

51. Declaratory Judgments [Details]

Law reviews:

For article, "Declaratory Judgment Actions to Resolve Insurance Coverage Questions", see 18 Colo. Law. 2299 (1989).

§ 13-51-101. Short title

This article shall be known and may be cited as the "Uniform Declaratory Judgments Law".

(L. 23: p. 271, § 16. CSA: C. 93, § 92. CRS 53: § 77-11-15. C.R.S. 1963: § 77-11-15.)

ANNOTATION

Law reviews. For note, "The Colorado Declaratory Judgment Act", see 1 Rocky Mt. L. Rev. 52 (1928). For article, "Twenty-six Years Under the Colorado Declaratory Judgments Act", see 27 Dicta 177 (1950). For article, "Trusts and Estates", see 30 Dicta 435 (1953).

For constitutionality of the declaratory judgment act, see San Luis Power & Water Co. v. Trujillo, 93 Colo. 385, 26 P.2d 537 (1933).

This article is designed to afford parties relief from uncertainty with respect to their rights and status under law. Silverstein v. Sisters of Charity, 38 Colo. App. 286, 559 P.2d 716 (1976); Mt. Emmons Mining Co. v. Town of Crested Butte, 690 P.2d 231 (Colo. 1984).

This article is to be liberally construed and administered.

Silverstein v. Sisters of Charity, 38 Colo. App. 286, 559 P.2d 716 (1976); Mt. Emmons Mining Co. v. Town of Crested Butte, 690 P.2d 231 (Colo. 1984); Trinen v. City & County of Denver, 725 P.2d 65 (Colo. App. 1986).

Who may seek judicial determination of rights. One whose rights are favorably affected by a statute is entitled to seek a judicial determination thereof so long as the court is provided with a properly adverse context. Silverstein v. Sisters of Charity, 38 Colo. App. 286, 559 P.2d 716 (1976).

One whose rights or status may be affected by statute is entitled to have any question of construction determined provided that a substantial controversy between adverse parties of sufficient immediacy to warrant the issuance of a declaratory judgment exists. Silverstein v. Sisters of Charity, 38 Colo. App. 286, 559 P.2d 716 (1976).

Prerequisites to jurisdiction such as exhaustion of remedies apply when a party seeks declaratory relief from agency action.

City & County of Denver v. United Air Lines, Inc., 8 P.3d 1206 (Colo. 2000).

Burden on moving party in summary judgment on constitutional issues in context of declaratory judgment. Party seeking declaratory relief must demonstrate challenged statute or ordinance will cause tangible

detriment to its activities and that statute or ordinance is unconstitutional beyond a reasonable doubt. *Mt. Emmons Mining Co. v. Town of Crested Butte*, 690 P.2d 231 (Colo. 1984).

Time limitations of appeal process cannot be circumvented by attempting to obtain declaratory relief. *Trinen v. City & County of Denver*, 725 P.2d 65 (Colo. App. 1986).

This statute neither expands nor contracts the jurisdiction of Colorado's courts. In creating a new remedy the general assembly did not by implication grant political subdivisions of the state the right to sue the state. *Romer v. Fountain Sanitation Dist.*, 898 P.2d 37 (Colo. 1995); *City & County of Denver v. United Air Lines, Inc.*, 8 P.3d 1206 (Colo. 2000).

Applied in *Bd. of County Comm'rs v. Fifty-first Gen. Ass'y*, 198 Colo. 302, 599 P.2d 887 (1979); *Citizens for Free Enter. v. Dept. of Rev.*, 649 P.2d 1054 (Colo. 1982); *Denver & R. G. W. R. R. v. City & County of Denver*, 673 P.2d 354 (Colo. 1983).

For declaratory judgments generally, see also C.R.C.P. 57.

§ 13-51-102. Legislative declaration

This article is declared to be remedial; its purpose is to settle and to afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations; and it is to be liberally construed and administered.

(L. 23: p. 270, § 12. CSA: C. 93, § 89. CRS 53: § 77-11-12. C.R.S. 1963: § 77-11-12.)

ANNOTATION

Law reviews. For article, "Twenty-six Years Under the Colorado Declaratory Judgments Act", see 27 *Dicta* 177 (1950).

The purpose of the statute and the rule is to be remedial and to afford relief from uncertainty and insecurity. The statute and rule expressly provide that they be liberally construed and administered. *Colo. State Bd. of Optometric Exam'rs v. Dixon*, 165 Colo. 488, 440 P.2d 287 (1968).

This article is designed to afford parties relief from uncertainty with respect to their rights and status under law. *Silverstein v. Sisters of Charity*, 38 Colo. App. 286, 559 P.2d 716 (1976).

Liberal construction makes this section applicable to decisions to be made by board or commission. A liberal construction of the statute and the rule rejects the proposition that a person adversely affected by a statute and seeking relief from uncertainty and insecurity with respect to his rights by reason of a statute or a rule of a board or commission must take the risk of prosecutions, fines, imprisonment, loss of property, or loss of profession in order to secure adjudication of his rights. *Colo. State Bd. of Optometric Exam'rs v. Dixon*, 165 Colo. 488, 440 P.2d 287 (1968).

