

RECORDER: May not record statement that records of General Land Office show a patent has been issued.

August 16, 1943.

Mr. Roy G. Skillman
Recorder of Deeds
Howard County
Fayette, Missouri



Dear Sir:

This will acknowledge receipt of your letter of July 21, 1943, as follows:

"As we understand it, before instruments can be recorded, they must be duly acknowledged. Therefore, are we justified in recording the following affidavit without acknowledgment being attached. If so please refer us to section authorizing such recording.

"The instrument under question is as follows:

"ATTORNEY'S CERTIFICATE OF LAND PATENT

"I HEREBY CERTIFY That I have examined the records of the General Land Office and find that the N. E. $\frac{1}{4}$ and E. $\frac{1}{2}$ of NW. $\frac{1}{4}$, 240 acres, Section 28, Township 49-N, Range 16-W, 5th P. M., District of Franklin, State of Missouri, was entered by Daniel Durbin on January 17, 1820 - August 27, 1821 with Cash Certificate #265, Patented to Henry Knaus, assignee, under date of July 1, 1824.

"Patent recorded, Misc. Volume 99, Page 256.

B. P. Holzberg
Attorney at Law.

"Remarks: Patent sent to local office.

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"One of our clients has said that there is no need for an acknowledgment of the above mentioned document. We would like to know for our benefit as well as for the benefit of our client."

Section 13161, R. S. Missouri 1939, makes it the duty of a recorder to record certain "instruments of writing, of or concerning any lands or tenements, * * * which shall be proved or acknowledged according to law * * *". It is to be noticed that the Attorney's Certificate which you have been asked to record is not proved or acknowledged in any manner, consequently, there is nothing in Section 13161, supra, which requires, or even permits, this Certificate to be recorded.

Section 13171, R. S. Missouri 1939, deals specifically with patents. It provides:

"All patents for lands lying within the state of Missouri, granted to any person or persons by the president of the United States or the governor of this state, may be recorded in the office of the recorder of the county in which the lands are situated; * * * " (Underscoring supplied).

The Attorney's Certificate, supra, appears to concern a patent granted by the president of the United States. Thus, it is formally recorded in the records of the General Land Office of the United States. In *Wilcox v. Phillips*, 260 Mo. 664, the court in discussing Sections 13161 and 13171, supra, said (l. c. 680):

"* * * to pass title or impart notice neither a patent from the United States nor a patent from the State itself needs record in the county in which the land is situate. 'A patent from the United States for land need not be delivered or recorded. Title by patent from the

United States is title by record; and though it is usual to deliver a patent to the claimant, as in case of deeds, yet delivery of it is not necessary. "The acts of Congress provide for the record of all patents for land in an office, and in books kept for that purpose. An officer called the 'recorder' is appointed to make and to keep these records. He is required to record every patent before it is issued, and to countersign the instrument to be delivered to the grantee. This, then, is the final record of the transaction -- the legally prescribed act which completes what Blackstone calls 'title by record,' --and when this is done the grantee is invested with that title. The statutes in regard to recording do not apply to conveyances by a State. Such conveyances may be recorded, and generally are, but their effect as vesting title and affording notice is not dependent upon their being recorded." (2 Jones, Real Prop., secs. 1377-1378; Mosher v. Bacon, 229 Mo. l. c. 358 et seq.) The statutes of the State of Missouri, recognizing the fact that patents emanate from the General Government and evidence acts of that Government as overlord, do not require as a condition precedent to vesting title or imparting notice that such patents be recorded in the county in which the land is situate. It would be uncommonly revolutionary and singular if they assumed such hostile and unconstitutional attitude. To the contrary, our statutes are merely permissive and use the phrase 'may be recorded.' (R. S. 1909, sec. 10390.) Conveyances that must be recorded are mentioned in another section. (Ibid., sec. 10381.)"

From this case, the law appears to be that a patent from the United States is not required to be recorded with a county recorder in order that the title passes or in order to impart notice of such conveyance. The Court clearly

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points out that our law only provides that such may be recorded with a county recorder, under Section 13171, and that it is not one of the instruments that must be recorded under Section 13161.

Section 13172, R. S. Missouri 1939, provides:

"All copies of patents so recorded, or which may have been heretofore recorded, duly certified by the recorder, under his official seal, shall be received in all courts in this state as prima facie evidence of the contents of such patents."

Where the statute provides that a patent may be recorded, and it is apparent from Section 13172 and the rule of the Wilcox case, that the only purpose for such is in order that some local record be created which may be used as evidence of such patent, it is difficult to see why anyone would desire to record, in lieu of such patent, this Attorney's Certificate. Even if recorded it would not serve to impart notice of the conveyance or serve to create a local record for use as evidence. In view of its complete uselessness, it is even more difficult to understand that our law permits such Certificate to be recorded. We do not think that Section 13161 requires that such Certificate be recorded and can find no authority that permits it to be recorded.

CONCLUSION

It is therefore our opinion that a signed statement to the effect that the records of the General Land Office of the United States show that a particular patent has been issued, may not be recorded by a recorder or deeds under the laws of this state.

Respectfully submitted,

LAWRENCE L. BRADLEY
Assistant Attorney General

APPROVED:

ROY MCKITTRICK
Attorney General

LLB:jn