APPENDIX J
MEMO SECTION

MEMORANDUM

SERVICE LEVEL, PRIORITY, AND EFFICIENCY GUIDELINES

Staff attorneys are being asked to perform several types of duties, e.g., bill drafting, rule review, annotations, legal research, member requests, requests from other legislative agencies, and public requests. With the increasing demands on our time, it is critical that we be able to judge the appropriate level of service and learn how to "work smarter, not harder".

The purpose of these guidelines is to aid staff attorneys in judging the appropriate level of service to be provided, setting work priorities, and working more efficiently. These are guidelines and are not absolute rules; however, a staff attorney should have a reason for a substantial departure from the guidelines.

It is expected that additional guidelines will be provided if they are helpful and suggestions are hereby solicited. You may wish to include these guidelines in your three-ring binder with your drafting manual.

GUIDELINE NO. 1

TIME LIMITS ON PROCESSING REQUESTS FOR INFORMATION THAT ARE NOT RELATED TO AN EXISTING OR FUTURE BILL REQUEST OR RULE REVIEW ISSUE - THE KIND WE OFTEN WONDER WHETHER WE SHOULD BE DOING

1.1. Requests for information from the public should not require more than 15 minutes per request.

1.1.1. Can you distinguish between requests you can handle by yourself on the phone from memory or experience or which require no more than pulling out a book and responding orally?

1.1.2. On requests that more than cursory effort, do they really have to be done by our office, i.e., can they be referred to Legislative Council, the public library, or other public agencies? Can you put legislative assistants to work on the request without the legislative assistants having to devote more than one-half hour to the request? Can legislative assistants do the follow-up phone or correspondence?

1.2. Requests for information by legislators not related to an existing or future bill request or rule review issue should not require more than 30 minutes per request. (1.1.1 and 1.1.2 are incorporated by reference)

1.3. Requests that can't be handled under 1.1 and 1.2 should be discussed with the team leader to determine what is the priority of the request as compared to bill drafting, rule review, and annotation duties and how much more time, if any, should be spent on the request for information.

GUIDELINE NO. 2

ATTENDANCE AT MEETINGS INSIDE OR OUTSIDE THE OFFICE THAT HAVE TO DO WITH DRAFTING A BILL OR AN AMENDMENT

2.1. These meetings have become more and more of a factor in the drafting process. Attendance is often mandatory both in terms of being "requested" by the member and in terms of being helpful in drafting the bill. However, the staff attorney must be expected to control the demands on the attorney's time as a result of these meetings. Organized, structured meetings which accomplish something within a designated period of time should be expected; if the meeting involves a lot of hand-wringing and agonizing without a focus on the issues that will help the attorney do the attorney's drafting job the staff attorney should decline to attend or politely leave.

2.2. Obviously, the staff attorney must use discretion about the attorney role in the meeting and the attorney's expenditure of time, but the staff attorney is a professional with many responsibilities which must be balanced and a large workload which must be completed within a fixed period of time. This fact should and probably will be respected by those at the meeting or requesting your presence at the meeting.

2.3. When you go to a meeting your first duty is to find out whether and how long you need to be there and let the participants know how long you can afford to be there.

2.4. With the exception of "marathon mark-up" sessions where you really are getting the information needed to get a bill completed, is there ever a reason to be at a drafting meeting for more than an hour?

GUIDELINE NO. 3

NEVER HESITATE TO TELL YOUR TEAM LEADER WHERE YOU ARE ON PROJECTS AND TO CONSULT WITH YOUR TEAM LEADER ABOUT WHAT YOUR PRIORITIES SHOULD BE

3.1. Manage your time, keep on top of information requests and handle them efficiently, use the telephone to cut down on the time you take to respond to inquiries, minimize meetings and wasted time at meetings, and keep your team leader informed; but the greatest of these is keep your team leader informed.

GUIDELINE NO. 4
MINIMIZE TRIPS TO THE LIBRARY OR NEVER UNDERESTIMATE THE BENEFITS OF USING THE TELEPHONE

4.1. As lawyers, we have a tendency to think we have to head to the law library every time we get a question. Nothing takes the place of good, solid legal research to give us the comfort level we need to respond to a legal question and to assure a safe and accurate response. But we never seem to have time to go to the library and when we do the project seems to grow rather than become more subject to a quick, crisp answer.

4.2. Good advice: Never go the library until you have checked first to see how big the issue really is and have exhausted all possibilities of getting a quick answer over the phone from a colleague in the office, a team leader, another legislative staffer, an expert in an agency, or someone with a special purpose organization like the National Conference of State Legislatures. Long distance calls are encouraged within reason.

4.3. In all likelihood, the telephone calls will help you find out about the scope of the issue, who else is already working on the issue, and what is the "conventional wisdom" about the issue. It will also help you identify exactly what it is that you are being asked to do.

4.4. When you make your phone calls to determine the scope and nature of your question, you should also be refining the legal issue or question you are to address. If you still think you need to, go to the library, but budget your time and keep your other work priorities in mind.

MEMORANDUM

October 17, 1994
(Revised September 30, 1999)

TO: OLLS Attorneys

FROM: Sharon Eubanks

RE: Inclusion of Footnotes in OLLS Legal Opinions and Legal Memorandums

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In several situations in the past, someone misrepresented an OLLS letter or memorandum as a binding legal opinion or used the letter or memorandum for purposes unrelated to the legislative process, or both. In an attempt to minimize the occurrence of these situations in the future, the OLLS decided to include a standard footnote in every OLLS legal opinion and legal memorandum. The purpose of this footnote is to explain the purpose, scope, and contemplated use of the opinion or memorandum. Hopefully, the inclusion of this information will avoid misunderstandings about the contemplated use and effect of these documents.

If the memorandum relates to a bill pending before the General Assembly or a bill that has been requested but not introduced, the footnote would read:

> [1] This legal memorandum results from a request made to the Office of Legislative Legal Services (OLLS), a staff agency of the General Assembly, in the course of its performance of bill drafting functions for the General Assembly. OLLS legal memorandums do not represent an official legal position of the General Assembly or the state of Colorado and do not bind the members of the General Assembly. They are intended for use in the legislative process and as information to assist the members in the performance of their legislative duties.

If the memorandum does not relate to a bill and responds to a request made of our staff in its capacity as in-house counsel,[1] the footnote may be modified as follows:

> [1] This legal memorandum results from a request made to the Office of Legislative Legal Services (OLLS), a staff agency of the General Assembly, ~~in the course of its performance of bill drafting functions for the General~~

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[1] The OLLS acts as in-house counsel when it provides legal advice to the General Assembly as an institution and does not purport to be performing legal services for one or more individual members as clients. Typical in-house counsel situations might include title opinions, rule review memos, and research memos on issues that are or may become the subject of litigation.

~~Assembly.~~ IN ITS CAPACITY AS IN-HOUSE COUNSEL FOR THE GENERAL ASSEMBLY. OLLS legal memorandums do not represent an official legal position of the General Assembly or the state of Colorado and do not bind the members of the General Assembly. They are intended for use in the legislative process and as information to assist the members in the performance of their legislative duties.

If neither the phrase referring to bill drafting functions nor the phrase referring to in-house counsel applies, the footnote should not include either phrase.

The appropriate footnote should probably appear either at the end of the "RE: " line or after the first sentence or paragraph of the document.

Other standard footnotes deal with the OLLS' general approach to questions of the constitutionality of bills or statutes. These footnotes and the circumstances in which they should be used are as follows:

1. If the legal opinion or legal memorandum addresses the question of whether the General Assembly has constitutional authority to act in a particular subject area and deals with a pending bill:

> [1] The Office of Legislative Legal Services generally presumes that the General Assembly has authority to act in a subject matter area in the absence of state or federal constitutional limitation. I N. Singer, Sutherland Statutory Construction, section 2.03, at 27 (4th ed. 1985).

2. If the legal opinion or legal memorandum addresses the question of whether the General Assembly has constitutional authority to act in a particular subject area and deals with a statute that is already enacted:

> [1] Duly enacted laws are presumed constitutional unless unconstitutionality is proven beyond a reasonable doubt. Lamm v. Barber, 192 Colo. 511, 565 P.2d 538 (1977).

If you have any questions regarding the language of the footnotes or the use of a footnote for a particular issue, you should ask your team leader or ask me.

OLLS POLICIES ON LEGAL OPINIONS AND LEGAL MEMORANDUMS

October 27, 1994
(Revised October, 2005; December 2007)

In recent years, the number of requests for legal opinions [1] and legal memorandums[2] from the Office has been increasing. The increasing number of requests is a mixed blessing. The Office should be encouraged that our understanding of the law is sought and has credibility. On the other hand, the legal opinion or legal memorandum must be carefully and thoroughly researched and must state our understanding of the law as clearly and coherently as possible.

The importance of the Office's task in preparing legal opinions and legal memorandums is emphasized by the fact that a legislative policy decision can turn on a conclusion reached in a legal memorandum regarding the meaning or legal effect of a constitutional or statutory provision, pending or potential legislation, or case law or a discussion of the current state of the law contained in a legal memorandum. Increasingly, members are asking for and relying upon legal opinions that take a position on legal issues as well as legal memorandums that support such a position. As a result, the Office has become more involved in representing the General Assembly in legal matters relating to legislative actions taken in reliance on OLLS legal opinions and legal memorandums.

While OLLS legal opinions and legal memorandums aid the performance of legislative functions, there is always the danger that the Office or an attorney in the Office will be criticized for writing a legal opinion or legal memorandum that may be construed as controlling or dictating a legislative policy decision. This is a situation to be avoided, if possible, so that the determination of legislative policy remains in the province of the elected members.

Due to the sensitive nature of preparing legal opinions and legal memorandums, the changing legislative environment, and the evolving role of the OLLS in the legislative process, the Office established the following written statement of office policies governing legal opinions and legal memorandums.

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[1] A legal opinion is a document prepared by the office that draws a legal conclusion regarding the meaning or legal effect of constitutional or statutory provision, pending or potential legislation or case law. In many instances, a legal opinion addresses the constitutionality of pending or potential legislation or a past or potential government action.

[2] A legal memorandum does not draw conclusions like the ones required of a legal opinion and more typically provides an overview of a particular area of law or summarizes statutory or constitutional provisions or a recently decided case.

LEGAL OPINIONS, LEGAL MEMORANDUMS, AND THE LEGISLATIVE ENVIRONMENT

The different roles the OLLS plays in the legislative process impact the manner in which the Office approaches the preparation of legal opinions and legal memorandums.

The attorney role. As attorneys, we are expected to reflect the knowledge of the law, expertise, and judgment characteristic of attorneys. The opinion of an attorney about what the law is or what the law means is accorded a higher status than the opinion of a non-attorney.[3]

In this role, the Office acts as in-house counsel and represents the General Assembly in legal actions. As in-house counsel, the Office provides legal advice to the General Assembly as an institution rather than performing legal services for one or more individual members as clients. We also represent the General Assembly in litigation arising out of legislative actions and other litigation in which the General Assembly has an institutional interest.

The legislative staff role. As legislative staff, we are expected to reflect a service orientation and recognize that our job is to support the legislative process and the members by providing services that enable them to perform their legislative duties, including making legislative policy decisions.

Our primary duty is to write legislation that embodies a member's chosen legislative policies. In the course of performing this duty, we advise members and others who rely on our professional expertise and judgment in drafting new law and modify existing law. While much of what we tell them relates to legislative drafting practice and procedure, our advice also inevitably includes matters that affect legislative policy, such as constitutional issues raised by members' legislation.

OPINIONS AND MEMORANDUMS COMMONLY REQUESTED

Often requests for opinions and memorandums relate to the conduct of the legislative process itself, such as the "rules of the game" or the conduct of legislative business and the administration of legislative agencies. Generally, these opinions and memorandums do not have readily apparent policy implications and are not viewed as intruding on legislative policy. These types of legal opinions and legal memorandums commonly involve:

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[3] It is important to note the difference between opinion and advice. Black's Law Dictionary (5th ed. 1979) notes this distinction as follows: An opinion is "a document prepared by an attorney for his client, embodying his understanding of the law as applicable to a state of facts submitted to him for that purpose" while advice is a "view; opinion; information; the counsel given by lawyers to their clients; an opinion expressed as to wisdom of future conduct." To put this difference in context, legal opinions of the Office generally set forth our understanding of the law as applicable to a particular fact situation or issue so that members may make an informed decision rather than advising members as to the wisdom of any particular decision.

→ Constitutional rules of legislative procedure and constitutional provisions that govern legislative procedure that have been interpreted as a result of litigation involving the General Assembly. Examples include the single subject and original purpose rules governing amendments to bills, the requirement that revenue raising bills be introduced in the House of Representatives, the GAVEL amendment, the speech and debate clause, and the Governor's exercise of his constitutional veto power.

→ Statutes that govern the conduct of the legislative process and legislative business, such as the sunshine law, ethics laws, and the statutes governing the compensation of legislators, legislative department contracts, and legislative employment practices.

→ Adopted rules of legislative procedure, such as the rules of the House and of the Senate and the joint rules of both houses.

A second area in which the Office receives a frequent number of requests for legal opinions and legal memorandums is the separation of powers. While the policy implications are more apparent in this area, our involvement in related constitutional litigation and in legislative review of administrative rules has tended to overcome most fears of intrusion in the province of legislative policy. Issues that frequently arise in this area involve:

→ The nature and extent of the legislative appropriation power by which the General Assembly controls the expenditure of moneys. Examples include questions regarding the ability of the Governor to cut the budget, whether certain types of moneys are subject to appropriation, and the extent of the General Assembly's ability to place conditions on appropriations.

→ Permissible delegations of legislative power, including the delegation of authority to adopt executive branch rules and regulations and the appointment of legislators to boards and commissions.

Other subject matters areas in which the OLLS regularly receives requests for legal opinions and memorandums include initiated measures and laws governing the conduct of state government in general; the initiative and referendum process; public school finance; and subject matters that OLLS attorneys have become deeply involved with through the bill drafting process. These areas may or may not have apparent policy implications; when they do, they are accompanied by the risk of intrusion into legislative policy.

