

SWAMP AND OVERFLOWED LANDS:: 1) Patents should be issued for
 PATENTS: : swamp and overflowed lands to
 : counties in which such lands
 : lie, by the State, under Sec.
 : 241.080, RSMo 1949. 2) When
 : such patents to such lands have
 : been issued by the State to
 : counties and when payment in full
 : has been made for such lands by
 : the purchaser, the County Court
 : shall cause the clerk of said
 : court to issue to the purchaser
 : or his heirs or assigns, a patent
 : under Sec. 241.220, RSMo 1949.



November 29, 1954

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

Attention: Honorable Will Davis,
 Chief Clerk.

Dear Mr. Toberman:

This will refer to your recent request for the opinion of this office respecting the question of whether or not the Secretary of State may issue a certified copy of a patent to a parcel of land in Ray County, Missouri, where the records of your office do not show that a patent has been issued to Ray County, Missouri, or to an individual, and if so, to whom should said patent be issued. Your letter requesting the opinion states the following:

"This office has been asked to furnish a certified copy of a patent to a parcel of land, described as the Southwest Quarter of the Northwest Quarter of Section 22, Township 51, Range 27 West, situated in Ray County, Missouri, to comply with requirements made on said land by Gardner Smith, Attorney for Phoenix Mutual Life Insurance Company, Kansas City, Mo.

"We fail to find any record of a patent having been issued to an individual or to the County of Ray for this land. We do find a certification made on the 15th day of July, 1867, in which it was ordered that the clerk of the county court certify to the Governor that S.A. Richardson

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had made full payment of the principal and interest on the following described Swamp and Overflowed Lands, to-wit:

"SW $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 22, Township 51, Range 27 W, Ray County
SW $\frac{1}{4}$ of SW $\frac{1}{4}$ " " " " " " " " " "
NW $\frac{1}{4}$ of SW $\frac{1}{4}$ " " " " " " " " " "

"This certificate is signed by Geo. N. McGee, Clerk of the County Court of Ray County. We find that a patent was issued for only the SW $\frac{1}{4}$ of SW $\frac{1}{4}$. None were issued for the SW $\frac{1}{4}$ of NW $\frac{1}{4}$ and for the NW $\frac{1}{4}$ of SW $\frac{1}{4}$.

"The Garner Abstract and Title Company, Richmond, Missouri, have asked if a patent can be issued for this land at this time and have referred us to Section 241.080, R.S. Mo., 1949.

"Will you please give us your opinion as to whether or not such patent can be issued, and if so, to whom should said patent be issued.

"Thanking you, we remain"

The question to be considered and here determined is apparently incidental to the completion of an abstract of title to said parcel of land in the negotiation of a loan from a life insurance company which requires the abstract to include a patent, or patents, transferring the legal title to such land from the State and county to the owner.

The description of the land for which the issuance of the certified copy of a patent has been requested is designated in your request as the Southwest Quarter of the Northwest Quarter of Section 22, Township 51, Range 27 West, situated in Ray County, Missouri. The request advises that there is no record in the office of the Secretary of State of a patent having been issued to an individual or to the County of Ray, in the State of Missouri, for the Southwest Quarter of the Northwest Quarter of Section 22, Township 51, Range 27 West, in said county.

Your request further advises that you do find a certification, dated July 15, 1867, by the County Clerk of Ray

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County, Missouri, and signed by him, of an order (presumably made by the County Court of said Ray County) that the Clerk of the County Court certify to the Governor that a named individual had made full payment of the purchase price of the following described Swamp and Overflowed Lands, to-wit:

"SW $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 22, Township 51, Range 27 W, Ray County
SW $\frac{1}{4}$ of SW $\frac{1}{4}$ " " " " " " " " " "
NW $\frac{1}{4}$ of SW $\frac{1}{4}$ " " " " " " " " " "

We are further advised that a patent was issued for the Southwest Quarter of the Southwest Quarter of said Section, Township and Range, as so described, but no patents were issued for the other two Quarter Quarter Sections of said Section, Township and Range, so described in said certification, one of the two Quarter Quarter Sections being the Southwest Quarter of the Northwest Quarter of said Section, Township and Range in Ray County, Missouri, and being the Quarter Quarter Section Tract for which a certified copy of a patent thereto has been requested.