This article is to be liberally construed and administered. *Silverstein v. Sisters of Charity*, 38 Colo. App. 286, 559 P.2d 716 (1976).

Who may seek judicial determination of rights. One whose rights are favorably affected by a statute is entitled to seek a judicial determination thereof so long as the court is provided with a properly adverse context. *Silverstein v. Sisters of Charity*, 38 Colo. App. 286, 559 P.2d 716 (1976).

One whose rights or status may be affected by statute is entitled to have any question of construction determined provided that a substantial controversy between adverse parties of sufficient immediacy to warrant the issuance of a declaratory judgment exists. *Silverstein v. Sisters of Charity*, 38 Colo. App. 286, 559 P.2d 716 (1976); *Buckley Powder Co. v. State*, 924 P.2d 1133 (Colo.

App. 1996), aff'd in part and rev'd in part on other grounds, 945 P.2d 841 (Colo. 1997).

This statute neither expands nor contracts the jurisdiction of Colorado's courts. In creating a new remedy the general assembly did not by implication grant political subdivisions of the state the right to sue the state. *Romer v. Fountain Sanitation Dist.*, 898 P.2d 37 (Colo. 1995).

Declaratory judgment action is an appropriate means of testing the validity of a decree and resolving uncertainty as to the legal rights and status of the parties, even if the controversy has not yet ripened into litigation. *In re Lockwood*, 857 P.2d 557 (Colo. App. 1993).

Trial court properly exercised its jurisdiction to review a Wyoming dissolution decree where the marital status of the parties was at issue and could be speedily and efficiently resolved through a declaratory judgment action. *In re Lockwood*, 857 P.2d 557 (Colo. App. 1993).

Applied in *Toncray v. Dolan*, 197 Colo. 382, 593 P.2d 956 (1979); *Citizens Progressive Alliance v. S.W. Water Conservation Dist.*, 97 P.3d 308 (Colo. App. 2004).

§ 13-51-103. Definitions

As used in this article, unless the context otherwise requires:

(1) "Person" means any person, partnership, joint stock company, unincorporated association, or society, or municipal or other corporation of any character whatsoever.

(L. 23: p. 271, § 13. CSA: C. 93, § 90. CRS 53: § 77-11-13. C.R.S. 1963: § 77-11-13.)

§ 13-51-104. Interpretation and construction

This article shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it and to harmonize, as far as possible, with federal laws and regulations on the subject of declaratory judgments and decrees.

(L. 23: p. 271, § 15. CSA: C. 93, § 91. CRS 53: § 77-11-14. C.R.S. 1963: § 77-11-14.)

§ 13-51-105. Power and force of declaration

Courts of record within their respective jurisdictions have power to declare rights, status, and other legal relations whether or not further relief is or could be claimed. No action or proceeding shall be open to objection on the ground that a declaratory judgment or decree is prayed for. The declaration may be either affirmative or negative in form and effect; and such declarations shall have the force and effect of a final judgment or decree.

(L. 23: p. 268, § 1. CSA: C. 93, § 78. CRS 53: § 77-11-1. C.R.S. 1963: § 77-11-1.)

ANNOTATION

Declaratory judgment is conclusive as to questions raised by parties and passed upon by court. *Atchison v. City of Englewood*, 180 Colo. 407, 506 P.2d 140 (1973).

Declaratory judgment does not constitute absolute bar to subsequent proceedings where parties are seeking other remedies, even though based upon claims which could have been asserted in original action. *Atchison v. City of Englewood*, 180 Colo. 407, 506 P.2d 140 (1973); *Near v. Calkins*, 946 P.2d 537 (Colo. App. 1997).

The judgment leaves the parties to pursue the remedies which the law provides, after performing its office of declaring the existence of a certain liability. *San Luis Power & Water Co. v. Trujillo*, 93 Colo. 385, 26 P.2d 537 (1933).

Declaratory judgment on contract validity held not res judicata in subsequent action for reformation, rescission, and damages. *Atchison v. City of Englewood*, 180 Colo. 407, 506 P.2d 140 (1973).

Judgment is res judicata as to questions of statutory construction raised between the parties. Preventive relief in some instances is just as properly a matter of judicial function as remedial relief and if given by a declaratory order in the construction of a statute, it is res judicata as to the questions of construction raised between the parties and passed upon. *San Luis Power & Water Co. v. Trujillo*, 93 Colo. 385, 26 P.2d 537 (1933).

Subsequent relief may be sought by separate action. Subsequent relief sought by party to prior declaratory judgment action need not be sought by amendment of complaint in original action, but may be sought by separate action. *Atchison v. City of Englewood*, 180 Colo. 407, 506 P.2d 140 (1973).

Declaratory judgment should not be accorded to try a controversy piecemeal. In granting the remedy of declaratory judgment, it should not be accorded, however, to try a controversy by piecemeal, or to try particular issues without settling the entire controversy. *Lane v. Page*, 126 Colo. 560, 251 P.2d 1078 (1952).

