

CORRECTED PATENTS
TO STATE LANDS:

Secretary of State cannot issue corrected patents to any person or persons other than the original patentee or some person or persons who own the entire tract intended to have been described in the original patent.

May 7, 1951

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89

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

Dear Sir:

We have your recent letter in which you request an opinion of this department. Your letter is as follows:

"On January 3, 1951, you gave us a written opinion in response to our request. The substance of this request is here quoted as follows:

"We have had a request in this office for a land patent which appears incomplete on the original patent.

"Attached find photostatic copy of the original patent issued to William McFarland of the County of Greene, covering a part of the Internal Improvement Land, or the 500,000 Acre Grant. You will note an erasure or eradication has been made which changes the original description of the land.

"The Register of Land Sales by the General Land Office, in 1850, shows that the SW $\frac{1}{4}$ of the SE $\frac{1}{4}$, Sec. 13, Twp. 28, Range 21, was sold to William McFarland; the Index covering all the Internal Improvement Lands also shows it to be the SW $\frac{1}{4}$ of the SE $\frac{1}{4}$, Sec. 13, Twp. 28, Range 21.

"The present owner of this land wants a corrected patent issued in lieu of the one on file in this office.

"Please give us your opinion as to whether

Hon. Walter H. Toberman

or not this original patent may be corrected and, if so, in what manner."

"As you may observe from the quotations we told you that the present owner of the land wanted a corrected patent issued in lieu of the one on file in our office. With this understanding you held that Section 12715, R.S.A. Mo. 1939 was applicable and that the present owner of the SW $\frac{1}{4}$ of the SE $\frac{1}{4}$, Sec. 13, Twp. 28, Range 21, is entitled to a corrected patent to said land.

"On February 19, 1951, we transmitted to you a copy of letter from Mr. Arthur Luna and also a copy of affidavit prepared in accordance with the above opinion along with our request that you render an opinion as to whether or not the prerequisites of the opinion have been met.

"On March 6, 1951, you replied to the effect that you were convinced, upon examination of the above mentioned copy of affidavit, that the land originally intended to be conveyed in the original patent has been divided into parcels and that the equitable title to each portion has been conveyed by mesne conveyance to several different owners.

"It is our understanding that a part or all of the SW $\frac{1}{4}$ of the SE $\frac{1}{4}$, Sec. 13, Twp. 28, Range 21, is the subject of a real-estate sale, but that consummation of the sale is dependent upon the issuance or correction of patent.

"Since you have not thus far expressed an opinion that the owner of only a portion of the land in question is entitled to a corrected patent, we now desire an opinion as to whether or not the owner or owners of a portion less than a whole of a tract of land originally bought from the State of Missouri but never patented because of a mistake in description in the original patent by which it was intended to convey the tract in question to the person who purchased from the state is entitled to a corrected patent to said portion less than a whole of the entire tract.

"In the event that your reply should be that such

Hon. Walter H. Toberman

an owner, or such owners of a portion of the tract, is entitled to a corrected patent, we wish further an opinion as to whether or not the enclosed affidavit submitted to us by the applicant for the corrected patent is sufficient compliance with the requirement of your opinion of January 3, 1951, to warrant this office in issuing the patent.

"In the event that you are forced to the opinion that patents cannot be issued piecemeal as indicated above, would you kindly advise what requirement would have to be met for issuance of patent covering all of the SW $\frac{1}{4}$ of the SE $\frac{1}{4}$ Sec. 13, Twp. 28, Range 21, despite the fact that the land and ownership thereof has now been broken down into sundry parcels. In other words, is there any method by which patent can be issued for the SW $\frac{1}{4}$ of the SE $\frac{1}{4}$ Sec. 13, Twp. 28, Range 21, without the complete ownership thereof being in one individual. If so, kindly state what requirement must be met."

A reading of the letter above quoted immediately suggests that the important question involved is whether or not an owner of only a portion of the SW $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Sec. 13, Twp. 28, Range 21, is entitled to have a corrected patent issued to him covering his particular portion. In other words, whether or not in the event the tract has been subdivided each owner of a lot or a parcel of said tract would be entitled to a corrected patent for his particular lot or parcel under the provisions of Section 12715, Mo. R.S.A. 1939, quoted in our opinion of January 3, 1951, being the same as Section 446.180, RSMo 1949, which is quoted as follows:

"In cases where errors shall have been made in the description of lands in any patent heretofore made, the person to whom such patent has been issued, or any person who has acquired the title to the land intended to be described in said erroneous patent by mesne conveyances from the persons to whom such erroneous patent has been issued, may have a new patent issued, correctly describing such land upon first making proof that he or some one under whom he claims purchased from the state the land to which he desires a corrected patent, and that the state has been paid for the same by affidavits or otherwise to the satisfaction of the secretary

