

Sk. File



**THE ATTORNEY GENERAL
OF TEXAS**

**JIM MATTOX
ATTORNEY GENERAL**

August 29, 1986

File No. Sketch File 63
Galveston County
Ownership of Eckert's Bayou & Lake Como
Filed October 31
By GARRY MAURO, Com'r
Douglas Howard 10 89

Mr. Spencer Reid
Director, Asset Analysis & Disposition
General Land Office, Room 738
Stephen F. Austin Building
1700 N. Congress
Austin, Texas 78701

INTER-AGENCY MAIL

Re: Inquiry Pertaining to Ownership
of Submerged Parcels of Land
on West Galveston Island

Dear Spence:

As you are aware, an informal opinion from a staff member of the Attorney General's Office is not tantamount to an Attorney General's Opinion. With this caveat, I am providing the following informal assessment regarding ownership of certain lands located on West Galveston Island, being those tracts known as Eckert's Bayou and Lake Como and a lot which appears on the Trimble and Lindsey Survey opposite Teichman's Point. This latter "upland" tract is now submerged; the former two not only are currently submerged, but also were submerged at the time of original survey.

After reviewing applicable evidence and law, I am of the opinion that the judiciary would reject the State's claims to Lake Como and Eckert's Bayou in favor of private interests. As for the "upland" lot, the mirror doctrine of erosion/accretion applies.

See Galveston Co. SK File 73 for Quitclaim from Mitchell

Energy to State on Eckert's Bayou.

Counter 23681



**THE ATTORNEY GENERAL
OF TEXAS**

**JIM MATTOX
ATTORNEY GENERAL**

August 29, 1986

Mr. Spencer Reid
Director, Asset Analysis & Disposition
General Land Office, Room 738
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File No. Sketch File 63
Galveston County
Ownership of Eckert's Bayou & Lake Como
Filed October 31
By GARRY M. HERRON, Comptroller
Douglas Howard 10 89

Mr. Spencer Reid
Page 2
August 29, 1986

If you should desire further elaboration on this topic, please do not hesitate to contact me. I will be happy to furnish any information you may request.

It is always a pleasure to work with you.

Sincerely,

Sharon

SHARON GILLESPIE
Assistant Attorney General

Energy Division
P. O. Box 12548, Capitol Station
Austin, Texas 78711-2548
(512) 463-2012

SG:csa

Mr. Spencer Reid
Page 2
August 29, 1986

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Sharon

SHARON GILLESPIE
Assistant Attorney General

Energy Division
P. O. Box 12548, Capitol Station
Austin, Texas 78711-2548
(512) 463-2012

SG:csa

FROM THE DESK OF
KEN CROSS
Assistant Attorney General



11.00

Tom:

Enclosed is a copy of the "open records request" we received yesterday from Ms. Fritiofson re: Eckert's Bayou.

Ken

3-8-90

File No. Sketch File 63A County
Galveston
"Open Records Request" concerning Eckert's Bayou
Filed March 12 19 90
By GARRY MAURO, Com'r
Douglas Howard

Walt Tullioffson
2407-37th St.
Galveston, Tex. 7755

March 1, 1990

Ms. Nancy N. Lynch
Chief, Environmental Protection Div.
Attorney General's Office
P. O. Box 12548
Austin, Tex. 78711-2548

File No. Sketch File 63A
Galveston
Open Records Request concerning Eckert's Bayou
Filed March 12
County
GARRY MAURO, Com'r
By Douglas Howard

Dear Ms. Lynch:

Re: Eckert's Bayou
West Galveston Island

It has come to my attention recently that Eckert's Bayou on West Galveston Island is now designated as a "Private" bayou on Land Commission maps and now belongs to Mitchell Development Corporation. This, as you can imagine, was a startling discovery.