PROCESS FOR LEGAL OPINIONS AND LEGAL MEMORANDUMS

Upon receiving a new research request (a legal opinion, legal memo, side-by-side comparison, chart, etc.), use the Knowledgebase system to input the request. All such requests must be logged into the system. The system will prompt you to input certain data in order to create the request. You will have the option of assigning the request to yourself or having the appropriate team leader assign it. Once the request is assigned, the system will prompt the person receiving the request (hereinafter "drafter") to answer a series of questions that determines the level of review necessary for the research. There are three levels of review: "high" which requires review by a team leader and one or more higher level attorneys; "medium" which requires review by a team leader; and "low", which allows for discretionary review by a team leader. Only after the level of review is determined will the drafter be able to create the working document in Knoledgebase.

After an attorney receives a memo request, the attorney should discuss with his or her team leader whether the memo needs to be reviewed by Charley or his designee (the designee may be in place of or in addition to Charley), or my the team leader only. Next, the attorney will conduct the necessary research and determine a line of reasoning and conclusion for the memo. Next, the attorney will email either a brief description of the issue, line of reasoning, conclusion, or outline to the reviewer(s) (team leader, Charley, and his designee if they are involved) and set up a time for the attorney and reviewer(s) to meet and discuss the issue.

At the meeting, the drafter and reviewer(s) should discuss the issue and come to a consensus regarding its direction and conclusion. The discussion "tests" the conclusion and help the attorney lay out the arguments that lead to the conclusion. The meeting will also allow the reviewer(s) to lend their institutional knowledge to the issue. At the end of the meeting, the attorney and reviewer(s) will set a deadline for the memo and discuss the workload priority level of the request related to the attorney's other workload.

For a request requiring a high or medium level of review, the drafter will conduct the necessary research, including whether the office has previously taken a position on the issue. After the attorney completes the memo for review, the attorney will give the memo to the team leader for review. After review, the team leader will give the memo to Charley and his designee if they will be reviewing it as well. Charley and his designee can send the then send the memo back to the attorney for finalization. The team leader and Charley (and his designee) will also have the option of sending the memo back to the attorney for revision that requires review again by that person.

Once the legal opinion or memo is in its final form, the drafter must mark the request completed in the database, choose the categories that describe the different subjects that the opinion or memo contains, and ensure that the subject entry still matches the request. This information will be attached to the document as a part of search options and the completed opinion or memo will be stored in a database. The database will be searchable by the inputted subject, key phrases, and full text.

For additional information about the process please refer to the Knowledgebase FAQ and Wade's Knowledgebase tutorial.

GENERAL POLICIES ON LEGAL OPINIONS AND LEGAL MEMORANDUMS

GP-1. Consultation with interested and affected parties outside the Office about the preparation and delivery of a legal opinion may be imperative. If a legal opinion concerns a bill that has not yet been introduced, it will probably be necessary and will almost invariably be advisable to get prior approval from the member requesting the opinion prior to contacting those parties.

> **Explanation of purpose.** The purpose of this policy is to require a determination whether an issue has already been addressed by an authoritative source,[4] to put interested and affected parties on notice about the opinion or memo, to help determine the impact of an opinion or memo on the legislative process and on legislative policy, and to avoid surprises.

GP-2. To the extent practicable, legal opinions and legal memorandums should support the constitutionality of enacted law and the plenary legislative power of the General Assembly.

> **Explanation of purpose.** Enacted law is clothed in a presumption of constitutionality. In interpreting the law, courts are bound to avoid constitutional issues and are under a duty to hold statutes as unconstitutional only when the constitutional defect is proven beyond a reasonable doubt.[5] These principles should guide any legal opinion or legal memorandum prepared by this Office.[6]
>
> Bills that enact new law or substantially amend existing law that have been introduced and are under consideration by the General Assembly have not been enacted and do not have the presumption of constitutionality. However, an OLLS legal opinion or legal memorandum relating to such a bill that involves the question whether the General Assembly has the authority to enact

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[4] An example is the longstanding policy that the office does not provide an opinion on a procedural issue such as whether an amendment fits under the title of a bill when the presiding officer, i.e., chairperson of a committee of reference or the committee of the whole, has already ruled, except with the consent of the person who ruled or at the direction of the Speaker or the President.

[5] See, for example, *In Re House Bill No. 1353,* 738 P.2d 371 (Colo. 1987), and *Lamm v. Barber*, 192 Colo. 511, 565 P.2d 538 (1977).

[6] Because our office is an instrumentality of the Colorado General Assembly, our office is viewed by some as having a degree of responsibility for laws passed by the General Assembly. While enactment of law is and must remain the sole province of the elected legislators, we work for the legislative institution and the legislative institution has responsibility for its acts.

such legislation should resolve all doubts in favor of the General Assembly's plenary legislative power.[7]

Bills do not enjoy any presumption of constitutionality in the face of valid legislative procedural objections, such as a bill enacted in violation of the GAVEL amendment or enactment of a revenue-raising bill that did not originate in the House.

Finally, before a bill is introduced and while confidentiality protects the bill, there seems little reason not to tell the sponsor about serious constitutional concerns as long as the above-mentioned presumptions are also discussed.

GP-3. Rules of construction[8] should be employed as much as possible and should be employed in their true context.

Explanation of purpose. Conscientious use of commonly accepted rules of construction adds credibility to the opinion or memorandum and reduces the exposure to criticism that an opinion or memorandum is unprincipled. Such rules of construction include, for example:

The "plain meaning" rule - When the intention of the legislature is so apparent from the face of the statute that there can be no question as to its meaning, there is no room for construction.[9]

Construction of an ambiguous statute by administrative officials charged with its enforcement shall be given deference by the courts.[10]

Construction of an ambiguous statute must attempt to give effect to all parts of the statute and constructions that would render meaningless a part of the statute should be avoided.[11]

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[7] See, for example, *Metzger v. People,* 98 Colo. 133, 53 P.2d 1189 (1936).

[8] To become more familiar with rules of construction, see *Sutherland Statutory Construction* and article 4 of title 2, C.R.S.

[9] 2A Singer, *Sutherland Statutory Construction*, section 46.01, at 81 (4th ed. 1985). See also *People v. District Court*, 713 P.2d 918 (Colo. 1986).

[10] *Larimer Cty. Sch. Dist. v. Industrial Comm'n,*727 P.2d 401 (Colo. App. 1986), cert. denied 752 P.2d 80 (Colo. 1988).

[11] *People v. Terry,* 791 P.2d 374 (Colo. 1990).

GUIDELINES FOR RELEASING DOCUMENTS PREPARED FOR MEMBERS OF THE GENERAL ASSEMBLY

Introduced bills or amendments. The introduced version of a bill or amendment is a public record and can be released at any time pursuant to section 2-3-505 (2) (b), C.R.S.

When a request is made for the introduced version of a bill, the best practice is to provide a copy of the "printed bill" as printed and distributed by the House or Senate. During a session and for recently enacted bills, a copy of a printed bill can be obtained from OLLS files or from the "Bill Room". For older bills, a copy can be obtained from the microfiche in the Legislative Council Library. Similarly, you can provide copies of the "engrossed", "reengrossed", "revised", "rerevised", and the "act" versions of bills.

When a request is made for an introduced amendment that has been passed, a copy can be made from the House or Senate Journal. However, if a request is made for an amendment that was introduced but not passed, you may have to obtain the assistance of the drafter of the bill or a Legislative Council staff person (for amendments introduced but not passed in committees of reference) to locate the appropriate copy. If such a copy is contained in a member file, you will need to follow the procedures outlined in the next section.

Member files - Bills and Amendments and Attached Materials. At all times, the bills and amendments contained in the member files and the materials attached to them are work product and shall remain confidential pursuant to section 2-3-505 (2) (b), C.R.S., unless they can be released pursuant to one of the following:

1. Copies of bills or amendments that have been introduced:
   - ☞ The OLLS file copy of the final version of a bill or amendment that has been introduced can be released if the Office knows that it was introduced[1]. If a determination cannot readily be made that it was introduced, the person requesting the document can be asked to provide additional information or, as time permits, the Office can conduct appropriate research necessary to make a determination.

2. Bills and amendments not introduced and any materials attached to bills and amendments, whether or not introduced:
   - ☞ These documents can be released if the person requesting them obtains permission of the member or the member has waived the work product privilege (see the subsequent paragraph on waiver or release); or
   - ☞ These documents can be released if a **former member cannot be located or is deceased** and the documents are reviewed by a staff attorney or by the office

[1] For example, if a person requests **all** amendments prepared for a particular member on a bill, you can't automatically release the copies in the member file. You would have to determine which of the amendments were actually introduced. Alternatively, you could release all of the amendments if the person obtains permission of the member or if the member has waived confidentiality.

administrator and any personal notes, private communications, or other items that the member would consider confidential are removed.

Legal Opinions. A legal opinion can be released if the person requesting it obtains permission of the member or the member has waived the work product privilege (see the subsequent paragraph on waiver or release).

Factual data[2] - Not part of Member Files or Legal Opinions. The final version of documents containing factual data that are not prepared as a part of a bill or amendment request or a part of a legal opinion are public records pursuant to section 2-3-505 (2) (c), C.R.S.

- ☞ The final version of these documents can be released.
- ☞ On and after August 6, 1997, a member may request that these documents remain work product pursuant to section 2-3-505 (2) (e), C.R.S.

The Office should generally assume that these documents are prepared for public release. However, if a member makes a request that a document remain work product, the person preparing the document should include the following notice on the first page: THIS DOCUMENT IS WORK PRODUCT PREPARED FOR A MEMBER OF THE GENERAL ASSEMBLY AND IS NOT AVAILABLE FOR PUBLIC RELEASE. If such a statement is not on the face of the document, you may release it.

Any documents containing factual data that are in draft form and not finalized cannot be released without the consent of the member.

Waiver or Release. If a member gives specific permission for release of a document or waives the work product privilege, orally or in writing, or produces or distributes a document in a public meeting, the document can be released. For members serving on or after January 1, 1997, when members end service with the General Assembly they will be given the opportunity to sign a waiver for their documents. The signed waiver forms will be kept in a central file in the front office.

Assisting Members of the General Assembly. In situations where the person making the request for release of a document is a member of the General Assembly or someone acting on behalf of a member, the Office should conduct any necessary research or obtain any necessary permission from other members.

[2] Examples are: Side-by-side comparisons of laws or versions of bills; compilations of existing public information, statistics, or data; or compilations or explanations of general areas or bodies of law, legislative history, or legislative policy.

IMPORTANT ISSUES TO KEEP IN MIND WHEN DRAFTING

Once a request for legislation is made to the OLLS, the assigned drafter usually begins work by focusing on how to best accomplish the purpose of the proposed legislation. However, a more important issue to be first decided is whether the proposed legislation is within the authority of the General Assembly. Although the General Assembly's constitutional power to enact legislation is plenary, this power is subject to constitutional limitations, statutory and regulatory limitations imposed by the federal government, and limitations imposed by the General Assembly itself by statute and by legislative rule. It is the responsibility of the drafter to determine whether there exists any state or federal constitutional provisions as well as any limitations imposed by statute, regulation, or legislative rule which could potentially affect the General Assembly's authority to enact proposed legislation. The goal of each drafter should be to identify potential issues so that sponsors can make informed decisions regarding their legislation.

One purpose of the following list is to set forth in one place for handy reference some of the more common issues which may be relevant to legislation. It is also the purpose of this list to assist drafters in more readily recognizing potential issues which may affect legislation which they are drafting. It should be noted that, while by no means does this list include all potential issues which may affect proposed legislation, it does provide a solid starting point for the drafter to begin thinking about any limitations which may exist on the authority of the General Assembly to enact legislation on a particular subject.

I. ISSUES APPLICABLE TO ANY BILL REGARDLESS OF SUBJECT MATTER

A. Separation of Powers

1. Are powers of one branch of state government being conferred upon another branch?
2. Are substantive powers of the legislative branch being improperly delegated? For example, is legislative authority being delegated to another entity (e.g., authorizing the Capital Development Committee or the Joint Budget Committee to approve acquisitions when the General Assembly is not in session, authorizing local governments to create a crime)?
3. If the proposed legislation creates a board or commission within the executive branch, would legislative appointments to the board or commission pursuant to statute violate the separation of powers doctrine? Will the board or commission exercise executive branch powers (e.g., rule-making, law enforcement) or only investigative, informative, and advisory functions?

B. Equal Protection

1. If the proposed legislation involves a classification that affects similarly situated groups in an unequal manner, one of the following standards of review may be applied in determining if such classification violates equal protection:
   - **a.** ***Strict scrutiny standard:*** Applied when the law makes a classification involving a suspect class (e.g., race, religion, national origin) or a fundamental right or interest (e.g., voting rights, criminal process). To be upheld, the classification must be necessary to achieve a compelling state interest.
   - **b.** ***Intermediate standard:*** Applied when the law makes a quasi-suspect classification based on gender or illegitimacy. To be upheld, the classification must be substantially related to achieving an important governmental interest.
   - **c.** ***Rational relationship standard:*** Applied when the law makes a classification which does not involve a fundamental right, suspect class, or quasi-suspect class. To be upheld, the classification must be reasonably related to a legitimate governmental interest.
2. If the proposed legislation involves such a classification, should a legislative intent provision be included to explain the underlying interest justifying the classification?

C. Ex Post Facto Laws - Retrospective Laws - Impairment of Contract

1. Does the proposed legislation make an innocent act done before the passage of the law criminal? Aggravate a crime after committed? Impose a greater punishment for a crime after committed? Allows less evidence for conviction of a crime after committed?
2. If the proposed legislation is to be retrospective in operation, are substantive rights being affected or is the proposed change in the law only procedural in nature?
3. Could the proposed legislation impair any existing contract?
4. Could any potential problems be avoided by including a prospective only applicability clause?

D. State Constitutional Provisions Specifically Governing The Legislative Process:

1. Is the law being changed other than by a bill?
2. Does the proposed bill have an enacting clause?
3. Does the proposed bill specify an effective date or will it take effect upon its passage?