Act not intended to be a substitute for proper pleading. The uniform act was never intended to be a substitute for, or a short cut to, proper pleading and specifically provides that all issues of fact shall be tried and determined as in other cases. *Home Owners' Loan Corp. v. Meyer*, 110 Colo. 501, 136 P.2d 282 (1943).

For the procedure in cases when issues involve equity and actions at law, see *Beacon Theatre, Inc. v. Westover*, 359 U.S. 500, 79 S. Ct. 948, 3 L. Ed. 2d 988 (1959).

Declaratory judgment action is an appropriate means of testing the validity of a decree and resolving uncertainty as to the legal rights and status of the parties, even if the controversy has not yet ripened into litigation. *In re Lockwood*, 857 P.2d 557 (Colo. App. 1993).

Applied in *Colo. & Utah Coal Co. v. Walter*, 75 Colo. 489, 226 P. 864 (1924); *Rice v. Franklin Loan & Fin. Co.*, 82 Colo. 163, 258 P. 223 (1927); *Bedford v. Colo. Nat'l Bank*, 104 Colo. 311, 91 P.2d 469 (1939); *Colo. Nat'l Bank v. Bedford*, 105 Colo. 373, 98 P.2d 1120, *aff'd*, 310 U.S. 41, 60 S. Ct. 800, 84 L. Ed. 1067 (1940); *Gordon v. Wheatridge Water Dist.*, 107 Colo. 128, 109 P.2d 899 (1941); *McNichols v. City & County of Denver*, 109 Colo. 269, 124 P.2d 601 (1942); *Carpenter v. Carman Distrib. Co.*, 111 Colo. 566, 144 P.2d 770 (1943); *Woodridge v. Denver & R. G. R. R.*, 118 Colo. 25, 191 P.2d 882 (1948); *Comme'ns Workers of Am. v. Western Elec. Co.*, 191 Colo. 128, 551 P.2d 1065 (1976); *Pennobscot, Inc. v. Bd. of County Comm'rs*, 642 P.2d 915 (Colo. 1982).

§ 13-51-106. Who may obtain declaration

Any person interested under a deed, will, written contract, or other writings constituting a contract or whose rights, status, or other legal relations are affected by a statute, municipal ordinance, contract, or franchise may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract, or franchise and obtain a declaration of rights, status, or other legal relations thereunder.

(L. 23: p. 268, § 2. CSA: C. 93, § 79. CRS 53: § 77-11-2. C.R.S. 1963: § 77-11-2.)

ANNOTATION

I. GENERAL CONSIDERATION.

Law reviews. For article, "Twenty-six Years Under the Colorado Declaratory Judgments Act", see 27 Dicta 177 (1950). For article, "One Year Review of Criminal Law and Procedure", see 39 Dicta 81 (1962). For comment, "Pre-Enforcement Judicial Review: CF&I Steel Corp. v. Colo. Air Pollution Control Commission", see 58 Den. L.J. 693 (1981).

This act was not intended to repeal the statute prohibiting judges from giving legal advice, nor to impose the duties of the profession upon the courts, nor to provide advance judgments as the basis of commercial enterprises, nor to settle mere academical questions. *Gabriel v. Bd. of Regents of Univ. of Colo.*, 83 Colo. 582, 267 P. 407 (1928); *City & County of Denver v. Lynch*, 92 Colo. 102, 18 P.2d 907 (1932).

Primary purpose of declaratory judgment procedure is to provide a speedy, inexpensive, and readily accessible means of determining actual controversies which depend on the validity or interpretation of some written instrument of law. *Toncray v. Dolan*, 197 Colo. 382, 593 P.2d 956 (1979).

The purpose of this statute is to afford relief from the uncertainty surrounding legal rights and legal relations. It is remedial in nature and should be liberally construed and administered. *Cmty. Tele-Communications v. Heather Corp.*, 677 P.2d 330 (Colo. 1984).

No proceeding lies under our declaratory judgment act to obtain merely an advisory opinion. *Farmers Elevator Co. v. First Nat'l Bank*, 176 Colo. 168, 489 P.2d 318 (1971).

A proceeding for declaratory judgment must be based upon an actual controversy. *Farmers Elevator Co. v. First Nat'l Bank*, 176 Colo. 168, 489 P.2d 318 (1971); *Beacom v. Bd. of County Comm'rs*, 657 P.2d 440

(Colo. 1983); Cmty. Tele-Communications v. Heather Corp., 677 P.2d 330 (Colo. 1984).

A controversy exists where an insured has submitted a claim and the insurer determined that it did not intend unilaterally to admit liability, even though the insurer had not in fact denied such claim. Am. Family Mut. Ins. Co. v. Bowser, 779 P.2d 1376 (Colo. App. 1989).

Plaintiff must demonstrate that there is an existing legal controversy that can be effectively resolved by a declaratory judgment, and not a mere possibility of a future legal dispute. Bd. of County Comm'rs v. Bowen/Edwards Assoc., 830 P.2d 1045 (Colo. 1992).

