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65101

July 27, 1979

OPINION LETTER NO. 94

The Honorable James C. Kirkpatrick
Secretary of State
State Capitol Building
Jefferson City, Missouri 65101

Dear Mr. Kirkpatrick:

This letter is to acknowledge receipt of your request for an opinion from this office in which you have presented the following question:

"Can land patents now be issued for section sixteen school lands which should have been patented when they were sold, but were not?"

In Attorney General's Opinion Letter No. 89, Kirkpatrick, 2-18-69, it was pointed out that Sections 166.130 and 166.140, RSMo 1959, provided the procedure to be followed by the Secretary of State of Missouri in issuing patents to the purchasers of school lands upon receipt of a statement showing payment of the purchase price. However, it was stated that Chapter 166, RSMo 1959, had been repealed and that no new sections had been enacted with the same or similar provisions of former Sections 166.130 and 166.140, RSMo 1959. Therefore, it was concluded that in the absence of any present Missouri statutes providing what he should do, the Secretary of State was unauthorized to issue patents to the purchasers of school lands (copy of opinion attached).

The present statutory provisions relating to the conveyance of section sixteen school lands are found in Sections 177.061 and 177.071, RSMo 1978, and read as follows:

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Section 177.061 provides:

"1. Any of the sixteenth-sections of land, or lands selected in lieu thereof, granted to the state of Missouri by acts of congress for the support of schools in congressional townships may be sold and conveyed by the school district for whose benefit the land is held in the manner provided by law for the sale of property owned by the school district and no longer required for school purposes. The deed of conveyance shall be executed by the president of the school board of the district, signed by him and attested by the clerk or secretary of the board. If the district has a seal the seal shall be affixed to the deed.

"2. Any conveyance of the land made by a school board in accordance with this section shall divest the state of Missouri of all title to the land, and vest title in the grantees, their heirs and assigns, forever.

"3. The proceeds derived from the sale of the sixteenth-section school lands shall be placed to the credit of the building fund of the district.

"4. This section does not affect conveyances of sixteenth-section school lands made under prior laws."

Section 177.071 provides:

"All sales of land in sections numbered sixteen, or lands selected in lieu thereof, by any sheriff, in the attempt to carry out the provisions of any statute relating to

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the sale of the lands as school lands for the townships in which they lie, which sales took place more than ten years before October 13, 1963, shall, upon the expiration of two years from October 13, 1963, become and be deemed valid and effectual for all intents and purposes, and the title thereto sought to be conveyed is hereby confirmed in the respective purchasers and those claiming under them at the expiration of the two years, whether there was any petition from the householders of the townships for the sales or not, and notwithstanding any other errors, defects, omissions or imperfections in the petition, order of sale, notice, sale, or other proceeding therein; save only as to such lands now involved or which during the period of two years may become involved in any suit because thereof, as to which lands this section shall not take effect until the final determination of the suit."

A review of the above statutory provisions does not reveal any authority of the Secretary of State to issue land patents for section sixteen school lands. The only other statutory provision relating to the authority of the Secretary of State concerning land patents is Section 446.180, RSMo 1978, which provides for authority to make corrections to existing patents under certain circumstances. However, this is not the factual situation that has been presented. As a result, it is our view that the reasoning of Attorney General's Opinion Letter No. 89 is still correct and is applicable to the question under consideration.

It is therefore our view that under the present Missouri statutes, the Secretary of State of Missouri is not authorized to issue a land patent for section sixteen school lands, but only has authority to make a correction to an existing land

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patent for section sixteen school lands in accordance with
the provisions of Section 446.180, RSMo 1978.

Very truly yours,

A handwritten signature in cursive script that reads "John Ashcroft". The signature is written in black ink and is positioned below the typed name.

JOHN ASHCROFT
Attorney General

Enclosure
Op. Ltr No. 89