

**COMPLAINT**  
**Colorado Secretary of State**  
**1700 Broadway, Suite 270**  
**Denver, CO 80290**  
**303-894-2200, Option 3**  
**Fax 303-869-4861**

**Person Alleging Complaint**

Brooks Imperial  
12300 County Rd. 118  
Kiowa, CO 80117  
Elbert County  
Home Phone: 303-621-9100  
Work Phone: 720-733-1403  
Email: brooks@forethought.net

**Entity Against Whom Alleged Complaint is Brought**

Elbert County Development Council, Inc.  
P.O. Box 432  
Kiowa, CO 80117

**Details of the Complaint**

The Elbert County Development Council, an entity serving in a government capacity and a recipient of public money, illegally influenced the 2007 election for the 1B referred tax measure in Elbert County, causing it to pass.

See Sections I through IV below for details.

**Affirmation**

I declare under penalty of perjury under the laws of the State of Colorado that the foregoing is true and correct.

Executed on November 8, 2007, at Elizabeth, Colorado.

Signature of Person Filing Complaint:      /s/

## **I. Relevant Laws**

### **(1) Colorado Statutes/Colorado Revised Statutes /TITLE 1 ELECTIONS/ELECTION CAMPAIGN REGULATIONS/ARTICLE 45 FAIR CAMPAIGN PRACTICES ACT**

#### **1-45-117. State and political subdivisions - limitations on contributions.**

(1) (a) (I) No agency, department, board, division, bureau, commission, or council of the state or any political subdivision thereof shall make any contribution in campaigns involving the nomination, retention, or election of any person to any public office, nor shall any such entity expend any public moneys from any source, or make any contributions, to urge electors to vote in favor of or against any:

(C) Referred measure, as defined in section 1-1-104 (34.5);

**Annotator's note.** Since § 1-45-117 is similar to § 1-45-116 as it existed prior to the 1997 repeal and reenactment of this article, relevant cases construing that provision have been included in the annotations to this section.

The purpose of this section is to prohibit the state government and its officials from spending public funds to influence the outcome of campaigns for political office or ballot issues. Colo. Common Cause v. Coffman, 85 P.3d 551 (Colo. App. 2003), aff'd, 102 P.3d 999 (Colo. 2004).

This section must be strictly construed. It is an established principle that statutes regarding the use of public funds to influence the outcome of elections are strictly construed. Coffman v. Colo. Common Cause, 102 P.3d 999 (Colo. 2004).

Moneys in fund administered by the Colorado compensation insurance authority that consisted primarily of premiums paid into the fund by employers constituted "public moneys" for purposes of this section. Denver Area Labor Fed'n v. Buckley, 924 P.2d 524 (Colo. 1996).

While the term "public moneys" is not defined, the all-inclusive language "from any source" indicates that the general assembly intended an expansive definition of the phrase. Thus, the term "public moneys" may not be construed to refer only to sums realized from the imposition of taxes. Denver Area Labor Fed'n v. Buckley, 924 P.2d 524 (Colo. 1996).

### **(2) Colorado Constitution/CONSTITUTION OF THE STATE OF COLORADO /ARTICLE XXVIII CAMPAIGN AND POLITICAL FINANCE**

#### **Section 9. Duties of the secretary of state - enforcement.**

(2) (a) Any person who believes that a violation of section 3, section 4, section 5, section 6, section 7, or section 9 (1) (e), of this article, or of sections 1-45-108, 1-45-114, 1-45-115, or **1-45-117 C.R.S.**[see below], or any successor sections, has occurred may file a written complaint with the secretary of state no later than one hundred eighty days after the date of the alleged violation. The secretary of state shall refer the complaint to an administrative law judge within three days of the filing of the complaint. The administrative law judge shall hold a hearing within fifteen days of the referral of the complaint, and shall render a decision within fifteen days of the hearing. The defendant shall be granted an extension of up to thirty days upon defendant's motion, or longer upon a showing of good cause. **If the administrative law judge determines that such violation has occurred, such decision shall include any appropriate order, sanction, or relief authorized by this article.**

**II. Evidence that the ECDC is a government council contemplated by C.R.S. 1-45-117.**

(1)

**NONPROFIT**

**ARTICLES OF INCORPORATION  
OF**

**FILED  
DONETTA DAVIDSON  
COLORADO SECRETARY OF STATE**

**ELBERT COUNTY DEVELOPMENT COUNCIL, INC.**

The undersigned, acting the incorporator of a nonprofit corporation under the Colorado Non Profit Corporation Act, hereby delivers the following Articles of Incorporation for Elbert County Development Council, Inc.

