

<p>Colorado Secretary of State  1700 Broadway, Suite 200  Denver, CO 80290  Phone Number: 303-894-2200</p> <hr/> <p><b>In re the</b></p> <p><b>Application for Determination of Abandonment  of the Town of Bonanza City</b></p> <hr/> <p>Attorney for the Committee to Save Bonanza:  M. Stuart Anderson, Esq.  Anderson &amp; Hughes, PC  7385 W. Highway 50  Salida, CO 81201  Phone Number: (719) 539-7003  FAX Number: (719) 539-2206    Atty. Reg.: 30251</p>	<p style="text-align: center;"><b>COURT USE ONLY</b></p> <hr/>
<b>AMENDED BRIEF</b>	

**COMES NOW** the Committee to Save the Town of Bonanza City, by and through its attorneys, Anderson & Hughes, P.C., and for its Amended Brief re the Application for Determination of Abandonment of the Town of Bonanza City states to the Court as follows:

**I.     The Application for the Abandonment of “Bonanza” should be denied because there are fatal procedural defects to the Application.**

A. No document from the County has been submitted wherein the County authorized the filing of the Application.

There has been nothing entered in the record to date which reflects a vote of the County Commissioners authorizing the Application for Abandonment. While CRS §31-3-201 permits a county attorney to make an application for abandonment, the attorney’s authority to make such an application must be authorized by his client, the County.



**Under the statutes of Colorado a county attorney is employed primarily as the legal advisor of the county commissioners in whose discretion reposes the power of appointment. In certain matters he advises other county administrative officers, appears for the county in cases involving dependent, neglected and delinquent children, in lunacy inquests and, when directed by the county commissioners, in civil litigation to which the county is a party or in which it is interested. County of Adams v. Hibbard, 918 P.2d 212, 219 (Colo.,1996)**

If there is no evidence that the County of Saguache authorized the Application being considered, then the Application must fail.

B. The Application fails to properly identify the correct political entity for abandonment. The Town's correct name is Bonanza City.

It is axiomatic in the law that the proper party must be named in any legal action involving such party. This is particularly true when the legal action involves the forfeiture of the existence of such party. Without the proper identification of the political entity, proper notice has not been provided by the County. CRS §31-3-201, See Also CRS §24-4-101 et seq. (Colorado Administrative Procedure Act).

Because of the failure to name the proper party, the Colorado Secretary of State does not have jurisdiction to proceed with the abandonment request pursuant to CRS §31-3-201; See Also CRS §24-4-101 et seq. (Colorado Administrative Procedure Act).

Attachment "I" to Exhibit 22 is a copy of the original plat filed for the "Town of Bonanza City." Please see the brief of Mr. Phil Lunt, Exhibit 22, for a full discussion of this issue. Further, The Colorado Department of Local Affairs lists the name of Bonanza as Town of "Bonanza City." (Exhibit 35).

There is no question that the Town has used the name "Bonanza". However, to the extent that any of the affected parties' rights associated with proper notice have been

violated by not naming "Bonanza City", then the Application should be denied. Procedural and substantive due process requires that proper notice be given both under the laws of the United States of America and Colorado. U.S.C.A Const.Amend. 5th, 14<sup>th</sup>; CRS §24-4-101 et seq.

C. The notices provided by the State are defective in that the notices misstate the grounds for the application and the elements of the statute to which the notices pertain.

The pertinent notices provided by the State of Colorado for the hearing regarding abandonment state, in part, as follows:

**"The application alleges as its grounds that the town failed, for a period of longer than five years immediately before the filing of the application, to hold any regular or special election, elect officers, or [emphasis added] maintain any of the functions of town government."** (Exhibits 36 and 37).

The actually wording of CRS §31-3-201 reads as follows:

**"(1) When any town has failed, for a period of five years or longer immediately prior to the filing of the application under this section, to hold any regular or special election or to elect officers and [emphasis added] to maintain any town government, such town may be determined to be abandoned as follows...."**

Accordingly, the State's notices mistakenly use the word "or" as opposed to "and".

While this is a small error, it has serious implications. The pertinent statute, as recognized by the hearing officer at the October 14, 2014 hearing, requires that the State prove both five (5) years or more of failures related to elections or of maintaining officers and a failure to maintain any town government. Anyone reading the State's notice would be under the mistaken impression of what was in the County's application and what the grounds were for the hearing.

Finally, the procedural defects in the County's application and in the State's proceedings including, but not limited to, inadequate notice, improper notice, failure to specify what specific portions of CRS §31-3-201 were being relied upon for abandonment, and other defects are contrary to the rights guaranteed under the Constitution and laws of the United States of America. Such federal rights include, but are not limited to, violations of substantive due process, procedural due process, equal protection rights, voting rights, and other federal rights. U.S.C.A Const.Amend. 5th, 14th; 42 U.S.C. 1983.