During the Coastal Management Plan public hearing in Galveston yesterday, February 28, 1990, I was advised by Land Commissioner Gary Mauro that his office was so directed to do same by the attorney General's office and that it was the result of an attorney General's opinion, which information was positively shocking.

our, from time immemorial, public bayou has been handed over on a silver platter to the Mitchell Development Corporation by our very respected and looked up to Attorney General's office. We, the public, were not aware that this high legal office was in the business of giving away public property. It is totally unheard of -

I am enclosing newspaper article which will give you some insight on our situation in general and assure you that you will find some self-explanatory. I am also enclosing copy of deed from the year 1930 in which my grandfather, John Egert, Sr., gave to Galveston County a strip of his land on the east bank of Eckert's for the benefit of the public's easy and more convenient access to Eckert's Bayou by auto from Stewart Road instead of coming by boat from the west Galveston Bay side. One could either launch their boats or just enjoy fishing and picnicing along the shore line.

Ekert's Bayou is used daily by the general public as well as our local commercial fishing community.

It is the only such site left and is absolutely free of charge.

The other site on Lake Como was closed by Mitchell Development to prey the public out of the area of the exclusive Pirate's Cove subdivision. The State Park Lake Como side shoreline is not allowed to have a launch site either for that very reason.

There are also property owners on Eckert's Bayou of which I am one (on west bank).

Eckert's Bayou is the major breeding and feeding grounds for shrimp, fish, etc, and its importance to our ever rapidly deteriorating Lake Houston Bay system goes without saying.

and now, I am requesting to be furnished the following information under the provisions of the Texas Open Records Act:

1. all documentation, maps, etc. presented by Mitchell Development Corp, or whatever agency might have done this for them, that initiated this request to make Eckert's Bayou private.

2. all documentation, maps, etc. of the attorney General's office concerning their participation in this matter including all letters written by an attorney Sharon Gillespie. Copy of deed.
3. Copy of the laws whereby the attorney General's office can confiscate public property and give it away to a private entity without due process.
4. Was this an official or unofficial opinion by the attorney General's office.

2, and many others, are anxiously awaiting your reply.

Thanking you in advance, I am

yours very truly,
Eric J. Futrefson

Copy with enclosures to:
Mr. Larry Laurent
Chief, Energy Division
Attorney General's Office
P.O. Box 12548
Austin, Tex. 78711-2548

John Egert

To

County of Galveston, Texas

---Deed---

The State of Texas

County of GALVESTON Know all Men by these Presents:

That I, John Egert of Galveston of the County of Galveston State of Texas for and in consideration of the sum of ONE AND No/100 (\$1.00) Dollars, to me in hand paid by the County of Galveston, Texas, the receipt of which is hereby acknowledged have Granted, Sold and Conveyed, and by these presents do Grant, Sell and Convey, unto the said County of Galveston, Texas, ~~of the County of~~ ~~State of~~ all that certain tract or parcel of land situated in Galveston County, Texas, and more particularly described as follows:

" Fifty (50) feet off of the northerly end of Lot Number 467, Section Two (2), Trimble and Lindsey Survey of Galveston Island, Galveston County, Texas."

TO HAVE AND TO HOLD the above described premises, together with all and singular the rights and appurtenances thereto in anywise belonging, unto the said County of Galveston, Texas, its successors heirs and assigns forever, and I do hereby bind myself and my heirs, executors and administrators, to Warrant and Forever Defend, all and singular the said premises unto the said County of Galveston, Texas, its successors heirs and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof.

Witness my hand at Galveston, Tex. this 29 day of September, A.D. 1930.

Witnesses at Request of Grantor.

John Egert

496

The State of Texas,

County of Galveston

Before me, E.T. Holman, A Notary Public in and for Galveston County, Texas, on this day personally appeared John Egert known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this 29 day of September, A.D. 1930.

(SEAL)

E. T. Holman
Notary Public in and for Galveston
County, Texas.

Filed for Record October 2nd 1930, at 8:50 o'clock, A.M.

Recorded October 2nd 1930, at 11:25 o'clock, A.M.

GEO. F. BURGESS, Clerk By *[Signature]* Deputy

THE STATE OF TEXAS,)

County of Galveston.)

