OFFICE OF THE GUNNISON COUNTY ATTORNEY
David Baumgarten, County Attorney
Art Trezise, Deputy County Attorney

MEMORANDUM

TO: Board of County Commissioners
Matthew Birnie

FROM: David Baumgarten, County Attorney
Art Trezise, Deputy County Attorney

RE: Colorado Sunshine Law

DATE: January 10, 2012

We'd like to use the occasion of the New Year to re-brief us on practices that will foster good governance discipline, will well serve our constituents, and will keep us out of legal jeopardy. We are available to meet to discuss any of these issues at your convenience. Please remember that Colorado law is explicit in the following statements:

1. C.R.S. 24-6-402(2)(b) states that "All meetings of a quorum or three or more members of any local public body, whichever is fewer, at <u>which any public business is discussed</u> or at which any formal action may be taken are declared to be public meetings open to the public at all times." (Emphasis added.)

2. C.R.S. 24-6-402(2)(c.)states that "Any meeting at which the adoption of any proposed policy, position, resolution, rule, regulation, or formal action occurs or <u>at which a majority or quorum of the body is in attendance,</u> or is <u>expected to be in attendance</u>, shall be held only after full and timely notice to the public. In addition to any other means of full and timely notice, a local public body shall be deemed to have given full and timely notice if the notice of the meeting is posted in a designated public place…. No less than twenty four hours prior to the holding of the meeting." (Emphasis added.)

3. C.R.S. 24-6-402(2)(d)(III) states: "If elected officials use electronic mail to discuss… public business among themselves, the electronic mail shall be subject to the requirements of the is section." I suggest that appointed members of boards and commissions strictly follow the same discipline.

4. C.R.S. 24-6-402(4) states that the members of a local public body, upon the announcement by the local public body to the public of the topic for discussion in the executive session, and upon the affirmative vote of two-thirds of the quorum present, may hold an executive session only at a regular or special meeting; no adoption of any formal action shall occur at any executive session.

5. C.R.S. 24-6-402(4)(f)(I) authorizes a local public body to conduct an executive session on "(p)ersonnel matters except if the employee who is the subject of the session has requested an open meetings."
6. C.R.S. 24-6-402(8) states that no action of a local public body shall be valid unless taken or made at a meeting that meets the law's requirements.

7. C.R.S. 24-6-402(9) authorizes the County or District courts to enforce this law on behalf of any citizen, and, if the court finds a violation of this law, to award costs and attorney's fees.

A fair reading of the law demonstrates that it is the explicit policy of the state that meetings of boards and commissions be given public notice; that public notice can be easily accomplished; and that a personnel matter can be discussed in an executive session <u>except</u> if the employee who is the subject of the session has requested an open meeting.

Because the law can be complied with readily and with ease, and because noncompliance raises an unnecessary issue and places an ultimate decision in jeopardy, I urge you to provide public notice.