On the question of the authority of your office to issue a patent now to the Southwest Quarter of the Northwest Quarter of Section 22, Township 51, Range 27 West, of the Swamp and Overflowed Lands in Ray County, Missouri, attention has been directed to your office for our observation, on the right to issue such patent, to Section 241,080, RSMo 1949, in the consideration of this matter. That section reads as follows:

"In order to convey to the different counties in the State of Missouri a complete title to all the swamp and overflowed lands which have been granted and patented to the state of Missouri by an act of congress, entitled 'An act to enable the state of Arkansas and other states to reclaim the swamp lands within their limits,' approved September 28, 1850, the secretary of state is hereby directed to prepare a patent or patents, embracing all the swamp or overflowed lands lying within the limits of the several counties of this state, conveying thereby all the title and interest of the state of Missouri in and to such lands,

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to the counties in which such lands may lie, and when such patents have been prepared as provided in sections 241.010 to 241.280, they shall be presented to and signed by the governor of this state, attested by the secretary of state, and recorded by the secretary of state in his office."

In connection with Section 241.080, supra, Section 241.220, in the same chapter of the present revision of the statutes of this State, must be considered and its terms, in sequence to, and as a complement thereof, must be applied to the question of the issuance of a patent or patents in this case to the Quarter Quarter Section of land here involved.

We assume that it will be agreed by all that the legal title to any swamp or overflowed land must emanate from the government, the state, or a county, as the case may require, in perfecting the title to such land, by patent. 50 C.J. 1016, states the text on this principle as follows:

"The fee in swamp lands remains in the state or the county until the execution by the proper officer of a patent or deed as provided by the statute, but when the patent for such land issues it relates back to the date of the sale.

* * * * *

"Ordinarily the deed or patent for swamp lands transfers legal title to the grantee or patentee, and it is, of course, evidence of such title in the grantee or patentee, and is conclusive or sufficient in this regard in the absence of any showing to the contrary; and the legal title must prevail, unless a prior right or superior equity in the opposing claimant is shown. * * *."

(Citing supporting Missouri authorities in the footnotes.)

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Your request states, as we have noted, that there is no record of a patent being issued to the Southwest Quarter of the Northwest Quarter of Section 22, Township 51, Range 27 West, situated in Ray County, Missouri, to an individual or to the County of Ray.

Said Section 241.080, supra, provides for the issuing of patents by the State to the different counties of the State wherein swamp and overflowed lands lie to make a complete legal title to any such lands in such counties, which said lands were granted and patented to this State by the Act of Congress, authorized September 28, 1850. Such purpose clearly appears from the terms of the section itself. The section provides that the patent conveying the title of the State to any county in which such lands lie shall be prepared by the Secretary of State in conformity to the provisions of Sections 241.010 to 241.280, inclusive, which patent shall be presented to and signed by the Governor of this State, attested by the Secretary of State, and recorded by him in his office.

Compliance with the terms of said Section 241.080 would divest the State of its title to such swamp and overflowed lands, and invest the legal title to such lands in the several counties in which such lands, respectively, may lie. It would not complete the legal title to such land in a purchaser. The legal title in that event would still remain in the county where such land is situated until a patent or a deed is executed by the proper officers conveying the title of the county, as provided by statute, to a purchaser, or his heirs or assigns.

Referring further to the certification of an order by the County Clerk of Ray County to the Governor of this State, dated July 15, 1867, that an individual had paid in full the purchase price for the swamp and overflowed lands described in your request as: SW $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 22, Township 51, Range 27 W, Ray County; SW $\frac{1}{4}$ of SW $\frac{1}{4}$ of Section 22, Township 51, Range 27 W, Ray County; NW $\frac{1}{4}$ of SW $\frac{1}{4}$ of Section 22, Township 51, Range 27 W, Ray County, and giving consideration to the operation and effect of such payments on the right of said purchaser to a patent to said lands, we turn to the statute in force at the time of the certification noted. The provisions of the Revised Statutes of Missouri, 1865,

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constituted the law of this State on that subject on July 15, 1867, the date of the certification of the order to the Governor by the Clerk of the County Court of Ray County, Missouri, that the purchase price had been so paid for the Quarter Quarter Section in said Section, Township and Range, in Ray County, Missouri. Section 4 of Chapter 48 of the Revised Statutes of this State, 1865, page 278, then read as follows:

"Section 4. Whenever full payment shall be made for any of said lands by the purchasers thereof, the county courts shall cause the same to be certified to the governor, who shall thereupon grant to the purchaser, his heirs and 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."