I, GERTRUDE McKENNA, County Clerk, in and for Galveston County, State of Texas, do hereby CERTIFY that the above and foregoing is a true and correct copy of A Deed

JOHN EGERT

TO

COUNTY OF GALVESTON, TEXAS

as the same appears of record in my office, in Deed Record Book No. 455 Page Nos. 495 to 496 Inc.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the impress of the official seal of said County Court, at my office, in the City and County of Galveston, State of Texas, on this the 28th day of August A. D., 1974

GERTRUDE McKENNA,

County Clerk, in and for

Galveston County, Texas.

By

Helma Boudreau

Deputy.



File No. Sketch File 63B
Galveston County
GLO General Counsel Reply to Letter of 3/9/90 Robert M. Moore
Filed March 12 19 90
GARRY MAURO, Com'r
By Douglas Howard

Texas General Land Office

James M. Phillips
General Counsel

Garry Mauro
Commissioner

March 12, 1990

Mr. Robert M. Moore
Moore Professional Building
7511 Broadway
Galveston, Texas 77554-8921

Re: Fritiofson, et al v. Alexander, et al

Dear Mr. Moore:

Commissioner Mauro referred to me your letter of February 9, 1990. Though you did not supply the commissioner with the pleadings in this case, I have reviewed the exhibits you sent to familiarize myself with the issues.

The Texas Historical Commission, Texas Water Commission, Texas Parks and Wildlife Department, Texas Department of Highways and Public Transportation, U.S. Fish and Wildlife Service, and the National Marine Fisheries Service have monitored the project and consulted with the Corps of Engineers and the applicant since it was proposed. At this point, their expertise and their knowledge of the project have obviously put these agencies in the best position to gauge the project's impact.

According to the materials you provided, no resource agency has objected to the lack of an EIS or a full Section 106 review process. Concerns raised by the commenting agencies appear to have been addressed to their satisfaction by placing additional requirements in the Corps of Engineers permit for this project. Specifically, the Texas Historical Commission has succeeded in protecting the undisturbed portion of the archaeological site by having Mitchell redesign the project to avoid the site and place it under a conservation easement in favor of the commission. The General Land Office applauds these and similar steps taken by the resource agencies.

I can not recommend to Commissioner Mauro that he take a position that essentially implies the Corps of Engineers acted unreasonably in this case. Based on the information you have supplied, I see insufficient justification for the General Land Office to second guess the resource agencies at this late date in the proceedings.

Stephen F. Austin Building
1700 N. Congress Avenue
Austin, Texas 78701
(512) 463-5235

counter 236.90

Mr. Robert M. Moore
March 9, 1990
Page 2

I would like to take this opportunity to clarify the situation on ownership of Eckert's Bayou. You have publicly implied that the General Land Office has relinquished title to all of Eckert's Bayou to Mitchell Development Corporation of the Southwest. You have mistakenly concluded that a land office map designating the bayou as "private" is equivalent to designating the bayou as "Mitchell's".

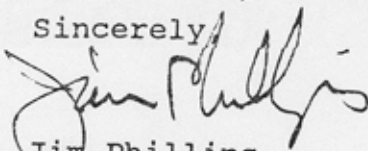
Mitchell claims the bayou was included in the state's grant of the west part of Galveston Island to Edward Hall and Levi Jones in 1840, which the legislature confirmed in 1854. Mitchell's claim is not exclusive of other littoral owners and is not based on any act of the current or any former land commissioner. If the state conveyed Eckert's Bayou into private hands, it was done 150 years ago to Hall and Jones.

The map in question is one among a set that our surveying division is updating. The preliminary "private" designation resulted from the informal opinion letter from an assistant attorney general being in the survey file. That letter resulted from a mineral leasing inquiry completely unrelated to the Mitchell project. The map has not been approved by the Commissioner or School Land Board, nor is it the official ownership map.

There is no basis either in the assistant attorney general's letter or from the land office map for your inference that the General Land Office or attorney general's office gave Mitchell all or any part of the bayou. Title to Eckert's Bayou has never been adjudicated to be in private hands and the General Land Office has never recognized private claims to submerged land under the Hall and Jones grant.