**II. The Application for the Abandonment of "Bonanza" should be denied because the County has failed to prove the substantive requirements of CRS §31-3-201.**

- A. CRS §31-3-201 requires the County to prove that five years or more of a failure of the Town to hold any regular elections, special elections, or elect officers as well as the failure to maintain any town government. Proof that any town government was maintained within 5 years of the Application means the County's application for abandonment must fail.

CRS §31-3-201, in pertinent part, states as follows:

**"(1) When any town has failed, for a period of five years or longer immediately prior to the filing of the application under this section, to hold any regular or special election or to elect officers and to maintain any town government, such town may be determined to be abandoned as follows..."**

The "and" in the pertinent statutory elements for abandonment connects the requirement that the County must prove a five year or more failure to maintain any town government to the failures related to elections and officers. If broken down as a typical jury instruction, the statute would read like this:

**"When any town has failed, for a period of five years or longer**

**immediately prior to the filing of the application under this section,  
1) to hold any regular or special election or to elect officers; and  
2) to maintain any town government, such town may be determined to be  
abandoned as follows...”**

B. The County’s application should fail because there is evidence that the Town maintained some town government.

The pertinent statute sets an extremely high threshold for the County to meet if a Town is to be deemed abandoned. “Any” evidence of town governance is fatal to the County’s application for abandonment. Already in the record is evidence that some town government was maintained in the five years prior to the Application.

In Exhibit 19, there are several financial transactions conducted by the Town with the County of Saguache. See Exhibit 19, Sub-Exhibits 5-11. Many of these transactions involve the County of Saguache cashing checks from a town government during a time period which the County now claims that no town government was being maintained. The County cannot have it both ways. If, as it now maintains, no town government was being maintained in Bonanza, then the County must have been cashing checks from a non-existent entity. The County should be estopped from claiming that no government existed in Bonanza during the five years preceding the Application when it was accepting money from the Town.

It should also be noted that there was a Town budget as late as 2007 and proposed budget for 2009 (Exhibit 6). The County cannot argue that the money it received was unappropriated as the payments by the Town of Bonanza paid to and accepted by the County are assumed to be valid unless proven otherwise by the County. **“The presumption is that public officials conduct their affairs in a legal manner including**

**monetary payments to other public entities, and that presumption exists as to the validity of the warrant here in question...**" Town of Morrison v. Burke, 84 P.2d 461, 462 (Colo. 1938).

The statute places the County under a heavy burden by using the phrase "any" in regard to maintaining any town government. The use of the phrase "to maintain any town government" signifies an intent by the Colorado Legislature to preserve Colorado's towns and to only declare them abandoned in the face of a clear abandonment of any and all signs of life. The intent is clearly to err on the side of preservation and not abandonment. The Town of Bonanza City should be preserved. The County has failed to meet the high bar set by our Legislature.

C. After the hearing on October 14, 2014, conclusive evidence was obtained that the failure to hold any election did not occur until, at the earliest, April of 2010 and that there were legitimately elected trustees in place for the Town of Bonanza until at least April of 2010

In the initial hearing in this matter on January 7, 2014, the County attorney indicated that it was the County's position that there was no record of an election in the Town of Bonanza since "2005" (audio posted on the Colorado Secretary of State website at 4:40-5:00). The County attorney was aware that there had been an election in 2006 because, back in 2006, the County attorney had been the attorney for the Town of Bonanza (Exhibit 29, See entry language just under the caption).

After the hearing on October 14, 2014, documents from a court case were obtained which establish that an election was held in April of 2006 and, based on the Town's

ordinances, there would have been a duly elected town government maintained in the form of trustees until at least April of 2010.

After the election in April of 2006, a law suit was filed by Gail Holbrook and Edgar Carpenter ("plaintiffs) in the Saguache District Court case no. 06CV27. In that case, the defendants were being sued to unseat them from their election as Trustees for the Town of Bonanza by the runners up in the 2006 election, the plaintiffs (Exhibits 26-29).

The attorney for the Town of Bonanza, Ben Gibbons (now the attorney for the County of Saguache) argued in his Answers in that case for the Town of Bonanza that the elections of 2006 had been legitimate elections and that the defendants represented the duly elected town government for the Town of Bonanza (Exhibits 27 and 29).

In his Order and Final Judgment in that case, the Honorable Paul A. Markson found that an election had occurred in the Town Bonanza on April 4, 2006 (Exhibit 31). The Court found that the clerk and recorder posted the ballot on the Town bulletin board on March 15, 2006 and mailed copies of the ballot to voters on the town voter rolls. Ultimately, the Court concluded that the defendants had not resided in the Town of Bonanza for the required time. The Court then installed Ms. Holbrook, Mr. Carpenter, and Ms. Osmond as the "trustees of the Town of Bonanza" from the 2006 election results (Exhibit 31, p.2, ¶5).

