

SECRETARY OF STATE - LAND DEPARTMENT ;

Right to patent land  
granted to Cairo and  
Fulton Railroad.

1-22  
January 16, 1934



Honorable Dwight H. Brown  
Secretary of State  
Jefferson City, Missouri

Dear Mr. Brown:

This Department acknowledges receipt of your letter dated January 5, 1934, as follows:

"We have received a request from the Keystone Mortgage Investment Company of Kansas City, Missouri, requesting a Grant or Patent from the State of Missouri in favor of the St. Louis-Iron Mountain and Southern Railway Company to the following land located in Dunklin County, Missouri, viz: N  $\frac{1}{2}$  of the NE  $\frac{1}{4}$  of section 27, Township 22 N. R. 9 E.

This land was Patented to the State for the use and benefit of the above mentioned Railway Company as embraced in Patent No. 6, dated Jan. 23, 1877; we find no record of a patent having been issued to the said Railway Company, by the State.

We desire to know if in your opinion it will be legal to issue a patent to the St. Louis - Iron Mountain and Southern Railway Company, embracing this particular tract of land.

The St. Louis-Iron Mountain and Southern Railway Company was formerly the Cairo and Fulton Railway Company and is now a part of the Missouri Pacific Lines."

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We note from your letter that the land inquired about was patented to the State by the United States Government on January 23, 1877. We take it therefore that in the opinion of the Land Department of the Department of the Interior of the United States that all of the conditions of the Act of Congress approved February 9, 1853, 10 (Stat.) 155 and Act of Congress approved July 28, 1866, 14 (Stat.) 338 were complied with so far as the United States Government was concerned. Section 3 of the Act approved July 28, 1866, provides in part that,

"All lands \* \* \* \* proposed to be granted by this Act for the use or in aid of the road herein named, and lying in said State of Missouri, shall be granted and patented to the said State\* \* \* \* which lands may be held by said state and used towards paying the state the amount of bonds heretofore issued by it to aid said company and all interest accrued or to accrue thereon."

It appears from in Re: Advisory Constitutional Opinion 37 Mo. 129 that there was a mortgage in existence in favor of the State and against the land in this state granted by the latter Act.

It appears from the case of Moore, et al v. Whitcomb 48 Mo. 543, that the property and franchises of the Cairo and Fulton Railroad, to which railroad the land above described was granted by Act of Congress, was foreclosed under a state lien, which foreclosure amounted to an extinguishment of the Cairo and Fulton Railroad Company. The fact of the dissolution of the Cairo and Fulton Railroad further is to be gathered from Laws of Missouri 1868, page 92. Laws Missouri 1868 at page 96 authorizes the St. Louis and Iron Mountain Railroad Company to purchase and consolidate with the Cairo and Fulton Railroad. By Section 8 of the Act it appears that there was then an unpaid balance due or thereafter to become due to the state for the purchase of the St. Louis and Iron Mountain Railroad and for the purchase of the Cairo and Fulton Railroad from Thomas Allen, but it does not appear that this amount was secured by bonds or a reserved lien of any other kind. Section 2 of the Act, page 95, refers to a mortgage executed by A. J. McKay, John C. Vogel and Samuel Simmons to the State on the

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property then owned by the St. Louis and Iron Mountain Railroad Company. The Act providing that such mortgage should remain in full force and effect.

Accompanying the files transmitted by you to us is what purports to be a copy of an affidavit executed by Eugene S. Cronk, former land agent of the St. Louis- Iron Mountain and Southern Railway Company, in which the history of the lands involved in the Act of Congress approved July 28, 1866 is set out in detail. Some of the purported facts set out in the affidavit should appear of record in Dunklin County, Missouri, but the same are not before us. It is stated in the affidavit that the St. Louis and Iron Mountain Railroad Company consolidated with the Cairo and Fulton Railroad.

We do not know what the facts are with reference to whether or not the State received payment for the bonds, liens reserved or purchase money above referred to; that is a matter of fact which you must determine for yourself but until you have informed yourself on that subject and are convinced that such payment has been made, then in view of the recital in the Act of Congress approved July 28, 1866, we think you should not make conveyance of this land.

The United States Government; the Land Department of your office seems to have assumed the right to patent this land to the successor of the Cairo and Fulton Railroad. Since, by issuing the patent by the United States Government, we assume that all of the provisions of the Act approved July 28, 1866 were met, so far as the United States Government was interested, we think the State of Missouri would be authorized in issuing a patent to the now successor of the Cairo and Fulton Road, if and when, you are satisfied of the payment or payments above mentioned having been made.

We are returning you your files in connection with the above matter herewith.

Very truly yours,

GILBERT LAMB  
Assistant Attorney General

APPROVED:

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ROY McKITTRICK  
Attorney General.

GL:LC