ARTICLE I

The name of the corporation is Elbert County Development Council, Inc. (hereinafter<sup>x</sup> referred to as the "Corporation").

20011122543 M  
\$ 50.00  
SECRETARY OF STATE  
06-19-2001 13:26:20

ARTICLE II

The period of duration of this Corporation shall be perpetual.

ARTICLE III

The Corporation is organized and shall be operated exclusively to encourage and promote balanced economic growth and community development within the meaning of Section 501-(c)-(6) of the Internal Revenue Code of 1986, hereinafter referred to as the "Code". These purposes include:

(2)

ID Number:	20011122543
Name:	ELBERT COUNTY DEVELOPMENT COUNCIL, INC.
<hr/>	
Registered Agent:	Sherry Metli
Registered Agent Street Address:	326 COMANCHE, KIOWA, CO 80117, United States
Registered Agent Mailing Address:	PO BOX 432, KIOWA, CO 80117, United States
<hr/>	
Principal Office Street Address:	326 COMANCHE, KIOWA, CO 80117 , United States
Principal Office Mailing Address:	P. O. Box 432, Kiowa, CO 80117, United States
<hr/>	
Status:	Good Standing
Form:	Nonprofit Corporation
Jurisdiction:	Colorado
Formation Date:	06/19/2001
Term of Duration:	Perpetual
Annual Report Month:	June

(3)



John Metli, Commissioner District 3

(4)

U.S. Code collection

TITLE 26 > Subtitle A > CHAPTER 1 > Subchapter F > PART I > § 501

§ 501. Exemption from tax on corporations, certain trusts, etc.

**(c) List of exempt organizations**

(6) Business leagues, chambers of commerce, real-estate boards, boards of trade, or professional football leagues (whether or not administering a pension fund for football players), not organized for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual.

**(5) ELBERT COUNTY COMMISSIONER MEETING MARCH 17, 2004**

<http://www.elbertcounty-co.gov/upload/documents/BOCC%20MTG%2003-17-04.doc>

**ECONOMIC DEVELOPMENT COUNCIL – LETTER OF SUPPORT:**

Van Sands, Chair of the Economic Development Council and Charles Groesbeck came before the Board to request that the Board of Commissioners adopt a resolution supporting a bio-agricultural industrial complex on the I-70 corridor. ECDC has held several meetings with North American Bio-Energy Resources regarding the development of this complex. NABR has expressed an interest in developing a bio-energy complex in Elbert County. The total estimated cost of such a project could reach \$250,000,000 and create 200 permanent jobs.

Commissioner Metli made a motion that the Board of County Commissioners of Elbert County, recognizing that the county desires commercial and industrial growth that will promote economic diversity, hereby supports the Elbert County Development Council in its efforts to bring industry to Elbert County that is compatible with the agricultural resources and rural character of the County. The BOCC encourages ECDC to work with North American Bio-Energy Resources in an effort to create a bio-refinery project in Elbert County. Commissioner Paulson seconded the motion. The roll having been called, the Chairman declared the motion unanimously carried and so ordered.

**RESOLUTION 04-25**  
**A RESOLUTION SUPPORTING ECONOMIC DEVELOPMENT**  
**COUNCIL'S EFFORT TO CREATE A BIO-REFINERY PROJECT**  
**IN ELBERT COUNTY**

**(6) ELBERT COUNTY COMMISSIONER MEETING APRIL 14, 2004**

<http://www.elbertcounty-co.gov/upload/documents/BOCC%20MTG%2004-14-04.doc>

**ECONOMIC DEVELOPMENT COUNCIL LETTER:**

Van Sands of the Elbert County Development Council, came before the Board to request that the Board of Commissioners send a letter to DOLA requesting \$150,000.00 for assistance for the Elbert County Development Council to prepare the documents for the bio-ag project. There is no match required on the County's behalf for this \$150,000.00. Commissioner Paulson made a motion that the Commissioners draft and sign a letter to the Colorado Department of Local Affairs for the funding for the EDC in the amount of \$150,000, with all three Commissioners signatures. Commissioner Metli seconded the motion. The roll having been called, the Chairman declared the motion unanimously carried and so ordered.

