SURVEYORS COUNTY: County surveyor must sign 'record of surveys' and same cannot be signed by deputy or third persons.

County Surveyors:

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Mr. Marshall Craig
Prosecuting Attorney
Charleston, Missouri

Dear Sir:

This department is in receipt of your request for an official opinion, which reads as follows:

> "We would like to have an opinion from your office with reference to Chapter 90, Revised Statutes of Missouri, 1939, and particularly Section 13202.
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> "The question has arisen as to whether or not anyone other than the duly elected and qualified surveyor can sign the 'Record of Surveys' in the office of the Recorder of Deeds, or whether any changes can be made in those records by anyone other than the duly elected and qualified surveyor."

Section 13190, R. S. Mo. 1939, provides for a county surveyor in each county of this state. Section 13208, R. S. Mo. 1939, provides that county surveyors may appoint deputies. Section 13202, R. S. Mo. 1939, provides, in part, as follows:

> "The county surveyor of every county or city shall: First, keep a fair and correct record of all surveys made by himself and his deputies, in a well-bound book, with a convenient index, to be procured at the expense of the county or city for that purpose, which books and indexes shall be the property of such county or city, and shall be known as the 'record of surveys,' and every such surveyor shall record in such book a full and complete description of all corners

> established by him or his deputies, within two weeks after the survey has been certified to, and such books shall be preserved by the recorder of deeds the same as the records of conveyances of such county or city and subject to inspection by any person interested therein, under the supervision of the recorder of deeds for such county or city; * * * "

The general rule as to the construction of statutes which impose duties upon public officers is given in 59 Corpus Juris, Section 633, page 1076, as follows:

> " * * * statutes * * * which confer a public body or person with power to perform acts which concern the public interest * * * are generally regarded as mandatory, * * *"

In the case of Carter v. Hornback, 139 Mo. 238, 40 S. W. 893, the court had before it the following situation, l. c. 242:

> "Upon the trial plaintiff offered in evidence what purported to be the 'Record of Surveys of Jasper county, Missouri,' and particularly a resurvey therein numbered 71. Defendant objected to the introduction of this survey in evidence, upon the ground that it did not purport to have been made by the county surveyor of said county, and was not signed by him, but was signed 'S. Lloyd, Deputy County Surveyor.' The objection was sustained, plaintiff saved his exceptions and assigns for error the ruling of the court in excluding the record of the survey from the consideration of the jury."

The court, in holding that such signature by the deputy county surveyor was not proper, said:

> "By section 8320, Revised Statutes 1889, section 7390, Revised Statutes 1879 authority is given to any county surveyor to appoint deputies, but it is a well settled rule of law that all official acts done by a deputy must be done in the name of the principal. 'A deputy is one who, by

> appointment, exercises an office in another's right, having no interest therein, but doing all things in his principal's name, and for whose misconduct the principal is answerable.' 5 Am. and Eng. Ency. of Law 623.
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> "As the survey was not made in the name of the principal it was not an official act, and was not, therefore, entitled to record, and no error was committed in excluding the record of the survey from the consideration of the jury.
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> "But it is claimed by counsel for plaintiff that it was proven that Lloyd was in fact deputy county surveyor, and also that his survey was made by mutual consent of the parties then interested, and therefore the record was admissible. We must confess our inability to see the force of this argument. Such evidence did not make it an official survey, and it was only as such that it was entitled to record in the record of surveys of the county, and it is only under these conditions that the record or a duly certified copy thereof can be received in evidence. Now, if the survey was made by mutual consent of the parties to the suit it would have been competent evidence. R. S. 1899, sec. 8312. But the record would not be competent evidence even then, while the original would be."

Under authority of the above case, it will be seen that a "record of surveys" may not be signed by a deputy county surveyor as such. However, as pointed out in Halter v. Leonard, 223 Mo. 286, 122 S. W. 706, a report of a county surveyor made in his name by his deputy is valid, because "it is a well settled rule of law that all official acts done by a deputy should be done in the name of the principal." Therefore, it would appear that the "record of surveys" must be signed by the county surveyor himself or in his name by the deputy county surveyor, and the signing by a deputy county surveyor in his own name, or by a third person, is illegal and of no official standing.

As to the right of any person other than the county surveyor to change the "record of surveys," it is well settled in this state that the survey of a county surveyor is prima facie correct, but is not conclusive, and may be disproved by any

competent evidence. Morris v. Nowell, 180 S. W. (2d) 717; Jones v. Eaton, 307 Mo. 172, 270 S. W. 105. Therefore, if it should be adjudged by any court of competent jurisdiction that a survey contained in the "record of surveys" was incorrect, then such survey should be changed. However, in view of what has been said above, such corrected "record of surveys" must be signed by the county surveyor or by the deputy county surveyor in the name of the county surveyor.

CONCLUSION

It is, therefore, the opinion of this department that the "record of surveys" required by Section 13302, R. S. Mo. 1939, must be signed by the county surveyor or by the deputy county surveyor in the name of the county surveyor, and no third person has authority to perform this act. The same rule applies if a survey in the "record of surveys" is adjudged incorrect and said survey is corrected by the county surveyor or his deputy.

Respectfully submitted,

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APPROVED:

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