

<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>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 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.

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 low threshold allowing the state to preserve a town when a county is requesting abandonment. "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).

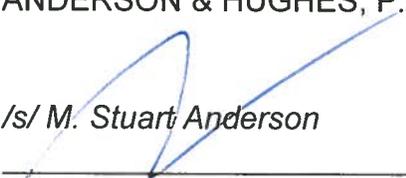
The statute places the County under a heavy burden by using the phrase "any" in regard to maintaining any town government. The use of the phrase "to maintain any town government" signifies an intent by the Colorado Legislature to preserve Colorado's towns and to only declare them abandoned in the face 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.

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Respectfully submitted this 14<sup>th</sup> day of October, 2014.

ANDERSON & HUGHES, P.C.

  
*/s/ M. Stuart Anderson*

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M. Stuart Anderson, Esq.