4. Is the proposed bill a prohibited shell bill (title only)?
5. Does the proposed bill (other than the general appropriation bill) contain only a single subject which is expressed in its title?
6. Does the proposed bill revive, amend, or extend a law by referring only to its title?
7. Does the proposed bill constitute special legislation which is specifically prohibited? Could a general law be made applicable?
8. If the proposed bill involves state general fund dollars and has as its main purpose to raise revenue for general uses of state government, does the proposed bill originate in the House of Representatives?
9. Is the proposed legislation attempting to disburse public moneys by some means other than by appropriation?
10. Are public moneys being appropriated to private institutions?

E. Measures referred to voters by the General Assembly

1. Do you recall that:
   a. A constitutional amendment proposed by the General Assembly requires a 2/3rds vote of both houses but a referred law only requires a majority vote of both houses?
   b. The General Assembly can propose amendments to no more than 6 articles of constitution at the same general election?
   c. For elections held in November of odd-numbered years, the General Assembly can only refer measures that concern state matters arising under section 20 of article X (Amendment #1)?

F. Federal Law

1. If the legislation is proposed for purposes of complying with federal law, has the federal law been checked to determine what is actually required?

G. Examples Of Other Constitutional Limitations Which May Be Relevant To Legislation:

Supremacy clause; regulation by Congress; elections for U.S. representatives and senators; limitations on state sovereignty; commerce clause; full faith and credit; privileges and immunities; free speech; establishment clause; right to bear arms; due process; unreasonable searches and seizures; and prohibition against cruel and unusual punishment.

II. ISSUES APPLICABLE TO BILLS CONCERNING SPECIFIC SUBJECT MATTERS

A. Article X, Section 20 (TABOR/1992 Amendment #1)

1. Does the proposed legislation require a referral clause in order to refer to the voters:
   a. A new tax, tax rate increase, valuation for assessment ratio increase for a property class, an extension of an expiring tax, or a tax policy change directly causing a net tax revenue gain to any district?
   b. The creation of a multiple-fiscal year direct or indirect debt or other financial obligation whatsoever without adequate present cash reserves pledged irrevocably and held for payments in all future fiscal years?
   c. A weakening of a revenue, spending, or debt limit?
2. If a tax increase or debt increase is being referred to the voters, does the ballot question conform to the constitutionally required ballot language?
3. Did you know that, unless excluded from the limit on fiscal year spending (e.g., gifts, federal funds, collections for another government):
   a. State fiscal year spending (all revenues, whether expended or saved) may change annually by a maximum percentage equal to inflation plus the percentage change in state population in the prior calendar year, adjusted for voter-approved revenue changes?
   b. All local government fiscal year spending (all revenues, whether expended or saved) and property tax revenues may change annually by a maximum percentage equal to inflation plus annual local growth, adjusted for voter-approved revenue changes?
4. In order to qualify as an enterprise which is not subject to the provisions of TABOR, is the governmental entity or operation a government-owned business authorized to issue its own revenue bonds and receiving under 10% of annual revenue in grants from all Colorado state and local governments combined?
5. Did you know that:
   a. Emergency taxes may be imposed only upon a two-thirds majority of the members of both houses of the General Assembly or of a local government board declaring an emergency and imposing the tax by separate roll call votes?
   b. Emergency taxes will expire unless approved by the voters at the next election date 60 days or more after the emergency declaration?

c. Emergency taxes can be spent only after emergency reserves have been exhausted?
d. Emergency taxes not expended on an emergency must -be refunded?
e. Expenditures of emergency taxes do not constitute fiscal year spending and are not included in the calculation of the government's spending limit?
f. Emergency property taxes are prohibited?

6. Did you know that:
a. New or increased transfer tax rates on real property are prohibited?
b. There cannot be a new state property tax?
c. Property tax valuation notices must be mailed annually and may be appealed annually?
d. The actual value of property must be stated on all property tax bills and valuation notices?
e. Local governments are authorized to reduce or terminate their subsidy for programs delegated to local governments by the General Assembly for administration?

B. State Finance

1. Do you recall that:
a. All state money goes to the General Fund unless otherwise specified by law?
b. Interest on state moneys is credited to the General Fund unless otherwise expressly provided by law?
c. Fees and taxes collected by state agencies are transmitted to the State Treasury?
d. Future General Assemblies are not bound by legislation requiring appropriations?
e. Unexpended appropriations revert to the General Fund or, if made from a special fund, to the special fund?
f. The capital development committee must review reports from the executive director of the department of administration regarding the acquisition or disposition of state property and make recommendations prior to the acquisition or disposition?
g. Deficit spending by the State is prohibited?
h. Pledging the credit of the State to any person, company, or corporation is prohibited?
i. State aid to corporations is prohibited unless the "public purpose" exception applies?

C. State General Fund Spending Limitation

1. Total state general fund appropriations for a given fiscal year limited to the lesser of an amount equal to 5% of Colorado personal income or 6% over total state General Fund appropriations for the previous fiscal year (commonly referred to as the "Arveschoug-Bird Limit").
   a. Does the proposed statutory change qualify as one of the existing exceptions or exclusions to the Arveschoug-Bird limit?
   b. Would the proposed statutory change "weaken" the limit by allowing a greater expenditure of general fund moneys than would have been allowed under the current limit (e.g., creation of a new exception to the limit or increasing the limit)? If so, should a referral clause be added?

D. Income Taxes

1. Did you know that:
   a. No local government can impose an income tax?
   b. Any state income tax rate increase or new definition of taxable income can only take effect in the next taxable year?
   c. All taxable net income is required to be taxed at one rate with no added tax or surcharge?

E. Sales and Use Taxes

1. If the rate of the state sales and use tax is being modified, has the rate been modified in all of the applicable statutory provisions?
2. If the sales and use tax rate is being increased:
   a. Does the bill contain a referral clause to refer the question of a tax rate increase to the voters?
   b. Should the statutory limit on the aggregate amount of sales and use taxes levied by the state, municipalities, and counties be increased by a corresponding amount?
3. If adding or changing an exemption to the state sales tax, was the same change made to the state use tax statutes?

F. Old Age Pension Fund (OAPF)

1. If the proposed bill involves state excise taxes on sales and use (not including motor fuels) or on alcoholic and malt beverages, are you aware that 85% of all revenues from these state excise taxes are earmarked for the OAPF? Is it possible to use a "hat trick" (earmarking an amount of general fund moneys equal to the amount of excise taxes generated from the law change) in order to avoid any conflict?

G. Highway Users Tax Fund (HUTF)

1. Does the proposed bill involve any of the following revenues which are constitutionally earmarked for the HUTF:
   a. License, registration fee, or other charge related to any motor vehicle upon any public highway?
   b. Excise tax on gasoline or other liquid motor fuel, other than aviation fuel?
2. Are HUTF revenues being used exclusively for the construction, maintenance, and supervision of the state -public highways? Are "off-the-top" distributions for costs of administration being made from HUTF revenues?

H. State-Supervised Lottery Games

1. If the proposed legislation is authorizing any new state-supervised lottery game operated under the authority of Section 2 of Article XVIII of the state constitution, are the proceeds earmarked in accordance with Article XXVII of the state constitution?

I. Establishing/Abolishing/Transferring A Department/Agency Within the Executive Branch of State Government

1. If the proposed legislation is creating a new state department within the executive branch, does an existing department need to be abolished in order to stay with the maximum number of 20 principal departments?
2. If creating a new state agency, what department is the agency created within?
3. In creating, abolishing, transferring a state agency or department, have all of the necessary amendments been made to the Administrative Organization Act?
4. Has the proper type of transfer (type 1, 2, or 3) been made to accomplish the transfer of an existing department, institution, or other state agency or its powers, duties, and functions to another department, institution, or state agency?
5. Has the proper type of transfer (type 1 or 2) been made for the creation of a new department, institution, or other state agency <u>as if</u> the new entity was transferred?
6. In creating a department, division, board, commission, or office, have the requirements of the Information Coordination Act been complied with in regard to:
   a. Preparation and distribution of annual reports?
   b. Issuance of publications circulated in quantity outside the executive branch?

J. Authority for State Agencies to Promulgate Rules

1. In granting rule-making authority to a state agency, has a proper delegation of authority been made by including sufficient statutory standards to protect against the unnecessary and uncontrolled exercise of discretionary power?

K. State Personnel System

1. If the proposed bill exempts any appointed state officials or state employees from the state personnel system, is the exemption constitutionally based?
2. Is the head of a principal department the appointing authority for employees of the department head's office and for the heads of the department's divisions? Is the head of a department's division the appointing authority for division positions included within the personnel system?
3. Does the proposed legislation authorize personal services contracts creating an independent contractor relationship? Do all of the statutory conditions exist for this independent contractor relationship to be permissible?
4. Since the state personnel board and state personnel director and their duties are constitutionally based, are any proposed statutory changes regarding the board or the director consistent with the constitution?

L. Licensing/Registration of Professions/Occupations

1. Does a disciplinary process created for licensees/registrants have adequate procedural safeguards for due process purposes? If the disciplinary process includes the Court of Appeals, has the statutory subject matter jurisdiction for the Court of Appeals been amended?
2. If licensing/registration is to occur through a board or commission in the division of registrations, department of regulatory agencies, has the board or commission been authorized to adjust its fees to cover its direct and indirect costs? Are the fees deposited in the division of registrations cash fund?
3. Does the proposed bill contain any mandatory continuing education requirement? Has the sponsor been informed that an administrative evaluation of the continuing education requirement must occur prior to the introduction of the bill?
4. In order for the State to require FBI criminal background checks of employees, licensees, etc., have the federal requirements been complied with?

5. If denial of a license/permit/certification for any business, occupation, or profession is based upon a person's conviction of a felony or a crime involving moral turpitude, does an applicable exception exist to the general rule set forth in statute that such a conviction cannot constitute grounds for denial or does such an exception need to be created?

M. Sunrise/Sunset Law

1. If regulation of any occupational or professional group not currently regulated is being proposed, has the sponsor been informed of the requirement that a proposal for regulation must be submitted to the department of regulatory agencies and informed of the procedures for the review as set forth in section 24-34-104.1, C.R.S.?
2. If the authority of state agencies subject to termination is being extended, is the authority being extended beyond 10 years? Has the schedule as well as the statutory repeal provisions in the enabling legislation been modified to reflect the extension?
3. If the proposed legislation is creating a new advisory committee, is there included a one-time review of the advisory committee by the General Assembly to occur no later than 6 years after the comittee's creation?

N. Social Services

1. Do you know that:
   a. The state constitutional prohibition against the use of public funds for abortions is being challenged as violating federal law which requires public funds be available for abortions due to rape or incest?
   b. County department of social services staff are merit system employees and are not part of the state personnel system, even though state social services programs are administered by county social services departments?
   c. Compliance with the federal law requirements for child welfare services, including the child abuse central registry, as well as most social services-type programs, including public assistance and medicaid, is required for the State to receive federal funds for these programs- unless the State has been granted a waiver from federal requirements?
   d. If requiring an executive agency to perform a social services function, the federal single state agency requirement often applicable to social services programs administered with federal funds should not be violated?

e. Rules and regulations regarding public assistance or welfare programs can be promulgated by the executive director of the department of human services as well as by the state board of human services?

f. When creating any new medical assistance service or program in the Medical Assistance Act, federal laws need to be checked so that medical assistance services can be correctly categorized as mandatory or optional based on the federal categorization?

O. Crimes

1. Has a crime been sufficiently defined in order to satisfy due process and give persons notice of what conduct is prohibited?
2. In making specific conduct a crime, has the crime been properly classified in accordance with the statutory penalty classification system? Is there any need for the statute to specify the penalty?
3. Does the bill affect criminal penalties which will cause an increase in the period of imprisonment in state correctional facilities? If so, does the bill comply with the "pay-as-you- go" requirement by including a 5-year statutory appropriation?

P. Education

1. Do you recall that:
   a. The State Board of Education and the Commissioner of Education are constitutionally created?
   b. The State is required to provide a thorough and uniform system of free public schools?
   c. The State School Fund is constitutionally created and the Fund's principal is inviolate while the interest earned on the Fund may only be expended for maintenance of the schools?
   d. Giving public aid to private schools, churches, or any sectarian purpose is prohibited?
   e. The State Land Board and its duties and powers regarding the control and disposition of state public lands are constitutionally based?
   f. The General Assembly may require persons ages 6 to 18 to attend public schools, unless educated by an alternative means?
   g. School districts with boards of education are constitutionally required?
   h. A board of education has local control of instruction in its school district?

i. Textbooks cannot be prescribed by the General Assembly or by the State Board of Education?
j. The Board of Regents of the University of Colorado and the terms of office for which they serve are constitutionally based?
k. The Board of Regents of the University of Colorado is constitutionally required to select the University's President?
l. The City and County of Denver is constitutionally required to constitute one school district?

Q. Water

1. Does the proposed bill affect water rights, which are property rights in Colorado, in a manner consistent with the technical prior appropriation system governing water?

R. Mandatory Health Care Coverage

1. If the proposed legislation would require a new type of mandatory health coverage, has there been a discussion with the sponsor to determine if a report of the social and financial impacts of such coverage is statutorily required?

S. Increasing Or Decreasing Compensation Of Public Officials.

1. Is the compensation of elected public officers being increased or decreased during their term of office?
2. Is the compensation of justices and judges being decreased during their term of office?
3. If the proposed legislation concerns compensation of county officers:
   a. Has the General Assembly given consideration to county variations prior to the setting of compensation levels?
   b. Is the compensation of all county officers within the same county being changed or is the compensation for the same county officer in all counties in the state?
   c. Is a governmental entity other than the General Assembly being given the authority to set the salaries of county officers?

T. Local Governments

1. Does the proposed legislation affect home rule municipalities or counties?
   a. Does the bill involve an issue of statewide concern? Local concern? Mixed statewide and local concern?

b. Should a legislative intent provision be included to explain why it is an issue of statewide concern?

2. If not home rule, does the proposed legislation give enough authority to non-home rule municipalities or counties to accomplish the legislation's intended purpose since they are limited to only those powers and duties established statutorily?
3. Are local governments being authorized to impose new or increase existing real property transfer taxes? A local income tax?
4. If the State is imposing a new mandate or an increase in the level of service of an existing mandate on local governments, has the State provided additional moneys to local governments for reimbursement of increased costs or are local governments statutorily authorized to treat such mandates and increases in the level of service as optional?
5. Are constitutionally created county officers being abolished?