The Town ordinances indicate that the term of a trustee is for four (4) years (Exhibit 33, p. 9 of 36, Article II, Section 1). Accordingly, the Town of Bonanza had duly elected trustees until at least April of 2010 (well within the five (5) year look back period from the October 28, 2013 application for abandonment by the County). Again, the statutory threshold for the County established by the Colorado Legislature in CRS §31-3-201 is



extremely high. Evidence of maintaining “any” town government in the five (5) years preceding the application is sufficient to save the Town of Bonanza from being abandoned. Not only is there conclusive evidence of duly elected trustees within the five year window, but at least one of those trustees was writing checks to the County and the County was accepting the checks from the Trustee on a Town of Bonanza account (Exhibit 19, Sub-exhibit 5, checks 481,482, and 483 signed by Town of Bonanza Trustee Gail Holbrook). In light of the evidence of a duly elected town government within five (5) years of the application, that members of the Town government were carrying out the business of the Town by paying the Town’s obligations, and that the County accepted money from the Town of Bonanza representatives, the County simply cannot meet the high burden of proving there was a failure to maintain “any” town government as required by the statute. Evidence that “any” town Government had been maintained is fatal to the County’s application.

D. The fact that the former attorney for the Town of Bonanza’s is now representing the County of Saguache in the application to abandon the Town of Bonanza sets up a conflict which impairs the procedural and substantive due process rights of those trying to save the Town from abandonment.

Normally, an attorney who possesses material evidence (a necessary witness) in a proceeding cannot act as an attorney in that same proceeding under the rules of professional ethics. Further, representing a client against the interests of a former client especially in a proceeding that might eliminate the existence of that former client raises serious issues. Rules of Professional Conduct 3.7, 1.7. These are ethical rules and undersigned counsel is not taking the position that any rules of professional conduct have



actually been violated. Nonetheless, the implications from the known facts and prior representation raises serious concerns.

The County took the position at the hearings in this matter that no election had occurred in the Town of Bonanza since 2005. The attorney for the County, by arguing for the County's position that no election in Bonanza had occurred since 2005, made himself a witness. His direct knowledge of a 2006 election would refute and impeach the county's position that there was no record of a post 2005 election.

All of those who opposed the County's application for abandonment were prejudiced by the failure of the County, through its attorney, to disclose the truth about what the County knew. The County, through its attorney, knew there had been an election in 2006. By failing to disclose what it knew and by taking a position that was contrary to what it knew to be true, the County has fundamentally introduced error into its own application and the process and it should be sanctioned for taking a frivolous and groundless position, namely that no election had occurred in Bonanza since 2005. Presumably, the County knew that the last election had to be in 2005 else its application would fail. An election in April of 2005 would mean that the last duly elected trustee's term would end in April of 2009 while a valid election in April of 2006 would mean there were duly elected trustees at least through April of 2010. Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194 U.S. Md.1963)(fundamental due process requirements may require governmental actors to disclose certain matters adverse to the government else fundamental constitutional rights may be violated).

The County's application for abandonment was simply premature. As stated by one of the participant's at the October 14, 2014 hearing, "what is the rush?" The Town of

Bonanza is not a ghost town. It is not one of those towns where no one lives, where no construction has taken place in decades, and where there has been no government for over five (5) years. There is new construction going on in the Town. There are numerous property owners and some residents. The Town had trustees as late as four (4) years ago. The County's application to abandon the Town of Bonanza should be denied.

Respectfully submitted this 20<sup>th</sup> day of October, 2014.

ANDERSON & HUGHES, P.C.

  
*/s/ M. Stuart Anderson*

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M. Stuart Anderson, Esq.

#### CERTIFICATE OF SERVICE

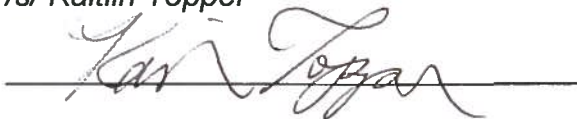
The undersigned hereby certifies that on October 20, 2014, a true and correct copy of the foregoing was sent via FedEx First Overnight to Rich Coolidge (Secretary of State's office) and deposited in the U.S. Mail, with first class postage prepaid, addressed as follows:

Colorado Secretary of State  
Attn: Rich Coolidge  
1700 Broadway, Suite 200  
Denver, CO 80290

Benjamin Gibbons, Esq.  
800 1st Ave  
Monte Vista, CO 81144

*Original Signature on File at  
Anderson & Hughes, P.C.*

*/s/ Kaitlin Topper*

  
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