

Section 1. Incorporated.

The municipal corporation known as the city of Denver and all municipal corporations and that part of the quasi-municipal corporation known as the county of Arapahoe, in the state of Colorado, included within the exterior boundaries of the said city of Denver as the same shall be bounded when this amendment takes effect, are hereby consolidated and are hereby declared to be a single body politic and corporate, by the name of the "City and County of Denver". By that name said corporation shall have perpetual succession, and shall own, possess, and hold all property, real and personal, theretofore owned, possessed, or held by the said city of Denver and by such included municipal corporations, and also all property, real and personal, theretofore owned, possessed, or held by the said county of Arapahoe, and shall assume, manage, and dispose of all trusts in any way connected therewith; shall succeed to all the rights and liabilities, and shall acquire all benefits and shall assume and pay all bonds, obligations, and indebtedness of said city of Denver and of said included municipal corporations and of the county of Arapahoe; by that name may sue and defend, plead and be impleaded, in all courts and places, and in all matters and proceedings; may have and use a common seal and alter the same at pleasure; may purchase, receive, hold, and enjoy or sell and dispose of, real and personal property; may receive bequests, gifts, and donations of all kinds of property, in fee simple, or in trust for public, charitable, or other purposes; and do all things and acts necessary to carry out the purposes of such gifts, bequests, and donations, with power to manage, sell, lease, or otherwise dispose of the same in accordance with the terms of the gift, bequest, or trust; shall have the power, within or without its territorial limits, to construct, condemn and purchase, purchase, acquire, lease, add to, maintain, conduct, and operate water works, light plants, power plants, transportation systems, heating plants, and any other public utilities or works or ways local in use and extent, in whole or in part, and everything required therefore, for the use of said city and county and the inhabitants thereof, and any such systems, plants, or works or ways, or any contracts in relation or connection with either, that may exist and which said city and county may desire to purchase, in whole or in part, the same or any part thereof may be purchased by said city and county which may enforce such purchase by proceedings at law as in taking land for public use by right of eminent domain, and shall have the power to issue bonds upon the vote of the taxpaying electors, at any special or general election, in any amount necessary to carry out any of said powers or purposes, as may by the charter be provided.

The provisions of section 3 of article XIV of this constitution and the general annexation and consolidation statutes of the state relating to counties shall apply to the city and county of Denver. Any contiguous town, city, or territory hereafter annexed to or consolidated with the city and county of Denver, under any such laws of this state, in whatsoever county the same may be at the time, shall be detached per se from such other county and become a municipal and territorial part of the city and county of Denver, together with all property thereunto belonging.

The city and county of Denver shall alone always constitute one judicial district of the state.

Any other provisions of this constitution to the contrary notwithstanding:

No annexation or consolidation proceeding shall be initiated after the effective date of this amendment pursuant to the general annexation and consolidation statutes of the state of Colorado to annex lands to or consolidate lands with the city and county of Denver until such proposed annexation or consolidation is first approved by a majority vote of a six-member boundary control commission composed of one commissioner from each of the boards of county commissioners of Adams, Arapahoe, and Jefferson counties, respectively, and three elected officials of the city and county of Denver to be chosen by the

mayor. The commissioners from each of the said counties shall be appointed by resolution of their respective boards.

No land located in any county other than Adams, Arapahoe, or Jefferson counties shall be annexed to or consolidated with the city and county of Denver unless such annexation or consolidation is approved by the unanimous vote of all the members of the board of county commissioners of the county in which such land is located.

(Paragraph deleted by amendment, L. 2002, p. 3097, effective upon proclamation of the Governor, L. 2003, p. 3611, December 20, 2002.)

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All actions, including actions regarding procedural rules, shall be adopted by the commission by majority vote. Each commissioner shall have one vote, including the commissioner who acts as the chairman of the commission. All procedural rules adopted by the commission shall be filed with the secretary of state.

This amendment shall be self-executing.

Source: L. 01: Entire article added, p. 97. **Initiated 74:** Paragraphs 1-3 were amended by the people, effective upon proclamation of the Governor, December 20, 1974, but do not appear in the session laws. **L. 74:** Paragraphs 7-10 amended, p. 457, effective upon proclamation of the Governor, December 20, 1974. **L. 2002:** Paragraphs deleted, p. 3097, § 1, effective upon proclamation of the Governor, **L. 2003**, p. 3611, December 20, 2002.

Cross references: For annexation of territory from one county to adjoining county, see § 3 of article XIV of this constitution; for officers of the city and county of Denver, see §§ 2 and 3 of this article; for the control of franchises and the power of taxation, see § 4 of this article; for amendment of charter or adoption of new charter, see § 5 of this article; for home rule for cities and towns and powers of home rule cities generally, see § 6 of this article; for power to regulate rates and service charges of public utilities, see article XXV of this constitution; for statutory provisions relative to the city of Denver, see part 2 of article [11](#) of title [30](#).

ANNOTATIONS

Analysis

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I. GENERAL CONSIDERATION.

Am. Jur.2d. See 56 Am. Jur.2d, Municipal Corporations, Counties, and Other Political Subdivisions, §§ 107-123.

