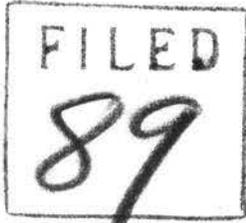


RECORDS:  
PUBLIC OFFICERS:

Land patents on file in the office of secretary of state may not be altered or cancelled by said officer.



May 12, 1953

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

Dear Sir:

Reference is made to your request for an official opinion of this office which reads as follows:

"May we have an opinion from you as to the procedure for correcting a patent to the following described Swamp Land, which was issued in error?

"The records in this office indicate that on December 8, 1856, the State of Missouri issued a patent in favor of one David A. Bunch to the following described land:

"The Southwest Quarter of the Northwest Quarter of Section Twenty-eight, Township, Thirty-six, Range Twenty-six, St. Clair County.

"It has now been brought to our attention that David A. Bunch never held title to this land.

"Our records further disclose Certificate No. 58 signed by James W. Beck,

Honorable Walter H. Toberman

County Clerk of St. Clair County, dated November 26, 1856, certifying to the Governor that this same described land was sold to Samuel Clifton and the full purchase price of \$50.00 was paid by him.

"The St. Clair County Abstract Company, Osceola, Missouri who is attempting to perfect title to this land has advised that the records in St. Clair County show that the Sheriff sold this land to Samuel Clifton on October 1, 1855. Indications point to the possibility that the clerk for the State who copied the patent made an error in the description, since David A. Bunch did own land in the northeastern part of the county, according to the record in Mr. Toalson's Abstract Office."

Certain swamp lands were granted to the State of Missouri by Act of Congress, September 28, 1850. After title to this land had thus been vested in the State of Missouri, the State through its General Assembly, by an Act approved March 31, 1851, Laws 1850-1851, page 238, donated its swamp lands to certain counties including the County of St. Clair. Section 3 of that Act provides that:

"Whenever, in the judgment of said county courts, it shall be the interest of said counties so to do, they shall order the sheriff to sell the same in such quantities, at such times and places, and on such terms as they may think proper; \* \* \*."

Section 4 of said Act then provided as follows:

"Whenever full payment shall be made for any of said lands by the purchaser thereof, the county courts shall cause the same to be certified to the governor, who shall thereupon grant to the purchaser, his heirs or assigns, a patent for the same, which patent shall be signed by the governor, countersigned by the secretary of state, and be recorded in the office of the secretary of state."

Honorable Walter H. Toberman

It appears from the facts that you have submitted that during the year 1855, certain described property located in St. Clair County was sold by the sheriff and that the county clerk of said county on November 26, 1856, certified to the governor that full payment had been made. However, the records in your office apparently show that a patent to this same described land was issued on December 8, 1856, to a party other than the person who had made the purchase in 1855 and for what reason, we do not know.

It is noted that the patent of Section 3, supra, was issued by the governor, signed by him and countersigned by the secretary of state. We do not believe that such instrument as issued by the chief executive and now on record for a period of almost ninety-seven years can be altered, changed or cancelled by the secretary of state.

We have examined the statutes relating to the duties of the secretary of state and the records of that office, and find no authority to change, alter or cancel records there on file and not made under the hand of the person now occupying that office, except errors in description which may be corrected as authorized by Section 446.180. The last noted section provides that where there exists errors in the description of land in a patent, the person who has acquired title to land intended to be described in the patent, may have a new patent issued under the method provided, correctly describing such land. This, however, does not appear to be the case here involved, since apparently no patent was ever issued to the person who actually purchased the land.

Changes in public records may be made only by or under official authority and if at the time of the original record, the instrument was correctly copied, the officer cannot subsequently alter the record even though there was a mistake in the original instrument. This rule is stated in 76 C. J. S., Records, page 17. It is further stated that the custodian of the public records has no right to cancel a record without authority from the same source which required the record to be made, 76 C. J. S., Records, page 129.

The reason for this rule we believe is obvious. A public record such as here considered, is presumably correct and it should not be overturned or its effect destroyed when such correction, or alteration might affect vested rights and therefore we are of the opinion that the patent to which you refer can be altered, changed or cancelled by the office of secretary of state.

Honorable Walter H. Toberman

CONCLUSION

Therefore, in the premise, it is the opinion of this office that a patent on record in the office of secretary of state not made under the hand of the person now occupying that office may not be altered, changed or cancelled or its effect in any way affected, except in cases where there exists an error in the description of land patented, as provided in Section 446.180.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. D. D. Guffey.

Very truly yours,

JOHN M. DALTON  
Attorney General

DDG:hr