A justiciable controversy existed, and so the dismissal of a declaratory judgment claim was an abuse of discretion, where a town's ordinance limited a developer's rights under an existing contract with the town, notwithstanding the fact that the developer had not applied for a permit from the town. Lot Thirty-Four Venture, L.L.C. v. Town of Telluride, 976 P.2d 303 (Colo. App. 1998), aff'd on other grounds, 3 P.3d 30 (Colo. 2000).

Injury in fact and interest legally protected by law give rise to standing. Cable television company was injured in fact by city ordinance granting unlawful permit to competitor without holding franchise election, and cable television company had a legally protected interest in conducting its business in a lawful manner satisfying requirements for standing under this act. Cmty. Tele-Communications v. Heather Corp., 677 P.2d 330 (Colo. 1984).

Judgment creditor of insured has standing to defend against claim for reformation of insurance policy. Cont'l Western v. Jim's Hardwood Fl., 12 P.3d 824 (Colo. App. 2000).

As does another insurer of judgment debtor. Cont'l Western v. Jim's Hardwood Fl., 12 P.3d 824 (Colo. App. 2000).

The questions presented must not be uncertain or hypothetical. The questions presented here are not uncertain or hypothetical, and because they are presented in an action seeking a declaratory judgment are no less justiciable than if presented by injunction or otherwise. San Luis Power & Water Co. v. Trujillo, 93 Colo. 385, 26 P.2d 537 (1933).

Courts need not reply to mere "speculative inquiries". The court cannot decide any other of the various questions raised, however desirable it might be to have them settled, unless it is now willing to answer questions

"which have not yet arisen and which may never arise" and reply to mere "speculative inquiries". It cannot thus permit the courts to be converted into legal aid bureaus. *Gabriel v. Bd. of Regents of Univ. of Colo.*, 83 Colo. 582, 267 P. 407 (1928).

A court should not enter into a speculative inquiry for the purpose of upholding or condemning statutory provisions, the effect of which, in concrete situations not yet developed, could not be definitely perceived. *Am. Fed'n of Labor v. Reilly*, 113 Colo. 90, 155 P.2d 145 (1944).

Or determine validity of a proposed city ordinance. A declaratory judgment may not issue under the provisions of this article on the validity of a city ordinance to create a storm sewer district, where the proposed ordinance is in contemplation only and has not been passed by the city council. *City & County of Denver v. Denver Land Co.*, 85 Colo. 198, 274 P. 743 (1929).

Especially in the absence of the necessary parties. Desirable as it might be to have an announcement of the court upon a question, it would be improper to decide the question in the absence of the necessary parties. *City & County of Denver v. Denver Land Co.*, 85 Colo. 198, 274 P. 743 (1929); *Cont'l Mut. Ins. Co. v. Cochrane*, 89 Colo. 462, 4 P.2d 308 (1931).

A declaratory judgment can only be taken to be a determination as to the rights of the parties before the court. *Farmers Elevator Co. v. First Nat'l Bank*, 176 Colo. 168, 489 P.2d 318 (1971).

For a declaratory judgment to be binding, the necessary parties must be before the court. *Beacom v. Bd. of County Comm'rs*, 657 P.2d 440 (Colo. 1983).

A judicial tribunal is not required to render a judicial opinion on a matter which has become moot. A judicial opinion would not serve to terminate any controversy or put to an end any uncertainty, which in this complaint and petition evaporated when the election was concluded. *Crowe v. Wheeler*, 165 Colo. 289, 439 P.2d 50 (1968).

Possible financial loss makes one an interested party. Junior college districts, which would suffer loss of funds if an act were declared unconstitutional, have the right to intervene in a declaratory judgment suit. *Mesa County Junior Coll. Dist. v. Donner*, 150 Colo. 156, 371 P.2d 442 (1962).

This statute neither expands nor contracts the jurisdiction of Colorado's courts. In creating a new remedy the general assembly did not by implication grant political subdivisions of the state the right to sue the state. *Romer v. Fountain Sanitation Dist.*, 898 P.2d 37 (Colo. 1995).

An anticipatory declaratory judgment action must be independent of and separable from the underlying action. This determination constitutes the third standard that a trial court must consider in determining whether an anticipatory declaratory judgment action is appropriate. *Constitution Assoc. v. N.H. Ins. Co.*, 930 P.2d 556 (Colo. 1996).

An anticipatory declaratory judgment action is more likely to be independent of and separable from the underlying action if no duty to defend in the underlying action has arisen. However, even if the duty has arisen, a party may bring the action if the party can demonstrate that a justiciable controversy exists, the judgment will finally resolve the controversy as to all parties, and independence and separability from the underlying action exists. *Constitution Assoc. v. N.H. Ins. Co.*, 930 P.2d 556 (Colo. 1996).

To have standing, a party seeking declaratory relief must demonstrate that the challenged statute or regulation will likely cause tangible detriment to conduct or activities that are presently occurring or are likely to occur in the near future. *Mt. Emmons Mining Co. v. Town of Crested Butte*, 690 P.2d 231 (Colo. 1984); *Citizens Progressive Alliance v. S.W. Water Conservation Dist.*, 97 P.3d 308 (Colo. App. 2004).

