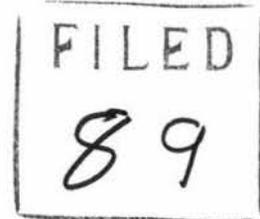


GOVERNOR: Patent to certain real estate should be
SECRETARY OF STATE: issued by Governor and countersigned by
PATENTS: Secretary of State.

September 17, 1949

Honorable Walter H. Toberman
Secretary of State
State of Missouri
Jefferson City, Missouri



Dear Sir:

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

"We are enclosing herewith copies of communications regarding a supposedly lost swamp land patent and copy of a court order issued by the St. Clair County Court.

"We have no record of the issuance of this patent covering the Northwest quarter of the Northeast quarter, Section 33, Township 37, Range 26. We do, however, have a receipt from the County Clerk's office issued April 15, 1857 showing that U. L. Sutherland purchased said section of land. The court order states that Sutherland purchased this land on January 25, 1858. It appears to us that Mr. Sutherland did purchase this section in 1857 or 1858.

"The court order states, 'It is therefore ordered that a patent be authorized to be issued by the State of Missouri to said U. L. Sutherland.'

"There is a question as to how this may be accomplished. We cannot issue a duplicate of the original as the original is not on record in this office. Since the date of said purchase, the swamp lands have been donated to the counties and the patents are issued by the presiding judge of the County Court. (See Sections 12752 and Section 12755, R. S. Mo., 1939.)"

The title of swamp lands, insofar as St. Clair County is concerned, was given to said county by Section 1, Laws of Missouri, 1850-51, page 238. This grant was confirmed by subsequent enactments confirming to the various counties the title to swamp lands located therein. Section 4, Laws of Missouri, 1850-51, page 238, provided for the patent to swamp land to be signed by the Governor and countersigned by the Secretary of State. Laws of Missouri, 1869, page 66, provides for the patenting to the various counties of all swamp land located therein except that swamp land patented by the State of Missouri to individuals prior to the passage of such act. Section 6 of such act provided that the county should issue a patent to individuals for the swamp land so conveyed by the state to the county and sold by the county to individuals.

The real property involved herein has never been patented by the state to an individual or to St. Clair County insofar as the records of the Secretary of State's Office are concerned. The only document with reference to this real property found in the Office of the Secretary of State is a receipt by the County Clerk of St. Clair County dated April 15, 1857. A copy of such receipt is hereto attached. While the act found Laws of Missouri, 1869, page 66, provided that after the passage of such act and the conveyance to the county by the state of the swamp lands, which had not been formerly patented, that patent should be issued by the county court, we believe that such act had reference only to the real property patented by the state to the county and did not refer to real property which had been purchased by an individual and which should have been patented by the Governor to such individual.

It is, therefore, our view that the evidence of the receipt of the County Clerk of St. Clair County of payment by U. L. Sutherland for the swamp land involved is sufficient authority for the Governor to issue the patent that should have been issued by the Governor when such receipt was received by the State of Missouri.

Section 1, of an act concerning the register of lands found in Laws of Missouri, 1857, page 33, provides as follows:

"That when a patent has issued, or shall be hereafter issued, by the Governor or Register of Lands of this State, to a person who is dead at the issuing of the patent, the heirs of such patentee shall take hold and enjoy the title to the estate so patented, in such portions as they are entitled to by the laws

then in force regulating descents, as if such patent had issued to such heirs by name; Provided, that when such real estate may have been sold, devised, or otherwise transferred by such patentee, or by his heirs, or when it may have been conveyed or transferred by virtue of a judgment or decree of a court, the patent shall inure to the benefit of, and the title thereby conveyed shall vest, in the owner of such real estate at the date of issuing such patent."

Under the provisions of such law the patent to the real estate described in the opinion request should be issued to U. L. Sutherland and dated as of the time such patent is issued.

CONCLUSION

It is the opinion of this department that the Governor should issue a patent which should be countersigned by the Secretary of State conveying the real property described in the opinion request herein contained.

Respectfully submitted,

C. B. BURNS, JR.
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General