Attachment P

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Dr. Stephen Block
Executive Director
Denver Options, Inc.
9900 East Iliff Ave.
Denver, CO 80231

Re: Proposed Legislation Concerning Appropriation of Denver Mill Levy Dollars

Dear Dr. Block:

This letter responds to your inquiry regarding the home rule implications of a state statute attempting to appropriate Denver mill levy dollars for state developmental disabilities funding. It is my opinion based upon my initial review of the situation that such a state statutory effort would violate Denver's home rule powers. I believe there are other legal problems as well with such a statutory scheme, however, this letter discusses only the home rule issue.

Denver is the original home rule jurisdiction in the State of Colorado. From early in the State's history, Colorado's Constitution has recognized Denver's home rule powers. *See* Colo. Const. art. XX. Denver's home rule power gives it plenary authority over local matters. *See City and County of Denver v. State*, 788 P.2d 764, 767 (Colo. 1990). In determining what matters are local in character, the courts look to a number of factors, including the need for statewide uniformity and impact on persons outside of the home rule jurisdiction. *See id.* at 768.

Denver's mill levy was adopted by the citizens of Denver for the express purpose of having the additional property taxes approved by Denver's voters be used for the provision of additional developmental disabilities in the City and County of Denver. This approval was a clear exercise of Denver's home rule power.

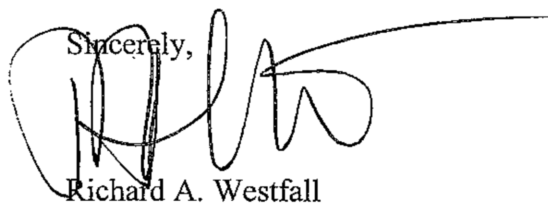
Any attempt by the General Assembly to try to appropriate this money would be contrary to well-established home rule law. First, the General Assembly would not be able to claim that there was a need for statewide uniformity to justify making the matter one of statewide concern. Not all parts of the State have mill levy funding, and the General Assembly has no way of enacting any type of state-wide legislative scheme because of the necessity for voter approval under TABOR, Colo. Const. art. X, § 20. There is no extra-territorial impact, moreover, because the funds raised are exclusively from Denver property taxes, and the expenditure of those funds is exclusive to Denver.

The developmental disabilities statute that addresses mill levy, C.R.S. § 27-10.5-104(6), in no way gives the State power to preempt Denver's mill levy ordinance adopted by Denver voters. That statute gives county commissioners the general power to voluntarily transfer local mill levy funds to the State to obtain federal Medicaid matching funds. Counties, however, with very few exceptions, are creatures of statute, and they do not possess home rule powers unless they have adopted home rule charters.

In the recent case of *Town of Telluride v. San Miguel Valley Corp.*, 185 P.3d 161 (Colo. 2008), the Colorado Supreme Court noted that deference needed to be afforded to the exercise of home rule powers that are expressly authorized by Colo. Const. art. XX. Here, Colo. Const. art. XX, § 6(g) expressly gives Denver the power to assess taxes on property within its jurisdiction. Under *Town of Telluride* and *City and County of Denver*, as well as under the plain language of Colo. Const. art. XX, the General Assembly has no ability to appropriate Denver's mill levy for developmental disabilities services.

Please contact me with any additional questions you may have in this regard.

Sincerely,



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