Since the southwestern water conservation district's rights were affected by a request made pursuant to the Colorado Open Records Act (CORA), and the district had a legitimate basis for believing that it could not respond to the request within the CORA time limits because of the breadth of and lack of specificity in the request, the district was entitled to have the court determine whether, under CORA, it was required to respond to the request within the statutory time limits. Such a declaration is the type of relief expressly contemplated under the declaratory judgments law. *Citizens Progressive Alliance v. S.W. Water Conservation Dist.*, 97 P.3d 308 (Colo. App. 2004).

To have standing a plaintiff seeking a declaratory judgment on the validity of a regulatory scheme need not violate the regulation and thus become subject to punishment in order to secure the adjudication of uncertain legal rights. *Bd. of County Comm'rs v. Bowen/Edwards Assoc.*, 830 P.2d 1045 (Colo. 1992).

Injury-in-fact element of standing satisfied when allegations of complaint, along with other evidence on issue of standing, establish that regulatory scheme threatens to cause injury to a legally protected interest of the plaintiff. *Bd. of County Comm'rs v. Bowen/Edwards Assoc.*, 830 P.2d 1045 (Colo. 1992).

Plaintiff has no standing to bring a declaratory judgment action against defendant's insurance company before obtaining a judgment against the defendant. *Farmers Ins. Exch. v. District Court for the Fourth Judicial Dist.*, 862 P.2d 944 (Colo. 1993).

An injured party in the underlying action cannot initiate an anticipatory declaratory judgment action against the other party's insurance company because the injured party does not have an enforceable judgment against nor a contractual relationship with either the other party or the other party's insurer. *Constitution Assoc. v. N.H. Ins. Co.*, 930 P.2d 556 (Colo. 1996).

Applied in *In re Estate of Daigle*, 634 P.2d 71 (Colo. 1981); *Dolores Huerta Prep. High v. Colo. State Bd. of Educ.*, 215 P.3d 1229 (Colo. App. 2009).

II. ACTIONS SUBJECT TO DECLARATORY JUDGMENT.

The courts have jurisdiction over certain enumerated actions seeking declaratory judgments. The general assembly is without power to require courts to exercise nonjudicial functions; but it is not without the power to impose upon courts jurisdiction over certain enumerated actions seeking declaratory judgments on matters that lend themselves to and receive judicial determination in otherwise litigated cases, as it at once appears, such would not be nonjudicial in their nature. *San Luis Power & Water Co. v. Trujillo*, 93 Colo. 385, 26 P.2d 537 (1933).

Section may be employed by an insurance company to determine its liability. An action for declaratory judgment may be properly maintained by an insurance company to determine if it will be liable to its insured for a defense and for payment of a possible judgment arising from a specified occurrence. *Beeson v. State Auto. & Cas. Underwriters*, 32 Colo. App. 62, 508 P.2d 402 (1973).

An insurer may seek a declaration of its contractual responsibilities of defense and indemnification in connection with a claim filed against a person who arguably qualified as an "insured" under the insurance contract. *Hartford Ins. Group v. District Court*, 625 P.2d 1013 (Colo. 1981).

The factual nature of the inquiry surrounding an action for declaratory judgment brought by an insurance company to determine its liability under a policy does not bar action. *Am. Family Mut. Ins. Co. v. Bowser*, 779 P.2d 1376 (Colo. App. 1989).

The section is applicable to a dispute over the right to the use of spring waters not tributary to any natural stream. *Colo. & Utah Coal Co. v. Walter*, 75 Colo. 489, 226 P. 864 (1924); *Stratton v. Beaver Farmers' Canal & Ditch Co.*, 82 Colo. 118, 257 P. 1077 (1927).

Proposed game procedures, rules, and materials that were not the subject of seizure by the department of revenue do not constitute a present controversy. *Snizek v. Dept. of Rev.*, 113 P.3d 1280 (Colo. App. 2005).

Validity of statute may be tested. Where results to occur from the enforcement of a statutory provision can be predicted with certainty or where the basic right of the state to enter legislative fields said to be the domain of the federal government is questioned, a court properly may declare with respect to the validity of a statute. *Am. Fed'n of Labor v. Reilly*, 113 Colo. 90, 155 P.2d 145 (1944).

One whose rights are affected by a statute may have its construction or validity determined by declaratory judgment. *Toncray v. Dolan*, 197 Colo. 382, 593 P.2d 956 (1979).

Where the taxpayers' liability for income taxes turns on the construction of a statute and the validity, or invalidity, of regulations purporting to interpret that statute, the case is well within the purpose of declaratory judgment. *Toncray v. Dolan*, 197 Colo. 382, 593 P.2d 956 (1979).

Where all administrative remedies within a labor organization have been exhausted and union officials are charged with fraud, trial court may properly assume jurisdiction of action by railroad company for declaratory judgment to determine rights under proposed contract. *Wooldrige v. Denver & R. G. R. R.*, 118 Colo. 25, 191 P.2d 882 (1948).

