15-1 to -47.
[28] *Id.* §§ 89-19-1 to -95 (Supp. 1967).
[29] COLO. REV. STAT. ANN. §§ 92-28-1 to -26 (1963).
[30] *Id.* §§ 150-5-1 to -50.
[31] GOVERNOR'S LOCAL AFFAIRS STUDY COMMISSION, *supra* note 2.

priated to the district budget from the general budget of the creating body.

The distinguishing characteristics of the special taxing districts are as follows:

(1) It is not a separate legal entity;
(2) It possesses only the power to levy special benefit assessment taxes through the creating body;
(3) It has a set of accounts separate from the creating body;
(4) It cannot exist outside of the boundaries of the creating local government unit; and
(5) Control of district management lies in the creating authority.

The following districts appear to possess the characteristics of special taxing districts: cemetery districts,[32] special improvement districts in cities and towns,[33] improvement districts in cities and towns,[34] and domestic waterworks districts — cities of 10,000.[35]

Special taxing districts are normally treated as administrative subdivisions of municipal corporations proper and are mentioned here for the sake of completeness. The law applicable to special taxing districts will normally be found in standard texts on municipal corporations. For this reason they shall not otherwise be dealt with in this article.

D. *Miscellaneous Districts*

It was mentioned before that there were 29 enabling laws under which special districts could be formed. So far, we have classified and accounted for 22 of these. No classifications in law are airtight. The following kinds of districts do not easily fit into the previously discussed classifications.

1. Moffat-Type Districts

The following three districts have powers and limitations quite distinct from other types of quasi-municipal corporations, but are treated by the courts as quasi-municipal corporations.

The Moffat Tunnel Improvement District[36] was established in the early 1920's. It was created to build a tunnel through the continental divide. The legislature directly created the district; however, the owners of 50 percent or more of the property in the district were given the opportunity to protest and reject its establishment.[37] In most

[32] COLO. REV. STAT. ANN. §§ 36-16-1 to -7 (1963).
[33] *Id.* §§ 89-2-1 to -39.
[34] *Id.* §§ 89-4-1 to -30.
[35] *Id.* §§ 89-7-1 to -41.
[36] *Id.* §§ 93-1-1 to -23.
[37] *Id.* § 93-1-3.

respects the Moffat Tunnel District is a public corporation. It is based on the idea of special benefit to the property of the district, and its sole taxing power is that of special benefit assessment taxes. However, the district, in the first case testing its constitutionality and validity,[38] was declared to be quasi-municipal in character, and thus despite the public corporation character of its powers, benefits, and purposes, it is judicially determined to be a quasi, or almost, municipal corporation in its incidents. For this reason it is not taxed by the state or other subdivisions of the state.[39]

Housing authorities[40] and urban renewal authorities[41] appear to be in the same position. In the case of *People ex rel. Stokes v. Newton*[42] the court held a housing authority to be a state agency and quasi-municipal corporation, stating that it was in all material respects similar to the Moffat Tunnel District.[43] This holding was, in spite of the facts, that unlike the Moffat Tunnel District and quasi-municipal corporations in general, a housing authority has no power to levy any kind of taxes, either special assessment or ad valorem; that the district is created by ordinance of city council; that the board of directors is appointed and can be removed by the mayor of the city with the approval of the city council; and that a housing authority cannot exist outside of municipal limits. Urban renewal authorities are similar in all material respects to housing authorities; even the wording of the two acts is frequently identical. While no case was found directly discussing the status of urban renewal authorities, it is presumed that they would also be classed as quasi-municipal corporations by the courts.[44]

2. Special Drainage and Irrigation Districts

The Grand Junction Drainage District,[45] and irrigation districts organized under the Irrigation District Law of 1935,[46] appear in most respects to be quasi-municipal corporations. This is especially true with regard to the power of each to levy ad valorem taxes.[47] How-

[38] Milheim v. Moffat Tunnel Improvement Dist., 72 Colo. 268, 211 P. 649 (1922).

[39] Letter from Howard A. Latting, Chairman, Colorado Tax Commission, to Benjamin Novak, December 2, 1966.

[40] COLO. REV. STAT. ANN. §§ 69-3-1 to -32 (1963).

[41] *Id.* §§ 139-62-1 to -14.

[42] 106 Colo. 61, 101 P.2d 21 (1940).

[43] *Id.* at 67-68, 101 P.2d at 24.

[44] Because they do not possess the power to levy taxes, authorities are often classified separately from special districts. R. SMITH, PUBLIC AUTHORITIES, SPECIAL DISTRICTS AND LOCAL GOVERNMENT 21 (1964). Since the Colorado Supreme Court did not consider this a material distinction, these authorities are included with the Moffat Tunnel District in this discussion of miscellaneous districts.

[45] COLO. REV. STAT. ANN. §§ 47-12-1 to -59 (1963).

[46] *Id.* §§ 150-3-1 to -88.

[47] Grand Junction Drainage District, *id.* § 47-12-35; Irrigation District Law of 1935, *id.* § 150-3-35.

ever, it is not clear from the cases whether these districts in the final analysis shall be treated as public corporations or as quasi-municipal corporations. Irrigation districts are not exempt from state and county taxes.[48]

3. Regional Conservation Districts

The two remaining districts to be accounted for are the Colorado River Conservation District,[49] and the Southwestern Water Conservation District.[50] Each of these is directly created by the legislature and given broad powers in the field of conservation.[51] It would be difficult to draw a line determining whether these districts were essentially administrative agencies of the state government, or whether they were quasi-municipal in character. Subdistricts can be formed under the two acts which resemble, in most material respects, the special taxing districts discussed before.

II. PUBLIC CORPORATIONS

In Colorado, irrigation,[52] drainage,[53] soil erosion,[54] and probably conservancy districts for flood control[55] have been judicially held to be "public corporations."

In its usual sense, the term "public corporations" refers to all civil corporations which are not private,[56] and includes municipal corporations, quasi-municipal corporations, quasi-corporations, and quasi-public corporations.[57] However, in applying the term "public corporations" to the types of districts mentioned above, the Colorado Supreme Court has not used it in its *generic* sense alone, but has developed a narrower classificatory meaning indicating a particular *species* of public corporations as well. A more orderly classification scheme would have reserved the term "public corporations" to indi-

[48] Letter from Howard Latting, *supra* note 39.

[49] COLO. REV. STAT. ANN. §§ 150-7-1 to -32 (1963).

[50] *Id.* §§ 150-8-1 to -32.

[51] Another district which would have been included in this classification had it not been recently dissolved is the Caddoa Reservoir and Arkansas River Basin Conservancy District. Ch. 84, §§ 1-22, [1935] Colo. Laws 267 (repealed 1967) [was COLO. REV. STAT. ANN. §§ 150-6-1 to -19 (1963)].

[52] *See, e.g.,* Logan Irrigation Dist. v. Holt, 110 Colo. 253, 133 P.2d 530 (1943); Holbrook Irrigation Dist. v. First State Bank, 84 Colo. 157, 268 P. 523 (1928).

[53] Colorado Investment & Realty Co. v. Riverview Drainage Dist., 83 Colo. 468, 266 P. 501 (1928).

[54] People *ex rel.* Cheyenne Soil Erosion Dist. v. Parker, 118 Colo. 13, 192 P.2d 417 (1948).

[55] The case of People *ex rel.* Setters v. Lee, 72 Colo. 598, 213 P. 583 (1923), does not unambiguously classify conservancy districts for flood control formed under COLO. REV. STAT. ANN. ch. 29 (1963). The case speaks of the district as a "quasi-municipal corporation," a "public corporation" and a "municipal corporation," and conservancy districts are said to be "on the same footing as drainage districts." Because its purposes and powers seem to be the same as drainage and irrigation districts in nearly all material respects, it will be discussed here as a public or quasi-public corporation.

[56] 1 W. FLETCHER, PRIVATE CORPORATIONS § 57 (perm. ed. rev. 1963).

[57] 18 C.J.S. *Corporations* § 18a (1939).

cate the genus and would have referred to irrigation, drainage, and soil erosion districts as quasi-public corporations, a more accurate designation. However, the designation of both the general class and the specific type appears to have become settled in the cases.[58] This dual usage presents some confusion. From this point on, when the term "public corporation" is used in its narrow, specific sense, it will be followed (except in quotations) by the phrase "or quasi-public corporation."