C.J.S. See 16 C.J.S., Constitutional Law, §§ 288-291, 294, 301; 16D C.J.S., Constitutional Law, §§ 1954, 1955, 1957, 1958; 62 C.J.S., Municipal Corporations, § 69, 70.

Law reviews. For article, "Colorado Constitutional Amendments: An Analysis", see 3 Den. B. Ass'n Rec. 4 (Nov. 1926). For article, "Report of Justice Court Committee", see 9 Dicta 221 (1932). For note, "Prohibition in 'Home Rule' Cities of Colorado", see 6 Rocky Mt. L. Rev. 146 (1934). For article, "Extraterritorial Service of Municipally Owned Water Works in Colorado", see 21 Rocky Mt. L. Rev. 56 (1948). For article, "Has the Doctrine of Stare Decisis Been Abandoned in Colorado?", see 25 Dicta 91 (1948). For article, "Strengthening Home Rule in Colorado -- Proposed Amendment No. 1", see 27 Dicta 343 (1950). For article, "Eminent Domain in Colorado", see 29 Dicta 313 (1952). For note, "The Constitutionality of a Colorado Municipal Income Tax", see 25 Rocky Mt. L. Rev. 343 (1953). For note, "The Power of the Denver Water Board to Enact Penalty Regulations", see 31 Dicta 349 (1954). For article, "Municipal Penal Ordinances in Colorado", see 30 Rocky Mt. L. Rev. 267 (1958). For article, "One Year Review of Constitutional and Administrative Law", see 36 Dicta 11 (1959). For article, "One Year Review of Criminal Law and Procedure", see 36 Dicta 34 (1959). For article, "One Year Review of Real Property", see 36 Dicta 57 (1959). For article, "Municipal Income Taxation", see 31 Rocky Mt. L. Rev. 123 (1959). For note, "The Effect of Land Use Legislation on the Common Law of Nuisance in Urban Areas", see 36 Dicta 414 (1959). For article, "A Review of the 1959 Constitutional and Administrative law Decisions", see 37 Dicta 81 (1960). For note, "Municipal Tort Immunity in Colorado", see 37 Dicta 133 (1960). For article, "Municipal Home Rule in Colorado: Self-Determination v. State Supremacy", see 37 Dicta 240 (1960). For article, "One Year Review of Constitutional and Administrative Law", see 38 Dicta 154 (1961). For article, "Subdivision Regulations and Compulsory Dedications", see 39 Dicta 299 (1962). For article, "One Year Review of Constitutional Law", see 40 Den. L. Ctr. J. 134 (1963). For note, "Increased Revenues for Colorado Municipalities", see 35 U. Colo. L. Rev. 370 (1963). For article, "The Powers of Home Rule Cities in Colorado", see 36 U. Colo. L. Rev. 321 (1964). For article, "An Engineering -- Legal Solution to Urban Drainage Problems", see 45 Den. L.J. 381 (1968). For article, "May Regulated Utilities Monopolize the Sun", see 56 Den. L.J. 31 (1979). For comment, "Water: Statewide or Local Concern?, City of Thornton v. Farmers Reservoir & Irrigation Co., 194 Colo. 526, 575 P.2d 382 (1978)", see 56 Den. L.J. 625 (1979). For article, "Intergovernmental Relations and Energy Taxation", see 58 Den. L.J. 141 (1980). For article, "Pollution or Resources Out-of-Place -- Reclaiming Municipal Wastewater for Agricultural Use", see 53 U. Colo. L. Rev. 559 (1982). For article, "Growth Management: Recent Developments in Municipal Annexation and Master Plans", see 31 Colo. Law. 61 (March 2002). For article, "Home Rule in Colorado: Evolution or Devolution", see 33 Colo. Law. 61 (January 2004). For article, "Home Rule, Extraterritorial Impact, and the Region", see 86 Den. U.L. Rev. 1271 (2009). For article, "Town of Telluride v. San Miguel Valley Corp.: Extraterritoriality and Local Autonomy", see 86 Den. U.L. Rev. 1311 (2009). For article, "Constitutional Home Rule and Judicial Scrutiny", see 86 Den. U.L. Rev. 1337 (2009). For article, "Telluride's Tale of Eminent Domain, Home Rule, and Retroactivity", see 86 Den. U.L. Rev. 1433 (2009). For comment, "Minority Interests, Majority Politics: A Comment on Richard Collins' 'Telluride's Tale of Eminent Domain, Home Rule, and Retroactivity'", see 86 Den. U.L. Rev. 1459 (2009).

Annotator's note. Prior to the enactment of this article of the constitution, the law incorporating the city of Denver and the several acts amendatory thereto were construed in a number of cases which are included mainly for historical purposes. *Brown v. State*, 5 Colo. 496 (1881); *Beatty v. People*, 6 Colo. 538 (1883); *Carpenter v. People ex rel. Tilford*, 8 Colo. 116, 5 P. 828 (1884); *Huffsmith v. People*, 8 Colo. 175, 6 P. 157 (1884); *Darrow v. People ex rel. Norris*, 8 Colo. 426, 8 P. 924 (1885); *Phillips v. City & County of Denver*, 19 Colo. 179, 34 P. 902 (1893); *Denver Tramway Co. v. Londoner*, 20 Colo. 150, 37 P. 723 (1894).