Declaratory judgment is not proper procedure by which to make preenforcement challenge to regulation promulgated by a state agency. *CF&I Steel Corp. v. Colo. Air Pollution Control Comm'n*, 199 Colo. 270, 610 P.2d 85 (1980).

For declaring a note or chattel mortgage void for usury, see *Rice v. Franklin Loan & Fin. Co.*, 82 Colo. 163, 258 P. 223 (1927).

For applicability to determination of rights under teachers' salary law, see *Washington County High Sch. Dist. v. Bd. of Comm'rs*, 85 Colo. 72, 273 P. 879 (1928).

For determination of certain levies, see *Denver Land Co. v. Moffat Tunnel Imp. Dist.*, 87 Colo. 1, 284 P. 339 (1930).

A lawsuit seeking a declaratory judgment may not be instituted if it impermissibly seeks to chill or freeze the defendant's protected political speech. *Bd. of County Comm'rs v. Shroyer*, 662 F. Supp. 1542 (D. Colo. 1987).

A cognizable claim is stated under this section and rule 57 of the Colorado Rules of Civil Procedure where towing carriers claimed that a Colorado state patrol policy invalidly abrogates a claimed legal right of such carriers to impose a lien on personal property obtained through rendition of towing services. *Jam Action, Inc. v. Colo. State Patrol*, 890 P.2d 210 (Colo. App. 1994).

Declaratory judgment actions may be filed to determine the existence of, or rights under, an oral contract. *Berenergy Corp. v. Zab, Inc.*, 94 P.3d 1232 (Colo. App. 2004), *aff'd*, 136 P.3d 252 (Colo. 2006).

A trial court may grant declaratory relief in oral contract disputes where relief would terminate the controversy or remove an uncertainty. *Zab, Inc. v. Berenergy Corp.*, 136 P.3d 252 (Colo. 2006).

Claim seeking a declaration that, as a matter of law, the word "firearm" in §30-15-301 includes bows and arrows does not present a nonjusticiable political question. District court erred, therefore, in dismissing plaintiff's declaratory judgment claim based on the political question doctrine. *Moss v. Bd. of County Comm'rs for Boulder County*, 2015 COA 35, 411 P.3d 918.

This case is a classic case appropriate for resolution by entry of a declaratory judgment. A declaratory judgment would resolve the controversy between the parties regarding whether bow-and-arrow discharges are prohibited under the existing county resolution in the area where plaintiffs reside. At a minimum, there is controversy about whether bow-and-arrow discharges are prohibited under the applicable county resolution. A declaratory judgment would resolve the dispute about what conduct is prohibited under the current legal framework. Thus, a declaratory judgment will terminate the controversy or uncertainty regarding the scope of the resolution. As such, plaintiffs' claim is appropriate for resolution by entry of a declaratory

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judgment. *Moss v. Bd. of County Comm'rs for Boulder County*, 2015 COA 35, 411 P.3d 918.

§ 13-51-107. Contract construed any time

A contract may be construed either before or after there has been a breach thereof.

(L. 23: p. 268, § 3. CSA: C. 93, § 80. CRS 53: § 77-11-3. C.R.S. 1963: § 77-11-3.)

ANNOTATION

Validity of contract or question arising under contract must be pleaded. In an action under this article to determine the validity of a contract, the complaint failing to allege that the validity of the contract had been questioned, or that a question had arisen under it, no cause of action was stated. *Gabriel v. Bd. of Regents of Univ. of Colo.*, 83 Colo. 582, 267 P. 407 (1928).

Contracts interpreted only when all necessary facts determinable. Although this section and C.R.C.P. 57 provide that a contract may be interpreted prior to breach, these provisions are inapplicable where the dispute requires an interpretation in light of extrinsic facts which are not yet determinable. *McDonald's Corp. v. Rocky Mt. McDonald's, Inc.*, 42 Colo. App. 143, 590 P.2d 519 (1979).

Insurer may seek declaration of contractual responsibilities of defense against "insured". An insurer may seek a declaration of its contractual responsibilities of defense and indemnification in connection with a claim filed against a person who arguably qualifies as an "insured" under the insurance contract. *Hartford Ins. Group v. District Court*, 625 P.2d 1013 (Colo. 1981).

§ 13-51-108. Purposes of declaration

(1) Any person interested as or through an executor, administrator, trustee, guardian, or other fiduciary, creditor, devisee, legatee, heir, next of kin, or cestui que trust in the administration of a trust or of the estate of a decedent, an infant, a mental incompetent, or an insolvent may have a declaration of rights or legal relations in respect thereto:

(a) To ascertain any class of creditors, devisees, legatees, heirs, next of kin, or other; or

(b) To direct the executors, administrators, or trustees to do or abstain from doing any particular act in their fiduciary capacity; or

(c) To determine any question arising in the administration of the estate or trust, including questions of construction of wills and other writings.

(L. 23: p. 269, § 4. CSA: C. 93, § 81. CRS 53: § 77-11-4. C.R.S. 1963: § 77-11-4. L. 75: IP(1) amended, p. 925, § 18, effective July 1.)