What then is a public or quasi-public corporation in the specific sense? Outlined before were five characteristics which distinguished local improvement districts as public corporations from other types of districts and corporations. These were (1) independent corporate existence; (2) the private benefit nature of the district; (3) liability for state, county, and other public taxes; (4) the limited public powers bestowed upon this class of districts; and (5) territoriality.

A. *Independent Corporate Existence*

Public or quasi-public corporations are unquestionably full and independent corporate entities. They are usually denominated as a "body corporate"[59] or a "public body corporate."[60] Normally they possess the power to sue and be sued in their corporate name, have perpetual existence, adopt a seal, incur debts, liabilities, and obligations, issue negotiable bonds, exercise the right of eminent domain, and levy special benefit assessments on real property within the district.[61] They possess a board of directors of from three to five persons who are responsible to the landowners of the district, and who are free from supervision of their activities by any other bodies except the legislature or the courts as outlined in the enabling legislation. These elements distinguish public or quasi-public corporations from special taxing districts which usually can be sued only in the name of the city, town, or county which created them and which usually do not possess a separate board of directors, but rather have the city or town council or county board of commissioners act as the special taxing district board.

B. *Private Nature*

Fletcher, in his cyclopedic work on corporations, wrote:

> Private corporations are those which are created for the immediate benefit and advantage of individuals, and their franchises may be

[58] *Compare* Logan Irrigation Dist. v. Holt, 110 Colo. 253, 258-59, 133 P.2d 530, 532 (1943), *with* People *ex rel.* Rogers v. Letford, 102 Colo. 284, 297, 79 P.2d 274, 281 (1938).

[59] *See, e.g.,* Conservancy Law of Colorado: Flood Control, COLO. REV. STAT. ANN. § 29-2-5(7) (1963).

[60] *See, e.g.,* Soil Conservation District, COLO. REV. STAT. ANN. § 128-1-6 (1963).

[61] *See, e.g.,* Conservancy Law of Colorado: Flood Control, COLO. REV. STAT. ANN. § 29-2-5(7) (1963).

> considered as privileges conferred on a number of individuals, to be exercised and enjoyed by them in the form of a corporation . . . . The property of this kind of corporation and the profits arising from the employment of their property and the exercise of their franchises, in fact, belong to individuals.[62]

This description can be applied to public or quasi-public corporations of the type under discussion just as accurately as to the ordinary business corporation which Fletcher had in mind. For a public or quasi-public corporation is one for the private benefit of landowners, the value of whose land is increased by the improvement maintained or operated by the district. This was clearly stated by the Colorado court in the case of *Colorado Investment and Realty Co. v. Riverview Drainage District:*[63]

> The primary purpose of such districts is to benefit the owners of the lands by making their lands productive, or more productive, as the case may be . . . . The benefit to the public . . . though substantial, is incidental to the main purpose sought to be accomplished.[64]

In *Interstate Trust Co. v. Montezuma Valley Irrigation District*[65] the following description of the nature of an irrigation district was borrowed from a California case:[66]

> "The district, when formed, is a local organization to secure a local benefit from the irrigation of lands from the same source of water supply, and by the same system of works. It is, therefore, a charge upon the lands benefited by a single local work or improvement, and from which the state, or the public at large, derives no direct benefit, but only that reflex benefit which all local improvements confer."[67]

The purposes and activities of public or quasi-public corporations must be distinguished from those general activities of governments which are normally called proprietary and which assume the governmental mantle by reason of the demands that governments assume those responsibilities.[68] An example of this is a municipal water or sewage system. Public or quasi-public corporations, unlike quasi-municipal corporations to be discussed below, do not have the governmental or proprietary activities of a local or state government. The Supreme Court of Nevada made this distinction very clearly in the case of *State v. Lincoln Power District No. 1*[69] where the court distinguished for purposes of taxation between irrigation districts as

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[62] 1 W. FLETCHER, PRIVATE CORPORATIONS § 58 (perm. ed. rev. 1963).

[63] 83 Colo. 468, 266 P. 501 (1928).

[64] *Id.* at 471, 266 P. at 502.

[65] 66 Colo. 219, 181 P. 123 (1919).

[66] City of San Diego v. Linda Vista Irrigation Dist., 108 Cal. 189, 193, 41 P. 291, 292 (1895).

[67] 66 Colo. at 221, 181 P. at 124.

[68] *See generally In re* Bonds of Orosi Pub. Util. Dist., 196 Cal. 43, 235 P. 1004 (1925).

[69] 60 Nev. 401, 111 P.2d 528 (1941).

public or quasi-public corporations and power districts as municipal corporations. Citing the Colorado case of *Holbrook Irrigation District v. First State Bank*,[70] the court said:

> Irrigation districts are organized primarily to promote the material prosperity of the few owning lands within their boundaries, just as manufacturing plants are established to produce profits for their stockholders, and are not organized for the discharge of governmental functions in addition to, or in aid of, the usual governmental departments or agencies. Power districts . . . are created for the sole purpose of assisting the state in the performance of its governmental function of distributing heat, light and power among its people without profit.[71]

The consequences of this recognition of the fundamentally private nature of public or quasi-public corporations can be seen in the cases.

In the *Riverview* case, an action had been brought against a drainage district for the return of wrongfully assessed taxes. The lower court sustained a demurrer to the complaint based on the defense that, since there was no statute authorizing such suit, the district was like a county or school district and could not be sued without its consent. The supreme court reversed on finding that the essential purposes of the district were to benefit the landowners and thus that it could be sued as a private entity without the need of a special statute authorizing suit.

In *Holbrook,* an action was brought by an irrigation district to obtain a decree that the district's bank deposit in an insolvent bank should be paid by the state bank commissioner to the district because moneys due the district from an insolvent bank have a preference as moneys due to the sovereign. The court denied the decree, holding: "While an irrigation district is a public corporation, we do not think that it is in any true sense a branch or subdivision of the sovereignty. Its purposes are chiefly private, and for the benefit of private landowners." [72]

People ex rel. Cheyenne Soil Erosion District v. Parker[73] was a case involving two issues of relevance here. The first concerned an amendment to the Soil Conservation Act which required a vote of 75 percent of the qualified landowners of the district for the adoption of land use ordinances. The contention was that submitting the ordinances to a vote of all the landowners constituted a "referendum" and thus came within the municipal referendum provisions of the

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[70] 84 Colo. 157, 268 P. 523 (1928).

[71] 60 Nev. at 410, 111 P.2d at 532. Power districts in Nevada would appear to be essentially the same as quasi-municipal districts in Colorado, to be discussed in text, section III *infra.*

[72] 84 Colo. at 165, 268 P. at 526.

[73] 118 Colo. 13, 192 P.2d 417 (1948).

constitution of Colorado which required only a majority vote.[74] Looking to the essential nature of the district, the court held:

> It is thoroughly settled that a district such as the one here involved, is a public corporation, but not a city, town or municipality within the meaning of the constitutional provision. The purposes of the district, as expressly set forth in the act, are, as the trial court expressly found, primarily of a private nature for the mutual benefit of the landowners of the district.[75]

It was also contended that the amendment was violative of the constitution because it permitted corporations and nonresidents of the district to vote upon the adoption of land use ordinances, instead of limiting the election to legal voters.[76] The *Cheyenne* court rejected this contention in language which strikingly illustrated the private nature of public or quasi-public corporations:

> We have heretofore shown that the relator [the soil erosion district] is a public corporation and not a municipal corporation. The so-called election upon the question of adopting land use ordinances is not an election within the constitutional provision, but is more in the nature of an election held by the stockholders of a private corporation in the management of its affairs.[77]

C. *Tax Liability*

The cases reviewed above indicate that the private benefit nature of public or quasi-public corporations is more than a theoretical distinction. It has been a material and often decisive factor in the cases. But by far the most important consequence of this fact lies in the area of tax liability. The landmark case in this area is *Logan Irrigation District v. Holt*.[78] The *Logan* case was an action by an irrigation district to restrain the county assessor from assessing taxes upon the district's property. The property of the district had not previously been assessed for tax purposes by the county. The fundamental issue raised was the meaning of the constitutional grants of exemption from taxation. The constitution of Colorado provides: "The property, real and personal, of the state, counties, cities, towns *and other*

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[74] COLO. CONST. art. V, § 1.

