Officer for SDA Board of Directors Chosen for 2015

Featuring Our Local Government Partners, Part Three: Ken DeLay and the Colorado Association of School Boards

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Officers for SDA Board of Directors Chosen for 2015

At the February meeting of the SDA Board of Directors, the following slate of Officers was proposed and approved for 2015:

» Jim Kullhem as President (Representing Prospect Recreation and Park District)
» Leo Johnson as Vice President (Representing Southwest Suburban Denver Water and Sanitation District)
» Susan Saint Vincent as Treasurer (Representing Elbert County Library District)
» Jim Whitfield as Secretary (Representing Apex Park and Recreation District)

“Working with the SDA Board is a privilege, and we are excited for the year ahead,” said SDA’s Executive Director, Ann Terry. “The experience of the SDA Board is invaluable, and each Board member is a trusted representative of the special district they serve.”

Library Districts... This Webinar’s For You!

Tune in on Wednesday, April 29 at 10:00 am when Jacqueline Murphy from the State Library and Elizabeth Kelsen Huber from the Colorado Library Consortium discuss hot topics for Colorado library districts. Among other things, this presentation will cover trends and best practices around:

» Maintaining relevancy/community engagement
» Good governance
» Sustainable funding and making your tax dollars go farther

Visit www.sdaco.org to register today for this complimentary webinar!

Exhibitor Booths at SDA Annual Conference Sell Out in Less Than Two Weeks!

The sign-up for exhibitor booths at the upcoming SDA Annual Conference opened on Monday, February 23, and they were sold out before the end of the following week! This is a true testament to the value our associate members find in this opportunity to network with over 1000 professionals from the special district world.

Ann Terry, SDA’s Executive Director, was thrilled with the response. “Our sponsors and exhibitors play a huge role in the success of the Conference, and we look forward to working with everyone again this year.”

If you missed out on an exhibitor booth but are interested in a sponsorship, please contact Meredith Quarles at meredith@sdaco.org for options that may be available. And remember to join us September 23-25 in Keystone!
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Featuring Our Local Government Partners, Part Three:

Ken DeLay and the Colorado Association of School Boards  By Susan Thornton

Editor’s note: This is the third in a three-part series highlighting our colleagues at the other local government associations.

When Ken DeLay became executive director of the Colorado Association of School Boards (CASB) in 1999, membership was down, with several other school districts poised to leave the association.

Today, CASB, which was founded in 1941, can boast that 175 of the state’s 178 school districts are members. (The three districts that are not members are very small, DeLay says.)

Like SDA and the Colorado Municipal League (CML), CASB focuses on board training and on advocacy for its members at both the state and federal level. Also similar to the other local government associations, CASB has lawyers on staff and a policy department to answer members’ questions.

Regional Representation on CASB’s Board
CASB has a 22-member board of directors elected from 12 regions across Colorado. The number of directors from each region is based on pupil enrollment, with four seats reserved for the six largest school districts.

The directors are elected each fall at the Delegate Assembly, which also establishes the organization’s advocacy agenda for working with the state legislature and federal government. Last fall, 82 delegates attended the Delegate Assembly, where participants debated 20 resolutions dealing with issues such as mandates, equity in school finance, student assessments, and data privacy.

Challenges for Education
Asked about the most challenging issues facing the association today, DeLay says that at both the state and federal level, “assessment and how much testing” school districts must conduct is a highly contentious issue, with strong opinions held on all sides.

In addition, at the state level, school finances are a hot button, with the so-called “negative factor” (the difference between mandated funding and available funding) at almost $1 billion. “That means it would take almost $1 billion to fully fund Colorado’s school finance formula,” DeLay says. “The state is still trying to catch up from the recession.” He acknowledges that this is part of a larger state fiscal challenge rooted in Colorado’s constitution.

Great Partnerships
DeLay notes that CASB has a “great working relationship” with SDA and other local government organizations, especially around financial and constitutional issues.