For history of section, see *Hoper v. City & County of Denver*, 173 Colo. 390, 479 P.2d 967 (1971).

This article by its terms is self-executing. *Cook v. City of Delta*, 100 Colo. 7, 64 P.2d 1257 (1937).

The provisions of this article are self-executing and the adoption of a charter was not required to give effect thereto. *Ward v. Colo. E. R. R.*, 22 Colo. App. 332, 125 P. 567 (1912); *Berman v. City & County of Denver*, 120 Colo. 218, 209 P.2d 754 (1949).

With respect to annexation, state is supreme. The state at its pleasure may expand or contract the territorial area of a municipal corporation, unite the whole or a part of it with another municipality, repeal the charter and destroy the corporation. All this may be done, conditionally or unconditionally, with or without the consent of the citizens, or even against their protest. *Bd. of County Comm'rs v. City & County of Denver*, 150 Colo. 198, 372 P.2d 152 (1962), appeal dismissed, 372 U.S. 226, 83 S. Ct. 679, 9 L. Ed.2d 714 (1963).

Proceedings for annexation. Proceedings for the annexation of a city to the city and county of Denver are governed by this section and section 31-8-201, not by § 3 of art. XIV, Colo. Const. *Simon v. Arapahoe County*, 80 Colo. 445, 252 P. 811 (1927).

This section modifies and limits § 3 of art. XIV, Colo. Const., insofar as a proposed annexation of territory to the city and county of Denver is concerned, and such annexation can be effected without the consenting vote of a majority of qualified voters of the county from which the annexed territory is detached. *People ex rel. Simon v. Anderson*, 112 Colo. 558, 151 P.2d 972 (1944); *Bd. of County Comm'rs v. City & County of Denver*, 150 Colo. 198, 372 P.2d 152 (1962), appeal dismissed, 372 U.S. 226, 83 S. Ct. 679, 9 L. Ed.2d 714 (1963).

Inhabitants have no right to unaltered existence of municipality. Although the inhabitants and property owners may suffer inconvenience by annexation, and their property may be lessened in value by the burden of increased taxation or for any other reason, they have no right, by contract or otherwise, in the unaltered or continued existence of the municipal corporation or its powers. *Bd. of County Comm'rs v. City & County of Denver*, 150 Colo. 198, 372 P.2d 152 (1962), appeal dismissed, 372 U.S. 226, 83 S. Ct. 679, 9 L. Ed.2d 714 (1963).

Annexation detaches territory. This section makes it clear that any annexation under any of the general laws of the state operates, per se, as a detachment of the annexed territory from the county in which it lies. *People ex rel. Simon v. Anderson*, 112 Colo. 558, 151 P.2d 972 (1944).

Section requires compliance with statutory procedures. Annexation is a special statutory proceeding, and this section requires compliance with such procedures by the city and county of Denver. *People ex rel. City & County of Denver v. County Court*, 137 Colo. 436, 326 P.2d 372 (1958).

Condemnation by a home rule municipality of property outside its territorial boundaries for open space and park purposes falls within the scope of the eminent domain power granted to such municipalities in this article. The eminent domain power granted to home rule municipalities in this article is not limited to the purposes specified in this section nor is the eminent domain power circumscribed when exercised extraterritorially. Rather, this article grants home rule municipalities the power to condemn property, within or outside of territorial limits, for any lawful, public, local, and municipal purpose. The extraterritorial condemnation of property need not be pursuant to a purpose that is purely local and municipal. As long as the condemnation is based on a lawful, public, local, and municipal purpose, it does not fall outside of the scope of this article merely because it potentially implicates competing state interests. Based upon statutory provisions authorizing statutory localities to condemn land for open space, parks, and recreation, as well as the traditional exercise of this power by the state's statutory and home rule municipalities, the extraterritorial condemnation of property for open space and parks is a lawful, public, local, and municipal purpose within the scope of this article. The condemnation of the landowner's property outside the territorial boundaries of the municipality was, therefore, lawful. *Town of Telluride v. San Miguel Valley Corp.*, 185 P.3d 161 (Colo. 2008).

Section [38-1-101](#) (4)(b) abrogates constitutional powers granted to home rule municipalities by this article. Accordingly, the statutory provision is unconstitutional with respect to home rule municipalities. Court's inquiry need not extend beyond the question of whether the statute purports to deny home rule municipalities powers specifically granted by the constitution. No analysis of competing state and local interests is necessary where a statute purports to take away home rule powers granted by the constitution. The legislature cannot prohibit the exercise of constitutional home rule powers regardless of the state interests that may be implicated by the exercise of those powers. *Town of Telluride v. San Miguel Valley Corp.*, 185 P.3d 161 (Colo. 2008).