[75] 118 Colo. at 18, 192 P.2d at 420.

[76] COLO. CONST. art. VII, §§ 1, 11.

[77] 118 Colo. at 20, 192 P.2d at 421. It is worthwhile noting here that at the time the *Cheyenne* decision was handed down, the statute provided that a violation of a land use ordinance so adopted by the landowners was a misdemeanor. This was later declared unconstitutional as an unauthorized delegation of power by the legislature to the district to make laws, violations of which were punishable as crimes. Olinger v. People, 140 Colo. 397, 344 P.2d 689 (1959). The Soil Conservation Districts act was amended by the legislature in 1961 to provide for the bringing of a civil action by the district to enforce the land use ordinances rather than a criminal action. COLO. REV. STAT. ANN. § 128-1-14 (1963). This brings the actual mechanics of the statute more into line with language in the *Cheyenne* case which held that the land use ordinances were more in the nature of bylaws or regulations of a private corporation or association.

[78] 110 Colo. 253, 133 P.2d 530 (1943).

municipal corporations and public libraries, shall be exempt from taxation."[79]

Counsel for the district contended that "while an irrigation district is not strictly a municipal corporation, yet it is a quasi-municipal corporation — that is, it partakes of the qualities of a municipal corporation"[80] and that it was intended to be included in the language "other municipal corporations" as above.

The Colorado Supreme Court held that the districts were not tax exempt. In doing so the court cited a long line of cases holding that an irrigation district is a "public corporation," and that, as such, its power of taxation is limited to local or special assessment taxes, and that the purposes of irrigation districts, like drainage districts, "are chiefly private, and for the benefit of private land owners." It concluded by quoting *Cooley on Taxation* to the effect that

> "[a]n express exemption of property of 'municipal corporations' applies only to municipal corporations proper and not to a corporation composed of shareholders [*i.e.,* landowners] which in its form and controlling features is a business enterprise upon which municipal powers have been incidentally conferred in promotion of its primary purpose."[81]

It is worth noting at this point the similarity of the reasoning in this case and the *Cheyenne* case previously quoted. In both cases a public corporation is compared to an ordinary business corporation as to its essential purpose and controlling features.[82]

Counsel for the district argued alternatively that even if the district did not qualify as a municipal or quasi-municipal corporation, that it would still be exempt as an agency of the state. The court replied, quoting from *Buffalo Rapids Irrigation District v. Colleran*:[83]

> "It would seem that, in order to come within the rule which will permit the court to consider the property of a public corporation the property of the state for the purpose of exemption from taxation, such corporation should be so closely engrafted upon the state as to in fact exercise governmental functions and be supported, directly or indirectly, by the state."[84]

The court held that public or quasi-public corporations, such as irrigation and drainage districts, were not agencies of the state despite the fact that the irrigation district act "was adopted from California, and the decisions of that state have held that irrigation districts are agencies of the state, and their property . . . exempt from taxation . . . ."[85] The California courts have reasoned that while irrigation

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[79] COLO. CONST. art. X, § 4 (emphasis added).

[80] 110 Colo. at 258, 133 P.2d at 532.

[81] *Id.* at 259, 133 P.2d at 532-33.

[82] *See* text accompanying note 77 *supra.*

[83] 85 Mont. 466, 477, 279 P. 369, 372 (1929).

[84] Logan Irrigation Dist. v. Holt, 110 Colo. 253, 259, 133 P.2d 530, 533 (1943).

[85] *Id.* at 260, 133 P.2d at 533.

and drainage districts are not municipal corporations in any true sense, they are nevertheless public agencies, and under the theory that their property is in effect property of the state they are not subject to taxation.[86]

The Colorado Tax Commission uses the following criterion of taxability of special districts: "Exemption applies to municipal corporations usually performing a function or service, as contrasted with districts that performed a special benefit to property and are collecting benefits the properties derived."[87]

Referring back to the identifying characteristics of a public corporation, it may be recalled that one of them was the limitation of their taxing powers to special benefit assessment taxes only. This follows closely the criterion of the Tax Commission in that benefits to properties derived from improvements could only be collected through special benefit assessments.

It might be noted here that drainage districts and voluntary drainage districts, to which the same provision applies, and the Grand Junction Drainage District as well as the Moffat Tunnel Improvement District and others, all have a special statutory exemption clause which exempts all the property, real and personal, of the districts from taxes of the state, counties or other political subdivisions of the state.[88] In the absence of this statutory exemption, it is presumed that drainage districts formed under these acts would be liable for taxes as public or quasi-public corporations. The Moffat Tunnel Improvement District would probably remain tax exempt as a quasi-municipal corporation.

D. *Public Powers of Public Corporations*

As has been shown, irrigation, drainage, soil erosion, soil conservation, and other local improvement districts are of an essentially private nature. Why, then, are they treated and classified as *public* corporations? The United States Supreme Court, in the landmark case of *Fallbrook Irrigation District v. Bradley,*[89] which upheld the constitutionality of the California irrigation district act (the Wright Act) — from which the Colorado act was largely taken — described the basis and necessity of granting to irrigation districts public powers and a certain public nature. Applying the same reasoning the Court

[86] Turlock Irrigation Dist. v. White, 186 Cal. 183, 198 P. 1060 (1921).

[87] Letter from Howard A. Latting, Chairman, Colorado Tax Commission, to Benjamin Novak, Dec. 2, 1966.

[88] Drainage and voluntary drainage districts, COLO. REV. STAT. ANN. § 47-2-7 (1963); Grand Junction Drainage Dist., *id.* § 47-12-27; Moffat Tunnel Improvement Dist., *id.* § 93-1-12.

[89] 164 U.S. 112 (1896).

had used with reference to reclamation districts,[90] and pointing to the essential similarity between these and irrigation districts, the Court said:

> If it be essential or material for the prosperity of the community, and if the improvement be one in which all the landowners have to a certain extent a common interest, and the improvement cannot be accomplished without the concurrence of all or nearly all of such owners by reason of the peculiar natural condition of the tract sought to be reclaimed, then such reclamation may be made and the land rendered useful to all and at their joint expense. In such case the absolute right of each individual owner of land must yield to a certain extent or be modified by corresponding rights on the part of other owners for what is declared upon the whole to be for the public benefit.[91]

1. Power to Levy Special Benefit Assessments

The most important power granted to a public or quasi-public corporation is the power to tax.[92] But this power is limited, both in purpose and in scope. In the following statement by the Colorado Supreme Court the importance of the purpose of the tax, and the private benefit nature of the public or quasi-public corporation can be seen:

> Irrigation district assessments are distinguished from taxes levied by a municipality for water works, and taxes levied for maintenance of schools, because of the public nature of the latter. In the latter cases there is a direct public benefit, general in character, for which the public at large, through general taxes levied for that purpose, must pay. But in the construction and maintenance of an irrigation system, there is obviously no direct general benefit. The direct advantage is to the particular landowner whose land is supplied with water, and he pays in proportion to the benefits received, the land itself being held for such payment.[93]

This statement discloses much about the power of public or quasi-public corporations to tax. First, the tax is an assessment for benefits, based on the theory of apportionment of benefits and costs

[90] Hagar v. Reclamation Dist., 111 U.S. 701 (1884).

[91] 164 U.S. at 163.

[92] Technically, public or quasi-public corporations do not possess the power to tax, but only the power to levy *assessments*. The distinction was made in the case of *City and County of Denver v. Tihen*, where the court said, "Taxation and assessment are not synonymous terms. Each is a separate and distinct exercise of the sovereign power to tax but . . . taxation . . . is that burden or charge upon all property laid for raising revenue for general public purposes in defraying the expense of government. Assessments are local and resorted to for making local improvements on the theory that the property affected is increased in value at least to the amount of the levy." 77 Colo. 212, 215, 235 P. 777, 779 (1925). The U.S. Supreme Court commented, "Although there is a marked distinction between an assessment for a local improvement and the levy of a general tax, yet the former is still the exercise of the same power as the latter, both having their source in the sovereign power of taxation." Fallbrook Irrigation Dist. v. Bradley, 164 U.S. 112, 176 (1896). The power of public or quasi-public corporations to levy assessments for benefits shall be discussed as an exercise of the power to tax in this latter sense.

