

**Section 35. Delegation of power.**

The general assembly shall not delegate to any special commission, private corporation or association, any power to make, supervise or interfere with any municipal improvement, money, property or effects, whether held in trust or otherwise, or to levy taxes or perform any municipal function whatever.

**Source:** Entire article added, effective August 1, 1876, see L. 1877, p. 42.

**Cross references:** For distribution of governmental powers, see article III of this constitution.

**ANNOTATIONS**

**Am. Jur.2d.** 16A Am. Jur.2d, Constitutional Law, §§ 288, 293.

**C.J.S.** See 16 C.J.S., Constitutional Law, §§ 256, 257, 265, 291, 297.

**Law reviews.** For article, "Extraterritorial Service of Municipally Owned Water Works in Colorado", see 21 Rocky Mt. L. Rev. 56 (1948). For comment, "Water: Statewide or Local Concern? City of Thornton v. Farmers Reservoir & Irrigation Co., 194 Colo. 526, 575 P.2d 382 (1978)", see 56 Den. L.J. 625 (1979).

**Design and purpose of this section** is to prohibit the delegation to private corporations of the exercise of powers strictly governmental. In re House, 23 Colo. 87, 46 P. 117, 33 L.R.A. 832 (1896).

The purpose of this provision was to prevent any organization being authorized by law to control or interfere with municipal matters. Town of Holyoke v. Smith, 75 Colo. 286, 226 P. 158 (1924).

purpose of this constitutional provision is to prevent the intrusion upon a municipality's domain of local self-government. Denver Urban Renewal Auth. v. Byrne, 618 P.2d 1374 (Colo. 1980); Reg'l Transp. Dist. v. Dept. of Labor, 830 P.2d 942 (Colo. 1992).

**And section to be given broad meaning.** In applying this provision, it should be given a broad and reasonable, rather than a technical meaning, so as to accomplish its evident purpose. Town of Holyoke v. Smith, 75 Colo. 286, 226 P. 158 (1924).

**"Municipal", for purposes of this section, refers to counties** and therefore the PUC may not regulate counties which are performing the "municipal function" of providing mass transit within county boundaries. City of Durango v. Durango Transp., 807 P.2d 1152 (Colo. 1991).

**"Municipal", for purposes of this section, is not limited to cities and towns.** Reg'l Transp. v. Dept. of Labor, 830 P.2d 942 (Colo. 1992).

**Section protects local self-government functions.** The subjects to which the protection of this section extends are such as properly fall within the domain of local self-government. If they are entitled to protection from an agency of the state exercising delegated powers of the kind enumerated, the right thus proposed to be protected would be violated as much by a general commission's doing the mentioned acts as by a special commission's doing the same things. Town of Holyoke v. Smith, 75 Colo. 286, 226 P. 158 (1924).

The purpose of this provision is to protect the right to local self-government over local services. City of Durango v. Durango Transp., 807 P.2d 1152 (Colo. 1991); Reg'l Transp. v. Dept. of Labor, 830 P.2d 942 (Colo. 1992).

**"Functional approach" is used to determine whether a unit of government is a municipality and a particular service is a municipal service.** City of Durango v. Durango Transp., 807 P.2d 1152 (Colo. 1991); Reg'l Transp. v. Dept. of Labor, 830 P.2d 942 (Colo. 1992).

**Functional approach to nondelegation issues** examines whether the function in question is truly local in the sense that, principally if not exclusively, it affects only those persons residing within the boundaries of the governmental unit in question and whether the political processes make those who perform the function responsive to the electorate within the affected area. Reg'l Transp. v. Dept. of Labor, 830 P.2d 942 (Colo. 1992).

Section 9. Limited gaming permitted.

(1) Any provisions of section 2 of this article XVIII or any other provisions of this constitution to the contrary notwithstanding, limited gaming in the City of Central, the City of Black Hawk, and the City of Cripple Creek shall be lawful as of October 1, 1991.

