May 16, 1972

OPINION LETTER NO. 97
Answer by letter-Wood

Mr. Robert E. Myers
State Land Surveyor
State Land Survey Authority
Post Office Box 1158
Rolla, Missouri 65401

Dear Mr. Myers:

This is in response to your request for my legal opinion on the following question:

> Should the State Land Survey Authority, rather than the Secretary of State, have the actual custody of the field notes, plats and documents pertaining to the United States public land survey within Missouri?

The State Land Survey Authority was established in 1969 (L. Mo. 1969, p. 123; Sections 60.500-60.610, RSMo 1969) with, among others, the following functions, duties and responsibilities:

> "The functions, duties and responsibilities of the authority shall be as follows:
>
> (1) To restore, maintain, and preserve the land survey monuments, section corners, and quarter section corners established by the United States public land survey within Missouri, together with all pertinent field notes, plats and documents; and also to restore, establish, maintain, and preserve other boundary markers considered by the authority to be of importance, or otherwise established by law;

* * *

(3) To establish, maintain, and provide safe storage facilities for a comprehensive system of recordation of information respecting all monuments established by the United States public land survey within this state, and such records as may be pertinent to the authority's establishment or maintenance of other land corners, Missouri state coordinate system stations and accessories, and monuments in general;

* * *

(6) To furnish, upon reasonable request and tender of the required fees therefor, certified copies of records created or maintained by the authority which, when certified by the state land surveyor or a designated assistant, shall be admissible in evidence in any court in this state, as the original record;" (Section 60.510, RSMo 1969)

"The custody and ownership of the original United States public land survey corners and accessories, including all restoration and replacements thereof and all accessories, belonging to the state of Missouri is hereby transferred to the authority. . . ." (Section 60.500, RSMo 1969)

". . . On the same basis of cost, this authority shall furnish [copies of] records within its custody to other agencies or departments of state, county or city, certifying them.

"2. The authority may produce, reproduce and sell maps, plats, reports, studies, and records, and shall fix the charge therefor. All income received shall be promptly deposited in the state treasury." (Section 60.590, subsections 1 and 2, RSMo 1969)

We believe the federal legislation by which the State of Missouri came into the custody of the field notes, plats, and records pertaining to the United States Government survey of the public lands within Missouri was as follows:

"That it shall be the duty of the Secretary of the Treasury to take all the necessary measures for the completion of the surveys, in the several districts for which surveyors general have been, or may be, appointed, at the earliest periods compatible with the purposes contemplated by law; and whenever the surveys and records of any such district or State shall be completed, the surveyor general thereof shall be required to deliver over to the Secretary of State of the respective States, including such surveys, or such other officer as may be authorized to receive them, all the field notes, maps, records, and other papers, appertaining to land titles, within the same; and the office of surveyor general, in every such district, shall thereafter cease and be discontinued." (Act of June 12, 1840, c. 36; 5 Stat. 384; 43 U.S.C.A. §54; Emphasis added)

". . . the field notes, maps, records, and other papers mentioned in [the Act of June 12, 1840] . . . shall in no case hereafter be turned over to the authorities of any State, until such State shall have provided by law for the reception and safe keeping of the same as public records, and for the allowance of free access to the same by the authorities of the United States, as herein provided." (Act of June 22, 1853, c. 24; 10 Stat. 152; 43 U.S.C.A. §56)

"That whenever the Secretary of the Interior shall be of the opinion that the public interest no longer requires the continuance of the office of recorder of land titles in Missouri, he may close and discontinue the same; and all of the records, maps, plats, field-notes, books, papers, and everything else concerning, pertaining or belonging to said office of recorder, shall be delivered to the State of Missouri: Provided, however, That said State shall provide by law for the reception and safekeeping of said records, maps, plats, field-notes, books, papers, and everything else belonging to said office of recorder, as public records, . . ." (Act of June 6, 1874, c. 223; §3, 18 Stat. 62)

> "That the land offices at Chillicothe, Ohio, Indianapolis, Indiana, Springfield, Illinois, and the office of the recorder of land titles of the State of Missouri are hereby abolished, from and after the thirtieth day of September next and the Secretary of the Interior is hereby authorized to transfer to the States respectively aforesaid such of the transcripts, documents, and records of the offices aforesaid as may not be required for use of the United States, and as the States respectively in which said offices are situated may desire to preserve; . . ." (Act of July 31, 1876, c. 246; 19 Stat. 121)

The General Assembly of Missouri responded by enacting the following laws:

> "The custodian of the archives, field notes, maps, plats, records and other papers of the late surveyor-general for the states of Illinois and Missouri is hereby directed to safely transmit, without delay, said archives, field-notes, maps, plats, records and other papers of said late surveyor-general for Illinois and Missouri; to the register of lands at the City of Jefferson."