I hope this resolves any misunderstanding you may have had on this matter.

Sincerely,



Jim Phillips
General Counsel

JP/TN/car

File No. Sketch File 63C
Galveston County

GENERAL LAND OFFICE Filed October 7 19 96

GARRY MAURO
COMMISSIONER

GARRY MAURO, Com'r
By Douglas Howard MEMORANDUM

DATE: March 14, 1995

TO: Galveston Island File
FROM: LaNell Aston
SUBJECT: Ownership of lakes on Galveston Island

Galveston Island was subdivided by Trimble and Lindsey according to the 1837 map on file in the GLO. Some of the lots were sold to individuals and then the lots that were sold were patented.

The Republic of Texas granted the entire island to Hall & Jones and issued a patent on same November 28, 1840. Some of the lots that had been sold and patented previously were listed in the Hall & Jones patent as being excluded from the patent. These lots are colored red on the attached map. The remainder of the lots that were patented but not listed in the Hall & Jones patent as being excluded are colored in green on the attached map.

The lots that are not colored on the attached map were not sold or patented separately from the Hall & Jones patent.


It appears that the green lots were patented twice: in the patent for the individual lots and in the patent to the entire island to Hall & Jones.

The Hall and Jones patent calls for a meander call around the island. The patents for the lots call for a specific lot and division number.

It is the opinion of this office that the patents to the lots that are located on any of the interior lakes also conveyed title out of the state to that portion of the lake. That is, the patents on the red and green lots conveyed that portion of the lake.

The lots that are not colored were conveyed out of the state under the Hall & Jones patent. Since the Hall & Jones patent contains meander calls, it is the opinion of this office that the submerged lands would not have been conveyed out of the state on any tidally influenced interior body of water. The lots that are not colored on the attached map will require an easement from the GLO on any activity affecting submerged tide waters.

These conclusions were drawn from research and discussions with Spencer Reid, Senior Deputy Commissioner and Ben Thomson, Director of Surveying and Associate Commissioner.

 The Woodlands Corporation

2201 Timberloch Place
The Woodlands, Texas 77380
(713) 377-5700

March 20, 1997

Mr. C. Bruce Smith
General Land Office
State of Texas
Stephen F. Austin Building
1700 North Congress Avenue
Austin, Texas 78701

File No. Sketch File 63 D
Galveston County
Filed April 28 19 97
By GARRY MAURO, Com'r
Douglas Howard

Re: Ownership of Submerged Lands in Eckert Bayou

Dear Mr. Smith:

It has come to our attention that several land owners whose property is adjacent to Eckert Bayou have received letters from the LaPorte Field Office of Texas General Land Office ("GLO") alleging that these property owners are required to obtain a permit from GLO because they have constructed structures on coastal public lands. Our records reflect that these structures are on privately owned land.

The majority of the submerged lands in Eckert Bayou are owned by The Woodlands Corporation, successor by merger to Mitchell Development Corporation of the Southwest ("TWC"). Attached for your reference is a copy of a letter dated June 1, 1987, written by Sharon Mattox of Vinson & Elkins which sets forth TWC's legal position in this matter. Also enclosed is a copy of a letter dated August 26, 1986, from the then Assistant Attorney General, Sharon Gillespie. After reviewing the evidence and the law, it was Ms. Gillespie's opinion that a court would likely reject the State's claim to Eckert Bayou in favor of TWC's private ownership interest. In North American Dredging Co. v. Jennings, 184 S.W. 287 (Tex.Civ.App.--Galveston 1916, no writ), the Court held that Offatts Bayou is privately owned even though it is submerged beneath navigable water. That Court's holding is consistent with Ms. Gillespie's opinion regarding the ownership of Eckert Bayou.

It is, therefore, our position that no land owner is required to obtain a permit from the GLO for structures that extend into Eckert Bayou because those structures are on privately owned land. If the information contained in this letter, including the enclosures, does not resolve this matter, please contact me at (713) 377-6731.

Pg. 1 of 3

Mr. C. Bruce Smith
March 20, 1997

Page 2

Your cooperation in resolving this matter is appreciated.