[93] Interstate Trust Co. v. Montezuma Valley Irrigation Dist., 66 Colo. 219, 223-24, 181 P. 123, 124-25 (1919).

as a result of the improvement constructed, operated or maintained.[94] This was explained in *People ex rel. Rogers v. Letford:*[95]

> As a general proposition special assessments are permitted by authorized governmental agencies upon the theory that the property against which they are levied derives some peculiar benefit by reason of the projected improvement different from that enjoyed by other property in the community in which the improvement is to be made.[96]

Second, because of its less than general purpose, and the private nature of its benefits, a public or quasi-public corporation does not have the power to levy ad valorem taxes upon the general inhabitants of the district, but is instead limited to special assessment levies against the increased value of the land as a result of the improvement.[97] It might be noted, however, that while public or quasi-public corporations, in the specific sense in which they have been discussed, are limited to only special benefit assessment taxes because of the private nature of the benefits, other public corporations, in the generic sense, including municipal corporations proper and quasi-municipal corporations, are not precluded from this type of taxation in addition to the power to levy general ad valorem taxes.[98]

Flowing from the nature of a special assessment tax are two restrictions upon its levy. First, the taxpayer has a right to voice objection at a public hearing as to the amount of benefits with which his property is charged and against which taxes are assessed.[99] Any act which attempts to delegate the special assessment taxing power to a district without providing for hearings will be declared unconstitutional.[100] Second, cumulative levies of special assessment taxes to discharge delinquencies of local improvement taxes are unconstitu-

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[94] Ruberoid Co. v. North Pecos Water & Sanitation Dist., 158 Colo. 498, 500, 408 P.2d 436, 437 (1965); Gordon v. Wheatridge Water Dist., 107 Colo. 128, 136, 109 P.2d 899, 903 (1941).

[95] 102 Colo. 284, 79 P.2d 274 (1938).

[96] *Id.* at 304, 79 P.2d at 284.

[97] Ruberoid Co. v. North Pecos Water & Sanitation Dist., 158 Colo. 498, 408 P.2d 436 (1965); People *ex rel.* Rogers v. Letford, 102 Colo. 284, 79 P.2d 274 (1938).

[98] *See* cases cited note 97 *supra. See also* Montgomery v. City & County of Denver, 102 Colo. 427, 80 P.2d 434 (1938); City & County of Denver v. Tihen, 77 Colo. 212, 235 P. 777 (1925).

[99] "In Colorado, where the cost of a local improvement is to be paid by special tax or assessment, the taxpayer has a right to be heard, after notice, upon the question of benefits and the proportion of the general cost which may be assessed against him . . . ." Gordon v. Wheatridge Water Dist., 107 Colo. 128, 136, 109 P.2d 899, 903 (1941); *accord,* Embree v. Kansas City & Liberty Boulevard Road Dist., 240 U.S. 242 (1916).

[100] Gordon v. Wheatridge Water Dist., 107 Colo. 128, 109 P.2d 899 (1941). There is, however, an exception to this rule. Where the legislature directly determines the boundaries of the district and declares that all of the property in the district is benefited, the declaration of the legislature, while not conclusive on the courts, is held to be "highly persuasive, and to be rejected only in case it is palpably false." Milheim v. Moffat Tunnel Improvement Dist., 72 Colo. 268, 279, 211 P. 649, 654 (1922).

tional.[101] This is merely logical; if assessments are for benefits to each piece of property, property *A* should not be additionally assessed to make up for a deficiency in district income caused by the failure of *B* to pay its taxes.

2. Eminent Domain

All of those kinds of districts which have been here classed as public or quasi-public corporations possess the power of eminent domain. However, this would not in itself grant any public character to the district. For the power of eminent domain has, on occasion, been granted to corporations which only by a great stretch of imagination could be considered public or municipal corporations. In these cases the question is not whether the corporation per se is to be considered a public corporation, but whether or not the public power granted (*i.e.*, eminent domain) will be exercised for a specific public use. The often cited case of *Tanner v. Treasury Tunnel, Mining and Reduction Co.*[102] is a good example. In that case the issue was whether or not a private company authorized for the purpose of constructing a tunnel could acquire the necessary real estate under eminent domain where the tunnel was to be used for draining mines and for the transportation of waste and ore for such proprietors as might wish to avail themselves of this facility. "The vital question is, whether or not the use of the property sought to be condemned will be public in its nature."[103] The court faced the issue in this way:

> As an aid in solving this question, we may consider the character of the business in which the petitioner proposes to engage through and by means of its tunnel. If this business is wholly for its benefit, then the use of the property sought to be appropriated would be private; while, on the other hand, if the business proposed to be carried on by the petitioner through its tunnel is essentially for public benefit and advantage, then the use would be public. . . .
>
> [W]e find, in examining the authorities, that, in determining whether or not a use is public, the physical conditions of the country, the needs of a community, the character of the benefit which a projected improvement may confer upon a locality, and the necessities for such improvement in the development of the resources of a state, are to be taken into consideration.[104]

This test and these considerations were applied to the grant of a single public power for a single specific use. However, this power granted to special districts is a general power at the general disposal of the district board of directors. The courts, consequently, in viewing the power, look not to the requirements or benefits of a single "pro-

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[101] Interstate Trust Co. v. Montezuma Valley Irrigation Dist., 66 Colo. 219, 225, 181 P. 123, 125 (1919).

[102] 35 Colo. 593, 83 P. 464 (1906).

[103] *Id.* at 595, 83 P. at 465.

[104] *Id.* at 595-96, 83 P. at 465.

jected improvement," but to the character and general purposes of the district in applying the consideration set out above. The case of *Rothwell v. Coffin*[105] indicated the scope of the grant of this power to an irrigation district. That case was a proceeding against a district judge to require him to appoint a board of commissioners to determine the necessity of the taking of the complainants' lands by eminent domain. The landowners argued that the entire project for which the land were being taken was infeasible, and even if it were feasible, the taking of their lands was unnecessary to accomplish the projected result. The court found that the irrigation district had the power under statute to construct, maintain, and operate irrigation district properties, and to acquire rights of way over the properties of others. The court also found that the project involved here, relating to the draining of ponds and the constructing of a drain ditch to protect irrigation dikes, was within the purposes of the district. The court then decided against the landowners, holding that it was solely within the province of the district board of directors to determine the feasibility of any project within their general purposes and powers and, further, that the district did not have to show the necessity for taking the particular lands in question, nor even whether the district would ever make use of the property it sought to condemn, but simply whether or not the property was being condemned for a stated purpose which was authorized for the district.

The power of eminent domain, however, can only be exercised for a public purpose. If, as has been shown, these local improvement districts are of essentially private nature, how then can this power, as well as that of special assessment taxes, be justified? These districts, though primarily for private benefit, are public corporations. That is, their existence is beneficial to the public weal, and the public powers granted to them are necessary to their effective existence. The Supreme Court of the United States in *Fallbrook* summed up the answer to this question succinctly:

> The use for which private property is to be taken must be a public one, whether the taking be by the exercise of the right of eminent domain or by that of taxation. . . . A private company or corporation without the power to acquire the land *in invitum* would be of no real benefit, and at any rate the cost of the undertaking would be so greatly enhanced by the knowledge that the land must be acquired by purchase, that it would be practically impossible to build the works or obtain the water. Individual enterprise would be equally ineffectual; no one owner would find it possible to construct and maintain waterworks and canals any better than private corporations or companies, and unless they had the power of eminent domain they could accomplish nothing. If that power could be conferred

[105] 122 Colo. 140, 220 P.2d 1063 (1950).

> upon them it could only be upon the ground that the property they took was to be taken for a public purpose.[106]

E. *Territoriality*

This last quotation from the *Fallbrook* case also suggests another characteristic of local improvement districts as public or quasi-public corporations which distinguishes them from private corporations. This is the characteristic of territoriality which is common to all special districts. Territoriality refers to the establishment of exact geographical boundaries within which the district will perform its functions. Territoriality is necessary to the district as an organizational device to (1) compel the inclusion for election purpose of all the landowners whose lands will be benefited by the improvement; (2) define those lands against which special assessments may be levied; and (3) specify the boundaries within which, or in reference to which, the power of eminent domain may be exercised.