U. Property Taxation

1. Does the proposed legislation provide for the imposition of a uniform mill levy by the political subdivision levying property tax?
2. Are the appropriate methods of appraisal being utilized in determining the actual value for different types of property?
3. Is the proposed legislation changing the percentage of actual value of real property used to determine valuation for assessment? Depending on the class of real property, is the change consistent with the constitution?
4. If exempting property from property taxation, is there a constitutional basis for the exemption? Are cumulative uniform exemptions and credits to reduce or end business personal property taxes being created?
5. Does the proposed legislation concern county boards of equalization, the state board of equalization, or the property tax administrator? If so, are the changes consistent with the constitutional provisions governing them and their duties?
6. Is the proposed bill imposing a state property tax?

MEMORANDUM

October 29, 1996

TO: Interested Persons

FROM: Office of Legislative Legal Services

RE: Title questions

In February of 1995, concern was expressed during a meeting of the Executive Committee of the Legislative Council about opinions of OLLS staff as to whether an amendment would be appropriate under the title of a bill. Discussion focused on the fact that asking for a title opinion may place OLLS staff in an awkward situation that is inappropriate for nonpartisan staff. An OLLS staff person should bring potential title issues to the attention of his or her team leader and Doug or Becky as soon as they arise.

The Executive Committee provided the OLLS with the following guidance concerning the issuance of title opinions:

1. An OLLS staff person should continue to consider title issues carefully when drafting bill and amendments and to advise members when they request amendments that may be beyond the title of the bill.

2. Once a bill or amendment is drafted, the OLLS staff should handle requests for title opinions as follows:

- An OLLS staff person can provide the member with an answer to a title question but should make it clear to the member **that the opinion is advisory only and is not binding on a committee chair or the chair of the committee of the whole.**

- An OLLS staff person should not put title opinions in writing unless the member insists. In this situation, the member should be advised that the OLLS will speak with the members of the Executive Committee from that member's house prior to writing the opinion.

MEMORANDUM

March 10, 1994

To: Senator Norton
Representative Berry

From: Office of Legislative Legal Services

Re: Guidelines for Determination of Bills Subject to § 10-16-103, C.R.S., Concerning Special Legislative Procedures Related to Mandated Health Insurance Coverages in Introduced Bills

EXECUTIVE SUMMARY

1. During the 1993 Regular Session of the General Assembly, the Office of Legislative Legal Services was directed by the legislative leadership to institute a procedure to make members aware of bills that are subject to special statutory provisions in addition to normal legislative procedures.

2. This procedure was implemented in the 1994 Regular Session by informing the prime sponsor of a bill of any special requirements, attaching a letter to the bill when introduced which indicates those special requirements, and giving a copy of the letter to the chair of the committee to which the bill is referred.

3. During the course of the 1994 Regular Session there has been concern and confusion about the criteria we have used to identify bills subject to the provisions of the law dealing with mandatory health care coverage provisions.

4. In the future, based on a "plain meaning" interpretation of § 10-16-103, C.R.S., we will identify any bill as subject to this law which:

   (1) imposes any new requirement on health care coverage entities to include coverage for new diseases, conditions, or courses of treatment;

   (2) would expand the types of health care providers which health care coverage entities must reimburse for the performance of covered services; or

   (3) makes changes to existing required coverages or requirements for payment for health care services.

   Doubts will be resolved in favor of identifying a bill as subject to the law.

5. These guidelines will still be applicable even if H.B. 94-1186, in its current form, amends § 10-16-103, C.R.S.

6. Section 10-16-103, C.R.S., does not make legislative action on a bill dependent upon compliance with this law. Section 10-16-103, C.R.S., should be implemented by the General Assembly in a manner consistent with other requirements imposed on the General Assembly by the Colorado Constitution and the intent and purpose of § 10-16-103, C.R.S.

INTRODUCTION

Pursuant to a direction from the legislative leadership during the 1993 Regular Session, we have instituted a procedure for dealing with bills which are affected by certain statutory requirements in addition to the regular legislative procedures.[1] The new procedure generally involves informing the prime sponsor of such special requirements, attaching a letter to the bill when introduced which indicates those special requirements, and giving a copy of the letter to the chair of the committee to which the bill is referred.

During the course of the 1994 Regular Session, there has been concern and confusion about the criteria we use to determine which bills are subject to the requirements of § 10-16-103, C.R.S., related to bills mandating a health coverage or offering of a health coverage by a health insurer, a nonprofit hospital, medical-surgical, and health service corporation, a health maintenance organization, or a prepaid dental care plan organization (collectively referred to as health care coverage entities). The purpose of this memorandum is to set forth guidelines for how we will determine in the future which bills are subject to the provisions of § 10-16-103, C.R.S. This memorandum also analyzes how the General Assembly should consider bills identified as subject to the provisions of § 10-16-103, C.R.S.

REQUIREMENTS OF § 10-16-103

Section 10-16-103 (1), C.R.S., provides that:

> Every person or organization which seeks legislative action which would mandate a health coverage or offering of a health coverage by an insurance

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[1] The types of bills subject to special statutory requirements in addition to regular legislative procedures are: (1) bills mandating a health coverage or offering of a health coverage by a health care coverage entity; (2) bills affecting criminal sentencing, which are to be reviewed by the legislative members of the Criminal Justice Commission whenever possible under § 18-1.5-103, C.R.S., and must contain an appropriation of moneys for any increased capital construction and operating costs which are the result of the bill for a period of five years under § 2-2-703, C.R.S.; (3) bills subject to the jurisdiction of the Capital Development Committee for purposes of determining the priority to be accorded proposals made by entities of state government for capital construction, controlled maintenance, and capital asset acquisitions under § 2-3-1304 (1), C.R.S.; and (4) bills proposing the regulation of an unregulated profession or occupation subject to the "sunrise" review process of the Sunrise and Sunset Review Committee under § 24-34-104.1, C.R.S.

carrier, nonprofit hospital and health care service corporation, health maintenance organization, or prepaid dental care plan organization as a component of individual or group policies shall submit a report to the legislative committee of reference addressing both the social and financial impacts of such coverage, including the efficacy of the treatment or service proposed.

Section 10-16-103 (2) (a), C.R.S., requires that parties seeking additional health insurance mandates provide information to the committee of reference dealing with the social impact of the proposed mandatory coverage:

(2) Guidelines for assessing the impact of proposed mandated or mandatorily offered health coverage to the extent that information is available shall include, but not be limited to, the following:

(a) The social impact of such mandatory coverage, including, but not limited to, the following:

(I) The extent to which the treatment or service is generally utilized by a significant portion of the population;

(II) The extent to which the insurance coverage is already generally available to the general population;

(III) The extent to which the lack of coverage results in persons avoiding necessary health care treatments;

(IV) The extent to which the lack of coverage results in unreasonable financial hardship;

(V) The level of public demand for the treatment or service, including the public level of demand for insurance coverage of such treatment or service;

(VI) The level of interest of collective bargaining agents in negotiating privately for inclusion of this coverage in group contracts;

Section 10-16-103 (2) (b), C.R.S., requires the submission of information on the financial impact of such mandatory coverage:

(b) The financial impact of such mandatory coverage, including, but not limited to, the following:

(I) The extent to which the coverage will increase or decrease the cost of the treatment or service;

(II) The extent to which the coverage will increase the appropriate use of the treatment or service;

(III) The extent to which the mandated treatment or service will be a substitute for more expensive treatment or coverage;

(IV) The extent to which the coverage will increase or decrease the administrative expenses of insurance companies and the premium and administrative expenses of policyholders;

(V) The impact of this coverage on the total cost of health care in Colorado.

Reading § 10-16-103, C.R.S., as a whole, the apparent legislative intent was to require that certain information be made available to a committee of reference when considering a bill falling under the law. The information requirements stated in § 10-16-103 (2) (a) and (2) (b), C.R.S., quoted above, demonstrate that it was intended that a committee of reference have a broad spectrum of information on many different issues when making a decision about legislation relating to mandatory health care coverage requirements.

TEST TO BE APPLIED TO DETERMINE WHETHER A BILL IS SUBJECT TO § 10-16-103

Section 10-16-103, C.R.S., applies to any bill "**which would mandate a health coverage or offering of a health coverage by ...**" a regulated health care coverage entity. When we apply a "plain meaning" interpretation[2] to these words, the statute applies to an "order" or "requirement" that health care coverage entities have certain terms and conditions of coverage and payment for medical services in policies. Accordingly, § 10-16-103, C.R.S., should apply to:

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[2] The courts generally apply the "plain meaning" rule in the following manner:

> Whether we are considering an agreement between the parties, a statute or a constitution, with a view to interpretation, the thing which we are to seek is **the thought it expresses**. To ascertain this the resort in all cases is to the natural signification of the words employed in the order of grammatical arrangement in which the framers of the instrument have placed them. If, thus regarded, the words embody a definite meaning which involves no absurdity and no contradiction between different parts of the same writing, then that meaning, apparent on the face of the instrument, is the one which alone we are at liberty to say was intended to be conveyed. **In such a case there is no room for construction**. That which the words declare is the meaning of the instrument, and neither the courts nor legislatures have a right to add to or take away from that meaning.

Colorado State Civil Service Employees Association v. Love, 448 P. 2d 624 (Colo. 1968) (emphasis by court). *Webster's New International Dictionary of the English Language,* (2nd ed. 1940), defines "mandate" as "An authoritative command; order; injunction; decree; precept; bidding; . . . an emphatic admonition or direction, each with the force of a command."

(1) bills which impose any new requirement on health care coverage entities to include coverage for new diseases, conditions, or courses of treatment;

(2) bills which would expand the types of health care providers which health care coverage entities must reimburse for the performance of covered services; or

(3) bills which make changes to existing required coverages or requirements for payment for health care services.

Doubts should be resolved in favor of identifying a bill as subject to the provisions of the law. Some examples of bills which should be identified as subject to § 10-16-103, C.R.S.: (1) bills which require health care coverage entities to waive or limit preexisting condition limitations; (2) bills which require health care coverage entities to guarantee the issuance of standardized policies to persons applying for coverage and able to pay premiums; (3) bills mandating health care coverage entities cover a particular treatment, or treatment for a particular condition, regardless of what type of practitioner renders the treatment; and (4) changes to existing mandatory coverages, for example, mental health coverage, which expand the obligation of health care coverage entities with respect to the mandate.

THE GENERAL ASSEMBLY HAS AUTHORITY TO INTERPRET THE MANNER IN WHICH § 10-16-103 IS IMPLEMENTED

As a general rule, the General Assembly is invested with plenary power to pass legislation, subject to any restrictions imposed by the Colorado Constitution. *Colorado State Civil Service Employees Association v. Love,* 448 P. 2d 624 (Colo. 1968). One legislature is not bound by the acts of a previous legislature.[3] Section 10-16-103, C.R.S., is a statutory rule of legislative procedure. This law is subject to reasonable interpretation by the General Assembly and may be amended by act of the General Assembly.

SECTION 10-16-103, C.R.S., SHOULD BE IMPLEMENTED IN A MANNER CONSISTENT WITH THE "GAVEL" AMENDMENT OF THE COLORADO CONSTITUTION

[3] As a general rule:

> The legislature by statute or joint resolution **cannot bind or restrict itself or its successors** to the procedure to be followed in the passage of legislation. . . . It **may not** by its rules **ignore constitutional restraints or violate fundamental rights**, and there should be a reasonable relation between the mode or method of proceeding established . . . and the result which is sought to be obtained. But within these limitations all matters of method are open to the determination of the house, and it is no impeachment of the rule to say that some other way would be better, more accurate or even more just.

Sutherland Stat. Const. § 7.04 (4th ed.) (emphasis added).

The General Assembly is subject to the "GAVEL" amendment (article V, section 20 of the Colorado Constitution), which requires that each bill referred to a committee of reference be acted upon by the committee within applicable deadlines. Thus, the General Assembly should not apply § 10-16-103, C.R.S., so as to preclude consideration of bills by committees, since that would ignore the constitutional restraint imposed by article V, section 20 of the Colorado Constitution.

Section 10-16-103, C.R.S., however, is silent as to what the "legislative committee of reference" or the General Assembly as a whole must do with information provided under this law. In fact, it appears the statute requires that the committee of reference be aware that a bill may affect mandated health coverage benefits and that the committee have available to it the information set forth in the statute. There is no direction as to how or whether the committee is to act on the information.

EFFECT OF HOUSE BILL 94-1186

House Bill 94-1186, by Representative Prinster and Senator Hopper, makes amendments to § 10-16-103, C.R.S.[4] The guidelines for interpreting § 10-16-103, C.R.S., contained in this memorandum would still apply if H.B. 94-1186 is enacted. The bill clarifies that the law does apply to the expansion of an existing health care coverage mandate.

Debbie Haskins and Bart Miller of the Legislative Legal Services Office have had preliminary conversations with the Legislative Council Staff concerning implementation of the requirements of § 10-16-103, C.R.S., whether or not House Bill 94-1186 is enacted. These conversations concerned procedures for coordination with bill sponsors by the Legislative Legal Services Office Staff and the Legislative Council Staff providing assistance to persons responsible for gathering information required by the law. The

[4] House Bill 94-1186 would clarify that § 10-16-103, C.R.S., applies to any proposal to expand an existing mandated coverage. The bill would require that the proponents submit a report to the Legislative Council prior to introduction of a bill and that the Legislative Council Staff would determine that the report conforms with the requirements of this law. The Legislative Council Staff would then make the report available to interested parties at the time of introduction of a bill. The interested parties would have an opportunity to submit written comments to the Legislative Council Staff or a committee of reference evaluating and supplementing the original report. Each committee of reference considering a bill covered by the law would have to review the report prior to consideration of such a bill and make determinations that the report is complete and valid, that the research cited meets professional standards, that all relevant research has been brought to light, and that the conclusions and interpretations drawn from the evidence are consistent with the data presented. House Bill 94-1186 would also allow a committee of reference identifying deficiencies in a report to request written clarification prior to consideration of the bill. House Bill 94-1186 specifically states that in order to meet deadlines for passage of bills, a committee of reference may consider a bill even if a report submitted under this law is deficient. House Bill 94-1186 would also add specific requirements to the contents of reports submitted under this law, including: Additional analyses of methods to manage the utilization and costs of a proposed mandate; the effect on the number and types of providers of a mandated treatment over the next five-year period; the impact of associated costs other than premiums and administrative costs on the costs and benefits of the mandate; effects on the cost of health care to employers and employees; the medical efficacy of the mandatory coverage; and the effects of balancing the social, economic, and medical efficacy considerations associated with the mandated coverage.