Sincerely,

A. Karen West
A. Karen West
Counsel

AKW/djz
Enclosures

Galveston Co. SK F. 63D
Pg. 2 of 3

Counter 23694



Texas General Land Office
Garry Mauro, Commissioner

Stephen F. Austin Building
1700 North Congress Avenue
Austin, Texas 78701-1495
(512) 463-5001

March 25, 1997

A. Karen West, Counsel
The Woodlands Corporation
2201 Timberloch Place
The Woodlands, Texas 77380-1181

Dear Ms. West:

Thank you for your letter of March 20, 1997, regarding ownership of submerged lands in Eckert Bayou, Galveston County, Texas.

Please note that the letter was received without the referenced enclosures. We are, however, initiating a detailed evaluation of your concern and will advise you by letter of our findings in coming weeks.

Please call me at (512) 463-5055 if you have questions or need additional information.

Sincerely,

C. Bruce Smith
Director of Permitting

Galveston Co. Sk. F. 63D
Pg. 3 of 3

Tex.)

of bayou land has the exclusive right to take oysters within the limits of his grant, the statute being a valid exercise of legislative power by the Legislature in encouraging production of oysters.

[Ed. Note.—For other cases, see Fish, Cent. Dig. § 10; Dec. Dig. ¶7(2).]

Appeal from District Court, Galveston County; Clay S. Briggs, Judge.

Suit for an injunction by Walter Jennings and others against the North American Dredging Company and others. Judgment for defendants, and plaintiffs appeal. Reversed and rendered.

Stewarts, of Galveston, for appellants. Frank S. Anderson, of Galveston, for appellees.

PLEASANTS, C. J. This suit was brought by appellants against appellees to enjoin them from taking oysters from that portion of Offatt's bayou, in Galveston county, which is embraced within the boundaries of a grant from the state, under which appellants hold title to land in said bayou. It is unnecessary, for the purpose of this opinion, to set out the pleadings of appellants. The defenses set up in the court below are thus summarized in appellees' brief:

"(a) That said Offatt's bayou is, and always has been, an inlet or small bay, forming a part of the tidewaters of Galveston Bay and the Gulf of Mexico, and through and into which the tide from said gulf and bay ebbs and flows.

"(b) That said bayou is navigable water, and that the same is navigated, and always has been, by small sailboats and other craft; egress and ingress being had thereto from the said Galveston Bay.

"(c) That said bayou is, and always has been, a natural oyster bed, and that as many as five barrels of oysters may be found within 2,500 square feet of any position of said bayou, and that the same has always been used by the public for the purpose of fishing and digging oysters therein and therefrom.

"(d) That the plaintiffs, nor either of them, have ever been granted exclusive right to fish and remove oysters therefrom."

The trial in the court below without a jury resulted in a judgment in favor of the defendants, denying the injunction asked by plaintiffs. The learned trial judge filed a written opinion, which contains the following fact findings that are sustained by the uncontroverted evidence, and which we adopt as our conclusions of fact:

"That Offatt's bayou is a navigable stream, where the tide ebbs and flows, and has always been such, and a part of the public waters of the state of Texas and the former Republic of Texas; that the oysters in said bayou are, and constitute, and have always been, natural oyster beds and reefs, and there have been no private oyster beds, or oysters planted by plaintiffs or those under whom they claim, in said bayou, or upon the lands thereunder involved in this suit.

"I further find that from that part of said bayou, and the land thereunder involved in this suit, defendants and others have always openly and constantly, without interruption or interference on the part of any one claiming to own or occupy the lands under the waters thereof, or

For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes *Application for writ of error pending in Supreme Court.