**(7) ELBERT COUNTY COMMISSIONER MEETING AUGUST 4, 2004**

<http://www.elbertcounty-co.gov/upload/documents/BOCC%20MTG%2008-04-04.doc>

**ECONOMIC DEVELOPMENT COUNCIL:**

Van Sands and Charles Groesbeck with the Economic Development Council came before the Board to discuss the following items:

Van and Charles reported on the proposed North American I-70 corridor project presentation.

Elbert County Development Council requested that the Commissioners have County departments support commercial growth and that the negative attitude from some County departments must stop. ECDC also requested that the Commissioners adopt a resolution to: refer all inquires of a commercial or economic development nature to the Elbert County Development Council within two business days and to prepare a synopsis of appropriate Master Plan/1041 procedures related to economic development. This shall include the welcoming nature of the amended Master Plan, fast track and an outline of requirements and procedures for approval, with the first draft to be reviewed by the Commissioners on September 8<sup>th</sup>. After some discussion, it was agreed to reschedule this matter on August 18<sup>th</sup>.

**(8) ELBERT COUNTY COMMISSIONER MEETING AUGUST 25, 2004**

<http://www.elbertcounty-co.gov/upload/documents/BOCC%20MTG%2008-25-04.doc>

**ECONOMIC DEVELOPMENT:**

Van Sands, Chairman of the Economic Development Council along with Charles Groesbeck, came before the Board to again request that the Board of County Commissioners direct the Planning Department to refer all inquiries of a commercial or economic development nature to the Elbert County Development Council within two business days and to prepare a synopsis of appropriate Master Plan/1041 procedures related to economic development, to include the welcoming nature of the amended Master Plan, fast track and an outline of requirements and procedures for approval. After a lengthy discussion, the Board of Commissioners agreed that the applicant will be provided a contact sheet for the Economic Development Council and have the applicant contact ECDC on their own. Further, the Board agreed for ECDC to prepare a synopsis of Master Plan/1041 Procedures related to economic development for the Planning Director's review and approval.

**(9) ELBERT COUNTY COMMISSIONER MEETING SEPTEMBER 29, 2004**

<http://www.elbertcounty-co.gov/upload/documents/BOCC%20MTG%2009-29-04.doc>

County Administrator Suzie Graeff came before the Board to discuss the following items:

Suzie reported that the ECDC would like permission to use the County logo on their stationary. BOCC said “no.”

**(10) ELBERT COUNTY COMMISSIONER MEETING OCTOBER 20, 2004**

<http://www.elbertcounty-co.gov/upload/documents/BOCC%20MTG%2010-20-04.doc>

**ELBERT COUNTY ECONOMIC DEVELOPMENT COUNCIL:**

Director Charles Groesbeck came before the Board to report the information from his meeting with the Lincoln County Commissioners, Lincoln County Director of Economic Development, and the McGalpin Group, October 13, 2004. The McGalpin Group’s proposal is in response to Excel’s request to have 500 megawatts of new energy online by December 31, 2006. The proposed wind farm would be located north-northwest of Limon to south-southeast into Lincoln County. This will bring an economic tax base to the 2 counties of some \$300 million, with ¼ to 1/3 of the taxes coming to Elbert County. Ken Wolf said the Fast Track is appropriate for the Wind Farm Project, when an application comes in.

Charles also reported on his meeting with attorney Michael Shay regarding the Bioag Foundation. The two entities are nonprofit: 501C6—which is similar to a Chamber of Commerce; and 501C3—education and research, or lessen the burdens of government (similar to ECDC). Michael Shay will write the resolution and Charles will present it to the BOCC.

**(11) ELBERT COUNTY COMMISSIONER MEETING DECEMBER 15, 2004**

<http://www.elbertcounty-co.gov/upload/documents/BOCC%20MTG%2012-15-04.doc>

**ECONOMIC DEVELOPMENT:**

Charles Groesbeck with the Economic Development Council came before the Board to discuss the following items:

Charles gave a status report on an entities that are proposing a 1,000 megawatts of energy on a strip of land between Agate and Limon.

Charles reported that ECDC respectfully requests that the Board of County Commissioners direct the County Attorney to hold in abeyance any civil actions upon any individuals or entities who may be in violation of the Zoning Regulations. The ECDC may be attempting to modify to promote sustainable, responsible economic/commercial development. The Board asked if Charles could wait for awhile so that this matter could be discussed with the County Attorney. Charles agreed.

