

SWAMP LANDS: Indemnity Patent No.33 by State of Missouri dated January 3, 1878, conveying certain described land to Mississippi County, was effective to pass title to such land to Mississippi County.

May 13, 1949

Honorable Marshall Craig  
Prosecuting Attorney  
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Dear Sir:

This is in answer to your letter requesting an official opinion of this department and reading as follows:

"Mississippi County owns the following described tract of land in Ripley County, Missouri, to-wit, the East Half ( $E\frac{1}{2}$ ) of the Southwest Quarter ( $SW\frac{1}{4}$ ), Section 33, Township 24, Range 2.

"Title to this property was acquired under the swamp land legislation.

"The United States Department of Agriculture recently entered into a contract with the County to purchase the land. Certain objections to the title have arisen and these objections are set out in the enclosed letter dated June 21, 1948.

"As you will note, the Department of Agriculture has requested an opinion from your office concerning this title.

"I am also enclosing a copy of a letter from the Department dated September 9, 1948."

The letter signed by E. C. Hotchkiss, Attorney in Charge, states that the Solicitor of the Department of Agriculture believed that the conveyance by the state of this property to Mississippi County was invalid because it was unauthorized by Sections 12752 and 12780, R. S. Mo. 1939. Such sections have reference to swamp land in Missouri and read as follows:

"Sec. 12752. In order to provide for the reclamation of all overflowed and swamp lands which were granted to the state of Missouri for that purpose by an act of congress, entitled 'An act to enable the state of Arkansas and other states to reclaim the swamp lands within their limits,' approved September 28, 1850, all of said lands in this state are hereby donated to the counties in which they may be respectively situated, and shall be the absolute property of such counties for the purposes hereinafter designated; and the secretary of state is hereby required to furnish to the clerks of all the county courts a certified copy of the approved and corrected list of swamp lands in each county, whenever called on for such list by the said clerk or clerks."

"Sec. 12780. In order to convey to the different counties in the state of Missouri a complete title to all the swamp and overflowed lands which have been granted and patented to the state of Missouri by an act of congress, entitled 'An act to enable the state of Arkansas and other states to reclaim the swamp lands within their limits,' approved September 28, 1850, the secretary of state is hereby directed to prepare a patent or patents, embracing all the swamp or overflowed lands lying within the limits of the several counties of this state, conveying thereby all the title and interest of the state of Missouri in and to such lands, to the counties in which such lands may lie, and when such patents have been prepared as herein provided, they shall be presented to and signed by the governor of this state, attested by the secretary of state, and recorded by the secretary of state in his office."

We also note that in his letter, Mr. Hotchkiss quotes the original patent from the State of Missouri to Mississippi County as providing among other things:

"A special certificate numbered twenty-two and dated 28th day of January, 1876, has been issued by the Commissioner of the

General Land Office, authorizing the state of Missouri to locate the quantity of two thousand one hundred and thirty eight acres and forty four hundredths of an acre, as the indemnity contemplated by the second section of the aforesaid act of March 27th, 1868 (not previously referred to in this patent) entitled "Sands Swamp", the swamp and overflowed lands were donated to the several counties wherein they are situated."

The patent by the State of Missouri to Mississippi County in reality reads as follows:

(See photostatic copy attached.)

The act of March 2, 1855, referred to in the patent, is found 10 U. S. Statutes at Large, page 634, 43 U.S.C.A., Section 981, and provides that where lands that were "swamp lands" were purchased from the United States and the lands were located by warrant or scrip, the state is authorized to locate a like quantity of any of the public lands subject to entry at \$1.25 per acre or less in patents should be issued therefor.

Section 12775, R. S. Mo. 1939, referring generally to the Secretary of State, provides in part as follows:

" \* \* \* He is hereby authorized to obtain such proof from the various county courts as is necessary to secure the indemnity from the general government under the act of March 2, 1855, and is hereby authorized to employ assistants for the performance of the duties required of him in this article, subject to the approval of the governor. He shall receive all moneys, scrip or certificates of indemnity on account of swamp and overflowed lands sold by the government of the United States since the donation of such lands to the state of Missouri, and deposit the moneys or scrip so obtained in the state treasury, to the credit of the county in whose favor the same is drawn, and cancel all records in his office on which indemnity has been received. He shall locate all certificates of indemnity received as aforesaid in the name of the county in whose favor said certificate is drawn, making said location from sight or personal knowledge of the same, and deposit the certificate of said location in the state treasury,

subject to the orders of the respective county courts, and he shall immediately notify said county courts of all deposits made in conformity with this article."

We believe it to be clear that the indemnity patent issued by the State of Missouri, January 3, 1878, to Mississippi County was a conveyance not of "swamp land" but of land received by the state in favor of Mississippi County as indemnity for "swamp land" that had previously been patented by the United States in Mississippi County. We find nothing in any statute requiring that such "indemnity land" be located in the county to which such land is granted. Therefore, we believe that the patent issued by the State of Missouri to Mississippi County conveying the land in question was a good conveyance of the title of such land. We believe it unnecessary to pass on the conveyances first evidenced by a tax sale by Ripley County since it is a matter of departmental policy of the Department of Agriculture as to whether or not this would constitute such a cloud on the title as would preclude the department's purchase. We do not see, however, how Ripley County could have obtained title to this land since there is no patent of the United States to Ripley County conveying this land and since this land is obviously not "swamp land" because it is indemnity land for swamp lands previously entered. The principal objection as we understand it by the department has been that Mississippi County had no title to such property.

#### CONCLUSION

It is the opinion of this department that the East half of the Southwest quarter, Section 33, Township 24, Range 2, patented to Mississippi County by the State of Missouri by Indemnity Patent No. 33, under date of January 3, 1878, was by such patent properly conveyed to Mississippi County and that by such patent, title was vested in Mississippi County.

Respectfully submitted,

APPROVED:

C. B. BURNS, JR.  
Assistant Attorney General

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