ANNOTATION

Law reviews. For article, "Express Trusts in Colorado", see 10 Rocky Mt. L. Rev. 9 (1937).

This section does not authorize advice on matters not before the court. The court at the request of the parties will determine all questions that have properly arisen, but will decline to determine those which had not arisen and which might never arise during the administration of the trust. Neither under the equity practice nor under this act are the courts required to give general advice and instructions upon matters which have not arisen at the time their jurisdiction is invoked. *Mulcahy v. Johnson*, 80 Colo. 499, 252 P. 816 (1927).

It confers no new authority concerning wills and trusts. District courts had full and complete jurisdiction before the passage of that act to construe wills and trusts and to control executors and trustees in the administration of estates. *Mulcahy v. Johnson*, 80 Colo. 499, 252 P. 816 (1927).

Applied in *In re Estate of Daigle*, 634 P.2d 71 (Colo. 1981).

§ 13-51-109. Not a limitation

The enumeration in sections 13-51-106 to 13-51-108 does not limit or restrict the exercise of the general powers conferred in section 13-51-105, in any proceeding where declaratory relief is sought, in which a judgment or decree will terminate the controversy or remove an uncertainty.

(L. 23: p. 269, § 5. CSA: C. 93, § 82. CRS 53: § 77-11-5. C.R.S. 1963: § 77-11-5.)

ANNOTATION

Although §13-51-106 and C.R.C.P. 57(b) detail situations in which declaratory judgment actions may be brought, they do not restrict the court's ability to grant declaratory relief in other situations when appropriate. *Berenergy Corp. v. Zab, Inc.*, 94 P.3d 1232 (Colo. App. 2004), *aff'd* on other grounds, 136 P.3d 252 (Colo. 2006).

Declaratory judgment action is an appropriate means of testing the validity of a decree and resolving uncertainty as to the legal rights and status of the parties, even if the controversy has not yet ripened into litigation. *In re Lockwood*, 857 P.2d 557 (Colo. App. 1993).

A trial court may exercise its discretion to declare the existence of an oral contract and, if one exists, the terms of that contract, where such relief would "terminate the controversy or remove an uncertainty." *Zab, Inc. v. Berenergy Corp.*, 136 P.3d 252 (Colo. 2006).

§ 13-51-110. When court may refuse

The court may refuse to render or enter a declaratory judgment or decree where such judgment or decree, if rendered or entered, would not terminate the uncertainty or controversy giving rise to the proceeding.

(L. 23: p. 269, § 6. CSA: C. 93, § 83. CRS 53: § 77-11-6. C.R.S. 1963: § 77-11-6.)

§ 13-51-111. Review

All orders, judgments, and decrees under this article may be reviewed as other orders, judgments, and decrees.

(L. 23: p. 269, § 7. CSA: C. 93, § 84. CRS 53: § 77-11-7. C.R.S. 1963: § 77-11-7.)

§ 13-51-112. Further relief

Further relief based on a declaratory judgment or decree may be granted when necessary or proper. The application therefor shall be by petition to a court having jurisdiction to grant the relief. If the application is deemed sufficient, the court, on reasonable notice, shall require any adverse party whose rights have been adjudicated by the declaratory judgment or decree to show cause why further relief should not be granted forthwith.

(L. 23: p. 269, § 8. CSA: C. 93, § 85. CRS 53: § 77-11-8. C.R.S. 1963: § 77-11-8.)

ANNOTATION

Relief is not limited by language of statute or rule to prevailing party in declaratory judgment action. *Atchison v. City of Englewood*, 180 Colo. 407, 506 P.2d 140 (1973).

Reversal of an underlying declaratory judgment is not the "further relief" contemplated by this section and C.R.C.P. 57(h) but is, instead, ordinary postjudgment relief. While "further relief" is not limited to the original prevailing party, nevertheless, such relief must seek remedies different from those granted in the declaratory judgment. *Spencer v. Bd. of County Comm'rs*, 39 P.3d 1272 (Colo. App. 2001).

§ 13-51-113. Issues of fact

When a proceeding under this article involves the determination of an issue of fact, such issue may be tried and determined in the same manner as issues of facts are tried and determined in other civil actions in the court in which the proceeding is pending.

(L. 23: p. 270, § 9. CSA: C. 93, § 86. CRS 53: § 77-11-9. C.R.S. 1963: § 77-11-9.)

ANNOTATION

Factual determinations may be necessary in order to declare rights, status or legal relations. An action for declaratory judgment may be properly maintained by an insurance company to fix liability vel non, notwithstanding that factual determinations are necessary to make a declaration on the controlling issue. *O'Herron v. State Farm Mut. Auto. Ins. Co.*, 156 Colo. 164, 397 P.2d 227 (1964); *Am. Family Mut. Ins. Co. v. Bowser*, 779 P.2d 1376 (Colo. App. 1989).