The last 15 years have seen a lot of educational reform, he says. “CASB, working with SDA and CML, has had some success in stopping bad ideas that made their way onto the ballot, and in significantly influencing in the right direction legislation on matters from money to board meetings.”

A Son of the West
Born and raised on a ranch in Montana, DeLay earned a bachelor’s degree in economics from North Carolina State University and a law degree from the University of Colorado. Under his leadership, CASB has been a leading voice in the debates that have shaped education in Colorado in the 21st century.

To learn more about CASB, please visit their website at www.casb.org.

“CASB, working with SDA and CML, has had some success in stopping bad ideas that made their way onto the ballot, and in significantly influencing in the right direction legislation on matters from money to board meetings.”—Ken DeLay
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GO WEST.
The cumulative impacts of three seemingly unrelated constitutional amendments are strangling Colorado’s state government and local governments, including special districts.

In the case of the Colorado budget, the amendments are causing numerous problems for lawmakers and have led to a dramatic lack of funding for rapidly growing statewide needs such as K-12 education, Medicaid, social services, roads and bridges, prisons and more.

The analogy sometimes used by knowledgeable persons is that of mandating having one foot on the gas and the other on the brake—while expecting to move forward.

The Gallagher Amendment

The Gallagher Amendment, a constitutional amendment passed by the voters in 1982, helps determine how much homeowners and commercial property owners pay in property taxes. Under Gallagher, the assessment rate applied to the appraised value of residential property drops when the value of homes across the state grows faster than the value of commercial or industrial property.

In Colorado, residential property values have grown over the years, forcing down the assessment rate, and thus taxes, on homes and forcing up taxes on commercial/industrial properties.

Since 1982, assessment rates for taxes on homes have dropped from 21 percent to less than eight percent. At the same time, the assessment rates on commercial properties have been held steady at 29 percent. This happens because Gallagher also mandates that commercial or business taxpayers pay 55% of all property taxes collected in the county, while residential property taxpayers are responsible for just 45% of all taxes.

The Taxpayer’s Bill of Rights (TABOR)

TABOR is probably the most well-known of the conflicting amendments that are having a dramatic effect on Colorado’s budget. Passed by the voters in 1992, TABOR does a number of things:

- It prohibits any tax increase without a vote of the people, thus taking basic historic budgeting power away from state legislators, city councils, school boards and special district boards of directors.
- It caps the revenue that state and local governments can keep. The cap is the sum of the previous year’s limit, increased only by inflation and the percentage of change in the state’s population.
- If revenues fall, TABOR ratchets the cap downward. Unless the local government has “de-Bruced” (successfully asked the voters to eliminate this provision of TABOR), the cap can never go up again. It can only ratchet down.
- It requires that any revenue collected over the TABOR cap be refunded to the taxpayers, which is the situation facing the legislature today.
- This limitation only applies to the artificial “TABOR” limits, without regard to cash on hand, or funding needs.

Prior to the passage of TABOR, the state, special districts and other local governments wisely saved excess revenues from the “good years” so that they would be prepared for the years when revenues fell. With its mandate to refund “excess” revenues, TABOR makes that impossible today.

Since the passage of TABOR, Colorado’s state government has returned more than $2 billion to taxpayers rather than being able to use the funds to provide services, invest in infrastructure or make up for years of shortfall funding.

The Effect of Gallagher and TABOR on K-12 Schools

The effect of TABOR fell heavily on K-12 schools during the 1990s, when its strict limits prevented the state from providing increases that kept up with inflation.

At the same time, the Gallagher Amendment was causing Colorado school districts to lose revenues from residential property taxes, and TABOR was preventing boards of education from increasing their mill levies to make up the gap.

Continued on page 9
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Historically, K-12 schools in Colorado were funded mostly by local property taxes, with the state paying for a smaller portion of the costs. Today, however, due to a combination of the interaction of Gallagher and TABOR, the state’s General Fund provides more than 60 percent of school funding, up from the 40 percent it formerly provided to schools.

