

RECORDER OF DEEDS: Recorder should not refuse to accept plat
on sole grounds that it does not bear signa-
LAND SURVEYORS: ture and seal of a registered land surveyor.

June 23, 1959

Honorable J. A. Appelquist
Prosecuting Attorney
Lawrence County
Mt. Vernon, Missouri



Dear Sir:

We have your request for an opinion of this office,
which request reads as follows:

"A problem has been called to the attention
of this office which appears to concern a
matter of first impression in this County
and perhaps in this State and the issue
is therefore referred to your office for
your opinion on the problem.

"The problem is as follows: There has been
presented to the Recorder of Deeds of Law-
rence County a plat of a subdivision of lots
situated within the city limits of the munici-
pality of Aurora, Missouri. Attached thereto
in proper form is a dedication and a certifi-
cate from the City Clerk reflecting acceptance
of the proposed subdivision.

"At this point it should be noted that the plat
or survey while prepared and drawn in detail
reflecting numbered lots thereof does not re-
flect thereon the impression of nor is affixed
thereto the personal seal and signature of a
registered land surveyor.

"The plat itself does not reflect patently that
such plat was prepared by a registered land sur-
veyor or by one under the authority and direction
of a registered land surveyor.

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"More specifically, in your opinion should the Recorder of Deeds refuse to admit such plat and refuse to record the same in his office in recognition of the Statutes of Missouri and in particular Chapter 344 and sections thereunder.

"It is apparent from the face of the plat that such plat has not been drawn to a scale nor has there been a scale noted on the plat which doubtless causes the plat not to be sufficient by reason of Section 445.020, however I am still concerned in so far as the intendment of the statute as is required under the new Section 344.120.

"Attached hereto for your examination is a photostatic copy of the plat in question.

"We would appreciate an early reply in this matter as at this writing the Recorder has been advised to refrain from recording same until further advised by your office."

Section 59.330, V.A.M.S., provides, in part, as follows:

"It shall be the duty of recorders to record:

"(1) All deeds, mortgages, conveyances, deeds of trust, bonds, covenants, defeasances, or other instruments of writing, of or concerning any lands and tenements, or goods and chattels, which shall be proved or acknowledged according to law, and authorized to be recorded in their offices."

"Generally, the duty of the recorder is to receive and file, or receive and record, as the case may be, such instruments, and only such instruments, as by law are entitled to be filed or recorded, and to file or record them in such manner as to serve all the purposes of the law. In the absence of a statute to the contrary, it is not his province to determine whether the parties have made valid instruments or to add notations with respect to their validity." 76 C.J.S., Registers of Deeds, Section 10, page 514.

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The Legislature in Missouri has prescribed certain conditions which must be complied with before a plat may be accepted for recording by a recorder. Among such are those found in Section 445.020, V.A.M.S., and reading as follows:

"Every plat hereafter constructed, which is authorized or required by law to be recorded, or intended to form part of any proceedings for the partition of real estate, shall be drawn to a scale, the scale to be noted on the plat, have written on its face as its title, and show the block, section, United States survey, or part thereof, it purports to represent. If the land platted be less than a whole block, section, or United States survey, the plat shall be corrected in such manner as to show the position of such land relatively to the remainder of the block, section, or United States survey, as the case may be; and if such land be intersected by a quarter-section, section, or United States survey line, such line shall be indicated on the plat and distinguished by suitable words and figures, and shall be done in such manner that the precise location of the land purported to be platted can be determined on inspecting the plat; provided, however, that the provisions of this section shall not apply to any plat issued by authority of the United States, or the state of Missouri."

As you have pointed out, the plat here in question does not meet these requirements, and for that reason alone the recorder would be justified in refusing to accept and record it.

Assuming that this defect might be corrected, the question remains as to the effect and meaning of Section 344.120, V.A.M.S. That section reads as follows:

"It shall be unlawful for the recorder of deeds of any county, or the clerk of any city or town, or the clerk or other proper officer of any school, road, drainage, or levee district, or other civil subdivision of this state, to file or record any map, plat, survey, or other document prepared by any land surveyor, which does not have

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impressed thereon, and affixed thereto, the personal seal and signature of the registered land surveyor by whom, or under whose authority and direction, the map, plat, survey, or other document was prepared."