> "The register of lands of the state of Missouri is hereby directed to receive all said archives, field-notes, plats, records, maps and other papers from the custodian of said archives, and to keep the same for the convenience of the people of the state of Missouri, at his office in Jefferson City." (L. Mo. 1874, §§1 and 2; Sections 7473 and 7474, RSMo 1889)

> "WHEREAS, The act of Congress of June 6, 1874, provides that all of the records, maps, plats, field notes, books, papers and everything else concerning, pertaining or belonging to the office of Recorder of Land Titles in Missouri, (usually called archives) of said office, be delivered to the State of Missouri, and the act of Congress of July the 31, 1866, also requires said archives, of said office to be delivered to the State; but both of said acts of Congress evidently require some indication

on the part of the State that said archives are desired by the State; and,

"WHEREAS, Also, said archives consist of the original titles to a large portion of the most valuable lands in Missouri, and are, consequently of great importance to the people of the State, and all of said archives ought to be obtained by the State as soon as practicable, and forever kept by the State as publice archives, for the use and benefit of all persons interested in said lands; therefore,

"Be it enacted by the General Assembly of the State of Missouri, as follows:

"Section 1. The United States, and the officers thereof, who have the possession or control of said archives, be and they are hereby most respectfully requested to deliver, as soon as practicable, to the State of Missouri, to any officer of said State lawfully authorized to receive the same, all of the records, maps, plats, field notes, books, papers and everything else concerning, pertaining or belonging to the said office of Recorder of Land Titles in Missouri, (usually called archives of said office.)

"Sec. 2. The Register of Lands of this State shall be and he is hereby authorized and required, as soon as practicable, to procure and receive said archives from the United States, or any officer or agent thereof; and said Register shall safely keep said archives in his office as public records, . . ." (L. Mo. 1877, p. 318; §§7477, 7478, RSMo 1889)

The office of Register of Lands was established by the General Assembly in 1841 (Act of 1841; see pp. 919-920, RSMo 1845), made a constitutional office in 1850 (Missouri Constitutional Amendments of 1850-1851), restored to a statutory basis in 1865 (Section 9, Article XIII, Constitution of Missouri, 1865), and finally abolished by the General Assembly in 1891 with a general transfer of duties to the Secretary of State (L. Mo. 1891, p. 181).

The statutory duties of the Register of Lands, prior to the abolition of his office, included in addition to those set forth in the statutes already quoted:

(1) The receipt, filing and safekeeping in his office of all patents, books, records, and other papers and documents relating to lands donated to the state by the United States, or otherwise acquired by the state, previously in the custody of the Secretary of State, State Auditor, State Treasurer, and swamp land agent (Section 7472, RSMo 1889);

(2) Preparing, issuing, and recording saline and seminary land patents which had been executed by the Governor and the Secretary of State (Sections 6415, 6416, 6420, 6423, 6424, and 6425, RSMo 1889);

(3) Receiving abstracts or reports of school lands sold or selected by the county courts, and making out state patents for such lands (Sections 6434, 6435, 6459, and 6460, RSMo 1889);

(4) Furnishing lists and plats of swamp lands to the county clerks, serving as the state swamp land agent, and preparing, issuing and recording state swamp land patents to the various counties (Sections 6461, 6466, 6484, and 6510-6513, RSMo 1889)

The fees prescribed by statute for services performed by the Register of Lands included:

"The register of lands shall charge for performing the services hereinafter specified the following fees, to wit

For plat of survey. $1.00

For plat of township. 2.50

For copy of field notes, for every one hundred words and figures . . . . .10"
(Section 5025, RSMo 1889)

The law abolishing the office of Register of Lands read:

"The secretary of state shall perform all the duties heretofore performed by and now required of the register of lands. On account of such additional duties imposed upon the secretary of

> state, he shall have one additional clerk." (L. Mo. 1891, p. 181; Section 10021, RSMo 1899)

This statute was amended in 1945 to its present form:

> "The secretary of state shall perform all the duties required by law to be performed on behalf of the state with respect to registration of lands, issuance of patents and other authentication of title to saline or swamp lands." (L. Mo. 1945, p. 1724, §12999; Section 28.110, RSMo 1969)