Section [38-1-101](#) (4)(b) prohibits home rule municipalities from condemning property for parks and open space, thus denying them their constitutional power to condemn for any lawful, public, local, and municipal purpose. Section [38-1-101](#) (4)(b) curtails the condemnation power in this article by limiting it to the enumerated purposes in this section and also by removing certain enumerated purposes from the list. Accordingly, § [38-1-101](#) (4)(b) is an unconstitutional abrogation of the powers granted to home rule municipalities under this article. The general assembly has no power to enact a law that denies a right specifically granted by the constitution. *Town of Telluride v. San Miguel Valley Corp.*, 185 P.3d 161 (Colo. 2008).

Applied in *Sch. Dist. No. 1 v. Sch. Dist. No. 7*, 33 Colo. 43, 78 P. 690 (1904); *Heuston v. Gilman*, 98 Colo. 301, 56 P.2d 40 (1936); *Bd. of County Comm'rs v. City & County of Denver*, 190 Colo. 347, 547 P.2d 249 (1976); *City of Northglenn v. City of Thornton*, 193 Colo. 536, 569 P.2d 319 (1977); *James v. Bd. of Comm'rs*, 42 Colo. App. 27, 595 P.2d 262 (1978); *Bd. of County Comm'rs v. City of Thornton*, 629 P.2d 605 (Colo. 1981); *Carstens v. Lamm*, 543 F. Supp. 68 (D. Colo. 1982); *Gold Star Sausage Co. v. Kempf*, 653 P.2d 397 (Colo. 1982).

II. PURPOSE OF ARTICLE.

To grant home rule. The purpose of this article is to grant home rule to Denver and other municipalities of the state. *City & County of Denver v. Hallett*, 34 Colo. 393, 83 P. 1066 (1905); *Lehman v. City & County of Denver*, 144 Colo. 109, 355 P.2d 309 (1960).

The subject matter of this article is home rule, or the right of self-government by Denver and other municipalities in the state relating to local and municipal matters. *People ex rel. Tate v. Prevost*, 55 Colo. 199, 134 P. 129 (1913).

The purpose of this article is to extend to the other cities of the state the privilege of adopting charters in substantially the same manner as is provided for the adoption of the Denver charter, granting to such cities the same power as to real and personal property and public utilities as is granted to the city and county of Denver. *People ex rel. Elder v. Sours*, 31 Colo. 369, 74 P. 167 (1903).

It was intended to give as large a measure of home rule in municipal affairs as could be granted under a republican form of government which the state is obliged to maintain under its compact with the federal government, as evidenced by the enabling act. *People ex rel. Parish v. Adams*, 31 Colo. 476, 73 P. 866 (1903); *Fishel v. City & County of Denver*, 106 Colo. 576, 108 P.2d 236 (1940); *Toll v. City & County of Denver*, 139 Colo. 462, 340 P.2d 862 (1959).

The prime purpose of this article was to bestow upon the inhabitants of the city of Denver, and certain surrounding territory, a very greatly increased measure of home rule. *Ward v. Colo. E. R. R.*, 22 Colo. App. 332, 125 P. 567 (1896); *Berman v. City & County of Denver*, 120 Colo. 218, 209 P.2d 754 (1949).

And to consolidate city and county powers. The purpose of this article was to consolidate the city of Denver and a portion of the county of Arapahoe into a new sort of municipality having the combined powers of city and county governments. *People ex rel. Elder v. Sours*, 31 Colo. 369, 74 P. 167 (1903).

The purpose of this article is to grant home rule to the city and county of Denver, subject to the conditions that the people establish such a government as would consolidate the functions of city and county affairs so as to be administered by one set of officers. *Lindsley v. City & County of Denver*, 64 Colo. 444, 172 P. 707 (1918).

And to enlarge their powers. Thus it was intended to enlarge the powers beyond those usually given by the general assembly. *City & County of Denver v. Hallett*, 34 Colo. 393, 83 P. 1066 (1905); *Berman v. City & County of Denver*, 120 Colo. 218, 209 P.2d 754 (1949); *Lehman v. City & County of Denver*, 144 Colo. 109, 355 P.2d 309 (1960).

The purpose of this article was to extend the powers of cities, not to impose further restrictions. *Hoper v. City & County of Denver*, 173 Colo. 390, 479 P.2d 967 (1971).

III. CONSTITUTIONALITY.

This article is constitutional, and it is a part of the constitution of the state, not partially constitutional, but constitutional as a whole, throughout its entirety, and in full force and effect. *Montclair v. Thomas*, 31 Colo. 327, 73 P. 48 (1903); *People ex rel. Elder v. Sours*, 31 Colo. 369, 74 P. 167 (1903); *People ex rel. Parish v. Adams*, 31 Colo. 476, 73 P. 866 (1903); *McMurray v. Wright*, 19 Colo. App. 17, 73 P. 257 (1903); *Parsons v. People*, 32 Colo. 221, 76 P. 666 (1904); *City Council v. Bd. of Comm'rs*, 33 Colo. 1, 77 P. 858 (1904); *Boston & Colo. Smelting Co. v. Elder*, 20 Colo. App. 96, 77 P. 258 (1904); *Uzzell v. Anderson*, 38 Colo. 32, 89 P. 785 (1906); *People ex rel. Attorney Gen. v. Curtice*, 50 Colo. 503, 117 P. 357, appeal dismissed for want of jurisdiction sub nom. *Cassiday v. Colo.*, 223 U.S. 707, 32 S. Ct. 518, 56 L. Ed. 662 (1911); *People ex rel. Moore v. Perkins*, 56 Colo. 17, 137 P. 55 (1913).