Legislative Council Staff will write a memorandum with more detailed proposals relevant to its functions.

cc: Representative Foster
Charles Brown, Director, Legislative Council Staff
Jim Hill - Principal Analyst, Legislative Council Staff, Policy and Research Section

MANDATORY COVER LETTERS FOR BILLS SUBJECT TO SPECIAL STATUTORY REQUIREMENTS

Bills Subject to Capital Development Requirements
Memo to Committee Chair

TO: Senator _____ [for Senate bills]
or
Representative _____ [for House bills]
Chair, Committee on _____

FROM: Office of Legislative Legal Services

RE: Bill subject to capital development requirements

Section ___ (, C.R.S.) of Senate Bill [House Bill] **07-0000**, CONCERNING , which has been referred to your committee, appears to be subject to the requirement of section 2-3-1304 (1), C.R.S. The purpose of this memorandum is to inform you of the requirements specified in these provisions. Our office has communicated these requirements to the sponsor of the bill.

Section 2-3-1304 states that the capital development committee has the power and duty to "study the capital construction and controlled maintenance requests and proposals . . . of each state department, institution, and agency . . .; to hold such hearings as may be necessary to consider reports from each department, institution, or agency . . .; and make determinations of the priority to be accorded to the proposals made. . . ." In furtherance of these powers and duties, House Rule 50 and Senate Rule 42 state "A copy of any bill introduced in the House [or Senate] and determined under the rules of the House [or Senate] to be dealing with capital construction requests, controlled maintenance requests, or proposals for the acquisition of capital assets shall be directed to [reviewed by] the Capital Development Committee. . . . The Capital Development Committee . . . may make advisory recommendations thereon to any committee of reference. . . ."

cc: [bill sponsor]

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Bills Subject to Capital Development Requirements
Memo to Leadership Attached to Bill

TO: President _____ [for Senate bills]
or
Speaker _____ [for House bills]

FROM: Office of Legislative Legal Services

RE: Bill subject to capital development requirements

Section ___ (, C.R.S.) of the attached bill, **LLS No. 07-0000**, appears to be subject to the requirement of section 2-3-1304 (1), C.R.S. The purpose of this memorandum is to inform you of the requirements specified in these provisions. Our office has communicated these requirements to the sponsor of the bill.

Section 2-3-1304 states that the capital development committee has the power and duty to "study the capital construction and controlled maintenance requests and proposals ... of each state department, institution, and agency . . .; to hold such hearings as may be necessary to consider reports from each department, institution, or agency . . .; and make determinations of the priority to be accorded to the proposals made. . . ." In furtherance of these powers and duties, House Rule 50 and Senate Rule 42 state "A copy of any bill introduced in the House [or Senate] and determined under the rules of the House [or Senate] to be dealing with capital construction requests, controlled maintenance requests, or proposals for the acquisition of capital assets shall be directed to [reviewed by] the Capital Development Committee. . . . The Capital Development Committee . . . may make advisory recommendations thereon to any committee of reference. . . ."

The chair of the committee to which this bill is referred will be notified of the requirements.

S:\LLS\GA\MEMOS\Mandatory Covers\Capital_Development_Requiremets_Leadership.wpd

Bills Affecting Changes in the Number of Judges
Memo to Committee Chair

TO: Senator _____ [for Senate bills]
or
Representative _____ [for House bills]
Chair, Committee on _____

FROM: Office of Legislative Legal Services

RE: Bill affecting changes in the number of judges - introduction and passage deadlines - 2/3 vote requirement

Section ___ (, C.R.S.) of Senate Bill [House Bill] **07-0000**, CONCERNING , which has been referred to your committee, appears to be subject to the provisions of section 10 (3) of article VI of the Colorado constitution and joint rule 23. The purpose of this memorandum is to inform you of the requirements specified in these provisions and rule. This office has communicated these requirements to the sponsor of the bill.

Section 10 (3) of article VI of the Colorado constitution requires a two-thirds vote of the members of each house for passage of bills that increase or diminish the number of district judges.

In addition, the bill appears to be subject to the deadline provisions of joint rule 23 requiring any bill affecting changes in the number of judges to be introduced on or before January 5, 2000, and to be passed by both houses on or before March 3, 2000.

cc: [bill sponsor]

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Bills Affecting Changes in the Number of Judges
Memo to Leadership Attached to Bill

TO: Senator Fitz-Gerald and Karen Goldman, Secretary of the Senate [for Senate bills]

or

Representative Romanoff and Marilyn Eddins, Chief Clerk [for House bills]

FROM: Office of Legislative Legal Services

RE: Bill affecting changes in the number of judges - introduction and passage deadlines - 2/3 vote requirement

Section ___ (, C.R.S.) of **LLS No. 03-0000**, CONCERNING , appears to be subject to the provisions of section 10 (3) of article VI of the Colorado constitution and joint rule 23. The purpose of this memorandum is to inform you of the requirements specified in these provisions and rule. This office has communicated these requirements to the sponsor of the bill.

Section 10 (3) of article VI of the Colorado constitution requires a two-thirds vote of the members of each house for passage of bills that increase or diminish the number of district judges.

In addition, the bill appears to be subject to the deadline provisions of joint rule 23 requiring any bill affecting changes in the number of judges to be introduced on or before January 5, 2000, and to be passed by both houses on or before March 3, 2000.

The chair of the committee to which this bill is referred will be notified of these provisions.

S:\LLS\GA\MEMOS\Mandatory Covers\Change_in_Judges_Requirements_Leadership.wpd

Bills Subject to Mandatory Continuing Education Requirements
Memo to Committee Chair

TO: Senator _____ [for Senate bills]
or
Representative _____ [for House bills]
Chair, Committee on _____

FROM: Office of Legislative Legal Services

RE: Bill subject to mandatory continuing education requirements

Section ___ (, C.R.S.) of Senate Bill [House Bill] **07-0000**, CONCERNING , which has been referred to your committee, appears to be subject to the requirement of section 24-34-901, C.R.S. The purpose of this memorandum is to inform you of the requirements specified in these provisions. Our office has communicated these requirements to the sponsor of the bill.

Section 24-34-901 states that "Before any bill is introduced . . . that contains a mandatory continuing education requirement for any occupation or profession, the practice of which requires a state of Colorado license, certificate, or registration, the group or association proposing such mandatory continuing education requirement shall first submit information concerning the need for such a requirement to the office of the executive director of the department of regulatory agencies."

cc: [bill sponsor]

S:\LLS\GA\MEMOS\Mandatory Covers\Continuing_Education_Requirements_Committee.wpd

Bills Subject to Mandatory Continuing Education Requirements
Memo to Leadership Attached to Bill

TO: President _____ [for Senate bills]
or
Speaker _____ [for House bills]

FROM: Office of Legislative Legal Services

RE: Bill subject to mandatory continuing education requirements

Section ___ (, C.R.S.) of the attached bill, **LLS No. 07-0000**, appears to be subject to the requirement of section 24-34-901, C.R.S. The purpose of this memorandum is to inform you of the requirements specified in these provisions. Our office has communicated these requirements to the sponsor of the bill.

Section 24-34-901 states that "Before any bill is introduced . . . that contains a mandatory continuing education requirement for any occupation or profession, the practice of which requires a state of Colorado license, certificate, or registration, the group or association proposing such mandatory continuing education requirement shall first submit information concerning the need for such a requirement to the office of the executive director of the department of regulatory agencies."

The chair of the committee to which this bill is referred will be notified of the sunrise/sunset requirements.

S:\LLS\GA\MEMOS\Mandatory Covers\Continuing_Education_Requirements_Leadership.wpd

Bills Affecting Criminal Sentencing
Memo to Committee Chair

TO: Senator _____ [for Senate bills]
or
Representative _____ [for House bills]
Chair, Committee on _____

FROM: Office of Legislative Legal Services

RE: Bill affecting criminal sentencing - referral to Appropriations Committee - review by Legislative Council staff

Section ___ (, C.R.S.) of Senate Bill [House Bill] **07-0000**, CONCERNING , which has been referred to your committee, appears to be subject to the provisions of section 2-2-702, C.R.S. The purpose of this memorandum is to inform you of the requirements specified in these provisions. Our office has communicated these requirements to the sponsor of the bill.

Section 2-2-702 requires that bills which affect sentencing and which would result in a net increase in periods of imprisonment in state correctional facilities must be assigned or referred to the Appropriations Committee in the house of origin.

In addition, the bill appears to be subject to the review provisions of section 2-2-701 (3), C.R.S. That section provides that "any bill . . . which affects criminal sentencing and which may result in a net increase or a net decrease in periods of imprisonment in state correctional facilities shall be reviewed by the director of research of the legislative council . . . ." This requirement is being handled as part of the fiscal note process.

cc: [bill sponsor]

S:\LLS\GA\MEMOS\Mandatory Covers\Criminal_Sentencing_Committee.wpd

Bills Affecting Criminal Sentencing
Memo to Leadership Attached to Bill

TO: President _____ [for Senate bills]
or
Speaker _____ [for House bills]

FROM: Office of Legislative Legal Services

RE: Bill affecting criminal sentencing - referral to Appropriations Committee - review by Legislative Council staff

Section ___ (, C.R.S.) of the attached bill, **LLS No. 07-0000**, appears to be subject to the provisions of section 2-2-702, C.R.S. The purpose of this memorandum is to inform you of the requirements specified in these provisions. Our office has communicated these requirements to the sponsor of the bill.

Section 2-2-702 requires that bills which affect sentencing and which would result in a net increase in periods of imprisonment in state correctional facilities must be assigned or referred to the Appropriations Committee in the house of origin.

In addition, the bill appears to be subject to the review provisions of section 2-2-701 (3), C.R.S. That section requires that "any bill . . . which affects criminal sentencing and which may result in a net increase or a net decrease in periods of imprisonment in state correctional facilities shall be reviewed by the director of research of the legislative council . . . ." This requirement is being handled as part of the fiscal note process.

The chair of the committee to which this bill is referred will be notified of these provisions.

S:\LLS\GA\MEMOS\Mandatory Covers\Criminal_Sentencing_Leadership.wpd

Bills Containing Mandated Health Insurance Coverage
Memo to Committee Chair

TO: Senator _____ [for Senate bills]
or
Representative _____ [for House bills]
Chair, Committee on _____
and
Representative _____ [Chair of the Commission on Mandated Health Insurance Benefits]

FROM: Office of Legislative Legal Services

RE: Bill subject to mandated health insurance coverage procedures

Section ___ (, C.R.S.) of Senate Bill [House Bill] **07-0000**, CONCERNING , which has been referred to your committee, appears to be subject to the requirements of sections 10-16-103 and 10-16-103.3, C.R.S., which set forth special procedures for bills containing mandated health insurance coverage. The purpose of this memorandum is to inform you of the requirements specified in these provisions.

Section 10-16-103 (1) requires every person or organization seeking legislative action that would mandate a health coverage or offering of a health coverage by an insurance carrier as part of individual or group policies to ". . . submit a report to the legislative committee of reference addressing both the social and financial impacts of such coverage . . ." Section 10-16-103.3 establishes the Commission on Mandated Health Insurance Benefits and requires the committee to which a bill containing a mandated health insurance benefit is referred to ". . . request that the commission prepare and forward to such committee a study that assesses the social and financial impact of the proposed mandate . . ."

Our office has communicated these requirements to the sponsor of the bill.

cc: [bill sponsor]

S:\LLS\GA\MEMOS\Mandatory Covers\Health_Insurance_Coverage_Committee.wpd

Bills Affecting Mandated Health Insurance Coverage
Memo to Leadership Attached to Bill

TO: President _____ [for Senate bills]
or
Speaker _____ [for House bills]

FROM: Office of Legislative Legal Services

RE: Bill subject to mandated health insurance coverage requirements

Section __ (, C.R.S.) of the attached bill, **LLS No. 07-0000**, appears to be subject to the requirements of sections 10-16-103 and 10-16-103.3, C.R.S., which set forth special procedures for bills containing mandated health insurance coverage. The purpose of this memorandum is to inform you of the requirements specified in these provisions.

Section 10-16-103 (1) requires every person or organization seeking legislative action that would mandate a health coverage or offering of a health coverage by an insurance carrier as part of individual or group policies to ". . . submit a report to the legislative committee of reference addressing both the social and financial impacts of such coverage . . ." Section 10-16-103.3 establishes the Commission on Mandated Health Insurance Benefits and requires the committee to which a bill containing a mandated health insurance benefit is referred to ". . . request that the commission prepare and forward to such committee a study that assesses the social and financial impact of the proposed mandate . . ."

Our office has communicated these requirements to the sponsor of the bill, and we will also notify the chair of the committee to which this bill is referred of these requirements.

S:\LLS\GA\MEMOS\Mandatory Covers\Health_Insurance_Coverage_Leadership.wpd

MEMORANDUM

September 25, 1995
(updated January, 2008)

TO: Joint Budget Committee Staff

FROM: Office of Legislative Legal Services

RE: Guidelines for legal research and opinions (JBC)

It has become increasingly common for the JBC staff to seek advice or an opinion from OLLS staff when they face an issue with legal implications. The OLLS welcomes this consultation between staffs. Our office's early involvement in issues that may have statutory or constitutional ramifications often prevents surprises during the legislative process. However, it has become clear that both of our staffs need to develop a common understanding of the time within which the OLLS can reasonably be expected to respond and the kinds of projects the OLLS can reasonably be expected to undertake. These guidelines are an attempt to respond to that need.