Section 4 of Chapter 48, RSMo 1865, supra, was amended Laws of Missouri, 1868, page 69, to authorize the register (registrar) of lands to issue a patent to swamp and overflowed lands conveying the legal title of the State to such lands to the purchasers upon certification by the County Court that the full purchase price therefor has been paid. The section as so amended reads as follows:

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

This was the only method then provided by law for the title to such lands to pass from the State. The State was dealing, so far as the title to such lands was concerned, directly with the purchasers, hence a patent to such lands was granted directly to the purchaser by the Governor under said section. Section 4, Laws of Missouri, 1868, supra, page 69, was amended by Section

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6154, RSMo 1879. Said Section 6154 as so amended reads as follows:

"After full payment, patent to issue, how--
Whenever full payment shall be made for any of said land by the purchaser thereof, the county court shall cause the clerk of said court to issue to the purchaser or purchasers, his or their heirs or assigns, a patent for the same, which patent shall be signed by the presiding judge of the county court, countersigned by the clerk thereof, and recorded in the swamp land patent book, in the office of the county clerk. (Laws 1868, p. 69, § 4, amended.)"

The swamp and overflowed lands belonging to the State were, by the provisions of Chapter III, RSMo 1879, donated by the State to the several counties in which such lands lie, as the absolute property of such counties, in order to provide for the reclamation of such lands which were granted to the State by the said Act of Congress, approved September 28, 1828, and to be sold for a county school fund under Section 6155, RSMo 1879. The General Assembly in enacting Section 6154, RSMo 1879, omitted from the section the provision for the County Court of a county containing such lands to certify to the Register of Lands that full payment had been made for any such land by a purchaser.

The General Assembly, in said Section 6154 of the Revision of 1879, having donated all such lands in the counties wherein they lie to such counties, separately, as the absolute property of such respective counties, the General Assembly made further provision to effectuate such donation by providing that such counties under Section 6153, RSMo 1879, may sell such lands as public lands, and that under Section 6155 the net proceeds of the sale of such lands by such counties shall be paid into the county treasury to become a part of the public school fund of any such county.

The General Assembly in the Session of 1869 (Laws of Missouri 1869, page 66), passed a new and comprehensive Act relating to patents to swamp and overflowed lands in this State. Section 1 of that Act provided that the State's title to all such lands should be conveyed to the counties by patent, signed by the Governor, attested by the Secretary

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of State and recorded by the Register of Lands in his office. Said Section 1 was carried into the Revision of 1879 as Section 6200. That section, RSMo 1879, pages 1221, 1222, reads as follows:

"Title to swamp lands to be conveyed to counties.-- In order to convey to the different counties in the state of Missouri a complete title to all the swamp and overflowed lands, which have been granted and patented to the state of Missouri by an act of congress, entitled 'An act to enable the state of Arkansas and other states to reclaim the swamp lands within their limits,' approved September 28, 1850, the register of lands is hereby directed to prepare a patent or patents, embracing all the swamp or overflowed lands lying within the limits of the several counties of this state, conveying thereby all the title and interest of the state of Missouri in and to such lands, to the counties in which such lands may lie, and when such patents have been prepared as herein provided, they shall be presented to and signed by the governor of this state, attested by the secretary of state, and recorded by the register of lands in his office. * * *."

The Act of 1869 (Laws of Missouri, 1869, page 66), and the provisions of the Revision of the swamp and overflowed lands statutes of 1879 contained the material in their several sections from which our present Section 241.080 relating to the issuance of patents to such lands is derived. The preparation of patents to such land for their signature by the Governor and the attestation thereof by the Secretary of State, and their later recording in his office, were among the duties of the Register of Lands. The office of Register of Lands was abolished in this State in 1891. The Act of the General Assembly discontinuing said office of Register of Lands (Laws of Missouri, 1891, page 181), and imposing the duties of that office upon the Secretary of State reads as follows:

"SECTION 1. The office of register of lands for the state of Missouri shall be and is hereby abolished.

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SEC. 2. 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.

SEC. 3. This law shall be in effect from and after the expiration of the term of office for which the present register of lands was elected. Approved February 25, 1891."