(Tex.) ment from Mexi-state, they being El Paso county laws of the Unit-importation, all knew; that de- spective the cattle, without inspection

ted to the judge upon he granted a er, and set the action for Novem- general and spe- g specially to the : Admit that it ke application to uestration under he cattle held by and possibly all of l handled as the hat the true and e might have op- or the proceeds he plaintiff, who, unlawfully acquir- as inspector and ls, are bound un- f office to perform e statute, are sub- oing so, and will order of court, etc. ow have or ever g any false report f El Paso county, ceed against said r than as the law

ivil Statutes 1911: e power to and may rked or unbranded e freshly marked or e fresh marks or h are about to be out of the county, e accompanied by the ntified by the pres- om the person pro- igned by him or his etc.

e power to and may rbranded animals o- les upon which the- ertained, which ar- d out of the county- slaughtered, unless- identified as provided

the injunction upon- idence having been- y his duty to do. for seizure only e unbranded, or if- rked or unbranded, that the cattle were- described in the pe- o not deny that the- lliged by plaintiff, he brands could not

On Rehearing.

Appellants urge the well-settled principle of law that a public officer will not be enjoined from performing the duties of his office under a valid law, and cites many authorities.

We are of opinion that the record presents no reason for us to pass upon the validity or constitutionality of the statutes involved, nor as to whether shipments of cattle from the republic of Mexico through Texas, if stopped in transit, are subject to inspection or seizure thereunder by the inspector, because, granting that the statutes are valid and applicable to such shipments in proper cases, the plaintiff, by sworn pleading, shows that the cattle in question were not subject to seizure under any of the provisions of the statutes, and the inspector having admitted that he intended to sequester the cattle, if not enjoined by a court of competent jurisdiction, and in his answer failed to allege any facts which would authorize the process, in view of the plaintiff's allegations that none existed. We simply hold that there is no authority for the writ, and therefore no duty to be performed by the hide and animal inspector, and his declaration that he intended to act without showing authority to act clearly means that he was to act outside of the statutory line of his duty, and upon the latter theory alone is the opinion of the court predicated. The motion is therefore overruled.

NORTH AMERICAN DREDGING CO. et al. v. JENNINGS et al. (No. 7069.)

Court of Civil Appeals of Texas, Galveston. Feb. 24, 1916. Rehearing Denied March 16, 1916.)

FISH ¶7(2)—OYSTER BEDS—GRANT BY PUBLIC AUTHORITIES—VALIDITY.

Under Vernon's Sayles' Ann. Civ. St. 1914, Art. 3982, providing that, whenever any creek, bayou, lake, or cove is within the bounds of an original grant, the lawful occupant thereof shall have the exclusive right to use it for gathering, planting, or sowing oysters, although the original grant from the Republic of Texas, confirmed by the Legislature of the state of Texas, did not give such exclusive right, the grantee

W.D. April 28
GARRY MAURO, Court
Douglas Howard
Galveston
Sketch File 63E
County

Galveston Co. sk. File 63E
Pg. 1 of 2

counter 23696

otherwise, exercised the right of fishing and digging oysters.

"I find that the plaintiffs are the owners of the land under Offatt's bayou designated in their petition, both under patent from the Republic of Texas on November 28, 1840, to said Hall and Jones, and by special act of the Legislature of Texas, February 9, 1854, confirming said grant, decree of partition, and mesne conveyance thereunder."

In adopting these fact findings we understand the first finding to mean only that Offatt's bayou, being a navigable stream in which the tide ebbs and flows, is a public water of which the state has jurisdiction and control for any and all purposes except such as it may have relinquished to private individuals.

The third finding of fact by the trial court shows that the state has parted with its title to the land under said bayou involved in this suit.

It may be conceded that the trial court is correct in the legal conclusion that the grant by the sovereignty of the title to the land under navigable waters does not carry with it the grant to the exclusive right of fishing in the waters covering said grant, unless the grant expressly includes such right. The original grant under which appellants hold title does not give such right, but an act of the Legislature of this state passed in 1905 contains the following provisions:

"Whenever any creek, bayou, lake or cove shall be included within the metes and bounds of any original grant or location in this state, the lawful occupant of such grant or location shall have the exclusive right to use said creek, lake, bayou or cove for gathering, planting or sowing oysters, within the metes and bounds of the official grant or patent of said land. Provided, that the fish and oyster commissioner may require the owner of oysters produced on such land when offered for sale to make an affidavit that such oysters were produced on his land." Vernon's Sayles' Statutes, art. 3982.

