

SURVEYORS:

For the surveying of accreted lands, such as river bars, the County Court need not necessarily employ the County Surveyor but may employ any surveyor.



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January 20th, 1934.

Mr. L. C. Gillis,
County Surveyor,
and Ex-Officio Highway Engineer,
Oregon, Missouri.

Dear Mr. Gillis:-

We have your letter of October 18th, 1933, in which is contained a request for an opinion as follows:

"At the general election in November, L. C. Gillis, a Democrat, was elected County Surveyor of Holt County by a large majority. He defeated John H. Peret, a Republican, who has held this office for sixteen years. The County Court is Republican and on December 7, 1932, this County Court gave Peret a contract to survey several Missouri River bars amounting to about 3200 acres and agreed to pay him 65¢ an acre as allowed by law. But Peret did not start work on this project until after the first of this year, or until after he had gone out of office. The Court evidently used Section 11179 as their alibi in giving this contract, which took \$2,080.00 from the newly elected surveyor. He is still working on this work, having been busy at it most of the time since the first of the year.

"What was the use of having an election if the old surveyor is going to hold over and keep on working? According to Section 111581 are these surveys legal? The Court must have gotten their authority from a misrepresentation of Section 11179, but there are no suits pending on this land as it has never been surveyed before. Please send me your opinion regarding this survey and sale of land, and how shall I proceed in order to get this work?"

We feel that the opinion above requested resolves itself into a construction of Section 11179, Revised Statutes of Missouri, 1929, and since we are unable to find any decisions to aid us in such construction, we are forced to construe said section according to the legislative meaning and intent as we see it.

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Article 6, Chapter 66, Revised Statutes of Missouri, 1929, sets forth the law as applicable to accreted lands such as the river bars mentioned in the letter above quoted.

Section 11166, contained in said Article, provides as follows:

"Sec. 11166. COUNTIES MAY SURVEY AND SELL.-
"All counties in which any such lands are situated shall have the power to cause the same to be appropriately surveyed, and to sell and convey them in the same manner that the swamp lands acquired under the act of congress of September 28, 1850, entitled 'An Act to enable the state of Arkansas and other states to reclaim the swamp and overflowed lands in their limits,' afterward donated to the counties in which they were situated, or conveyed; and the proceeds of all such sales shall become a part of the swamp land school funds of the counties in which said lands are situated."

Section 11169, contained in said Article, provides as follows:

"Sec. 11169. LANDS TO BE SURVEYED, HOW.-
In surveying the lands and islands referred to in this article the surveyor shall connect the survey thereof with some established section, quarter section, meander or other United States survey corner conveniently near or adjacent to the land or island to be surveyed; he shall meander islands and such lake and river bed lands as may abut on a navigable river or lake; he shall subdivide such lands into sections and quarter sections by producing and extending the lines of the surveys made by the United States surveyors over such islands and lands from the shore from which said islands or lands may be surveyed."

Section 11179, also contained in said Article, provides as follows:

"Sec. 11179. COUNTY COURT MAY EMPLOY SURVEYORS AND ATTORNEYS. The county court may employ surveyors to survey said lands and islands, and attorneys to represent them in any suits pertaining thereto, and shall pay such surveyors and attorneys reasonable compensation for their services, to be paid out of any funds arising out of the sale of such lands and islands, or out of the general revenue fund of the county as may be agreed upon at the time such surveyors and attorneys are employed."

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As will be seen from a reading of the above, Section 11166 gives the county the power to survey and sell such lands; Section 11169 sets forth the manner in which such lands shall be surveyed, and Section 11179 provides by whom such surveys may be made. We are not of the opinion that Section 11179 applies only to lands concerning which some suit has arisen because from the punctuation and the arrangement of the clauses, such meaning does not appear. To the contrary, the section clearly provides in the first two lines that the County Court may employ surveyors to survey said lands and islands without any following limitation as to what surveyor or surveyors may be employed. The mere fact that the next clause provides for the employment of attorneys to represent said surveyors in any suit that may arise is of no import. The clauses are separate and distinct and are divided from each other by a comma.

Section 11581, Revised Statutes of Missouri, 1929, provides as follows:

"Sec. 11581. WHAT SURVEY SHALL BE LEGAL EVIDENCE.-
No survey or resurvey, hereafter made by any person, except that of the county surveyor or his deputy, shall be considered legal evidence in any court in this state, except such surveys as are made by the authority of the United States or by mutual consent of the parties."

The question is asked whether, according to the above section, the surveys referred to in the above quoted letter are legal. We are of the opinion that they are. The above section refers only to what surveys shall be considered legal evidence in a court and can have no effect on the actual legality of surveys for other purposes. In addition, Section 11581 is a general section of the laws on surveyors, while Section 11179 is a section applying solely to the type of lands to be surveyed in this instance. Of course, should a survey be made under Section 11179 by any surveyor other than the county surveyor and a suit should arise concerning such lands, such survey could not be used as legal evidence unless the parties to the suit consented thereto. If said parties would not so consent, a further survey would have to be made by the county surveyor, said survey, under Section 11580, being at the expense of the person demanding same. This may seem a somewhat circuitous procedure but under the laws as they now stand, we can see no alternative.

As noted above, Article 6, Chapter 66, Revised Statutes of Missouri, 1929, sets forth the law on accreted lands and surveys

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relative thereto. Section 11179 of that Article provides in plain terms for the employment of surveyors by the county court. Since this provision does not specify what surveyors shall be employed, we are of the opinion that the county court need not necessarily employ the county surveyor for such work.

Very truly yours,

CMHjr-MB

CHARLES M. HOWELL, Jr.
Assistant Attorney-General.

APPROVED:

Attorney-General.