1. A realistic time schedule for the project should be mutually worked out and agreed to by JBC and OLLS staff.

   a. A written response is always going to take more time than an oral response. The OLLS has internal procedures for the review of OLLS memos. These usually involve review by a team leader and, in the case of legal opinions or major memos, additional review by other senior attorneys. In some circumstances a conversation between the JBC analyst and the OLLS attorney will be more efficient in conveying the results of the legal research than a written memo.

   b. The OLLS will do its best to accommodate the schedule of the JBC and the JBC staff. However, the JBC staff should understand that OLLS staff must integrate the projects assigned by the JBC with their other duties, particularly at busy times of the year such as interim committee and session deadlines.

   c. At the outset of each project, OLLS staff will try to give JBC staff a realistic estimate of the amount of time required to complete the project in a competent, professional manner. If the two staffs agree to eliminate some research tasks in the interests of using less time, JBC staff should understand that the quality and reliability of the product may decrease.

2. The job of any attorney is to exercise independent professional judgment and give his or her client candid advice. The attorney should assist a client to make a good faith

effort to determine the validity, scope, meaning, or application of the law. Colorado Rules of Professional Conduct, Rules 1.2 and 2. 1. Often the law is not crystal clear on a particular subject. When the law is not clear, the attorney's job is to present a range of possibilities and to delineate the advantages, disadvantages, and risks associated with each. While OLLS staff will give a clear answer when the law is clear, their professional obligations require them to tell JBC staff when there is no clear answer to the question asked.

3. OLLS attorneys will do a better job of legal research or legal analysis if they have as much information about the problem as possible. JBC staff should explain the events that gave rise to the legal issue thoroughly, even if they believe that many facts are not necessary to understanding the issue. If the OLLS attorney believes something is irrelevant, he or she will tell the JBC analyst. JBC staff should err on the side of providing more information rather than less.

4. Sometimes the JBC staff refers questions to OLLS staff that are not legal questions per se. The kinds of questions with which OLLS attorneys can be of most help are those that involve applying the rules of statutory or constitutional interpretation, analyzing case law, or applying legislative procedural history. If the question is one of policy, or simply requires the exercise of common sense, the OILS may determine not to treat it as a legal question.

5. If the JBC staff knows which OLLS staff attorney to contact on a particular project, the OLLS staff attorney can be contacted directly. (The OLLS attorney will keep his or her team leader advised of any JBC staff project requests for purposes of workload distribution.). However, the JBC staff may contact Sharon Eubanks or Dan Cartin of the OLLS if the staff is unsure of which OLLS staff attorney to deal with.

OLLS GUIDELINES FOR WORKING WITH LOBBYISTS

NOTE: For purposes of these guidelines, "lobbyist" includes a professional lobbyist, as defined in section 24-6-301 (6), C.R.S., volunteer lobbyist, as defined in section 24-6-301 (7), C.R.S., and state officials and employees registered with the secretary of state who are responsible for lobbying as defined in section 24-6-303.5, C.R.S.

1. PRIORITY OF SERVICE

The Office of Legislative Legal Services (OLLS) is a staff agency of the General Assembly and the Office's first priority is the provision of services directly to members. Therefore, the following guideline will apply to all persons in the OLLS (legislative assistants in the front office and attorneys should be particularly sensitive to this issue):

> **A staff person in the OLLS should always assist a legislator who is seeking help, either in person or by phone, before assisting a lobbyist even if the lobbyist is seeking help at the behest of a legislator. If the staff person is already assisting a lobbyist when the legislator asks for help, the lobbyist should be asked to wait while the legislator is being helped or the lobbyist should be assisted by another staff person. A legislator should not be asked to wait until the staff person is finished assisting a lobbyist.**

2. BILL REQUESTS AND AMENDMENT REQUESTS

Section 2-3-505, C.R.S.,[1] requires that a request for the drafting of a bill be submitted by a legislator, either in writing or orally. If a lobbyist makes a bill request on behalf of a legislator, the OLLS will accept the bill request but will not consider the request "submitted by the legislator" until the legislator has notified the OLLS, either orally or in writing, that he or she will actually sponsor the bill request made by the lobbyist. Unlike prior practice, the OLLS will no longer call a legislator to verify sponsorship on a bill submitted by a lobbyist; however, the OLLS can verify sponsorship on the bill if the OLLS has occasion to speak to the legislator on some other matter. The lobbyist should be responsible for making sure the legislator calls the OLLS and officially "submits" the bill request. The mere acceptance by the OLLS of a bill request from a lobbyist will not be sufficient to meet bill request deadlines; the legislator must contact the OLLS and verify the request prior to the request deadline.

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[1] 2-3-505. Requests for drafting bills and amendments- confidential nature thereof - lobbying for bills. (1) All requests made to the office for the drafting of bills or amendments thereto shall be submitted, either in writing or orally, by the legislator, or by the governor or the governor's representative making the request, with a general statement respecting the policies and purposes which the person making the request desires the bill or amendment to accomplish. The office shall draft each bill or amendment to conform to the purposes so stated or to supplementary instructions of the person making the original request. (remainder of section omitted)

Like bills, a request for the drafting of an amendment must be submitted by a legislator, either in writing or orally. The OLLS may accept a request for an amendment from a lobbyist on behalf of a member only if the lobbyist has the member's authorization, in writing, to make the amendment request. The member's written authorization serves as the member's written request for the drafting of the amendment. The OLLS suggests the use of the attached amendment authorization form; however, the OLLS will accept any written authorization, no matter the form, if it includes similar information. Copies of the amendment authorization form will be available in the front office.

NOTE: The provisions outlined above for bill requests and amendment requests do not apply when a legislator has made the bill request or amendment request himself or herself and has authorized the OLLS to work with a specific lobbyist. The provisions are intended to apply in the situation where a lobbyist is making a bill request or amendment request on behalf of a legislator and the OLLS has had no prior contact, either orally or in writing, with the legislator concerning the request.

3. INFORMATION RELATING TO THE DRAFTING OF A BILL OR THE DRAFTING OF AN AMENDMENT

In accordance with section 2-3-505, C.R.S., the OLLS drafter should rely only on information received directly from the bill sponsor or amendment sponsor, either orally or in writing, concerning the specifics relating to the drafting of a bill or an amendment. The OLLS drafter may also rely on information concerning a bill or an amendment provided by a lobbyist who is listed as the contact person on the bill request form, amendment request form, or other written authorization from the sponsor. The OLLS drafter should not rely on information provided by a lobbyist not listed as the contact person unless the drafter has been authorized by the sponsor to rely on such information, either orally or in writing.

4. COPIES OF BILLS AND AMENDMENTS

In accordance with the confidentiality provisions of section 2-3-505, C.R.S., the OLLS will release a copy of a bill or an amendment only to the bill or amendment sponsor. The OLLS may release a copy of a bill or amendment directly to a lobbyist who is working on the bill or a specific amendment and who is listed as the contact person on the bill request form, the amendment request form, or other written authorization from the sponsor. The OLLS may also release a copy to any other lobbyist who the sponsor has authorized on such request form or other written authorization to receive a copy of the bill or amendment. The OLLS should not release a copy of a bill or amendment to any other lobbyist until the OLLS has confirmed with the bill sponsor or amendment sponsor, either orally or in writing, that the sponsor has authorized the lobbyist to receive a copy of the bill or amendment. A lobbyist who is listed as the contact person on the amendment request form or other written authorization from a sponsor may receive copies of only the amendments he or she is working with the sponsor on -- not all amendments to the bill. Lobbyists are advised that a drafter may elect to deliver a bill or amendment to the sponsor prior to releasing a copy to the authorized lobbyist.

NOTE: For purposes of guidelines 2 through 4, the term "bill" includes both bill drafts and finalized bills prior to introduction and the term "amendment" includes both amendment drafts and finalized amendments prior to offering in committee or on the floor. Guidelines 2 through 4 do not apply once a bill is introduced or an amendment is offered by a committee or on the floor.

5. LEGAL MEMORANDA

The OLLS will release a copy of a legal memorandum requested by and prepared for a member only to that member. Because of the confidential nature of the memorandum, the OLLS will release a copy of a memorandum to a lobbyist only if the member has authorized the OLLS, orally or in writing, to provide the lobbyist with a copy. A legal memorandum requested by and prepared for a member is "work product", as defined in section 24-72-202 (6.5), C.R.S., is not a public record, and is subject to the statutory requirements governing work product.

6. COPIES OF OLLS MATERIALS

The OLLS will provide a copy of any material prepared or held by the OLLS (charts, bill summaries, memoranda, preamended bills, court cases, etc.) that is not confidential to any member. The OLLS will provide a copy of any such material to a lobbyist, without charge, if a member has directed the OLLS, either orally or in writing, to provide the lobbyist or if the material is ten or fewer pages in length. If the material exceeds ten pages in length, the OLLS will provide a copy of the material to a lobbyist for purposes of allowing the lobbyist to copy the material on the public copying machine as allowed by the "Public Records Act", part 2 of article 72 of title 24, Colorado Revised Statutes.

NOTE: This provision does not apply to the Digest of Bills prepared by the OLLS.

7. REQUESTS FOR RESEARCH

The OLLS will take research requests from members either orally or in writing. The OLLS will take a research request from a lobbyist only if the lobbyist has a member's authorization, in writing, to make the research request.

8. USE OF OLLS OFFICE EQUIPMENT BY OR FOR LOBBYISTS

OLLS office equipment including, but not limited to, telephones, copying machines, and FAX machines, can be used by a lobbyist or by an OLLS staff person on a lobbyist's behalf only if the OLLS determines the use is directly related to furthering work by the OLLS for a member. Under no circumstances should OLLS office equipment be used for a lobbyist's personal business. OLLS staff persons who are notaries and whose notary seal is paid for from OLLS funds should not notarize any document for a lobbyist.

9. GIFTS FROM LOBBYISTS AND ATTENDANCE AT LOBBYIST-SPONSORED ACTIVITIES

The provisions of article XXIX of the Colorado constitution (more commonly known as "Amendment 41"), which became effective on December 31, 2006, expressly prohibit a professional lobbyist, personally or on behalf of any other person or entity, from knowingly offering, giving, or arranging to give to certain persons covered by the article, including government employees such as employees of the OLLS, or to such covered persons' immediate family members, any gift or thing of value or any meal, beverage, or other consumable item.[2] Accordingly, and in order to comply with the letter and spirit of Article XXIX, employees of the OLLS are prohibited from receiving, accepting, taking, seeking, or soliciting, directly or indirectly, *any* gift from a lobbyist. The term "gift" has the same meaning as described and used in section 3 of article XXIX. This restriction prohibits OLLS employees from attending lobbyist-sponsored activities or programs, as well, unless the OLLS employee pays for the cost of attending or the office pays the cost on behalf of the employee. However, an OLLS employee may have a meal with a lobbyist so long as the OLLS employee pays for his or her own meal.

OLLS employees attending a conference or meeting the registration fee or other costs for which has been paid by the employee or on the employee's behalf by the state, may partake in meals or activities that are a scheduled part of the conference or meeting and that may be underwritten, in whole or in part, by one or more organizations that may be represented by a lobbyist if: 1) The meal or activity is offered by the sponsor of the program or meeting to every attendee; and 2) it is not given or offered individually to the OLLS employee to influence an official act that he or she may perform in the course and scope of his or her public duties.

In certain circumstances, the director of the OLLS may accept or receive on behalf of the entire office a gift of nominal value from a lobbyist that is intended for the benefit and enjoyment of the office as a whole.

If you have any questions regarding compliance with article XXIX, please see the director of the OLLS or your immediate supervisor.

10. DATING LOBBYISTS AND OTHER LOBBYIST RELATIONS

An OLLS staff person is strongly discouraged from dating a lobbyist, especially if the staff person is working directly with the lobbyist on official business.

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[2]On May 31, 2007, Denver District Court Judge Habas entered a preliminary injunction enjoining the enforcement of sections 2 and 3 of article XXIX. The defendants in that case appealed the ruling to the Colorado Supreme Court which is scheduled to be argued on October 25, 2007.

If, because of a personal relationship with a lobbyist, an OLLS staff person believes that there may be an appearance of impropriety, the OLLS staff person shall disclose the existence of the relationship to the member and to the OLLS.

11. NONCOMPLIANCE WITH GUIDELINES.

Knowing noncompliance with one or more of these guidelines by an OLLS staff person may result in the taking of appropriate disciplinary or remedial action in the interest of preserving the role and integrity of the office. Noncompliance with a guideline will be addressed on a case-by-case basis.

If a lobbyist knowingly asks an OLLS staff person to disregard one of these guidelines, the OLLS staff person should report such request to the director of the OLLS for appropriate action.

Effective December 9, 1994
Revised January, 1996
Revised November, 1999
Revised November, 2000
Revised October, 2007

OFFICE OF LEGISLATIVE LEGAL SERVICES
AMENDMENT AUTHORIZATION FORM

Date _____

Representative/Senator _____ authorizes

_____ to be the contact person and provide information to the

OLLS for the purpose of preparing amendment(s) to HB/SB _____.

The contact person is authorized to receive a copy of only those amendments that the

contact person is working on.

Check the appropriate line(s):

_____ Single Amendment

_____ Multiple Amendments (This authorization for multiple amendments will expire on _____ or 30 days from the date of this form, whichever is earlier.)

_____ In addition to releasing copies of the amendment to the lobbyist listed above as the Contact Person, copies may be released as well to the Following Named Individuals

_____ _____

_____ _____

_____

Signature or Initials of Amendment Sponsor

MEMORANDUM

November 12,1999

TO: OLLS Staff
FROM: Doug Brown
RE: Attorney General affirms previous opinion relating to what is a revenue-raising bill which must be introduced in the House of Representatives pursuant to Article V, Section 31 of the Colorado Constitution.

As you may know, there has been a controversy about whether bills that reduced taxes could be introduced in the Senate. In 1966, the Attorney General opined that a bill that raises or reduces taxes must be introduced in the House of Representatives. This ruling is discussed and applied in detail in the OLLS Drafting Manual, at page 134.

Early this year, outgoing Attorney General Norton was asked to review this opinion, did so, and let the opinion stand. Later in this year, Attorney General Salazar was asked to review this opinion and has now affirmed the 1966 opinion, see copy attached. The opinion also notes that, in recent years, several bills which were required to be introduced in the House were introduced in the Senate and became law. It is not clear why the Attorney General's letter included this latter information.

What does this mean for us? I think it means that we continue to determine whether a bill is a bill for raising revenue according to the traditional rule, stated in the drafting manual as follows:

> Any bill which would increase or decrease state income tax, state sales tax, state use tax, state estate tax, or any other state tax which goes to the general fund and becomes available for general state purposes should be introduced in the House of Representatives.

