

PUBLIC LANDS:

Sale of public lands.

January 27, 1942

Hon. Mark Wilson
Prosecuting Attorney
Henry County
Clinton, Missouri



Dear Mr. Wilson:

This is in reply to your letter of recent date, wherein you request an opinion from this department on the question of the procedure for the sale of public lands in a county.

In your letter you indicate that the tract of land sought to be sold is a portion of Section 16 of a certain township and range. The 16th section of each Congressional Township may be sold by virtue of the provision of Section 12717, R. S. Mo., 1939, which is as follows:

"In all congressional townships in this state in which there are fifteen householders, they shall have the right to sell their sixteenth sections, or such lands as have been or shall be selected in lieu thereof; and upon a petition of a majority of such householders, the county court shall make an order, a copy of which shall be furnished the sheriff, directing him to expose such lands to sale at the court house door, and while the circuit court of the county is in session, after giving twenty days' notice thereof: Provided, that in any fractional township in this state wherein less than fifteen householders now or shall hereafter reside, a majority of the householders of such fractional township may petition the county court for an order to sell the sixteenth section in such township, or other lands which have been or shall be selected in lieu thereof, in like manner as hereinbefore provided."

January 27, 1942

In speaking of the duties imposed on the county court by this section the Supreme Court in the case of *Doddridge v. Patterson* 222 Mo., 146, 153 said:

"* * *By reading that section, it will be seen that the county court has no authority upon its own instigation to sell the school lands of the respective townships of the county, but that its authority and jurisdiction to order such lands to be sold in the ordinary townships depend upon two conditions precedent or jurisdictional facts-- first, that the township must have at least fifteen householders; and, second, that a majority of them must petition the county court to make an order to sell the lands.* * *"

Again at l. c. 154 the court said:

"* * *A congressional township is six miles square and contains thirty-six sections of land,* * *"

The forming of the congressional township is prescribed by section 751 at page 50 of Title 43 U.S.C.A. This section provides in part as follows:

"The public lands shall be divided by north and south lines run according to the true meridian, and by others crossing them at right angles, so as to form townships of six miles square, unless where the line of an Indian reservation, or of tracts of land surveyed or patented prior to May 18, 1796, or the course of navigable rivers, may render this impracticable; and in that case this rule must be departed from no further than such particular circumstances require."

From your letter, it appears that you may be under the impression that the township referred to in said section 12717 *supra*, is a "municipal township". We think the language of this section clearly indicates that the lawmakers did not have in mind a "municipal township" but intended to and did refer to

Hon. Mark Wilson

-8-

January 27, 1942

the "congressional township".

The lands within the bounds of the sixteenth section of each township are school lands and the title to such lands does not pass to the counties but must be passed in accordance with the provision of said section 12717. The provisions of said section were in effect long prior to the laws creating a "municipal township."

CONCLUSION

From the foregoing, it is the opinion of this department that a majority of the householders of the municipal township 41 of range 26 in Henry County, Missouri, must sign a petition for the sale of the lands in section sixteen of said township and range before the county court has authority to make an order for the sale of same.

Respectfully submitted,

TYRE W. BURTON
ASSISTANT ATTORNEY GENERAL

APPROVED:

VANE C. THURLO
(Acting) Attorney General

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