Parties are entitled to jury trial if issue would have matured into one at law. If the action in which declaratory relief is sought would have been an action at law had it been permitted to mature without intervention of declaratory procedure, the right to trial by jury of disputed questions of fact is not affected. *Baumgartner v. Schey*, 143 Colo. 373, 353 P.2d 375 (1960).

§ 13-51-114. Costs

In any proceeding under this article, the court may make such award of costs as may seem equitable and just.

(L. 23: p. 270, § 10. CSA: C. 93, § 87. CRS 53: § 77-11-10. C.R.S. 1963: § 77-11-10.)

ANNOTATION

County treasurer is entitled to attorney fees in mandamus suit against board of commissioners. Where county treasurer seeks writ of mandamus requiring board of commissioners to approve salaries set by treasurer and requests declaratory judgment construing and interpreting relative rights, powers and duties of treasurer and board under statute, treasurer is entitled to reasonable attorney fees incurred in prosecuting action. *Kanaly v. Wadlow*, 31 Colo. App. 193, 502 P.2d 83 (1972), modified, 511 P.2d 484 (1973).

This section does not evince a legislative intent to authorize cost awards against public entities, because this section neither explicitly refers to such entities nor to any action that can be brought only against such entities. *Farmers Reservoir & Irrigation Co. v. City of Golden*, 113 P.3d 119 (Colo. 2005).

§ 13-51-115. Parties - ordinances - statutes

When declaratory relief is sought, all persons shall be made parties who have or claim any interest which would be affected by the declaration, and no declaration shall prejudice the rights of persons not parties to the proceeding. In any proceeding which involves the validity of a municipal ordinance or franchise, such municipality shall be made a party and is entitled to be heard, and, if the statute, ordinance, or franchise is alleged to be unconstitutional, the attorney general of the state shall also be served with a copy of the proceeding and be entitled to be heard.

(L. 23: p. 270, § 11. CSA: C. 93, § 88. CRS 53: § 77-11-11. C.R.S. 1963: § 77-11-11.)

ANNOTATION

Law reviews. For note, "Has the Colorado IRA Met an Advisory Death?", see 8 Rocky Mt. L. Rev. 140 (1936).

All persons who have an interest shall be made parties. This section provides that all persons who claim an interest in the litigation which would be affected by the declaration sought shall be made parties. Mesa County Junior Coll. Dist. v. Donner, 150 Colo. 156, 371 P.2d 442 (1962).

It was appropriate for the insurer to name the injured party in the underlying action as a party defendant in the anticipatory declaratory judgment action to ensure that the declaratory judgment would resolve the controversy at issue with regard to all parties. Once named, it was appropriate for the injured party in the underlying action to defend against the declaratory judgment action brought by the insurer. Constitution Assoc. v. N.H. Ins. Co., 930 P.2d 556 (Colo. 1996).

Any person or entity not named as a party to an anticipatory declaratory judgment action is not bound by the court's ruling in the action. Constitution Assoc. v. N.H. Ins. Co., 930 P.2d 556 (Colo. 1996).

Possible loss of funds is sufficient interest. Under this section all persons claiming an interest in the litigation to be affected by the declaration sought shall be made parties. It is error to deny petitions of intervention of junior colleges whose rights would be directly affected by a declaration of unconstitutionality depriving them of funds. Mesa County Junior Coll. Dist. v. Donner, 150 Colo. 156, 371 P.2d 442 (1962).

Neither this section nor C.R.C.P. 57 (j) applies to regulations promulgated pursuant to legislative grant of authority; therefore, in

challenging a regulation, the attorney general need not be joined. Cont'l Liquor Co. v. Kalbin, 43 Colo. App. 438, 608 P.2d 353 (1977).

Nor do they address situation where constitutional question arises during trial. This section and C.R.C.P. 57 (j), mandating notice to the attorney general when allegations of unconstitutionality are made, do not address the situation where the question of constitutionality arises for the first time during the course of trial. Howell v. Woodlin Sch. Dist. R-104, 198 Colo. 40, 596 P.2d 56 (1979).

Where the state was already a party to the action and the constitutionality of a statute had been raised and argued in the trial court, this section did not require additional notice to the attorney general. Raptor Educ. Found., Inc. v. State, 2012 COA 219, 296 P.3d 352.

In suit seeking declaratory judgment that tax statute is unconstitutional, the attorney general, governor, state property tax commissioner, and county attorney are not proper parties defendant, but the state of Colorado and county officials are proper parties defendant. Lucchesi v. State, 807 P.2d 1185 (Colo. App. 1990).

Condominium association and its board members can adequately represent the interests of absent unit owners for purposes of a declaratory judgment claim concerning the validity of a declaration provision. Accordingly, plaintiff need not join absent unit owners as parties. Accetta v. Brooks Towers Residences, 2019 CO 11, 434 P.3d 600.

Applied in Hide-A-Way Massage Parlor, Inc. v. Bd. of County Comm'rs, 198 Colo. 175, 597 P.2d 564 (1979); Empire Sav., Bldg. & Loan Ass'n v. Otero Sav. & Loan Ass'n, 640 P.2d 1151 (Colo. 1982).

For similar provisions in court rules, see C.R.C.P. 57(j).