That section is a part of the law enacted by the General Assembly to require the registration of land surveyors. Section 344.010, V.A.M.S., a part of the same law, provides:

"For the purposes of this chapter:

"(1) 'Land surveying' means the surveying and measuring of the area of any portion of the earth's surface; locating and measuring the lengths and directions of the boundaries of land, and the contour of the surface thereof; and the plotting of lands, and subdivisions thereof in this state, for compensation in any form or manner;

"(2) A 'land surveyor' is one who surveys land, or who offers his services to the public as a land surveyor or surveyor of land, or who, by advertising or in any other manner whatsoever, holds himself out to the public as being authorized by law to practice land surveying, or to survey land in this state."

Section 344.020, V.A.M.S., provides:

"It shall be unlawful for any person to practice, or offer to practice, or to in any manner advertise or indicate to the public that he is engaged in, or will engage in the practice of land surveying in this state, without first registering with the state board of registration for architects and professional engineers, as a land surveyor."

In none of the provisions of Chapter 344, V.A.M.S., in regulating land surveyors, is there to be found an absolute prohibition against the preparation of plats by a person other than a land surveyor. Section 344.010, supra, defines a "land surveyor" as one who surveys lands, and the same section defines "land surveying" to include "the plotting of lands, and subdivisions thereof in this state, for compensation in any form or manner." These sections clearly do not exclude anyone other than a registered land surveyor from preparing plats. In the absence of any absolute prohibition against the preparation of plats by other than land surveyors, there is no basis for

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an assumption by the recorder that the plat here involved was of necessity prepared by a land surveyor.

By the same token, the Legislature has not prohibited the recording of plats prepared by a person other than a registered land surveyor. They have provided that a recorder who records a plat prepared by a land surveyor is liable for punishment for a misdemeanor if he records such plat without its bearing the signature and seal of the registered surveyor who prepared the plat. Should a recorder know that a plat tendered to him was so prepared or have reasonable grounds for such belief, he would be justified in refusing to accept it for recording. We perceive, however, no basis for his refusal to accept a plat for recording on the sole grounds that it does not bear the signature and seal of a registered land surveyor.

The case of *In re Mechanics' Bank of Brooklyn*, 156 App. Div. 343, 141 N.Y.S. 473, involved a New York statute which provided that no mortgage should be recorded until the tax imposed by law had been paid. The regulation was promulgated by the State Board of Tax Commissioners to the effect that whenever a recording officer had reasonable grounds to believe that an instrument offered for record was intended to operate as a mortgage, although on its face was to be an absolute conveyance, he should refuse to record it without the payment of the mortgage tax, unless he was furnished by the party offering the same an affidavit that the instrument was not given as a security for the debt or obligation. The bank tendered a deed for record and the register of deeds refused to accept it without either the payment of the tax or the furnishing of the affidavit. In an action for mandamus to compel him to accept and record the deed, the register's return stated that he had reasonable grounds to believe that the instrument was intended to operate as a mortgage security because it came from a bank whose business it was to conduct banking and make loans on collateral and other securities. The court held that the recorder was not authorized to refuse to accept the instrument tendered. The court stated: "Without determining the power of the State Board of Tax Commissioners to prescribe the rule above referred to, if the power exists, the facts here disclosed furnish no ground for its attempted enforcement. Mere suspicion is not synonymous with belief resting upon reasonable grounds. * * * If a state bank could only accept a conveyance of real property by way of security for a loan, there might be some grounds for the position taken by the respondents; but such is not the case."

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In view of the fact that the recorder might subject himself to criminal penalty for recording an instrument prepared by a land surveyor which did not bear the name and seal of the surveyor, the recorder will be justified in making inquiry with respect to the instrument tendered to him, but the mere absence of the seal and signature by and of itself would not, we feel, be a legal basis for his refusing to accept the instrument for recording.

CONCLUSION

Therefore, it is the opinion of this office that a recorder of deeds may not refuse to accept for recording a plat on the sole grounds that it does not bear the signature and seal of a registered land surveyor.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Robert R. Welborn.

Yours very truly,

John M. Dalton
Attorney General

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