And is to be given force and effect according to its plain intent, purpose and meaning. When the whole people speak through a fundamental law, or by amendment thereto, not in conflict with the federal constitution, all should hear and heed, more especially the courts, whose function is to interpret, and, where possible, uphold and enforce, not nullify, overthrow, and destroy the law. *People ex rel. Attorney Gen. v. Curtice*, 50 Colo. 503, 117 P. 357, appeal dismissed for want of jurisdiction sub nom. *Cassiday v. Colo.*, 223 U.S. 707, 32 S. Ct. 518, 56 L. Ed. 662 (1911).

And is not repugnant to state government or federal constitution. The home rule amendment is not subversive of the state government or repugnant to the constitution of the United States. The contention that the government proposed by the home rule amendment is not republican in form has been fully settled. It is a political question purely, over which courts have no jurisdiction. *People ex rel. Tate v. Prevost*, 55 Colo. 199, 134 P. 129 (1913).

This article does not create a government unrepublican in form or involve any inhibition of the federal constitution, and was clearly within the powers reserved to the people of the state, upon entering into federal compact. *People ex rel. Elder v. Sours*, 31 Colo. 369, 74 P. 167 (1903); *People ex rel. Attorney Gen. v. Curtice*, 50 Colo. 503, 117 P. 357, appeal dismissed for want of jurisdiction sub nom. *Cassiday v. Colo.*, 233 U.S. 707, 32 S. Ct. 518, 56 L. Ed. 662 (1911).

The objection that this article is repugnant to § 4 of art. IV, U.S. Const., guaranteeing to the state a republican form of government, in that it takes from the state general assembly and vests directly in the people of the city legislative power over all subjects of purely municipal concern, was sufficiently covered and disposed of by a previous decision of the United States supreme court. *City & County of Denver v. New York Trust Co.*, 229 U.S. 123, 33 S. Ct. 657, 57 L. Ed. 1101 (1913).

Since government provided may be withdrawn or modified at will. The government provided for the city and county of Denver by this article rests solely upon the will of the people of the whole state, and is the creature of such will. It is a full and complete answer to the contention that the government so provided is unrepublican in form, to show that it rests upon the will of the people of the entire state, and may be by the same authority either withdrawn or modified. *People ex rel. Attorney Gen. v. Curtice*, 50 Colo. 503, 117 P. 357, appeal dismissed for want of jurisdiction sub nom. *Cassiday v. Colo.*, 223 U.S. 707, 32 S. Ct. 518, 56 L. Ed. 662 (1911).

Municipalities are not city-states. Colorado municipalities are creatures of either legislative enactment or constitutional provision or both and are not city-states. They have only powers expressly or impliedly granted to them. *City of Golden v. Ford*, 141 Colo. 472, 348 P.2d 951 (1960).

Clearly the federal system does not envisage as a part thereof city-states. It follows that home rule cities can be only an arm or branch of the state with delegated power. That is the kind of power granted by this article. *City & County of Denver v. Sweet*, 138 Colo. 41, 329 P.2d 441 (1958).

Since the power still resides with the people of the state to completely annul this article, or amend, alter, or set aside any one or more of its provisions providing a government for the city and county of Denver at will, a state within the state of Colorado has not been created. *People ex rel. Attorney Gen. v. Curtice*, 50 Colo. 503, 117 P. 357, appeal dismissed for want of jurisdiction, sub nom. *Cassiday v. Colo.*, 223 U.S. 707, 32 S. Ct. 518, 56 L. Ed. 662 (1911).

Every decision of the supreme court upholding this article of the constitution is based upon the proposition that it does not violate the federal law against the creation of a state within a state contained in § 3 of art. IV, U.S. Const. *People v. Max*, 70 Colo. 100, 198 P. 150 (1921).

Classification of Denver does not violate equal protection. The classification under this section is based upon geographical and historical conditions peculiar to Denver as a capital city and regional commercial center, and is neither arbitrary nor unreasonable. *Bd. of County Comm'rs v. City & County of Denver*, 150 Colo. 198, 372 P.2d 152 (1962), appeal dismissed for want of substantial federal question, 372 U.S. 226, 83 S. Ct. 679, 9 L. Ed. 714 (1963); *Francis v. County Court*, 175 Colo. 308, 487 P.2d 375 (1971).

The classification under this section is not violative of equal protection merely because it is limited in the object to which it is directed or the territory within which it is to operate. *Bd. of County Comm'rs v. City & County of Denver*, 150 Colo. 198, 372 P.2d 152 (1962), appeal dismissed for want of jurisdiction, 372 U.S. 226, 83 S. Ct. 679, 9 L. Ed.2d 714 (1963).