Pursuant to the 1891 law, the Secretary of State assumed all responsibilities previously held by the Register of Lands with regard to:

> (1) Saline and seminary lands (Sections 8148, 8149, 8150, 8154, 8158, and 8159, RSMo 1899; Section 28.110, RSMo 1969);
>
> (2) School lands (Sections 8168, 8169, 8193, and 8194, RSMo 1899; Sections 166.120-166.130, RSMo 1959, repealed, L. Mo. 1963, p. 200);
>
> (3) Swamp lands (Sections 8195, 8200, 8218, and 8244-8248, RSMo 1899; Sections 241.010-241.030 and 241.080-241.130, RSMo 1969)

The fees prescribed for services performed by the Register of Lands were similarly transferred to the Secretary of State (Section 3283, RSMo 1899; Section 28.160, RSMo 1969).

The statutes pertaining to the office of Register of Lands, and defining his responsibilities for maintaining and keeping the public land survey plats, field notes, maps, and records (Sections 7462-7478, RSMo 1889) were repealed in 1899 (L. Mo. 1899, p. 323). Since that time, and prior to enactment of the State Land Survey Authority Law in 1969, there were no laws expressly assigning to a particular state officer the responsibility for keeping and maintaining these public land survey documents.

Before the amendment of present Section 28.110, RSMo, in 1945, we believe it was clear that the Secretary of State had the responsibility for keeping and maintaining these public land survey documents, because such was the duty of the Register of Lands in 1891. However, as amended in 1945, the statute is much less clear on this point, to wit:

> "The secretary of state shall perform all the duties required by law to be performed on behalf of the state with respect to registration of lands, issuance of patents and other authentication of title to saline or swamp lands." (Section 28.110, RSMo 1969)

We doubt that this statute was, after the 1945 amendment, authority for the Secretary of State's custody of the United States public land survey documents.

The statute prescribing the fees to be exacted by the Secretary of State for copies of survey and township plats, and the field notes, was perhaps some justification for the Secretary of State's continued custody after 1945 of the original plats and field notes of the public land survey (Section 28.160, RSMo 1969).

However, we suspect that the real basis for the Secretary of State's continued possession of the documents after 1945 was that there was no other department or agency authorized by law to receive and maintain them. The 1969 State Land Survey Authority Law is, in our opinion, such a law, and one that is definite and certain as to the custody of the original plats and field notes of the public land survey. It states that the Authority shall ". . . maintain, and preserve . . . the United States public land survey within Missouri, . . . pertinent field notes, plats and documents; . . ." (Section 60.510(1), RSMo 1969) and shall ". . . establish, maintain, and provide safe storage facilities for a comprehensive system of recordation of information respecting all monuments established by the United States public land survey within this state, . . ." (Emphasis added; Section 60.510(3), RSMo 1969). The Authority is further instructed to provide certified copies of all records it maintains upon payment of fees fixed by it for this service (Sections 60.510(6) and 60.590(2), RSMo 1969). We believe this law is, on the subject of the custody of the plats, field notes and documents of the United States public land survey in Missouri, complete in and of itself, irreconcilably inconsistent with and repugnant to any prior laws placing the custody of these documents elsewhere, and to this extent, an implied repeal of Sections 28.110 and 28.160, RSMo 1969, assuming that such statutes authorize the Secretary of State's custody of these documents.

> "The repeal of a statute by implication is a matter of legislative intent, is not presumed, and is not favored. . . . Where two acts are seemingly repugnant, they must, if possible, be so construed that the latter may not operate as a repeal of the earlier one by implication, if they are not irreconcilably inconsistent,

> both must stand. . . . Repeals by implication usually arise where a later statute covers the whole subject matter of an earlier statute or where its provisions are so repugnant to the other as to make the two statutes irreconcilable. . . . Where there are two or more provisions relating to the same subject matter, they must, if reasonably possible, be construed so as to maintain the integrity of both. . . ." (Bullington v. State, 459 S.W.2d 334, 338 (Mo. 1970))

Since the 1969 law clearly designates the State Land Survey Authority as the repository of the "field notes, plats, and documents of the United States public land survey," we believe it operates as an exception to earlier laws, if any, placing these records in the custody of the Secretary of State. Accordingly, it is our opinion that the Secretary of State should transfer possession of these records to the State Land Survey Authority.

Yours very truly,

JOHN C. DANFORTH
Attorney General