

NEW PATENT ISSUED FOR
PURPOSE OF CORRECTING
ERRONEOUS DESCRIPTION
IN ORIGINAL PATENT:

Secretary of State may issue corrected patent
for land in cases in which land was erroneously
described in original patent from state after
proper showing is made.

January 3, 1951



1-8-51

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

Dear Mr. Toberman:

We have your letter of November 21, 1950, in which you request
an opinion of this department. Your letter is 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 Improve-
ment 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 $\frac{1}{2}$ of the SE $\frac{1}{2}$
was sold to William McFarland; the Index covering
all the Internal Improvement Lands also shows it
to be the SW $\frac{1}{2}$ of the SE $\frac{1}{2}$.

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

We have also examined the photostatic copy of the original
patent issued in the year of 1850, by the State of Missouri to
William McFarland.

It is apparent from the records of the Register of Land
Sales by the General Land Office referred to in your aforesaid

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letter that the land that was sold by the state to William McFarland was actually the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 13, Twsp 28, R 21, whereas the land described in the patent to McFarland was the SW $\frac{1}{4}$ of Section 13, Twsp 28, R 21, said land being recited in said patent as containing forty acres. This is obviously an error for the reason that the SW $\frac{1}{4}$ of said Section 13 would contain one hundred and sixty acres instead of forty acres, whereas the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of said Section 13 would contain forty acres, the amount recited in the patent as the acreage intended to be conveyed. We are, therefore, of the opinion that it was the intention of the person who issued the patent to convey by said patent the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of said Section 13 instead of the SW $\frac{1}{4}$ of said Section 13, the land actually described in the patent and that an error in the description of the land in the patent heretofore issued in 1850 was therefore made. This conclusion is supported by the fact that the records of the land office as above stated indicate that the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of said Section 13 was sold to McFarland and that he was accordingly entitled to a patent to said land whereas there is nothing before us to indicate that McFarland ever purchased the SW $\frac{1}{4}$ of said Section 13 or was ever entitled to the issuance of a patent conveying to him the last above described land.

Since the land in the patent issued to McFarland was erroneously described as the SW $\frac{1}{4}$ of said Section 13 instead of the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of said Section 13, which last described land, according to your above-quoted letter, is owned by the man who desires a corrected patent, we must consider Section 12715, R. S. A. Mo. 1939, which we quote 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 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

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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."

We are of the opinion that the above-quoted statute is applicable to the facts before us and that under the provisions of said statute the person who has by mesne conveyances from McFarland acquired the equitable title to the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of said Section 13, heretofore vested in McFarland by reason of his above-mentioned purchase of said land from the state is entitled in the words of said section to have "a new patent issued correctly describing such land provided he makes the necessary proof and meets the requirements of said statute specifically set forth therein."

In this connection the question occurs as to whether the new patent being corrective in its nature should be made to McFarland, the original purchaser, or to the present owner. We are of the opinion that the patent should be issued to the present owner in view of the following language of the statute, "* * * 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

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patent has been issued may have a new patent issued correctly describing such land * * *." We are of the opinion that since the statute says, as appears in the last above quotation, that the person who has acquired the land by mesne conveyances from the original patentee "may have a new patent issued" the inference may be drawn that such person may have the new patent issued to himself.

Having hereinabove answered your inquiry as to whether the original patent may be corrected by saying that a new patent may be issued to the owner, we shall now give attention to that part of your inquiry which asks in what manner this is to be done. In this connection we quote Section 12726, R.S.A. Mo. 1939, as follows:

"The patents issued in virtue of the provisions of this article shall be signed by the governor, countersigned by the secretary of state, and attested by the great seal of the state of Missouri."

We are of the opinion that the burden of following the course set out in Section 12715, supra, as prerequisite to having a patent issued rests upon the person seeking the patent. We are of the further opinion that if and when that person has complied with each requirement of said section set forth as a prerequisite to the issuance the Secretary of State, after checking the records in his office and assuring himself that the land for which the patent is desired is state land and that it has not been disposed of to any other person, should cause a patent to be prepared following the form usually used by the State of Missouri and present same to the Governor for his signature, and if and when the Governor shall sign the patent the Secretary of State should countersign it and affix the great Seal of the State of Missouri thereto in accordance with the provisions of Section 12726, supra, and deliver the patent to the patentee and keep a copy thereof for his records. The Secretary of State should then file all documents in the nature of proof required by the statute among the records of his office.

We shall now refer to the things which the Secretary of State should satisfy himself have been complied with by the persons seeking the new patent as a prerequisite to the issuance thereof.

We are of the opinion that the Secretary of State should take no steps toward the issuance of the desired new patent until he is (1) provided with satisfactory proof adduced by the person seeking the patent that said person or someone under whom he claims (in this case, McFarland) purchased the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of said

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Section 13 from the state and that the state has been paid for same which said proof may be made by affidavit or by the land office records or may be made otherwise to the satisfaction of the Secretary of State and (2) provided with satisfactory proof presented by said person in affidavit form that he sets up no claim to the land embodied in the erroneous description in the original patent and that neither he nor any one by, through or under whom he claims, has ever set up any claim to the land under or by virtue of the original patent, (3) presented with the original patent which contains the erroneous description of the land, which patent must be delivered to the Secretary of State, which said delivery, if and when made, completes the proofs to be required of the applicant by the Secretary of State or in the alternative if said patent be not delivered as aforesaid, then provided with affidavits of two disinterested freeholders of the township in which the land for which the new patent is sought is situated to the effect that the applicant and those under whom he claims title have been in open, notorious, exclusive, continuous, adverse and hostile possession of all of said lands for a period of ten years last past prior to the filing of the application for the new patent 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 (4) presented with a deed executed by the applicant releasing the erroneously patented land (in this case the SW $\frac{1}{4}$ of said Sec. 13) to the State of Missouri.

We are of the opinion that all of the things last above enumerated except the thing excluded by the choice of one or the other of the alternatives above mentioned must be done to the satisfaction of the Secretary of State before he has any right or duty to take any steps toward the issuance of the new patent applied for but we are of the further opinion that when all such things, with the exception of the excluded alternative have been done to his satisfaction it is his duty to proceed with the work of issuing the desired new patent.

CONCLUSION

We are accordingly of the opinion that the person in whom the equitable title to the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of said Section 13 obtained by mesne conveyances from McFarland the man who purchased said land from the state in 1850 is vested, is entitled to a new patent conveying said land to him in accordance with the provisions of Section 12715, supra, in view of the fact that the patent issued to McFarland in 1850 did not describe the land purchased by him but described other land.

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We are of the further opinion that said patent should follow the form ordinarily used by the State of Missouri in the conveyance of its public lands and should be signed by the Governor and countersigned by the Secretary of State and that it should be attested by the Great Seal of the State of Missouri, as provided by Section 12726, supra.

We are of the further opinion that before issuing and delivering said patent the Secretary of State should assure himself that the proofs required by Section 12715, supra, as above outlined, have been submitted.

Respectfully submitted,

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Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

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