The equal protection clause of the fourteenth amendment to the United States Constitution is not in conflict with provisions granting the city and county of Denver annexation procedures unlike the provisions controlling other counties. *Francis v. County Court*, 175 Colo. 308, 487 P.2d 375 (1971).

Loss of public property upon consolidation does not violate due process. This article of the constitution is not unconstitutional on the ground that it violates the provisions of the constitution of the United States by taking

property from existing towns and giving it to the city and county of Denver, without due process of law. The loss of public property by adjoining towns and the loss of shares of public buildings by people of other towns excluded from the city and county of Denver, are incidental and unavoidable conditions which exist whenever the boundaries of counties are changed or municipalities are consolidated. These municipalities exist for the public convenience, their property is the property of the public, and is held, not as private property, but subject to the changing conditions and requirements of local government. *People ex rel. Ceder v. Sours*, 31 Colo. 369, 74 P. 167 (1903); *Hazlet v. Gaunt*, 126 Colo. 385, 250 P.2d 188 (1952).

Procedure does not violate individual rights. There is no constitutional violation of the rights of individual plaintiffs by the annexation procedure under this section. *Bd. of County Comm'rs v. City & County of Denver*, 150 Colo. 198, 372 P.2d 152 (1962), appeal dismissed for want of substantial federal question, 372 U.S. 226, 83 S. Ct. 679, 9 L. Ed.2d 714 (1963).

IV. CITY AND COUNTY OF DENVER.

A. In General.

City and county of Denver came into existence by virtue of this article of the constitution, and this article measures its powers. *City of Denver v. Mercantile Trust Co.*, 201 F. 790 (8th Cir. 1912); *City & County of Denver v. Mountain States Tel. & Tel. Co.*, 67 Colo. 225, 184 P. 604 (1919), dismissed for want of jurisdiction, 251 U.S. 545, 40 S. Ct. 219, 64 L. Ed. 407 (1920).

The moment the constitutional amendment took effect, the municipal corporation, known as the city of Denver, and the quasi-corporation, known as the county of Arapahoe, ceased to exist; a new body politic and corporate was created, called the city and county of Denver. *McMurray v. Wright*, 19 Colo. App. 17, 73 P. 257 (1903).

It is but a reincorporation of city of Denver, with some extended territory. *City of Denver v. Mercantile Trust Co.*, 201 F. 790 (8th Cir. 1912); *McMurray v. Wright*, 19 Colo. App. 17, 73 P. 257 (1903).

It was the purpose of the general assembly to provide in this article for disincorporating, and merging into a new one, all municipal bodies within the exterior boundaries of the former city of Denver as these boundaries were specifically described. *Town of Montclair v. Thomas*, 31 Colo. 327, 73 P. 48 (1903).

It is a change only in governmental form under a new name. *Hilts v. Markey*, 52 Colo. 382, 122 P. 394 (1912); *City of Denver v. Mercantile Trust Co.*, 201 F. 790 (8th Cir. 1912).

Under this article the merger of the different municipal corporations into the city and county of Denver took effect upon the proclamation of the governor, December 1, 1902, and until that date the different municipal corporations continued, separate and independent, and the municipal officers continued in office with the same powers and duties that they had prior to the adoption of the amendment. *Boston & Colo. Smelting Co. v. Elder*, 20 Colo. App. 96, 77 P. 258 (1904).

City and county of Denver succeeded to all the rights of former city of Denver. *Hallett v. City & County of Denver*, 46 Colo. 487, 104 P. 1038 (1909); *City of Denver v. Mercantile Trust Co.*, 201 F. 790 (8th Cir. 1912).

Such as right of municipal corporations to collect taxes. It also succeeded to the right to collect taxes levied by the municipal corporations merged into said city and county. *Boston & Colo. Smelting Co. v. Elder*, 20 Colo. App. 96, 77 P. 258 (1904).

And was vested with title to tax certificates of purchase. Title to tax certificates of purchase issued and held by Arapahoe county on lands which thereafter became a part of the city and county of Denver upon adoption of this article vested in the latter, and transfer of the same by it to another was valid. *Nat'l Tax & Mtg. Co. v. Cartwright*, 90 Colo. 16, 5 P.2d 878 (1931).

City and county of Denver assumed all liabilities of former city of Denver. The city of Denver did not cease to exist by virtue of this article and a motion to dismiss in a trial pending when this article went into effect was denied because the parties, in effect, agreed by their conduct that the suit should proceed in the name of the original parties. *City of Denver v. Iliff*, 38 Colo. 357, 89 P. 823 (1906); *City of Denver v. Mercantile Trust Co.*, 201 F. 790 (8th Cir. 1912).

And became liable for obligations of former county of Arapahoe. This article conferred upon the city and

county of Denver all the property belonging to, and made it liable for the obligations of, the county of Arapahoe, but made no specific provision for the payment to other new counties created out of said Arapahoe county of their proportion of the value of said county property. The city and county of Denver is liable to such other new counties for said proportional value and its city council may be compelled by mandamus to levy a tax to provide for the payment of such claims. *City Council v. Bd. of Comm'rs*, 33 Colo. 1, 77 P. 858 (1904).