## (12) ELBERT COUNTY COMMISSIONER MEETING JANUARY 3, 2007

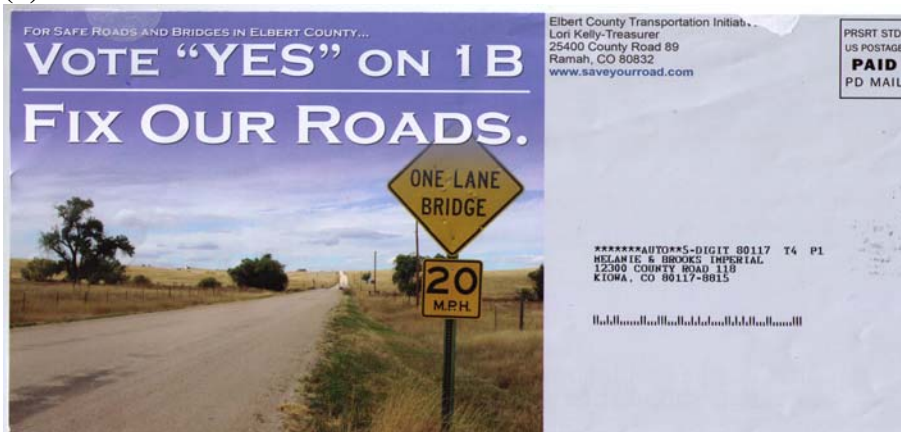
<http://www.elbertcounty-co.gov/upload/documents/BOCC%20MTG%2001-03-07.doc>

### **SPRING VALLEY VISTAS PUD, PRELIMINARY PLAT & 1041 PERMIT:**

The Planning Department identified 27 agencies to be utilized for referrals on this proposal. These agencies are: Arapahoe County Public Works and Development, Douglas County Planning Division, Douglas County Engineering/Public Works, Rattlesnake Fire Protection District, Colorado Department of Health, Colorado Geological Survey, Colorado Division of Water Resources, Colorado Division of Wildlife, U.S. Fish and Wildlife Services, ECDC, Conoco Phillips Pipeline Company, Douglas County School District RE-1, Kiowa Conservation District, City of Aurora Planning, IREA, Aquila Natural Gas, XCEL Energy of Colorado, Elbert County Assessor, Elbert County Building Department, Elbert County Road & Bridge, Elbert County Mapper, Elbert County Engineer, Elbert County Environmental Health Department, Elbert County Sheriff, Elbert County Planning Department. The responses from these referral agencies are in the Planning Department's Staff Report.

### **III. Evidence that the ECDC contributed money in favor of a referred measure in the 11/06/07 general election.**

(1)





(2)

**Committee Name:** ELBERT COUNTY TRANSPORTATION INITIATIVE  
**SOS ID Number:** 20075621971  
**Type:** ISSUE COMMITTEE

**Party:**  
**Filing Date:** 09/19/2007  
**Status:** Active  
**Filing Type:** Electronic  
**Purpose:** SUPPORT OF BALLOT ISSUE 1B

**Most Recent Election Cycle:**  
**Area/Office/District:** ELBERT/ N/A / N/A /  
**Last Detail Summary Report Filing Date:** 11/03/2007 8:34 AM  
**For Report Period Ending:** 10/28/2007  
**Funds On Hand:** \$50.00  
**Next Calendar Report Due:** 12/06/2007  
 (doesn't account for past due, if any)

**Registered Agent:** LORI KELLY  
**Mailing Address:** 25400 COUNTY ROAD 89  
**City State Zip:** RAMAH, CO 80832  
**Phone:** 719-351-0181

(3)

**Committee Name:** ELBERT COUNTY TRANSPORTATION INITIATIVE  
**SOS ID Number:** 20075621971  
**Type:** ISSUE COMMITTEE  
**Reporting Period:** 10/12/2007 - 10/28/2007      **Due:** 11/02/2007

**Date:** 10/22/2007  
**Contributor:** ECDC  
 PO BOX 432  
 KIOWA, CO 80117

**Original Amount Reported:** \$0.00  
**Actual Amount:** \$100.00  
**Total Amount, this cycle:** \$100.00

**Monetary:** Yes  
**Contributor Type:** Other

If membership organization, number of member donors:

**Description:**

**Employer:**

**Occupation:**

**IV. Remedy sought.**



**Vote margin: 210**

**The Elbert County Transportation Initiative flyers (there were 2) only needed to cause 105 voters to change their vote to carry the election.**

**(2) Due to the prohibited electioneering by a government council, and the material effect it had on the election outcome, the election results for 1B should be set aside.**