(2) The administration and regulation of this section 9 shall be under an appointed limited gaming control commission, referred to in this section 9 as the commission; said commission to be created under such official or department of government of the state of Colorado as the general assembly shall provide by May 1, 1991. Such official or the director of the department of government shall appoint the commission by July 1, 1991. The commission shall promulgate all necessary rules and regulations relating to the licensing of limited gaming by October 1, 1991, in the manner authorized by statute for the promulgation of administrative rules and regulations. Such rules and regulations shall include the necessary defining of terms that are not otherwise defined.

(3) Limited gaming shall be subject to the following:

(a) Limited gaming shall take place only in the existing Colorado cities of: the City of Central, county of Gilpin, the City of Black Hawk, county of Gilpin, and the City of Cripple Creek, county of Teller. Such limited gaming shall be further confined to the commercial districts of said cities as said districts are respectively defined in the city ordinances adopted by: the City of Central on October 7, 1981, the City of Black Hawk on May 4, 1978, and the City of Cripple Creek on December 3, 1973.

(b) Limited gaming shall only be conducted in structures which conform, as determined by the respective municipal governing bodies, to the architectural styles and designs that were common to the areas prior to World War I and which conform to the requirements of applicable respective city ordinances, regardless of the age of said structures.

(c) No more than thirty-five percent of the square footage of any building and no more than fifty percent of any one floor of such building, may be used for limited gaming.

(d) Limited gaming operations shall be prohibited between the hours of 2:00 o'clock a.m. and 8:00 o'clock a.m.

(e) Limited gaming may occur in establishments licensed to sell alcoholic beverages.

(4) As certain terms are used in regards to limited gaming:

(a) "Adjusted gross proceeds" means the total amount of all wagers made by players on limited gaming less all payments to players; said payments to players being deemed to include all payments of cash premiums, merchandise, tokens, redeemable game credits, or any other thing of value.

(b) "Limited gaming" means the use of slot machines and the card games of blackjack and poker, each game having a maximum single bet of five dollars.

(c) "Slot machine" means any mechanical, electrical, video, electronic, or other device, contrivance, or machine which, after insertion of a coin, token, or similar object, or upon payment of any required consideration whatsoever by a player, is available to be played or operated, and which, whether by reason of the skill of the player or application of the element of chance, or both, may deliver or entitle

the player operating the machine to receive cash premiums, merchandise, tokens, redeemable game credits, or any other thing of value other than unredeemable free games, whether the payoff is made automatically from the machines or in any other manner.

(5) (a) Up to a maximum of forty percent of the adjusted gross proceeds of limited gaming shall be paid by each licensee, in addition to any applicable license fees, for the privilege of conducting limited gaming. Such percentage shall be established annually by the commission according to the criteria established by the general assembly in the implementing legislation to be enacted pursuant to paragraph (c) of this subsection (5). Such payments shall be made into a limited gaming fund that is hereby created in the state treasury.

(b) (I) From the moneys in the limited gaming fund, the state treasurer is hereby authorized to pay all ongoing expenses of the commission and any other state agency, related to the administration of this section 9. Such payment shall be made upon proper presentation of a voucher prepared by the commission in accordance with statutes governing payments of liabilities incurred on behalf of the state. Such payment shall not be conditioned on any appropriation by the general assembly.

(II) At the end of each state fiscal year, the state treasurer shall distribute the balance remaining in the limited gaming fund, except for an amount equal to all expenses of the administration of this section 9 for the preceding two-month period, according to the following guidelines: fifty percent shall be transferred to the state general fund or such other fund as the general assembly shall provide; twenty-eight percent shall be transferred to the state historical fund, which fund is hereby created in the state treasury; twelve percent shall be distributed to the governing bodies of Gilpin county and Teller county in proportion to the gaming revenues generated in each county; the remaining ten percent shall be distributed to the governing bodies of the cities of: the City of Central, the City of Black Hawk, and the City of Cripple Creek in proportion to the gaming revenues generated in each respective city.

*20% for pres & rector.  
to 4  
govt  
body  
BH*

(III) Of the moneys in the state historical fund, from which the state treasurer shall also make annual distributions, twenty percent shall be used for the preservation and restoration of the cities of: the City of Central, the City of Black Hawk, and the City of Cripple Creek, and such moneys shall be distributed, to the governing bodies of the respective cities, according to the proportion of the gaming revenues generated in each respective city. The remaining eighty percent in the state historical fund shall be used for the historic preservation and restoration of historical sites and municipalities throughout the state in a manner to be determined by the general assembly.