I am informed that the Senate President and the Speaker of the House intend to follow the traditional interpretation of section 31 affirmed by the Attorney General on November 10. *Accordingly, we should review all the bill requests submitted by a senator as the prime sponsor in the first house to determine whether this issue should be raised with the prime sponsor.*

c: Speaker George, Majority Leader Dean, Minority Leader Gordon, Representative McPherson, Majority Leader Blickensderfer, Minority Leader Feeley, Senator Teck, Charlie Brown, Kenneth Conahan, JR Rodrigue, Patty Dicks

ATTORNEY GENERAL OF COLORADO
Ken Salazar

November 10, 1999

The Honorable Ray Powers
President of the Senate
State Capitol
Denver, CO 80203

Re: Article V, Section 31 of the Colorado Constitution

Dear Senator Powers;

I have carefully reviewed Attorney General Duke Dunbar's 1966 opinion concluding that bills raising and reducing state tax revenues should originate in the House of Representatives under Article V, Section 31 of the Colorado Constitution. I believe that the reasoning of this opinion remains sound, and therefore, I affirm it.

As a practical matter, I will note that over the years, many tax credit bills originating in the Senate have become law. As recently as 1998, SB 158 expanded an existing tax credit for child care expenses and created a new credit for children, based upon a federal credit. That same year, the General Assembly passed SB 154 which expanded a tax credit for contributions to certain child care facilities and programs, from enterprise zones to the entire state, and SB 85, which created a tax credit for investment in rural technology infrastructure. In 1997, the General Assembly passed SB 76, which established a sales tax exemption for coins and precious metal bullion, which the Governor vetoed. In 1996, the General Assembly adopted SB 193 which revised the enterprise zone law. This bill both increased revenues by reducing existing tax credits, and decreased revenues by adding other kinds of credits in the zones. Legislators argued that this bill was revenue neutral. In 1994, SB 64 concerning credits to promote temporary housing for the homeless and SB 200 concerning the extension of historic property preservation tax credits were both enacted.

Sincerely,
KEN SALAZAR
Attorney General

Executive Committee of the General Assembly
Non-partisan Staff Out-of-Capitol-Complex Meeting Policy

This policy is intended to apply to legislative business meetings with, on behalf of, or at the request of individual legislators, or groups of legislators meeting on an ad hoc basis. Staff persons shall attend such legislative business meetings outside the Capitol complex only if:

1) The staff person's attendance is in compliance with any applicable policy of the Legislative Council, Committee on Legal Services,[3] Legislative Audit Committee, or the Joint Budget Committee and the management of the non partisan staff agency has authorized the staff person's attendance; or

2) The attendance is authorized by the Executive Committee of Legislative Council.

This policy governs the Legislative Council Staff, the Office of Legislative Legal Services, the Office of the State Auditor, and the Joint Budget Committee Staff. This policy does not pertain to meetings of officially established committees of the General Assembly or staff attendance at meetings, seminars, conferences, or workshops that are educational in nature or at which a staff member is representing their office in an official capacity.

Approved by the Executive Committee on March 5, 2001.

[3]For OLLS policy, see 01/02/2001 e-mail "Policy Concerning Out-of-Office Meetings with Members on the following page.

To: &LLS
From: Stephen Miller
Date: 01/02/2001 06:01 PM
Subject: [OLLS] Policy Concerning Out-Of-Office Meetings With Members

On December 19, 2000, Sharon and I presented the office's proposed policy on staff attendance at out-of-office legislative business meetings to the COLS. As some of you may recall, the proposed policy attempted to establish a reasonable constraint on OLLS staff involvement with such meetings by limiting staff attendance to 2-1/2 hours per meeting, including travel time. The proposed policy also left it to the discretion of the team leader to determine whether the staff person should attend an out-of-office meeting outside the 2-1/2 hour time limit.

For the most part, the COLS was not in favor of the policy. The consensus was that the policy tended to formalize out-of-office meetings and actually "push for" or encourage such meetings rather than discourage them. In other words, the COLS felt that the policy probably would have the opposite effect of what was intended. Most COLS members appeared to be opposed to OLLS staff attending *any* out-of-office meetings. These members felt that if out-of-office meetings were going to occur, they should only occur under emergency circumstances. A few members noted that if there were to be a policy, it should apply to OLLS staff rather than to members themselves.

The COLS then suggested that the development of policy regarding OLLS staff attendance at out-of-office meetings should be an OLLS managerial matter rather than a COLS policy matter. After further discussion, however, the COLS agreed to fashion a policy for the OLLS. A motion was made as follows:

"Only upon approval of OLLS management **and** only upon unusual circumstances may an OLLS staff person attend a legislative business meeting outside the *Capitol complex*."

The motion passed 8-1.

The bottom line now is that if an OLLS staff person is requested to attend any legislative business meeting outside the Capitol complex, the circumstances of the meeting must be 'unusual' and the request must be approved by the staff member's team leader. The COLS did not clarify what "unusual" meant, although one member cited an example, "where a member breaks his leg". It appears that "unusual circumstances", as used in the new COLS policy, revolve around emergency and exigent situations rather than inconvenience.

In order to ensure consistent treatment of all requests for OLLS staff to attend meetings outside of the Capitol complex, the office would like team leaders to develop guidelines for determining whether particular circumstances constitute "unusual circumstances" under the

policy. If you are requested to attend an out-of-office meeting outside the Capitol complex, please inform the member of the OLLS' policy and ascertain if, under the guidelines, "unusual circumstances" warrant your attendance. You should then discuss the request with your team leader. The office's position under the new COLS policy is that only upon receiving your team leader's prior approval can you attend the out-of-office meeting.

Please feel free to contact anyone on the personnel subcommittee or your team leader concerning this policy and/or the COLS meeting. Thanks.

Steve Miller

COLORADO
HOUSE OF REPRESENTATIVES
STATE CAPITOL
DENVER
80203

January 21, 2000

Douglas G. Brown
Director, Office of Legislative Legal Services
091 State Capitol
Denver, CO 80203

RE: Requests for opinions relating to a procedural issue when the issue has been decided in the course of legislative deliberations

Dear Mr. Brown:

In recent years, we have requested the assistance of the Office of Legislative Legal Services (OLLS) in analyzing and resolving issues of legislative procedure arising in the course of legislative deliberations. This practice has been generally helpful to the legislative process.

However, it is my view that the rules themselves and the processes they prescribe and the prudent observance of the proper role of nonpartisan staff dictate some limits on this practice.

Accordingly, it is my view that when the person in the chair, whether the Speaker, the Speaker Pro Tempore, or the Chair of the Committee of the Whole makes a final ruling on a question of procedure, that ruling should not be called into question through the mechanism of requesting an opinion from the OLLS on the ruling made by the person in the chair. Under the rules, such a ruling is final and ought not to be disturbed unless action is taken under House Rule 11 which provides for an appeal from the ruling of the chair.

If a Representative requests an opinion on a procedural issue under these circumstances, please inform the member of this letter and suggest that the member consult with me or the appropriate member of leadership.

It is my understanding that the issuance of these instructions and their content are generally consistent with previous instructions given to guide the OLLS in the conduct of similar functions, specifically instructions from the Executive Committee in February, 1995, which required the OLLS staff to speak with members of the Executive Committee from the requesting member's house prior to the writing of an opinion.

Yours truly,
/s/
Representative Russell George
Speaker of the House of Representatives

MEMORANDUM
February 8, 2000

TO: Senator Powers and Speaker George
FROM: Doug Brown /i/
RE: Response to your letter relating to requests for written legal opinions relating to the separation of powers among the three branches of government.

This memo responds to your letter of January 24, 2000, directing the Office of Legislative Legal Services (OLLS) to notify in writing the President and the Speaker whenever the OLLS receives a request for a written legal opinion relating to the separation of powers among the three branches of government.

The OLLS views the General Assembly as the institutional or organizational client of its staff attorneys; therefore, we are subject to the directives of the General Assembly. In many cases, the General Assembly directs the conduct of the OLLS by statute or legislative rule; these are formal articulations of the interests of the institutional client. As President of the Senate and Speaker of the House of Representatives, the leaders of the legislative institution, your instructions provide useful guidance in the conduct of the activities of the OLLS.

The status of a request for a written legal opinion from the OLLS is not directly addressed by a statute, legislative rule, or other written legislative directive or policy. Therefore, the OLLS has developed procedures related to legal opinions which are analogous to those governing requests for bills and amendments. These informal procedures "filled in a gap" in legislative direction.

Your letter provides the OLLS with explicit instructions relating to a matter not specifically addressed by the General Assembly. Your letter is a written directive relating to the conduct of the OLLS; it also "fills in a gap".

The OLLS intends to implement your instructions in a manner that balances the interests of legislative management with the statutory protections of legislator confidentiality as described in part II. of this memo.

Finally, it should be noted that this procedure parallels the procedure followed for many years by the President and Speaker of the House of Representatives relating to legislators' requests for written legal opinions from the Attorney General.

I. Current Practices

There is no statute, legislative rule, or other legislative directive or policy that directly addresses the status of a request for a written legal opinion from the OLLS. In the absence of such guidance, our general policy has been to follow practices similar to those that govern requests for bills or amendments which are confidential under section 2-3-505, C.R.S. In addition, all documents prepared or assembled in response to a request for a bill or amendment, including legal opinions, are considered work product, as defined in section 24-72-202 (6.5), C.R.S., and are not subject to disclosure under the open records law without the permission of the requesting legislator.

Accordingly, in the absence of a specific directive, we have generally treated requests for legal opinions as being confidential unless the requesting legislator indicates otherwise. This practice seemed consistent with the need to treat legal opinions that are not prepared or assembled in response to a request for a bill or amendment as work product under the open records law, part 2 of article 72 of title 24, C.R.S.

However, the practical application of these specific statutes inevitably results in potential conflict with legitimate legislative management interests. As a result, information relating to bill requests has been released in the interests of better legislative management, so long as the purpose of the statutory provision requiring confidentiality is not contravened.

For example, information about bill requests has been released in response to requests from legislative leadership relating to legislative management concerns, so long as the identity of the requesting legislator is not jeopardized. We have released general information about the number of bill requests received so long as the identity of the requesting legislator is not revealed without the legislator's permission. In addition, when asked whether bill requests on certain subject matters have been received by the OLLS, we have consulted with the requesting legislator and obtained their permission to release the information that a bill request for a certain subject matter has been received, again honoring a legislator's desire to keep the legislator's identity confidential. Thus, the interests of legislative management have been served while the purpose of the confidentiality statute is not contravened.

In addition, the OLLS has recognized a practical limitation on the confidentiality of written legal opinions. This limit is based on the interests of fair delivery of legal services to all members of the General Assembly by the OLLS. The OLLS is obligated to do the same quality of work for one legislator as it does for another. As a result, a legislator acquires no proprietary interest in a legal opinion prepared at his or her request. Therefore, when a written legal opinion has been requested by a legislator and prepared and the OLLS receives a request for an identical legal opinion from another legislator, the OLLS's practice has been to prepare and deliver an identical legal opinion for any member who requests it.

In summary, the practical application of statutory protections of legislator confidentiality has allowed the consideration of the interests of legislative management and fair administration of the office so long as the underlying purpose of statutory protection of legislator confidentiality has not been contravened.

II. Suggested Implementation

For reasons stated above, this Office intends to implement the instructions as follows:

1. When a legislator requests a written opinion relating to the separation of powers between the three branches of government, this Office will inform the requesting legislator that we will inform the President and Speaker in writing of the request. If the requesting legislator consents, the letter informing the President and Speaker of the request will also identify the requesting legislator. If the requesting legislator so desires, he or she may take the responsibility of so informing the President and Speaker of the request. Otherwise, the letter will describe the request for the written opinion but will not reveal the name of the requesting legislator.

2. The OLLS will not release a final written legal opinion relating to the separation of powers between the three branches of government without the consent of the President if the requesting legislator is a Senator, or the consent of the Speaker if the requesting legislator is a Representative.

3. Requests for written legal opinions relating to other questions of law will continue to be treated by the OLLS in the same manner as described in part I. of this memo.

This method of implementation recognizes legitimate legislative management concerns while avoiding conflict with the purposes of the statutes protecting member confidentiality. It parallels the existing practices of this office in addressing other situations where potentially conflicting interests must be balanced. It is our assumption that your instructions will continue to control the office's conduct of these matters until this office receives new direction from leadership or appropriate statutes or legislative rules are changed.

January 22, 2001

Douglas G. Brown
Director, Office of Legislative Legal Services
091 State Capitol
Denver, CO 80203

RE: Requirement of notice to the Speaker or President, or both, when the Office of Legislative Legal Services (OLLS) receives a request for a written legal opinion relating to separation of powers

Dear Mr. Brown:

As the President of the Senate and the Speaker of the House, we are committed to the preservation and protection of the integrity of the processes of the Colorado General Assembly. In particular, we are sensitive to the proper exercise of executive, legislative, and judicial powers and are deeply concerned that the activities of the three branches remain within their appropriate spheres as defined by the Colorado Constitution.

Accordingly, we are issuing the following instructions: When the OLLS is requested by a member to issue a written legal opinion relating to the separation of powers among the three branches of government, please inform the member that you must notify the President and the Speaker of the request in writing. You should encourage the member to contact the leader of the member's chamber about the request personally, if possible.

The purpose of the requirement is to inform the President and the Speaker about legal opinions that could implicate the General Assembly's ability to perform its legislative functions. It is not the purpose of this requirement to limit any member's ability to obtain information or advice from the OLLS. However, when an opinion could have significant implications for the legislative institution, it is appropriate for us to provide recommendations on the advisability of seeking a written legal opinion and about its timing or focus.

In addition, these instructions are intended to aid the OLLS in assuring that necessary resources are available to perform the work of the office and assist the members of the legislature with their need for bill drafting services and other services provided by the OLLS.

It is our understanding that the issuance of these instructions and their content are generally consistent with previous instructions given to guide the OLLS in the conduct of similar functions.