The characteristic of territoriality is part of the public nature of a public or quasi-public corporation. It is believed that this characteristic has often led courts to refer to special districts as municipal corporations.[107] McQuillin listed "[a]population and prescribed area within which the . . . corporate functions are exercised" as one of the six elements necessary to constitute a municipal corporation proper.[108] Banks speaks of it this way:

> A municipal corporation generally has jurisdiction only in the territory embraced within its corporate limits. It therefore follows that every municipality must have its boundaries fixed, definite and certain in order that they may be identified and so all will know the exact territory within the corporate limits. Such boundaries are originally fixed when a municipality is incorporated and they may be changed when territory is annexed or disconnected.[109]

This feature distinguishes a public or quasi-public corporation from a private corporation which does not have set boundaries within a state. First, this characteristic enables a public or quasi-public corporation to include an individual's lands within the district whether the individual wants to be included or not, as long as the formation procedures in the enabling act are followed. A purely private corporation, on the other hand, is a collection of individuals who each *voluntarily* join together for a common purpose. It is quite possible for many of the member landowners of a public or quasi-public corporation to be quite bitterly opposed to the formation of the district and the inclusion of them as members.

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[106] Fallbrook Irrigation Dist. v. Bradley, 164 U.S. 112, 161 (1896).

[107] *See, e.g.*, the use of the term "municipal corporations" as applied to irrigation districts in People *ex rel.* Weisbrod v. Lockhard, 26 Colo. App. 439, 143 P. 273 (1914).

[108] 1 E. McQUILLIN, MUNICIPAL CORPORATIONS § 2.07, at 454 (3d ed. 1949).

[109] J. BANKS, COLORADO LAW OF CITIES AND COUNTIES § 4.1 (1966).

Second, a private business corporation normally can operate anywhere within the state under whose laws it is incorporated. A public or quasi-public corporation, like quasi-municipal and municipal corporations proper, cannot, of course, pick up and move to another part of the state when conditions change. William Anderson made this distinction clear when he listed the characteristics of territoriality as one of the elements necessary to constitute "a government" for the purposes of his 1941 enumeration of governments in the United States.[110] Discussing this aspect of a government further, he said:

> Each unit of government . . . operates over a definite land or land-and-water area . . . . It may have incidental powers and possessions beyond these territorial limits, yet it remains identified with a particular area. In this respect it is unlike a business corporation . . . which usually has a principal place or center of business such as a central office, but ranges outward from that center without very fixed territorial limits.[111]

Special service districts, which are discussed in the next section of this article as quasi-municipal corporations, also possess this characteristic of territoriality.

F. *Public Corporations — Conclusion*

Thus we have the essence of a public or quasi-public corporation. The legislature acts to enable the organization of an area and all of its residents to accomplish works which, though they may privately benefit those involved, redound to the benefit of the entire state. Through bringing more lands into cultivation through drainage or irrigation districts or protecting the economic base of the state through flood control or conservation, the state as a whole is made richer, and all of its people are indirectly benefited. For this reason, several of the powers of the state are conferred upon private landowners organized according to statute, such as the powers of taxation and eminent domain, the power to issue municipal bonds, and the power to organize an area and all the landowners thereof into a district, even if a number of those to be organized might object. For this reason, these districts, though essentially and directly for private benefit, are classed as public corporations.

III. QUASI-MUNICIPAL CORPORATIONS

Districts formed under 11 special district enabling statutes were classified above as quasi-municipal corporations.[112] They were all placed in the same classification because analysis of their provisions reveals that they are similar in all material respects. Cases bearing

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[110] W. ANDERSON, THE UNITS OF GOVERNMENT IN THE UNITED STATES (1945).

[111] *Id.* at 8.

[112] *See* text, section IB *supra.*

upon the quasi-municipal status of districts formed under each of these statutes have not been before the courts. However, the Colorado Supreme Court has been consistent in classifying those which have been litigated before that court as quasi-municipal corporations. Thus metropolitan districts,[113] water and sanitation districts,[114] and water conservancy districts[115] have been held to be quasi-municipal corporations. In addition, metropolitan recreation and park districts,[116] and fire protection districts[117] have been noted to belong to the same classification, although there has been no specific holding on these types of districts.

A. *Independent Corporate Existence*

Quasi-municipal corporations, like public or quasi-public corporations and unlike special taxing districts, are full and independent corporate entities. Like all municipal corporations, they are not managed or subject to the control of any other entity or body except the legislature. They are usually denominated "quasi-municipal corporations" although in a minority of the enabling statutes they are referred to as "municipal corporations." They possess the powers to sue and be sued in their corporate name, to have perpetual existence, to adopt a seal, incur debts, enter contracts, buy, sell, and own real and personal property, hire employees, issue negotiable and general obligation bonds, levy and collect taxes, and to exercise the power of eminent domain. They are governed by a board of directors who are normally elected by the resident taxpaying electors of the district and are responsible to the inhabitants of the district without supervision of their activities by any other bodies except the legislature or the courts as outlined in the enabling legislation.

B. *The Nature of Quasi-Municipal Corporations*

Throughout the preceding discussion of public or quasi-public corporations, it was observed that they were basically private corporations in nature and benefits, upon which had been engrafted a few of the attributes and powers of municipal corporations. On the other

[113] Garden Home Sanitation Dist. v. City and County of Denver, 116 Colo. 1, 177 P.2d 546 (1947); City of Aurora v. Aurora Sanitation Dist., 112 Colo. 406, 149 P.2d 662 (1944). Both of these cases were decided prior to the enactment of the Metropolitan Districts Act in 1947. However, the acts under which they were formed became in large measure the provisions of the 1947 Act, which replaced them.

[114] Schlarb v. North Suburban Sanitation Dist., 144 Colo. 590, 357 P.2d 647 (1960); Gordon v. Wheatridge Water Dist., 107 Colo. 128, 109 P.2d 899 (1941).

[115] People *ex rel.* Dunbar v. South Platte Water Conservancy Dist., 139 Colo. 503, 343 P.2d 812 (1959); Kistler v. Northern Colorado Water Conservancy Dist., 126 Colo. 11, 246 P.2d 616 (1952); People *ex rel.* Rogers v. Letford, 102 Colo. 284, 79 P.2d 274 (1938).

[116] Burns v. District Court, 144 Colo. 259, 356 P.2d 245 (1960); Schlarb v. North Suburban Sanitation Dist., 144 Colo. 590, 357 P.2d 647 (1960).

[117] Schlarb v. North Suburban Sanitation Dist., 144 Colo. 590, 357 P.2d 647 (1960).

hand, quasi-municipal corporations, as their name implies, approach the opposite end of the scale. They are "almost" *municipal* corporations lacking only those powers of a municipal corporation which are not essential to the fulfillment of their limited objectives or functions.

In traditional language, the basic distinction between quasi-municipal corporations and public or quasi-public corporations, respectively, is the difference between an organization for "normal" governmental purposes and one which has as its purpose the organization of landowners to construct improvements that will affect the value of their lands. Generally, Colorado municipalities are authorized to perform almost all of the functions (except, perhaps, water conservancy) which are authorized for special service districts as quasi-municipal corporations. The primary reason for the creation of these latter districts has been to provide municipal services in unincorporated areas where they were not available from a city or town and which were beyond the county's power to provide. The functions of public or quasi-public corporations as local improvement districts are not "normal" governmental functions at either the county level or the municipal level. They are, in fact, "extra-governmental." The Supreme Court of Oregon has stated this more generally as the first test of the corporate status of a special district:

> The criteria adopted by the courts in determining whether a specified public corporation is a municipal corporation designed to confer general benefits, as distinguished from a special assessment or a local improvement district designed to confer special benefits, are, first, whether the functions which the corporation is designed to perform are in their nature so interrelated with industry and general community development as to affect the property *as well as the persons* generally within the boundaries of the public corporation . . . .[118]

This character of a quasi-municipal corporation in Colorado was clearly presented in *People ex rel. Dunbar v. Proposed Toll Gate Sanitation District*.[119] Referring to sanitation districts,[120] the Colorado Supreme Court said that they are "an expression of the unquestioned police power of the state in serving a public use for the 'health, safety . . . of the inhabitants of said districts.' "[121] This concern for all of the *inhabitants* of the district is greatly different from the conception the courts have of public or quasi-public corporations

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[118] Petition of Board of Directors of Tillamook People's Util. Dist., 160 Ore. 530, 86 P.2d 460, 463 (1939) (emphasis added); *accord*, Pacific Gas & Elec. Co. v. Sacramento Municipal Util. Dist., 92 F.2d 365 (9th Cir. 1937). The other two tests are whether the district was formed as a separate organization or is to be dissolved upon performance of the special functions for which it was organized, and whether it is empowered to levy a general tax or only to levy special assessments.