Thus a claim against the former county of Arapahoe, was a liability against the county of Denver, not against the city and county. *City & County of Denver v. Bottom*, 44 Colo. 308, 98 P. 13 (1935).

"City and county of Denver" was proper party in suit to cancel tax certificates. In a suit to have tax sales held void and certificates of purchase cancelled, the city of Denver being primarily interested, the "city and county of Denver" held properly made a party to the action. *Burton v. City & County of Denver*, 99 Colo. 207, 61 P.2d 856 (1936).

It remains agency of state for purpose of government. The municipality of Denver, though created by a constitutional amendment by a direct vote of the people, and having the power to frame its own charter, is just as much an agency of the state for the purpose of government as if it was organized under a general law passed by the general assembly. The mode of its creation does not change the nature of its relation to the state. Like cities and towns organized under the general statutes, it is still a part of the state government. *Keefe v. People*, 37 Colo. 317, 87 P. 791 (1906).

Sovereign immunity from suit. Assertions of an unconstitutional deprivation of a right of action have no merit under the governmental immunity doctrine. In Colorado there is no "right" in the absence of a statute granting such, thus it cannot be taken away or damaged by the application of sovereign immunity to a tort claim. *Abeyta v. City & County of Denver*, 165 Colo. 58, 437 P.2d 67 (1968).

Charter provisions in conflict with article lost their effect upon its adoption. Upon the adoption of this article of the constitution every provision of the former charter of the city of Denver, and its ordinances, in conflict with the provisions of the new article, immediately lost their effect. *Aichele v. City & County of Denver*, 52 Colo. 183, 120 P. 149 (1911).

Section did not amend general provisions of constitution. The powers of city and county municipalities being essentially different, in investing the new municipality of Denver with the powers of both by the adoption of § 1 of art. XX, Colo. Const., it became necessary to modify the provisions of the constitution relative to municipal affairs, by providing new ones applicable to such combined government; but this is not an amendment of those provisions such as was in contemplation by the framers of the constitution, because the constitutional provisions that are abrogated as to the city and county of Denver remain in force generally throughout the state. *People ex rel. Elder v. Sours*, 31 Colo. 369, 74 P. 167 (1903).

B. Form and Nature of Government.

Article affects only local or municipal government. This article does not affect state or county but only local or municipal government. *City & County of Denver v. Bottom*, 44 Colo. 308, 98 P. 13 (1908).

The general scheme of government contemplated in this article is restricted to that of the municipality proper, and does not entrench upon county or state government. It does not purport to nullify the constitution or general laws of the state insofar as they pertain to county or state government, or attempt to interfere with the power of the state in raising state revenue. *Parsons v. People*, 32 Colo. 221, 76 P. 666 (1904).

Denver is granted special status as both city and county under this article. *City & County of Denver v. Miller*, 151 Colo. 444, 379 P.2d 169 (1963).

The city and county of Denver is still a county as well as a city. This new municipality is invested with the combined powers of both city and county municipalities, which powers are essentially different. *People ex rel. Elder v. Sours*, 31 Colo. 369, 74 P. 167 (1903); *City Council v. Bd. of Comm'rs*, 33 Colo. 1, 77 P. 858 (1904).

The new corporation of Denver is subject to the general provisions of art. XIV, Colo. Const., providing for counties and county officers, and of the state legislation enacted in pursuance of it, so that, although a city, it is a county equally with any other legal subdivision of the state to which the constitution and statutes have given the name of county. *McMurray v. Wright*, 19 Colo. App. 17, 73 P. 257 (1903).

A county, and likewise state and county governmental functions and duties, exist in the territory known as the city and county of Denver, as they exist in other portions of the state. *Dixon v. People ex rel. Elliott*, 53 Colo. 527, 127 P. 930 (1912).

There are two governmental entities within municipality of Denver, a county, with all the duties of a county as prescribed by the general law, and a city, with duties wholly of local character. *Hilts v. Markey*, 52 Colo. 382, 122 P. 394 (1912).

And its municipal and county governments are distinct. County government and county offices remain in the city and county of Denver the same as in all other counties of the state, and its municipal and county government is distinct. *City & County of Denver v. Bottom*, 44 Colo. 308, 98 P. 13 (1908).

The city and county of Denver, insofar as the exercise of county functions is concerned, is a new county, created by the merger and consolidation of the municipalities and territory within the boundaries designated by this article, and, as such new county, comes within the purview of § 6 of art. XIV, Colo. Const., providing for the election of county commissioners. *Uzzell v. Anderson*, 38 Colo. 32, 89 P. 785, 1056 (1906).

But single set of municipal officers have all duties. All the duties of these governmental entities are imposed upon a single set of municipal officers. *Hilts v. Markey*, 52 Colo. 382, 122 P. 394 (1912); *Lail v. City & County of Denver*, 88 Colo. 362, 297 P. 512 (1931).