Hon. Walter H. Toberman

of state, and, second, filing his affidavit that he sets up no claims to the land described in the patent sought to be corrected, and that neither he, nor any one by, through or under whom he claims has ever set up any claim to such land under or by virtue of said patent; and upon producing said affidavit to the secretary of state, the correction asked shall be made and a new patent shall be issued correctly describing the said land, upon the delivering up of the erroneous patent, or upon the applicant showing to the secretary of state by the affidavits of two disinterested householders of the township in which said land is located, that the applicant and those under whom he claims title have been in the open, notorious, exclusive, continuous, adverse and hostile possession of all of said lands for the period of ten years last past prior to the time of filing said application, and that during said period of time no person has ever set up or made any claim to said land or any part thereof, hostile or adverse to the title of the applicant and those under whom he claims, and shall execute a deed releasing the erroneously patented land to the state; provided, however, that the records in the office of the secretary of state shall show that the land is state land, and has not been disposed of to any other person; provided further, that all such proofs aforesaid shall be filed in the land department of the secretary of state and preserved among the records thereof."

In deciding this question we call attention particularly to the following words from the above quoted section:

"In cases where errors shall have been made in the description of lands in any patent heretofore made, the person to whom such patent has been issued or any person who has acquired the title to the land intended to be described in said erroneous patent by mesne conveyances from the persons to whom such erroneous patent has been issued, may have a new patent issued, correctly describing such land * * *"(Underscoring ours).

With the above language in view, we call attention to the

Hon. Walter H. Toberman

fact that the right on the part of anybody to a corrected patent rests solely on the above quoted statute and in defining said right and outlining the limitations thereof, we are of the opinion that the statute must be strictly construed. That being true we are of the further opinion that no person, or persons, who do not have title to all of the land intended to be conveyed and described in the erroneous patent is entitled to a corrected patent for the reason that the statute in naming the persons entitled to said corrected patent clearly designates such persons to be either the person to whom the original erroneous patent was issued or any person who has acquired title to the land intended to be described in the erroneous patent by mesne conveyances from the original owner. We are of the opinion that when the statute mentions any person who has acquired title to the land intended to be described it means exactly that and does not mean any person who has acquired title to a portion of the land intended to be described. We are therefore of the opinion that a corrected patent can be issued only to the original patentee or to persons who have acquired the ownership of all of the land originally intended to be patented by mesne conveyances from the person who bought same from the state. We suggest that this is of course entirely consistent with our opinion of January 3, 1951, in which opinion we held in our concluding paragraph that the person in whom the equitable title to the SW $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Sec. 13, was vested was entitled to a new patent under the provisions of the aforesaid statute. We further suggest that any other construction of this statute might place quite a burden upon the state in drawing corrected patents. For instance, suppose the state had sought to issue a patent to a square mile of land and had erroneously described that land and suppose further that the land had been conveyed by mesne conveyances to an owner who subdivided it into three hundred parcels and sold each parcel separately. We suggest that under such circumstances it would be quite an undertaking for the state to issue a patent to each of these parcels separately and we are of the opinion that such was not the intention of the Legislature when it enacted the above quoted statute.

In your above quoted letter you indicate that in the event that we hold that corrected patents cannot be issued to owners of only a portion of the land originally intended to be patented, you desire our opinion as to whether there is any method by which a patent can be issued if the land is divided into more than one parcel. In response we state that we are of the opinion that in view of the statute as it exists the only way that a corrected patent could issue to a given tract of land intended to have been conveyed in an original patent would be for the several parcels which, taken together, constitute the whole of the tract originally intended to be conveyed, to be assembled under one ownership in which

Hon. Walter H. Toberman

event a corrected patent could be issued to the owner of the whole tract upon compliance with the provisions of the statute as outlined in our aforesaid opinion of July 3, 1950.

CONCLUSION

We are accordingly of the opinion that a corrected patent can be issued only to, (1) the original patentee, or (2) the owner, or owners, of the whole of the SW $\frac{1}{4}$ of the SE $\frac{1}{4}$, which is the tract originally intended to be conveyed, and we are of the further opinion that if said SW $\frac{1}{4}$ of the SE $\frac{1}{4}$ of said Sec. 13, is now divided into parcels, each parcel being owned by a different owner or set of owners, that the owners of the respective parcels cannot obtain a corrected patent under the section above quoted or any other section of our statutes. However, if all of the separate tracts, which, in the aggregate, constitute the whole of the SW $\frac{1}{4}$ of the SE $\frac{1}{4}$ of said Sec. 13 shall be assembled under one ownership the then owner of the whole of the SW $\frac{1}{4}$ of the SE $\frac{1}{4}$ of said Sec. 13 may be granted a corrected patent if the provisions of the above quoted statute, as set forth in our aforesaid opinion of July 3, 1950, are complied with.

Respectfully submitted,

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APPROVED:

J. E. TAYLOR
Attorney General

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