[119] 128 Colo. 33, 261 P.2d 152 (1953).

[120] Organized under COLO. REV. STAT. ANN. §§ 89-5-1 to -49 (1963).

[121] People *ex rel.* Dunbar v. Proposed Toll Gate Sanitation Dist., 128 Colo. 33, 39, 261 P.2d 152, 155 (1953).

which were "essentially private in nature," and primarily for the benefit of those *landowners* of the district whose lands were increased in value. This is the crux of the difference between public or quasi-public corporations and quasi-municipal corporations. In *Ruberoid Co. v. North Pecos Water and Sanitation District*[122] this difference was decisive. *Ruberoid* was an action by landowners to have their lands excluded from the district on the grounds that their property would not be benefited by being included in the district. Were this a typical public or quasi-public corporation, this objection would be sufficient to have them excluded.[123] But the court, quoting from *Toll Gate*, distinguished these two types of districts: " 'Sanitation districts . . . are not created for the purpose of improvements or benefits to land, as may be the case in the organization of other kinds of districts, but are for the inhabitants of the district' ";[124] and concluded: "We hold, therefore, that lack of special benefit alone cannot be a ground for excluding property from a water and sanitation district."[125]

Another distinction flows from the nature of the district. Requirements for voting in the district are different. In a public or quasi-public corporation usually nonresidents of the district and corportions which own land can vote in district elections.[126] In quasi-municipal corporations normally only persons who are registered voters in state elections, have paid real or personal property taxes in the last year, and reside in the district can vote.[127] In public or quasi-public corporations, voting is often weighed according to the amount of land a person owns in the district. In quasi-municipal corporations, on the other hand, the principle of "one man, one vote" prevails.

C. *Power of Taxation*

Where the nature of the district most obviously makes a difference is in the more extensive power of taxation possessed by a quasi-municipal corporation. This was brought out most forcefully in the landmark case of *People ex rel. Rogers v. Letford*[128] which upheld the Water Conservancy Law of Colorado,[129] and held water conservancy districts to be quasi-municipal corporations. Water con-

[122] 158 Colo. 498, 408 P.2d 436 (1965).

[123] *See, e.g.*, Irrigation District Law of 1905, COLO. REV. STAT. ANN. § 150-1-3 (1963); Internal Improvement District Law of 1923, *id.* §§ 150-4-12, -13.

[124] 158 Colo. at 501, 408 P.2d at 438.

[125] *Id.*

[126] People *ex rel.* Cheyenne Soil Erosion Dist. v. Parker, 118 Colo. 13, 192 P.2d 417 (1948).

[127] People *ex rel.* Dunbar v. Proposed Toll Gate Sanitation Dist., 128 Colo. 33, 261 P.2d 152 (1953).

[128] 102 Colo. 284, 79 P.2d 274 (1938).

[129] COLO. REV. STAT. ANN. §§ 150-5-1 to -50 (1963). For a good presentation of the important provisions of this act, and the *Letford* case upholding its constitutionality, see Kelly, *Water Conservancy Districts*, 22 ROCKY MT. L. REV. 432 (1950).

servancy districts were granted the power to levy ad valorem taxes as well as special benefit assessments.[130] Discussing the constitutionality of the power to levy ad valorem taxes, the court quoted the constitutional provision which authorizes the legislature to grant to the corporate authorities of "any county, city, town or other municipal corporation" the power to levy and collect taxes for all purposes of such corporation,[131] and continued: "In this grant of power [*i.e.*, the power to levy ad valorem taxes] lies the distinction between a water conservancy district under this act and . . . irrigation districts . . . . *The public character of the water conservancy district is the occasion for this difference.*"[132]

The court held that a water conservancy district was a "quasi-municipal corporation formed for a public state purpose," and had the power to levy "an ad valorem tax based upon the same valuations as all general taxes."[133] This type of district was quite carefully distinguished from irrigation districts as examples of public or quasi-public corporations. It was stated that "an irrigation district operates in a proprietary rather than a public capacity,"[134] and thus cases limiting the power of irrigation districts to levy ad valorem taxes had no applicability to water conservancy districts as quasi-municipal corporations. Three years later the court affirmed the reasoning in *Letford* in deciding the constitutionality of the grant of the power to levy ad valorem taxes to water districts:

> Section 7 of the [Water and Sanitation District] act provides inter alia that a district "shall be a governmental subdivision of the state of Colorado and a body corporate, with all the powers of a public or quasi-municipal corporation." If the district is such and no question is here raised on this point, the power to levy general taxes on all property, real and personal, within the district may be conferred by the legislature.[135]

In the case of *Kistler v. Northern Colorado Water Conservancy District*[136] the court again distinguished between irrigation districts as public or quasi-public corporations and water conservancy districts as quasi-municipal corporations on the basis of the latter's purposes

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[130] COLO. REV. STAT. ANN. § 150-5-16 (1963).

[131] COLO. CONST. art. X, § 7.

[132] 102 Colo. at 301, 79 P.2d at 283 (emphasis added).

[133] *Id.* at 302, 79 P.2d at 284.

[134] *Id.* at 302, 79 P.2d at 283.

[135] Gordon v. Wheatridge Water Dist., 107 Colo. 128, 136-37, 109 P.2d 899, 903 (1941). As though to further emphasize the fact that quasi-municipal corporations exist to benefit the inhabitants of the district generally and not only landowners, the water district act in this case was declared unconstitutional on the grounds that it authorized the district to levy an ad valorem tax on real estate solely, thereby exempting personalty and violating the uniformity and exemption clauses of the Colorado constitution.

[136] 126 Colo. 11, 246 P.2d 616 (1952).

and status as state agencies and their general taxing powers. The court used these words:

> The [water conservancy] district as here created is, according to our adjudication in the Letford case, supra, a state agency, and as such is a public corporation with broad powers to accomplish its objects which are of *public* benefit, an advantage to the people of the state as a whole.[137]

This is in striking contrast to an irrigation or other public or quasi-public corporation which is "a local organization to secure a local benefit," "from which the state, or the public at large, derives no direct benefit."[138] The *Kistler* court added:

> It is technically characterized as a "quasi-municipal corporation," however, designed for *state* purposes. It is, by the broad grant of power to levy taxes, distinguished from the usual irrigation districts authorized by Colorado statutes.[139]

This distinction was summed up in the *Ruberoid* case, previously mentioned, where the court said:

> Unlike special [local] improvement districts, which do have as their objective improvement of the respective properties and which are financed by a special assessment on each by reason of the relationship to the improvement bestowed, a water and sanitation district is directly concerned with the public health and welfare. . . . Because of that fact, the water and sanitation district does not depend on special assessments for its revenue or taxing authority. Instead, there is in the act . . . conferred upon the board "power and authority *to levy and collect ad valorem taxes* . . . ."[140]

Another distinction between the extent of the taxing power of a public or quasi-public corporation and a quasi-municipal corporation was made in the *Letford* case: Public or quasi-public corporations, which are given only the power to levy special benefit assessment taxes, cannot collect cumulative levies to meet defaults and deficiencies.[141] Speaking of public or quasi-public corporations as local special improvement districts, the court met the objection that cumulative levies of ad valorem taxes by a water conservancy district were unconstitutional, saying:

> It has very generally been held that such [cumulative] levies could not be made for the purpose of paying deficiencies arising from a nonpayment of taxes in local special improvement districts such as irrigation and drainage districts. . . .
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> These decisions are based upon the theory that the assessments levied in a local special improvement district cannot exceed the benefits conferred upon the property involved. The distinction

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[137] *Id.* at 14, 246 P.2d at 618.

[138] Interstate Trust Co. v. Montezuma Valley Irrigation Dist., 66 Colo. 219, 221, 181 P. 123, 124 (1919).

[139] 126 Colo. at 14, 246 P.2d at 618.

[140] 158 Colo. 498, 500, 408 P.2d 436, 437 (1965).