It’s also worth noting that funding for K-12 education now consumes more than 40 percent of the state’s General Fund appropriations.

Amendment 23
Now add a third constitutional amendment to the mix.

Amendment 23, proposed by K-12 education supporters and passed by the voters in 2000, requires the state to provide per-pupil funding that keeps up with inflation—whether or not the funding is urgently needed elsewhere, for example, to help communities recover from disastrous floods or fires.

Failure to meet this funding mandate during the recent economic depression has led to what is called a “negative factor” (the difference between mandated funding and available funding) of nearly $1 billion across Colorado’s more than 170 school districts.

In other words, the state has fallen short of its K-12 funding requirement by nearly $1 billion.

The Gordian Knot
So Colorado has one constitutional amendment forcing down K-12 school revenues lost to residential property taxes, a second constitutional amendment forcing the state to provide student spending to match inflation, and a third constitutional amendment forcing the state (and special districts and other local governments) to “give-back” revenues that exceed artificial caps.

And all this is happening at a time when the need for services at all levels is growing:

» Colorado is falling further and further behind with maintenance on roads and bridges (more than 50 percent of Colorado’s roads are rated “poor” or worse), as Medicaid rolls grow (by about 5,000 persons per month) and as prison populations increase dramatically.

» K-12 schools are unable to catch up from all the years when the economy turned downward.

» Cities and counties are struggling with the issue of children in poverty, as well as aging populations that require more and more services.

» And special districts struggle to find funding to address clean water mandates, maintain parks and open space, replace aging roofs on libraries, and replace infrastructure after several years of devastating fires and floods.

Colorado’s forecasted revenues for 2015 and for 2016 will exceed the TABOR cap, and as this article is being written, the legislature and governor are locked in discussions about whether to “give back” the excess (per the current statute), or whether to ask the voters if those revenues can be retained and appropriated for demonstrable needs, such as K-12 funding or roads.

The last time the state asked voters to temporarily lift TABOR’s cap was 2005. Voters approved a five-year time-out from TABOR when they passed Referendum C, but the effort to educate voters about Ref. C, led by the business community, cost millions.

Ease of Amending the Colorado Constitution
Those who study Colorado government say that the ease with which Colorado’s constitution can be amended is a large part of the problem.

Some food for thought: the U.S. Constitution has 27 amendments; Colorado’s constitution has been amended 158 times.
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Don’t Miss April’s Lunch and Learn!

Applying Public Private Partnership Concepts to Local Government Projects

Join us on Wednesday, April 22 from 11:30 am-1:30 pm for this enlightening discussion featuring Russ Dykstra from Spencer Fane and Eric Hecox from the South Metro Water Supply Authority.

To date in the U.S., most public private partnership (P3) projects have consisted of large highway, air and sea port, and social infrastructure projects. The vast majority of U.S. infrastructure projects typically involve local and state governments and are valued at less than $50 million. There is a growing desire in local and state level governments for creative solutions and utilization of private sector expertise and investment to maximize public return on water, sanitary sewer, and recreation projects. There is also growing utilization of P3 concepts and structures for inter-governmental cooperative projects.

This Lunch and Learn will discuss the application of critical P3 concepts to small projects and how to utilize those concepts in non-typical P3 and governmental transactions.

Mark your calendars to join us for this educational program which will be held at South Metro Water Supply Authority located at 8400 East Prentice Avenue in Greenwood Village (we will be in the second floor conference room). Register today at www.sdaco.org. The cost is $25 which includes the program and lunch.