Yours truly,

/s/	/s/
Senator Stan Matsunaka	Representative Doug Dean
President of the Senate	Speaker of the House of Representatives

MEMORANDUM

TO: Speaker _____
President _____

FROM: Office of Legislative Legal Services

RE: Request for Legal Opinion Relating to Separation of Powers

In a memorandum dated January 22, 2001, this office was directed to notify you when this office receives a request for a written legal opinion relation to the separation of powers between the three branches of government.

The OLLS has received such a request. Specifically the request is as follows:

_____

_____

_____

_____

We have informed the member that we would notify you in writing of the request and have encouraged the member to contact the leader of the member's chamber.

S:\LLS\FORMS\SEPPOWERS.wpd

Legislative Staff: Toward a New Professional Role

by John Phelps
Clerk, Florida House of Representatives

Volume 5, Number 2 Winter 2000

This article is from remarks which were presented by John Phelps at 1999 meetings of staff sections of the National Conference of State Legislatures.

Over the past few months it has been my pleasure to travel to meetings of the staff sections of the National Conference of State Legislatures (NCSL). These visits have given me some fresh insights into our business. Meeting attendance is at an all-time high and programs are becoming increasingly relevant and valuable. I believe something is building for legislative staff, something important. But before getting to that, let me place it in context.

NCSL was created in 1975, a time when state legislatures were minor players in the fabric of American government. Over the past 30 years there has been a dramatic change. Our legislatures today are increasingly influential at home and in Washington, and our government has begun to return to the state/federal balance intended by its founders.

I believe NCSL is due considerable credit for this transformation. It has worked hard to bring together the resources state legislatures needed to reassert their proper constitutional authority. We are now beginning to see the fruits of that labor.

At the very beginning NCSL recognized that effective legislative staff would be a key to state legislatures realizing their potential. I believe it was at that moment that legislative staff work began taking on the properties of a profession. What are some of these properties?

1. A defined mission serving a critical public purpose;
2. A set of core values;
3. A code of ethics;
4. Self-developed and enforced standards of performance; and
5. Continuing education.

Let me give you an example of how this works in practice.

Those of us in term-limited states have heard for years that staff and lobbyists will soon be running our legislatures. That is nonsense and every legislative staff person knows it. Staff today know where the line is drawn for us. We honor it because doing so conveys respect for the legislature itself and our proper role within it. That doesn't mean we are passive; it just means we know when and under what circumstances to be assertive. It is one of our key professional values. We don't even think about it, we just do it.

Some veteran colleague cared enough to pass along this insight to us. That is what

professions do, they pass along their skills and values to the next generation. If we believe our jobs are important enough to do well, then we should be similarly concerned that our successors do them well. If we care about the future of the legislature, we have to care about future legislative staff.

Many of the "old legislative foot soldiers" like me who got in on the early ramping-up of legislative staff are approaching retirement age. It is time for us to acknowledge that much of this work isn't learned at the university. It is learned in the trenches, under fire.

We need to begin devising programs in each of our states so that the young people joining our ranks are given the benefit of our experience and do not become discouraged or overwhelmed. We need to look out for them during those early skirmishes that we know are bound to come.

The first step in this process is to identify their frame of reference. Namely, that new staff know about the legislature what they have been taught by the media. This can be dangerous for them and for us. Dangerous for them because it can threaten their employment, and dangerous for us because when any staff person fails, the credibility of all staff is diminished.

New staff need a more factual perspective. They need to understand a few imperatives.

1. *They need to know that legislatures are made up of many fine and decent people, members, staff, and lobbyists alike* who often look upon what they do with a kind of reverence, as much a commitment as a career.

This attitude is formed when lawmaking is experienced as a player, in a first-hand, personal way. People so engaged come to realize that for all its complexities and frustrations, there is certain majesty in the democratic process. They come to appreciate that something larger than their narrow interest is at stake. They come to accept the process itself as a thing to be cherished and preserved.

It would be naïve to say that everyone in the business holds this view, but that so many have over the years is remarkable. More so than constitutions, they have been the foundation on which the legislative institution has been built.

2. *New staff need to know the legislative process is fairer than they have been led to believe, but not perfect;* that conflict over deeply held beliefs always gets personal. Lawmaking is not an Oxford-style debate; it has real consequences for real people. It is disorderly and there will be an occasional fistfight. But when the dust settles the "process" will right itself as it has done for over 200 years.

3. *They need to know that legislatures do a much better job than the media would admit* and that, for most issues, very responsible policies are developed. Legislatures were never

expected to produce perfect laws; they were only expected to achieve the possible within the context of their time.

4. *They need to believe in the power of ideas.* Obviously, influence matters in politics, but so does solid factual analysis. If it didn't a lot of staff would be out of work. We all know that legislatures make their worst decisions when they act with inadequate information. Our job is to see that never happens. They need to know that a good idea is a good idea, even if it comes from a scoundrel. There is, of course, the corollary that a bad idea is still a bad idea even if it comes from a statesman.

5. *They need to know that lawmaking is not about winning or losing, it is about best guesses.* It involves taking the facts at hand and making a decision, in the full knowledge that history will likely judge you wrong. That is how our government was intended to work. It was not founded upon fixed ideas as were so many that failed. It was based instead on the commonsense notion that policies will change when experience requires them to. There is not now nor was there ever intended to be a "final word" in lawmaking. It is the genius of our system.

Our federal constitution was born in an era when English empiricism was the ascendant philosophy. John Locke, who deeply influenced our founding fathers, was one of its chief proponents. This philosophy rejected the notion that perfection or absolute truth was possible in earthly matters. That is the principle reason powers were balanced among competing branches. The best all of us in government can do is strive for that ambiguous and shifting notion of the collective good.

6. *New staff need to respect a person's right to hold his or her own views.* Lobbyists represent people asserting their constitutional right to petition their government. Neither their motives nor anyone else's should be questioned. Staff should be willing to trust that the merits of every proposal will be fairly judged through the twin cauldrons of analysis and debate.

7. *They need to know that they don't have to be experts in politics.* For most of us, that is not what we were hired to do. That doesn't mean that they should ignore politics. It just means that the politics of our work should not become an obsession.

8. *They need to know that there is a line past which staff do not carry an issue.* It is the point at which they have to hand the ball to a member and let them carry it. It is necessary to know where that line is drawn and not to step over it. A veteran can help them understand where that line is.

9. *They need to know not to personalize outcomes.* Their ideas will not always prevail. That doesn't mean that they were wrong. It just means that they need to go on to the next issue. They should be inspired by the knowledge that they will one day be able to point with pride to the statute books and say they had a hand in writing some of those laws.

10. *They need to know that the votes are not always as certain as one may think.* It is now a truism that special interests control every action of the legislatures. I don't believe it. I think every staff person has seen powerful interests faced down and defeated by the simple testimony of an ordinary citizen. That is how the system is supposed to work.

11. *They need to respect the process.* It is more important than any bill or any member. All of us are asked how to get around this or that rule or procedure. Usually, there is a way within the rules to address the problem; the questioner simply isn't aware of it. If it is plainly against procedure, we should say so and let that be the end of it.

12. *We should encourage new staff to take pride in what they do* - not just because it is right, but because one day a person affected by a law will be grateful someone took the time to do a good job crafting it, even though they may never know who that drafter was.

13. *New staff need to be prepared for the fact that they will not be trusted immediately.* They should not become discouraged when their advice or recommendations are not accepted immediately. They have not failed. It just takes time in this business to build relationships and establish a reputation for good work.

14. *They need to be encouraged to speak up for the legislature,* not to be silent when it is maligned. As "insiders" they have a special knowledge of how our system works. That knowledge carries with it a special responsibility to speak up for the legislative institution. They need to understand that what they say - good or bad - about the legislature has real impact. They just need to tell the truth. A democracy can handle that.

In conclusion, I would like to make one final observation. We talk a lot about the "Legislative Institution." But what exactly do we mean?

I do not believe the legislative institution is bricks and mortar or some rarefied abstraction. To me it is very real and wherever we do our work it surrounds us like the grandeur of our legislative halls.

- It is you and the person in the office next to you.
- It is the honor we pay our rules and traditions.
- It is the courtesy and deference we pay members and one another.
- It is preserving our historic chambers and keeping them safe.
- It is the legacy of our special ceremonies and language.
- It is a well-written bill or report.

- It is the record kept and verified with such care that it is beyond legal challenge.

- It is research so vital when the time comes to vote.

- It is NCSL and its extraordinary staff.

It is these and many other things, but most of all, it is the love that each of us holds for this precious gift of democracy and the understanding that our work and our conduct has real consequences for its future.

Over the past thirty years, with increasing and impressive competence, colleagues in NCSL staff sections have built a profession, a profession that is now an important pillar upholding the legislative institution and facilitating its work within a modern republic. It is an obligation we bear with humility and with pride.

When our work is done and we have kept faith with that responsibility, we can take satisfaction in the knowledge that our legislatures, our states, and our nation have been made stronger.

Guidelines for When Skipping the Revisor May Be Considered

1. Bills
   a. All bills by first year drafters should be revised.
   b. First year editors should get approval from their head LA before skipping revisor.
   c. All bills and resolutions should be revised at least once.
   d. Before skipping the revisor, both the drafter and the editor should agree that there are no issues that it is important for the revisor to review and it is okay to skip the revisor and the revisor should approve it; or the drafter should show the change to the revisor ahead of time and get approval to skip.

2. Resolutions and Memorials.
   a. You may consider skipping the revisor for resolutions or memorials that are requested every year when there is little or no change to the language each year.
   b. Resolutions honoring deceased members, sports teams or players, or other special groups; creating special days i.e. "nurses day", "Ag day", "single parent day", "frozen dead guy day", etc.; increasing awareness of diseases; encouraging specific behavior; and other resolutions or memorials that do not have the effect of law, will not have any legal impact, and are not politically sensitive may be skipped with the approval of the revisor and drafter.
   c. Resolutions memorializing congress, designating how money will be spent such as "state education fund revenue resolution", "species conservation eligibility list", or "Colorado water conservation board construction fund project eligibility list"; creating interim committees or studies; changing house, senate, or joint rules; and resolutions dealing with a politically sensitive subject should always be revised.

3. When the only change is changing the effective date or repeal date of a section (not the effective date clause in the bill). For example:

> (3) (b) (I) Notwithstanding any provision of paragraph (a) of this subsection (3) to the contrary, for precinct caucuses held in the calendar year commencing January 1, ~~2002~~ 2004, the county clerk and recorder shall furnish without charge to each major political party in the county a preliminary list of the registered electors in the county who are affiliated with that political party as soon as practicable after the date of the Colorado supreme court's approval of the reapportionment plan for senatorial and representative districts of members of the general assembly in the calendar year commencing January 1, ~~2002~~ 2004. The county clerk and recorder shall furnish a supplemental list of such registered electors to each major political party on the Friday preceding the date of the precinct caucus.
>
> (II) This paragraph (b) is repealed, effective July 1, ~~2002~~ 2004.

Except that, if this type of change is contained in a sunset bill or a tax bill, the bill should always be revised.

3. Technical changes
   a. Changing the no-safety clause to a safety clause provision. However, if you are changing a safety clause to a no-safety clause, other issues such as issues concerning effective dates may arise, and the bill should be revised unless skipping the revisor is approved by the revisor.
   b. You may skip the revisor if changing dollar amounts in an appropriation section. When adding or removing an appropriation section, you may skip the revisor only with the approval of the revisor.
   c. You may skip the revisor if correcting spelling errors.

4. Title changes
   a. When a title is changed to reflect the addition or elimination of an appropriation section when the appropriation section was removed previously and the title change was missed the revisor may be skipped but the bill summary should also be checked for conforming amendments.
   b. When adding or removing articles from the title such as "the", "an", "a", etc. and no substantive change is being made, the revisor may be skipped.
   c. Any other more substantive title changes should be seen by the revisor.

OLLS Policies on Green Sheets

December 6, 2005

Purpose of policies and background: OLLS has a statutory duty to keep records regarding bills. Section 2-3-504 (1) (e), C.R.S., states:

> **2-3-504. Duties of office.** (1) The office shall:
> (e) Keep on file records concerning legislative bills and the proceedings of the general assembly with respect to such bills; subject indexes of bills introduced at each session of the general assembly; files on each bill prepared for members of the general assembly and the governor; and such documents, pamphlets, or other literature relating to proposed or pending legislation, without undue duplication of material contained in the office of the legislative council or in the supreme court library. All such records and documents shall be made available in the office at reasonable times to the public for reference purposes, unless said records are classed as confidential under this part 5.

One of the primary means of complying with this requirement is the permanent retention of greet sheets. Current practice regarding the types of documents that are attached to green sheets varies widely between teams and from drafter to drafter. One of the purposes of this policy is to promote compliance with OLLS' statutory obligations by establishing uniform requirements and guidelines for attachments to green sheets.

As a preliminary matter, the retention of green sheets is accomplished by filing green sheets in the front office after bills have been introduced. However, often the green sheets are not filed until after the session has ended due to the session work load. Green sheets are historical documents that the office is mandated by statute to save and the office takes the custodianship of these records seriously. Thus, the other purpose of this policy is to specify the procedures to be followed for the filing of green sheets.

Green Sheet Attachments - Required. The following documents shall be attached to each green sheet:

1. The bill draft workflow sheet and bill request yellow sheet;
2. Legislative audit committee partial draft request workflow sheets and pre-CLICS workflow sheets, if applicable;
3. All written drafting instructions from the sponsor and contacts; and
4. All of the different versions of the bill draft, including LAC partial drafts. In order to conserve space, at the legislative assistants' discretion, only those pages of a revised bill draft that contain new language in double underlined text or hand-written changes may be attached rather than every page of the full redrafted bill.

Green Sheet Attachments - Guidelines. Any document, whether created pre- or post-introduction, should be attached to a green sheet, if, giving due consideration to limitations on storage space and compliance with the office's record keeping responsibilities, doing so would aid in the office's later reconstruction of the bill's drafting history, including specifically the following:

1. Summaries of legal research conducted with regard to the bill, including case citations instead of hard copies of cases and the file and pathname of legal opinions or memos that originate inside the office; and
2. Hard copies of legal opinions or memos that originate outside the office.

Filing of Green Sheets. Legislative assistants shall file a bill's green sheet in the front office as soon as possible after the bill has been introduced.

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