[141] *See* text accompanying note 101 *supra.*

> between such a district and the one under consideration has been heretofore pointed out . . . . [T]he objection is not tenable.[142]

The point should be clear by now that two separate classes of districts have been distinguished. One is for public purposes, the other is not; one is a state agency, the other is not; one is to benefit the public generally, the other is for the benefit of private landowners only. And it should be clear by now that the presence or absence of the power to levy general ad valorem taxes has frequently been used by the court to determine whether a particular kind of district, such as irrigation or water conservancy, is one or the other. For example, no district has ever first been declared to be a public or quasi-public corporation and consequently denied the power to levy general ad valorem taxes. Rather, the presence or absence of this power has first been noted, and the district then found to be either quasi-municipal or public or quasi-public.[143]

D. *Tax Exemption*

Quasi-municipal corporations are exempt from state and county taxes. Three of the enabling statutes contain specific exemptions.[144] The remaining eight districts are exempt from taxes because of their quasi-municipal status. In response to the question of what criterion is used to determine whether or not a particular district is exempt from taxation, the Colorado Tax Commission replied that municipal corporations are exempt from state and county taxes under the Colorado constitution,[145] and added, "Examples of districts which are not subject to local taxes would include fire, recreation, water, hospital, sewer."[146] Three of these have been held by the courts to be quasi-municipal corporations. The others are similar in all material respects. Thus, unlike public or quasi-public corporations, quasi-municipal corporations are exempt from local taxation without a special statutory exemption. In this respect they are treated as municipal corporations.

A problem arises, however, as to the classification of irrigation districts formed under the Irrigation District Act of 1935.[147] Under

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[142] 102 Colo. at 305-06, 79 P.2d at 285.

[143] *See* Petition of Board of Directors of Tillamook People's Util. Dist., 160 Ore. 530, 86 P.2d 460 (1939); Pacific Gas & Elec. Co. v. Sacramento Municipal Util. Dist., 92 F.2d 365 (9th Cir. 1937). However, this logic has been criticized. *See* Brown, *People's Utility Districts in Oregon,* 20 ORE. L. REV. 3 (1940). "[T]he nature of the taxing power would seem to result from the nature of the district rather than the converse, since, if the agency is a municipal corporation, it may exercise a general taxing power, but otherwise not." *Id.* at 10.

[144] Grand Junction Drainage District, COLO. REV. STAT. ANN. § 47-12-27 (1963); Domestic Waterworks Districts, COLO. REV. STAT. ANN. § 89-1-14 (1963); Metropolitan Sewage Disposal Districts, COLO. REV. STAT. ANN. § 89-15-42 (1963).

[145] COLO. CONST. art. X, § 4 (quoted at note 79 *supra*).

[146] Letter from Howard A. Latting, Chairman, Colorado Tax Commission, to Benjamin Novak, December 2, 1966.

[147] COLO. REV. STAT. ANN. §§ 150-3-1 to -88 (1963).

this act irrigation districts are granted the power to levy general ad valorem taxes.[148] If, as was stated above, the presence of this power alters the nature of the district, changing it from a public or quasi-public corporation into a quasi-municipal corporation, could it not be argued that they should be exempt from local taxes under the constitution? This argument has not yet been tested before the courts and all irrigation districts are at present subject to taxation. Were this to be litigated, the court would be presented with interesting alternatives. If the court chose to remain consistent, it could either void the power to levy ad valorem taxes, saying that an irrigation district was either intended by the legislature to be, or is per se, primarily for the benefit of the private landowners. Or it could decide that an irrigation district granted such power is quasi-municipal in nature and thus falls under the constitutional exemption applicable to other quasi-municipal corporations. On the other hand, the court, by taking a position inconsistent with its former decisions, could maintain both the power and the tax liability of irrigation districts. However, it would seem strange if an irrigation district possessing all the powers of, say, a water district, were to be taxed by the state solely because it supplied water for agricultural and rural uses rather than industrial and urban uses. What the courts will do remains to be seen.

E. *Quasi-Municipal Distinguished from Municipal Corporations*

Quasi-municipal corporations have been distinguished from public or quasi-public corporations on the basis of the greater public powers and purposes accorded to the former. In many respects quasi-municipal corporations are indistinguishable from municipal corporations proper. In more than one case, districts which have been classified here as quasi-municipal have been referred to as municipal corporations proper. As regards tort liability quasi-municipal corporations are treated as municipal corporations.[149] Authority to be granted the power to levy general taxes as well as exemption from taxation is derived from the "other municipal corporations" clauses of article X, sections 4 and 7, respectively, of the Colorado constitution. Three of the 11 enabling acts under which these districts are formed state that they either "shall be a municipal corporation" or "shall have the powers of a municipal corporation."[150] Why, then, are these districts classified as "almost," or quasi-municipal corporations? And how are quasi-municipal corporations distinguished from municipal corporations proper?

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[148] *Id.* § 150-3-35.

[149] Cerise v. Fruitvale Water and Sanitation Dist., 153 Colo. 31, 384 P.2d 462 (1963).

[150] Domestic Waterworks Districts, COLO. REV. STAT. ANN. § 89-1-11(1) (1963); Metropolitan Stadium District, COLO. REV. STAT. ANN. § 89-19-2 (Supp. 1967); and Mine Drainage Districts, COLO. REV. STAT. ANN. § 92-98-10 (1963).

The majority of the enabling acts for these districts specifically state that the districts formed under them shall be quasi-municipal corporations.[151] The wording of the Metropolitan Districts Act is typical: "[T]he district shall be a governmental subdivision of the State of Colorado and a body corporate with all the powers of a public or quasi-municipal corporation."[152] Commenting on this clause, the Colorado Supreme Court, in the case of *Aurora v. Aurora Sanitation District*,[153] said:

> The significance, as well as the definitive limitations, of the latter legislative declaration, is made apparent when it is considered that a quasi-municipal corporation is not a true municipal corporation having powers of local government, but is merely a public agency endowed with such of the attributes of a municipality as may be necessary in the performance of its limited objective.[154]

This element of the "powers of local government," which the court has denied to quasi-municipal corporations, is listed by McQuillin as one of the six elements necessary to constitute a municipal corporation in its strict and proper sense.[155] What is meant by the term "power of local government" was explained in the case of *Stermer v. Board of Commissioners*.[156] The court in *Stermer* held that the primary purpose of a municipal corporation is the regulation of conduct and the administration of its own internal affairs. Speaking of a community with the power of local self-government, the court said:

> It is a community invested with peculiar functions for the benefit of its own citizens. It possesses a local government of its own, with executive, legislative, and judicial branches. *It can enact and enforce ordinances, having the force of laws, for the regulation of its domestic concerns and the preservation of its peace.*[157]

No quasi-municipal corporation in Colorado presently possesses this kind of power. However, the history of police protection districts, which until 1965 were enabled to be formed possessing substantial powers of local government, should well illustrate the importance of this distinction. The Metropolitan Districts Act of 1947 authorized the formation of a number of different kinds of districts, either singly

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[151] Metropolitan Districts, COLO. REV. STAT. ANN. § 89-3-8(7) (1963); Water and Sanitation Districts, COLO. REV. STAT. ANN. § 89-5-7(7) (1963); Fire Protection Districts, COLO. REV. STAT. ANN. § 89-6-7(7) (1963); Metropolitan Recreation Districts, COLO. REV. STAT. ANN. § 89-12-7(6) (1963); Metropolitan Water Districts, COLO. REV. STAT. ANN. § 89-13-3 (1963); and Metropolitan Sewage Disposal Districts, COLO. REV. STAT. ANN. § 89-15-6(2) (1963).

[152] Metropolitan Districts, COLO. REV. STAT. ANN. § 89-3-8(7) (1963).

[153] 112 Colo. 406, 149 P.2d 662 (1944).

[154] *Id.* at 411, 149 P.2d at 664.

[155] 1 E. MCQUILLIN, MUNICIPAL CORPORATIONS § 2.07 (3d ed. 1949).

[156] 5 Colo. App. 379, 38 P. 839 (1895).