Welcome New SDA Members

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- Burlington Conservation District
- Castle Pines Metropolitan District
- Castle Pines Commercial Metropolitan District No.2
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- Castle Pines Commercial Metropolitan District No.5
- Cherrylane Metropolitan District
- Colorado International Center Metro District No.13
- Eagle River Station Metropolitan District
- Eastern Hills Metropolitan District No.2
- Eaton Area Park and Recreation District
- Ellicott Metropolitan District
- Flat Rock Metropolitan District No.5
- Forest Trace Metropolitan District No.1
- Forest Trace Metropolitan District No.2
- Forest Trace Metropolitan District No.3
- GCC Metropolitan District No.3
- Highland Park Sanitation District
- Hillrose Rural Fire Protection District
- Hometown Metropolitan District No.1
- Horizon Drive Business Improvement District
- Lake of the Rockies Metropolitan District
- Lyons Regional Library District
- Mesa County Federal Mineral Lease District
- Miner’s Village Metropolitan District No.2
- Miner’s Village Metropolitan District No.3
- Mountain Shadows Metropolitan District (Weld County)
- Paradise of Colorado Metropolitan District
- RainDance Metropolitan District No.1
- RainDance Metropolitan District No.2
- RainDance Metropolitan District No.3
- RainDance Metropolitan District No.4
- Red Feather Mountain Library District
- Redtail Ranch Metropolitan District
- Rocky Mountain Fire District
- Skyland Metropolitan District
- St. Mary’s Glacier Water & Sanitation District
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SDA Welcomes Hospital District with Long History of Serving Community  
By Susan Thornton

When the Heart of the Rockies Regional Medical Center in Salida joined SDA last year, it represented a continuation of the 130-year-old facility’s ongoing dedication to improvement.

The hospital was first established in 1885 as the Denver and Rio Grande Railroad Hospital, serving railroad employees. The hospital was destroyed by a fire in 1899, and a “new” hospital building was erected in 1900 on the foundation of the original structure. It was sold to community leaders in 1962, then became the Salida Hospital District in 1976. In 1989, the facility was re-named Heart of the Rockies Regional Medical Center, and in 2008, a new hospital was built.

Serving the Upper Arkansas Valley
With the hospital, which has 25 beds, and with clinics in both Salida and Buena Vista, Heart of the Rockies serves approximately 20,000 residents in Chaffee County as well as northern Saguache and western Fremont counties.

Three Clinics Provide Outpatient Services
The hospital district’s specialty clinic in the hospital, and a medical clinic on highway 50 in Salida, includes physicians and surgeons from a wide range of specialties—such as psychiatry, neurology and nephrology—that are not often found in rural areas. A small gym is open to the community as part of the medical clinic’s large outpatient rehabilitation department, and a specialist from Denver provides gastroenterology service via telemedicine.

The Buena Vista Health Center is a family practice and internal medicine clinic, with cardiology, pain management and orthopedic care provided by visiting physicians. Physical therapy, cardiac and pulmonary rehabilitation, and counseling services are also available.

New Specialty Services Prevent Long Drives for Care
Marji Ackermann, public information officer for Heart of the Rockies, says the hospital district’s focus is on providing specialty services locally, so people don’t have to drive long distances for medical care. With that in mind, Heart of the Rockies has begun several new initiatives.

For example, the hospital is being remodeled to accommodate a dialysis unit where a contracting medical company will provide inpatient and outpatient care. “Patients and community members told us that having dialysis locally is very important to them,” Ackermann says.

Another new initiative is the Center for Breast Health, which boasts 3-D mammography equipment, breast MRI, stereotactic biopsy, and an integrated oncology practice that includes diet, exercise and massage as part of patients’ treatment plans. A surgeon, who practiced for 17 years at Yale-New Haven Hospital before joining the Heart of the Rockies’ medical staff in 2012, is bringing her background in breast surgery to the Center.

Heart of the Rockies is also proud of the Community Wellness Program it calls “Wellness U.” Last year, the program began providing direct access lab testing. “Anyone can drop in to get a blood test from a menu of 15 standard tests at a discounted cost, 365 days a year,” Ackermann says. There’s no need for referral from a physician, but it is the patient’s responsibility to take blood results to his or her care provider.

“We want to make monitoring of blood values accessible to everyone in the community,” Ackermann adds. “It can be important for someone with a thyroid condition, for example, who wants to check their values.”