Such duties are fixed by constitution and general laws. Their duties, so far as they concern county government, are fixed by the constitution and general laws, and as to these, the people of the municipality have no power to legislate. *Hilts v. Markey*, 52 Colo. 382, 122 P. 394 (1912).

Inhabitants to designate agencies to perform county duties. The sole effect of this article in relation to county functions and duties is to impose upon the inhabitants of the territory of Denver the power and duty to designate the agencies which shall therein discharge the acts and duties required of county officers to be done by the constitution and general law. *Dixon v. People ex rel. Elliott*, 53 Colo. 527, 127 P. 930 (1912).

This article embodied radical changes by consolidating the city and county of Denver and allowing it to designate the persons therein who should perform the duties pertaining to county offices, as well as granting to it the right to make its own charter, a power theretofore resting in the general assembly. *People ex rel. Moore v. Perkins*, 56 Colo. 17, 137 P. 55 (1913).

C. Powers Conferred.

Annotator's note. In view of the fact that § 6 of this article enumerates the specific powers granted cities operating under this article, the cases dealing with the powers granted the city and county of Denver have been treated in the annotations to § 6.

This article is a grant of power to the inhabitants of the city and county of Denver, and it authorizes them to do what it specifically states they can do and such other matters as must be necessarily implied from the language used. *People ex rel. Moore v. Perkins*, 56 Colo. 17, 137 P. 55, 1914D Ann. Cas. 1154 (1913).

Listing of powers is not complete enumeration of powers conferred. The statement of powers contained in this section was not intended to be an enumeration of powers conferred, but simply the expression of a few of the more prominent powers which municipal corporations are frequently granted. *City & County of Denver v. Hallett*, 34 Colo. 393, 83 P. 1066 (1905); *Londoner v. City & County of Denver*, 52 Colo. 15, 119 P. 156 (1911); *Fishel v. City & County of Denver*, 106 Colo. 576, 108 P.2d 236 (1940).

The powers enumerated do not constitute a limitation on the powers conferred on the municipality. *City & County of Denver v. Sweet*, 138 Colo. 41, 329 P.2d 441 (1958).

The people by this section enumerated broad powers which they conferred upon the city and county of Denver. *Four-County Metro. Capital Imp. Dist. v. Bd. of County Comm'rs*, 149 Colo. 284, 369 P.2d 67 (1962).

"Water works", as used in this section, includes water and water rights. *City of Thornton v. Farmers Reservoir & Irrigation Co.*, 194 Colo. 526, 575 P.2d 382 (1978).

Denver's creation and operation of a water works for the use of Denver and its residents does not offend this constitutional provision. *Cottrell v. City & County of Denver*, 636 P.2d 703 (Colo. 1981).

Denver has constitutional and statutory authority to appropriate and provide water for use outside its city limits. *Denver v. Colo. River Water Conservation Dist.*, 696 P.2d 730 (Colo. 1985).

"Public utilities" are those facilities necessary for the maintenance of life and occupation of the residents, the services of which are available to all, and with respect to which all have the right to demand service. *Ginsberg v. City & County of Denver*, 164 Colo. 572, 436 P.2d 685 (1968).

The term "public utility" has come into use in the sense, not of a chattel or other property used for the benefit of the public, but of a system of works operated for public use, examples of which are telephone, street railway, water, electric light and power, gas works and other systems. *Ginsberg v. City & County of Denver*, 164 Colo. 572, 436 P.2d 685 (1968).

Sewers are "public utilities". Although sewers are not expressly mentioned in the constitution, the necessary correlative to waterworks expressly granted in the constitution is a facility to carry off that same water. Thus, sewage lines and disposal facilities also are included in the general term "other public utilities". *Town of Glendale v. City & County of Denver*, 137 Colo. 188, 322 P.2d 1053 (1958); *Toll v. City & County of Denver*, 139 Colo. 462, 340 P.2d 862 (1959).

Water project located outside boundaries. Denver is not immune from regulation by Grand county in the development of a water project without its local boundaries and on national forest lands within Grand county. *City & County of Denver v. Bergland*, 517 F. Supp. 155 (D. Colo. 1981), *aff'd in part and rev'd on other grounds*, 695 F.2d 465 (10th Cir. 1982).

Denver has constitutional and statutory authority to lease water for use outside its city limits. *Cottrell v. City & County of Denver*, 636 P.2d 703 (Colo. 1981).

Denver's water projects are matters of mixed local and state interest. Where Denver's charter conflicts with state act that authorizes local governments to designate projects as matters of state interests and to promulgate rules and regulations to administer such projects, the state act controls. *City & County of Denver v. Bd. of County Comm'rs*, 760 P.2d 656 (Colo. App. 1988).

Power granted with respect to light plants concerned local or municipal matters or both. *Cook v. City of Delta*, 100 Colo. 7, 64 P.2d 1257 (1937).

Deficiency bond payment is not loan or new bond. The charter of the city of Denver in authorizing payment by the city of deficiencies in bond payments does not amount to the issuance of bonds or the creation of a loan within the meaning of this section. *Montgomery v. City & County of Denver*, 102 Colo. 427, 80 P.2d 434 (1938).