[157] *Id.* at 388, 38 P. at 842 (emphasis added).

or in combination. One of these kinds was a "police protection district." Under the act, such districts were empowered:

> (a) To license, tax, regulate, or prohibit hucksters, peddlers, pawn brokers, billiard or pool halls, places of amusement, junk dealers, and the transportation or storage of any dangerous or inflammable liquids, gases or solids within the district.
>
> (b) To establish and regulate a police force for the district and to pass and enforce all necessary police regulations. Prosecution for violation of any regulations of the district shall be handled by the District Attorney . . . in the same manner as . . . provided by law for the prosecution of misdemeanors . . . .
>
> . . . .
>
> (d) To make, adopt, amend, extend, add to or carry out a master plan for the physical development of the district . . . . [T]he board shall have all of the powers granted to the zoning commission of any first class city . . . .[158]

No district was ever formed to provide for police protection under this act, and consequently there are no cases testing its constitutionality before the courts. But in 1964 the Governor's Local Affairs Study Commission leveled such deep criticism and raised such doubts as to its constitutionality that the police protection provisions of the Metropolitan Districts Act were repealed by the legislature the following year.[159] Among the criticisms aimed at these provisions was the following comment:

> [T]he act apparently would permit the district directors to exercise powers similar to the ordinance power exercised by municipal governing bodies to determine offenses punishable by fine and imprisonment. The central question presented is: Can the general assembly constitutionally delegate to the governing bodies of quasi-municipal corporations legislative power to determine what is in the interest of public health, welfare and safety?[160]

Under *Aurora* and *Stermer* the answer clearly would be no. For with the power to enact police, zoning, and other ordinances having the force of law, and the power to enforce them, these districts clearly fell into the definition of municipal corporation given in *Stermer;* and these powers would certainly qualify as the power of local government referred to in *Aurora.* Indeed, the Local Affairs Study Commission referred to these districts as "Junior City Districts."[161] If districts could be granted these powers, any distinction between cities and towns and such districts would be without a difference. On the basis of the *Aurora* and *Stermer* decisions, taken together, it is safe to say that no quasi-municipal corporation can be granted the power of local self-government.

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[158] Ch. 238 § 15, [1947] Colo. Laws 668-69 (repealed 1965).

[159] Ch. 218, § 2, [1965] Colo. Laws 866.

[160] GOVERNOR'S LOCAL AFFAIRS STUDY COMM'N, ANALYSIS OF THE 1947 METROPOLITAN DISTRICTS ACT — THE ORGANIZATION, FUNCTIONS, POWERS, AND PROBLEMS OF METROPOLITAN DISTRICTS 8 (1964).

[161] *Id.* at 9.

However, this does not mean that special districts cannot make any regulations. Public or quasi-public and quasi-municipal corporations can, of course, make regulations which are administrative in nature, relating to the local improvement or special service with which they are charged. Further, referring to the *Cheyenne* decision upholding the power of soil erosion and soil conservation districts to enact "land use ordinances," where the regulations are in the nature of bylaws of a private corporation, they will be upheld.

The *Aurora* decision, in which the negative definition of quasi-municipal corporations already mentioned was given, involved the question of whether quasi-municipal corporations could exist within the boundaries of municipal corporations proper. The City of Aurora sought to enjoin the operations and nullify the existence of the Aurora Sanitation District which lay wholly within the City's boundaries. The City argued the well-known principle, "There cannot be at the same time, within the same territory, two distinct municipal corporations, exercising the same powers, jurisdictions and privileges."[162] The court held that the district was a quasi-municipal corporation, and that the district and the City did not have the same powers, and thus, although two municipal corporations could not exist in the same territory, a municipal corporation and a quasi-municipal corporation did not conflict with each other. This principle was affirmed in a similar case three years later.[163]

There are other differences between quasi-municipal and municipal corporations. In 1936 the Colorado constitution was amended to permit the legislature to impose an annual specific ownership tax upon motor vehicles, trailers, et cetera, the proceeds to be distributed "to the State and its political subdivisions" in lieu of all ad valorem taxes upon property.[164] In *Northern Colorado Water Conservancy District v. Witwer*,[165] the sole question to be decided was whether a water conservancy district was one of the political subdivisions of the state within the purview of the amendment to the constitution. The court held that water conservancy districts, despite the holding in the *Letford* case that they are "almost" municipal corporations, were not subdivisions of the state in the same sense as counties, cities, towns, and school districts, and thus could not claim any revenue from the motor vehicle tax.

Besides the explicit distinctions and differences of the *Aurora* and *Witwer* decisions, another distinction in the form of a limitation

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[162] City of Aurora v. Aurora Sanitation Dist., 112 Colo. 406, 410, 149 P.2d 662, 664 (1944).

[163] Garden Home Sanitation Dist. v. City & County of Denver, 116 Colo. 1, 177 P.2d 546 (1947).

[164] COLO. CONST. art. X, § 6.

[165] 108 Colo. 307, 116 P.2d 200 (1941).

upon quasi-municipal corporations was implied in the case of *Four County Metropolitan Capital Improvement District v. Board of Commissioners.*[166] M.C.I.D. was "a device for collecting a sales tax on a region-wide basis, with the proceeds earmarked, by units of government, for capital improvements and capital equipment."[167] The district directors were given power to levy a 2 percent sales tax to be collected in all of the municipalities of the metropolitan area of Denver, to keep separate accounts for each unit of government in the area in which the taxes were collected, and to purchase capital equipment or construct capital improvements in accordance with the desires of each of the units of government within the district, and upon completion of the purchase or construction, to turn the equipment or improvement over to the unit of government from which the sales tax was collected, and by whom it had been requested. The district was declared unconstitutional on many grounds, the most significant relating to its violation of the home rule provisions of the Colorado constitution. But in elaborating upon its original opinion in the case, the court, upon its denial of the petition for rehearing, raised another objection which implies a further distinction between municipal and quasi-municipal corporations. The court appeared to limit constitutional validity of districts "which would increase the value of real property proportionately to the value of the improvement":[168]

> So far as the pronouncements of this court are concerned our recognition has never been given to any departure from the basic concept that an "improvement district" is geared to enhance the value of property; that such districts are financed by ad valorem taxes, or special assesments upon property; that the directors of such districts function as administrators of funds derived from taxes on real property the value of which has been enhanced by the "improvement."[169]

This statement by the court is confusing. If the court was implying that because the word "improvement" appeared in the district's title, that it was a local improvement district, and thus a public or quasi-public corporation, then the court is correct in saying that the district must be geared to enhance the value of property. But such districts are not financed by ad valorem taxes. On the other hand, if the district were a quasi-municipal corporation (the court nowhere classified the M.C.I.D.), then, while it could levy ad valorem taxes,

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[166] 149 Colo. 284, 369 P.2d 67, *petition for rehearing denied,* 149 Colo. 302, 369 P.2d 76 (1962).

[167] F. BRIDGE, METRO-DENVER: MILE-HIGH GOVERNMENT 63 (1963).

[168] *Id.* at 64.

[169] 149 Colo. at 304, 369 P.2d at 77.

its improvements or services need not be related to the value of property.[170]

This apparent dilemma may be solved by a different interpretation. In the next paragraph the court states: "A sales tax of 2% is imposed throughout the district. Thus at the very outset we have a significant departure from any district heretofore declared legal by this court."[171] Perhaps what the court is trying to say here is that quasi-municipal corporations, although they have been referred to as state agencies, cannot be given the power to levy a sales tax, though presumably this power might be given to municipal corporations proper. It should be noted that although it is true that the court has never passed upon the validity of a sales tax levied by a quasi-municipal corporation, the M.C.I.D. was not the first district authorized by the legislature to levy such a tax. Mine drainage districts have been authorized by the legislature since 1911 to levy a limited sales tax.[172] No other type of district is presently authorized to levy any kind of sales tax, but there would appear to be no constitutional reason why such a power could not be authorized by the legislature.

F. *Quasi-Municipal Corporations — Conclusion*

Quasi-municipal corporations constitute a unique class of special districts, partaking of those characteristics and powers of a municipal corporation which are necessary to perform their limited objective and achieve their limited purposes, as defined in their enabling acts. They have a legal nature all their own, and a function for which they are molded in powers and purposes by the legislature and the courts to provide for the needs of the citizens of the state. They establish a continuum between public or quasi-public corporations as classed herein and municipal corporations proper. It is hoped that this analysis will contribute to a better understanding and more effective use of them in the State of Colorado and in other states to which the same classificatory principles apply.

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[170] *See* text accompanying notes 119-25 *supra.*

[171] 149 Colo. at 305, 369 P.2d at 77.

[172] COLO. REV. STAT. ANN. § 92-28-19(5) (1963).