The original hospital building (left) before the fire of April 14, 1899. At this time it was known as the Denver and Rio Grande Railroad Hospital. Hospital staff in 1903 in front of the “new” hospital building (right) which was erected after the 1899 fire.
Thriving While Other Rural Hospitals Struggle

With 381 employees, Heart of the Rockies is an economic engine for Chaffee County and is thriving while other Critical Access hospitals in rural parts of Colorado are struggling.

Heart of the Rockies is funded by a mill levy of 1.731, which will total approximately $659,000 in revenues in 2015. Ackermann says that the property tax accounts for less than one percent of gross revenues; most of the medical center’s revenues come from patient care.

The hospital system also seems to have less difficulty attracting health providers than some rural areas. “We’re extremely fortunate to have so many services and physicians here,” Ackermann says with a smile. “This area is so beautiful that it helps with recruitment of physicians and other staff. With hiking, biking, rafting and fishing, anyone who likes the out-of-doors wants to be here. And Monarch ski area is only 25 minutes away!”

Joins SDA for Leadership Resources

“Our hospital decided to join SDA because it offers our board and senior leadership resources that help us function better in the hospital district environment,” says Bob Morasko, CEO of Heart of the Rockies.

Ann Terry, SDA’s Executive Director, was pleased to welcome Heart of the Rockies as a new member. “The hospital has such a long history of serving the residents of the Upper Arkansas Valley, and they are a prime example of how special districts provide essential services to their communities. We look forward to working with Heart of the Rockies and providing them any tools we can to assist them in the efficient operation of their district.”

SDA Regional Workshops Present Law & Order: Special Districts

Investigating the Legal (and Practical) Obligations of District Directors and Managers through Real World Examples

SDA and the law firm of Collins Cockrel & Cole will be presenting these informative and entertaining workshops across the state during the month of June. If you have ever had questions about public meetings, public records, contracts and consultants, or any other number of issues related to the proper oversight of your district, you won’t want to miss this training!

Registration opens May 1 so mark your calendars and watch your emails and the SDA website at www.sdaco.org for more information. Cost for each workshop is $30 for members and $55 for non-members. See you there!

» Denver—Friday, June 12, 8:30 am-12:00 pm
  South Metro Fire Rescue Authority
  9195 East Mineral Avenue, Centennial (80112)

» Durango—Monday, June 15, 8:30 am-12:00 pm
  Durango Community Recreation Center
  2700 Main Avenue, Durango (81301)

» Grand Junction—Tuesday, June 16, 8:30 am-12:00 pm
  Grand Junction Police Department, Gary Konzak Training Room
  555 Ute Avenue, Grand Junction (81501)

» Vail—Wednesday, June 17, 8:30 am-12:00 pm
  Lionshead Welcome Center, Grand View Room
  395 East Lionshead Circle, Vail (81657)

» Granby—Thursday, June 18, 8:30 am-12:00 pm
  Grand Fire Protection District
  60500 US Highway 40, Granby (80446)

» Fort Collins—Tuesday, June 23, 8:30 am-12:00 pm
  Old Town Library, Community Room
  201 Peterson Street, Fort Collins (80524)

» Estes Park—Wednesday, June 24, 8:30 am-12:00 pm
  VFW Hall, 850 North St. Vrain Avenue
  Estes Park (80517)

» Fountain—Thursday, June 25, 8:30 am-12:00 pm
  City Hall Council Chambers
  116 South Main Street, Fountain (80817)

» Golden—Friday, June 26, 8:30 am-12:00 pm
  Mount Vernon Country Club, Canyon Room
  24933 Clubhouse Circle, Golden (80401)
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East Grand Fire Protection District’s Resident Program Helps Keep Volunteers

By Susan Thornton

If you attended the Fire Forum at the SDA Annual Conference in the fall of 2014, you learned that Colorado has an estimated shortage of 3,000 firefighters.

