

**VINCENT J. MESSINA****- JUDGE -**

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**Re: Cause No. C05691; In the County Court at Law of Hood County, Texas;  
Chris Lawry vs. Hood County et al**

Gentleman:

Section 7.002 of the Texas Local Government Code states in relevant part as follows:

*7.002(b) The application (to incorporate) must state the proposed boundaries and name of the municipality and it must be accompanied by a plat of the proposed municipality that contains only the territory to be used strictly for municipal purposes.*

*5.901 (2) A community with 2,001 to 4,999 inhabitants must have not more than four square miles of surface area; and*

*(3) A community with 5,001 to 9,999 inhabitants must not have more than nine square miles of surface area.*

When a statute sets out plain language to be followed; in this case the "must" language in both 7.002(b) and 5.901(2)(3), courts of this state should not substitute such language and find that the legislature's intent was different from the plain language of the statute. In this case, the plain meaning of the statute is to provide a mechanism that the proponents of incorporation attach a plat to their application and set out the boundaries of the proposed municipality. The plat and boundary description must set out

with some degree of certainty the boundaries of the municipality such that the surface area of the municipality can be calculated to determine if the proposed municipality is eligible for incorporation under 5.901(2) or 5.901(3) of the local government code.

In order for a Plaintiff to prevail on the equitable remedy of injunction they must show that there is a probability that they will prevail when the case is tried on the merits before a reasonable trial of fact. In the instant case, should the Plaintiff prevail and a violation of Texas Property Code Section 7.002(b) and 5.901(2)(3) be found, the election; either for or against incorporation, would be declared "void" as a matter of law. Should this occur, section 7.008 of the Local Government Code states as follows:

*Section 7.008 Interval between elections: A County Judge may not order an incorporation election under this chapter to be held earlier than three years after the date of the most recent incorporation election under this chapter.*

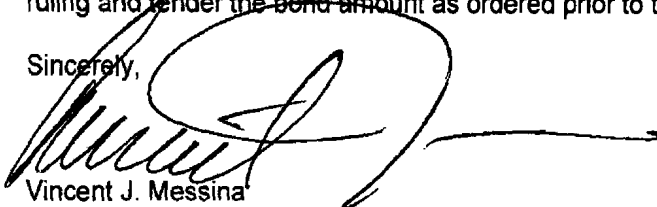
Based upon the evidence, the Court finds that the plat and boundary descriptions are inadequate to demonstrate with any degree of certainty the actual boundaries of the proposed municipality.

The Court further finds that the plat and boundary descriptions attached to the application are, as a matter of law, inadequate for any reasonable person to calculate the surface area of the proposed municipality so that such may be demonstrated to fall under the mandates set out in 5.901(2) or (3) of the Texas Local Government Code.

The Court further finds that there is a probability that Plaintiffs will prevail on a final trial on the merits and therefore grants a Temporary Injunction as requested, conditioned upon the Plaintiff posting a bond in the amount of five (5) times the testified costs of the election to be, that sum being \$1,000.00, and further conditioned upon the Plaintiff prosecuting his suit to a final resolution.

Mr. Pitts is ordered to draft a Temporary Injunction which comports with this ruling and tender the bond amount as ordered prior to the injunction being issued.

Sincerely,



Vincent J. Messina  
Hood County Court at Law Judge

VJM/mgs