The provisions for the assumption and performance of the duties by the Secretary of State formerly imposed upon the Register of Lands to the effect that the Secretary of State should prepare a patent, or patents, to such swamp and overflowed lands lying within the limits of such counties conveying all the title and interest to the State of Missouri in and to such lands to such counties and that such patents be presented to and signed by the Governor of this State, attested by the Secretary of State and be recorded by the Secretary of State in his office, appeared in the Revised Statutes of 1899 as Section 8244; in the Revision of 1909 as Section 8023; in the Revision of 1919 as Section 7020; in the Revision of 1929 as Section 11156; in the Revision of 1939 as Section 12780, and appears in the present Revision of 1949 as our present Section 241.080.

Upon the payment of the purchase price for such lands and the certification of the order to the Governor by the said County Clerk of Ray County, Missouri, on July 15, 1867, acknowledging such payment, the purchaser then and thereby became the owner of the equitable title to such swamp and overflowed land. There are numerous decisions by the Supreme Court of this State so holding. We quote from one of such cases, *Kline vs. Groeschner*, 280 Mo. Rep. 599, where the Court, i.c. 608, 609, said:

"* * * It was held by this court in case of *Mosher v. Bacon*, 229 Mo. 338, where land belonging to a county is sold by the county, and paid for, and the purchaser receives a certificate of purchase, thereafter the county is powerless to convey it to another person. The purchaser receiving the certificate of purchase would have an equitable title which would be good against all the world. It was further decided in that case,

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l.c. 349, that a purchaser has no control over the land office, nor over the state officers, whose duty it is to issue a patent and conform to the requirements of the law, and the failure of such officer to do his duty in that respect would not affect a purchaser's right or title."

Notwithstanding the payment of the purchase price in full for such lands, and that thereby the purchaser became the owner of the equitable title to such lands, the legal title to such lands still remains in the State until a patent is issued by the State to the county, and remains in the county until a patent is issued to such land by the county to the purchaser or his heirs or assigns. We now turn to said Section 241.220 for directions for issuing county patents. By this section when the purchase price for swamp and overflowed lands has been paid in full, as has been done in this case, the State having conveyed its title to such lands by patent to the county, a patent conveying the legal title of the county should issue from the county to the purchaser or his heirs and assigns, and in this case a patent should issue from Ray County to the purchaser or his heirs or assigns to the Southwest Quarter of the Northwest Quarter of Section 22, Township 51, Range 27 West, in Ray County, Missouri, to complete the legal title to said Quarter Quarter Section so involved.

The facts and conditions recited in the request disclose that no patent has ever been issued by the State to Ray County, Missouri, and that there is no record in the office of the Secretary of State of the issuance of such patent to comply with the terms of Section 241.080, supra, to the Southwest Quarter of the Northwest Quarter of Section 22, Township 51, Range 27 West, in said Ray County. The purchaser of said Quarter Quarter Section of land, upon the completion of the payment of the purchase price therefor, as the owner of the equitable title to said land, was then entitled, and is now entitled, to patents, respectively, from the State to Ray County and from said county to said purchaser or his heirs and assigns, to said land.

It appears to be clear in this matter that a patent should be issued by the Governor for the State according to the terms, and in conformity with such terms, of Section 241.080, to said Ray County, to said lands. But this is not enough to complete the legal or "paper" title to said

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lands. A patent also should be issued to said lands from the County of Ray to the present owner of said land, under the terms of said Section 241.220, conveying to such owner the legal title of the county to such land.

CONCLUSION

It is, therefore, considering the premises, the opinion of this office:

1) That in order to perfect the legal title to swamp and overflowed lands in any county in this State wherein such lands lie, the Governor of the State under Section 241.080, RSMo 1949, may sign and issue a patent, attested by the Secretary of State, to any such lands, conveying thereby all title and interest of the State of Missouri in and to such lands to the respective counties in which such lands may lie, and that when such patent is signed and issued by the Governor, attested by the Secretary of State, it shall be recorded by the Secretary of State in his office;

2) That it is the further opinion of this office that when such patent to the county wherein such lands lie has been issued and recorded in compliance with the terms of said Section 241.080, RSMo 1949, and when payment in full has been made for any of such land by the purchaser thereof, the County Court shall cause the clerk of said court under Section 241.220, RSMo 1949, to issue to the purchaser, or purchasers, his or their heirs or assigns, a patent for the same, which patent shall be signed for the county by the Presiding Judge of the County Court, countersigned by the clerk thereof and recorded in the Swamp Land Patent Book in the office of the County Clerk.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. George W. Crowley.

Very truly yours,

JOHN M. DALTON
Attorney General

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