You also heard a concern shared by many Chiefs from smaller towns and rural areas across the state: it’s getting more and more difficult to recruit and retain volunteer firefighters.

The reasons, according to the Chiefs, are many:

- The state’s population is aging
- Adults—often working several jobs and caring for their children and their parents—are too busy to volunteer
- Firefighter applicants want to be full-time firefighters
- More people want a paid job, and fewer people want to volunteer anymore.

One solution for many fire departments is to have a “combined” staff of both paid and volunteer firefighters.

The volunteers are also covered by a district-funded health insurance program and may receive a pension when they retire.

East Grand, which serves 209 square miles in the Fraser Valley, currently has a paid staff of five (soon to be six, with the addition of a new volunteer coordinator position) and approximately 40 volunteers. The paid positions include a Fire Prevention Bureau with a Fire Marshal and Technician for inspections and plan reviews; an Office Manager and a Training Officer; the new Volunteer Coordinator; and the Fire Chief, who works out of the recently remodeled Headquarters Station.

Residents at Three Stations

The District has three stations. The Headquarters Station, located between Winter Park and Fraser, has six suites for volunteers (bedroom, sitting room, private bath, with a shared kitchen and living/dining area). Station Two, in Tabernash, contains three suites. The third, Red Dirt Station, co-owned with Grand Fire Protection District, covers the YMCA of the Rockies area and contains two apartments for volunteer firefighters.

“We recognized that people were working two, three or even four jobs to be able to afford living in the Fraser Valley,” Chief Holzwarth says. With the resident program, the District is “helping keep their housing costs under control.”

While living at the stations, the volunteers have “on duty” periods where in addition to responding to calls, they do chores, light maintenance and care for the stations. In essence, the volunteers have these duties in order to compensate for the value of the residence they occupy. It is a win-win, Chief Holzwarth says.
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Biggest Challenge
Chief Holzwarth joined East Grand Fire Protection District as a teenager 41 years ago when the District had three small metal buildings, two 500 GPM engines, three converted military trucks and two pickups. After high school, he attended Western State College (now Western Colorado State University) in Gunnison, while working at the Gunnison Ambulance Service. After graduating with a degree in business administration, Chief Holzwarth returned to the Fraser Valley and continued as a volunteer firefighter and officer. He has been Fire Chief for 20 years after being appointed in 1995, becoming full-time in 2003.

Today, although the resident program is an important asset to the District, Chief Holzwarth says his biggest challenge is in maintaining a combined volunteer fire department that is financially sound, and “keeping the volunteer count up.”

Jobs in the Fraser Valley, he explains, are mostly in service industries, construction, and tourism. “It’s great employment,” he says, “but it’s hard for workers to get away when there’s a call. If the boss says ‘no,’ you can’t just leave.”

To meet the need to have firefighters available whenever there is a call, East Grand has and is expanding a volunteer shifting program. Local firefighters and out-of-District firefighters from as far as Grand Junction and the Front Range are providing coverage.

Alarms and “Starter Castles” Pose Issues
East Grand Fire Protection District responds to structure fires, vehicle accidents, hazardous materials spills, wildland fires and calls for medical assistance. It also provides support to mountain rescue. Last year the department responded to 269 calls, many of them from alarm systems.

Carbon monoxide detectors, in particular, pose issues, Chief Holzwarth says. “We were really pushing to have them installed 10 years ago, even providing free detectors,” he states. “They certainly save lives, but the sensors expire after five years and need to be replaced, so there are issues with them if they’re not properly maintained.” The four-gas detectors and RAD 57 blood saturation sensors also get regular workouts, he adds. In addition, the District found that commercial hood systems were not keeping up with newer technologies and started a small, very successful grant program to get them upgraded.

Other issues relate to what locals call “McMansions” or “Starter Castles” in the Valley. Many are second homes, occupied for only part of the year. People are building these homes, some as large as 10,000 to 20,000 square feet (and larger), installing door monitoring systems, internet cameras, carbon monoxide detectors, and fire sprinkler and fire alarm systems—all of which can transmit alarms.