*8%*

(c) and (d) Repealed.

(e) The general assembly shall enact provisions for the special licensing of qualifying nonprofit charitable organizations desiring to periodically host charitable gaming activities in licensed gaming establishments.

(f) If any provision of this section 9 is held invalid, the remainder of this section 9 shall remain unimpaired.

**(6) Local vote on legality of limited gaming - election required.** (a) Except as provided in paragraph (e) of this subsection (6), limited gaming shall not be lawful within any city, town, or unincorporated portion of a county which has been granted constitutional authority for limited gaming within its boundaries unless first approved by an affirmative vote of a majority of the electors of such city, town, or county voting thereon. The question shall first be submitted to the electors at a general, regular, or special election held within thirteen months after the effective date of the amendment which first adds such city, county, or town to those authorized for limited gaming pursuant to this constitution; and said election shall be conducted pursuant to applicable state or local government election laws.

(b) If approval of limited gaming is not obtained when the question is first submitted to the electors, the question may be submitted at subsequent elections held in accordance with paragraph (d) of this subsection (6); except that, once approval is obtained, limited gaming shall thereafter be lawful within the said city, town, or unincorporated portion of a county so long as the city, town, or county remains among those with constitutional authority for limited gaming within their boundaries.

(c) Nothing contained in this subsection (6) shall be construed to limit the ability of a city, town, or county to regulate the conduct of limited gaming as otherwise authorized by statute or by this constitution.

(d) (I) The question submitted to the electors at any election held pursuant to this subsection (6) shall be phrased in substantially the following form: "Shall limited gaming be lawful within ?"

(II) The failure to acquire approval of limited gaming in the unincorporated portion of a county shall not prevent lawful limited gaming within a city or town located in such county where such approval is acquired in a city or town election, and failure to acquire such approval in a city or town election shall not prevent lawful limited gaming within the unincorporated area of the county in which such city or town is located where such approval is acquired in an election in the unincorporated area of a county.

(III) If approval of limited gaming is not acquired when the question is first submitted in accordance with this subsection (6), the question may be submitted at subsequent elections so long as at least four years have elapsed since any previous election at which the question was submitted.

(e) Nothing contained in this subsection (6) shall be construed to affect the authority granted upon the initial adoption of this section at the 1990 general election, or the conduct and regulation of gaming on Indian reservations pursuant to federal law.

(f) For purposes of this subsection (6), a "city, town, or county" includes all land and buildings located within, or owned and controlled by, such city, town, or county or any political subdivision thereof. "City, town, or county" also includes the city and county of Denver.

**Source: Initiated 90:** Entire section added, effective upon proclamation of the Governor, L. 91, p. 2037, January 3, 1991. **L. 92:** (6) added, p. 2313, effective upon proclamation of the Governor, L. 93, p. 2158, January 14, 1993. **L. 2002:** (5)(c) and (5)(d) repealed, p. 3095, § 1, effective upon proclamation of the Governor, L. 2003, p. 3611, December 20, 2002.

**Cross references:** For statutory provisions concerning limited gaming, see articles 47.1 and 47.2 of title 12.

#### ANNOTATIONS

**Law reviews.** For article, "Colorado's New Gaming Industry", see 20 Colo. Law. 207 (1991).

**This section and section 20 of article X of the Colorado Constitution are not in direct conflict.** Submission of Interrogatories on Senate Bill 93-74, 852 P.2d 1 (Colo. 1993).

**This section prohibits the general assembly from enacting limitations on revenues collected by the Colorado Limited Gaming Commission** in order to comply with section 20 of article X of the Colorado Constitution, and insofar as revenues generated by limited gaming might tend in a given year to violate the spending limits imposed by that section, the general assembly may comply by decreasing revenues collected elsewhere, or if that is impossible after the fact, by refunding the surplus to taxpayers. Submission of Interrogatories on Senate Bill 93-74, 852 P.2d 1, (Colo. 1993).

**Limited gaming control commission acted properly and within its authority in promulgating regulation**