

STATE OF COLORADO
Department of State
1700 Broadway
Suite 250
Denver, CO 80290



Mike Coffman
Secretary of State

William A. Hobbs
Deputy Secretary of State

September 20, 2007

SENT VIA FAX & FIRST CLASS MAIL

Mr. John M. Evans, Esq.
Law Firm of John Evans, P.C.
19751 East Mainstreet, Suite 360
Parker, CO 80138
FAX: 303-840-2841

Mr. Lance J. Ingalls, Esq.
Douglas County Attorney
100 Third Street
Castle Rock, CO 80104
FAX: 303-688-6596

Re: Douglas County application for determinations of town abandonment -- Frankstown

Dear Sirs:

On September 13, 2007, this Office received a letter from Mr. Evans requesting that the Secretary of State stay any action regarding the application of the Douglas County Attorney for a determination of abandonment of Frankstown. On September 18, 2007, the Office received Mr. Ingalls' letter opposing the request. After careful consideration, I have determined that I must respectfully decline Mr. Evans' request for a stay and proceed with a hearing on the application.

The application was filed with the Secretary of State on June 19, 2007 pursuant to section 31-3-201, C.R.S., requesting a determination of abandonment with respect to twelve cities or towns that existed in Douglas County, including Frankstown. The statute requires the Secretary of State to respond to such applications "forthwith" by setting a public hearing on the application.

About the same time, however, Mr. Evans filed a petition with the District Court in Douglas County seeking to set a date for an election on the question of the reorganization of Frankstown and seeking a temporary restraining order against Douglas County and the Secretary of State in the abandonment proceeding. (*Residents and Registered Electors of the Town of Frankstown, Colorado v. The Board of Trustees of the Town of Frankstown, Colorado*, Case Number 07CV1342) On June 22, the Court denied Mr. Evans' request for a temporary restraining order against the abandonment proceeding, and on July 7 the Court issued an order denying the petition, as follows:

The Court declines to exercise its discretion to compel a non-existent Board of Trustees to hold a reorganization election based upon a Petition signed by registered electors in an area that Petitioners have not been established by the evidence to be a town incorporated prior to 1877 that has a clear right to hold such an election.

Having considered the evidence under C.R.C.P. 57, the Court finds and concludes that Frankstown is not an incorporated town under Colorado law and that the area legally described in the petition is located within unincorporated Douglas County.

Mr. Evans has filed a notice of appeal of this decision with the Colorado Court of Appeals (Case Number 07CA1569). According to the notice of appeal, the issues to be raised are whether the trial court erred (1) in denying the Petition on the grounds that Frankstown is not an incorporated town and (2) in declining to compel the holding of a reorganization election.

In view of this background, it appears that the Secretary of State must proceed under section 31-3-201 to set a hearing on the application for a determination of abandonment. The statute requires that a hearing be set "forthwith", but disposition of the appeal could take a couple of years. There is no stay or restraining order to prevent me from complying with the statutory requirement that a hearing be set "forthwith". Most significantly, it appears that the issue before the Court of Appeals (whether to compel a reorganization election) is quite different than the issue before the Secretary of State (whether the town has held elections and maintained a town government for five years preceding the application), and it appears that a decision on the issue in one proceeding will have no effect on the other proceeding. Finally, even if a decision by the Secretary of State on the application for abandonment will have some adverse effect on Mr. Evans' appeal before the Court of Appeals, Mr. Evans may appeal that decision in order to maintain his legal position.

For these reasons, it is my intention to proceed in accordance with section 31-3-201 by publishing a notice of hearing on the application for a determination of abandonment of towns in Douglas County, including Frankstown. In accordance with the attached notice, the hearing will be held at 9:00 a.m. on October 23 in the Board of County Commissioners Hearing Room, Phillip S. Miller Building, 100 Third Street, in Castle Rock.

Sincerely,

A handwritten signature in black ink, appearing to read "Mike Coffman", written over a horizontal line.

Mike Coffman
Secretary of State

Attachment: Notice of Hearing

STATE OF COLORADO
Department of State
1700 Broadway
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Secretary of State

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NOTICE
OF
HEARING

APPLICATION FOR DETERMINATION OF ABANDONMENT
OF TOWNS
IN DOUGLAS COUNTY, COLORADO

PLEASE TAKE NOTICE that, pursuant to C.R.S. 31-3-201, the county attorney of the County of Douglas, State of Colorado, has made application to the Secretary of State for a determination that the following Douglas County towns are abandoned. The application alleges as its grounds that the towns failed, for a period of longer than five years immediately prior to the filing of the application, to hold any regular or special election, elect officers, or to maintain the functions of any town government.

Acequia
Frankstown
Lehigh
West Creek (Westcreek)

Deckers
Greenland
Louviers

Douglas
Huntsville
Russelville

You are hereby notified that a hearing on the above-described application will be held on October 23, 2007, beginning at 9:00 A.M., in the Board of County Commissioners Hearing Room, Phillip S. Miller Building, 100 Third Street, Castle Rock, Colorado. At the hearing, evidence and testimony relating to this matter will be taken from any interested person. The public is invited to attend.

In accordance with part 2 of article 3 of title 31, Colorado Revised Statutes, after hearing the application and receiving evidence and testimony, the Secretary of State will determine whether or not the towns are abandoned.

Dated this 20th day of September, 2007.

Mike Coffman
Secretary of State