Adding to the difficulty, many of these homes are fairly remote, so getting to them takes a lot of time, Chief Holzwarth says.

Property Tax and Impact Fees
East Grand Fire Protection District is funded by a property tax of 6.143 mills, which yields an operating budget of $1.556 million per year. The District has no debt or debt service mill levy, but does receive money for capital improvements from an impact fee on new construction.

Fraser, Winter Park and Grand County created the impact fee at the District’s request in 2001 to help fund East Grand’s capital improvement needs. The fee is currently $483 on new construction and $286 per thousand square feet on new commercial buildings. Revenues from the fee can only be used to build a planned fire station and to buy firefighting apparatus and equipment.

A Big Fan of SDA
Chief Holzwarth says he is a big fan of SDA. Back in the early 1980s, when he was “wandering around the Capitol one day trying to understand what a proposed massive overhaul bill to the special district statutes would mean to us,” the governor’s secretary directed him to the SDA office, where he got the information he needed on the bill.

He says he presented the paperwork to join SDA to his board of directors at their very next meeting. By the way, the bill did not pass, but East Grand Fire Protection District has been an active SDA member ever since.

“I think sending our board members to SDA’s Annual Conference is extremely valuable,” Holzwarth says. “There they get to network with others and “learn they are not alone” in the issues they face.”
How Sovereign Immunity Can Bar Otherwise Valid Claims

Guest article by S. Lorrie Ray, Mountain States Employers Council

Two recent cases illustrate how sovereign immunity limits an employee’s ability to bring a lawsuit. Sovereign immunity is the legal theory that protects the government from being sued, except in limited circumstances. The underlying support for the theory is that the government exists to help its citizens and not to hurt them.

In the first case, a Milwaukee County employee with a chronic back condition attempted to sue the county and the Wisconsin Department of Health Services—a department of state government—for failing to accommodate her work restrictions in violation of the Americans with Disabilities Act. *Whitaker v. Milwaukee County* (7th Cir. 2014).

Both the district court and the Seventh Circuit Court of Appeals held for the county, finding that the Department of Health Services supervised Whitaker’s work in a cooperative arrangement with the county and was her “real” employer. But as part of the State of Wisconsin, the Department of Health Services enjoyed sovereign immunity and could not be sued. Meanwhile, the county had no involvement in the decisions leading to the lawsuit, nor did it have the power to override those decisions.

In a final and heroic attempt at a legal Hail Mary, Whitaker attempted to persuade the Seventh Circuit Court of Appeals that the county was liable as a “joint employer.” But the court found that her theory could only apply if each employer exercised so much control over the terms and conditions of her employment that they were both effectively employers. The court found that the employee could not prove the county participated in the decision to deny her leave, and thus joint employment did not exist.

Meanwhile, in Michigan, corrections officers were barred from bringing suit under the Fair Labor Standards Act (FLSA). The U.S. Court of Appeals for the Sixth Circuit ruled that a group of corrections officers could not proceed with FLSA overtime claims against the Michigan Department of Corrections because, as part of state government, the department was entitled to sovereign immunity. *Mich. Corr. Org. v. Mich. Dep’t of Corr.* (6th Cir. 2014).

Trying a new approach, the officers argued that their right to minimum wage and overtime pay were fundamental rights of national citizenship protected by the privileges and immunities clause of the U.S. Constitution. “No court to our knowledge has deemed wage-and-hour protections fundamental under the Constitution, and we see no reason to be the first,” was the court’s response.

As in *Whitaker*, the plaintiffs sought any legal basis to prevent their case from being tossed due to sovereign immunity. The officers argued that the Declaratory Judgment Act, a federal law that allows a court to declare “rights and other legal relations” of parties in court, provided a basis for their lawsuit. But this approach also failed, as the Act is not a basis for a lawsuit, but only provides additional remedies to parties who are already in court for a legitimate reason.
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