It seems to us that the language of this statute is so plain and definite that there is no room for construction. The authority of the Legislature to grant the exclusive right to the owners of the land covered by the public navigable waters of this state to take oysters therefrom or to plant oysters in said waters cannot be doubted. Jones v. Johnson, 6 Tex. Civ. App. 262, 25 S. W. 650. There is nothing in the act of which the article above quoted is a part, inconsistent with said article. On the contrary, it seems to us that granting to the owners of the land covered by navigable waters the exclusive right to gather and plant oysters in such waters subserves the manifest purpose of the act, which was to preserve and protect the natural oyster beds of this state, encourage the planting and growing, and thus increase the supply of oysters.

We think the trial court erred in denying the injunction prayed for by plaintiffs, and, the facts being undisputed, the judgment should be reversed, and judgment here ren-

dered, granting the injunction in accordance with the prayer of plaintiffs' petition, and it has been so ordered.

Reversed and rendered.

GAUSS-LANGENBERG HAT CO. v. AL-
LUMS et al. (No. 67.)

(Court of Civil Appeals of Texas. Beaumont. Jan. 28, 1916. On Motion for Rehearing, March 2, 1916.)

1. JUDGMENT \Leftrightarrow 787 — PRIORITY BETWEEN JUDGMENTS AND CONVEYANCES—ERRONEOUS DESCRIPTION IN CONVEYANCE.

Though a deed executed and delivered before the recovery of a judgment against the grantors described the property as lots 2 and 3 in block 2, instead of block 1, it conveyed the property and passed the title to the grantees; and the fact that a new deed was subsequently executed to correct the description did not change the legal status of the grantor and grantee, especially where the grantee took immediate possession of the land intended to be conveyed upon execution of the first deed, and hence the judgment lien did not attach to the land.

[Ed. Note.—For other cases, see Judgment, Cent. Dig. §§ 1361, 1363-1367; Dec. Dig. \Leftrightarrow 787.]

2. PARTNERSHIP \Leftrightarrow 68(1) — CONVEYANCE TO PARTNERSHIP—LEGAL TITLE IN PARTNER.

A deed to C. R. H. & Co., a firm incapable of holding title, and composed of C. R. H. and another, placed the title in C. R. H. in trust for the firm or partnership.

[Ed. Note.—For other cases, see Partnership, Cent. Dig. §§ 101-107, 109-111; Dec. Dig. \Leftrightarrow 68(1).]

Appeal from District Court, Hardin County; L. B. Hightower, Judge.

Action by J. J. Allums and another against the Gauss-Langenberg Hat Company. From a judgment for plaintiffs, defendant appeals. Affirmed.

B. L. Aycock, of Kountze, for appellant. Coe & Coe and Singleton & Nall, all of Kountze, for appellees.

MIDDLEBROOK, J. Briefly stated, this was an injunction suit brought by J. J. Allums and C. R. Hooks, composing the firm of C. R. Hooks & Co., to enjoin the sale of lots Nos. 2 and 3, in block No. 1, Williams' addition to the town of Kountze. A temporary injunction was granted, and upon final hearing the injunction was perpetuated. Hooks & Co. bought the property described on the 17th day of May, 1907, from L. G. Roberts and wife, Dora Roberts, and the deed was duly recorded. They paid \$1,500 for the lot and store building which stood upon it, and immediately went into possession of the property, having at the same time purchased the stock of goods then in the building, and Hooks & Co. proceeded with the business and was the occupant of said building and property at the time of the bringing of the suit, still doing business there. In December, 1908, appellant, Gauss-Langenberg Hat Company, secured a judg-

\Leftrightarrow For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes

Galveston Co. Sk. File 63E

B. 2 of 2



The Woodlands Corporation

2201 Timberloch Place
The Woodlands, Texas 77380
(713) 377-5700

Ben
4-4-97
Attachments given
to me today.
Re: Eckert Bayou
C2

March 31, 1997

Mr. C. Bruce Smith
General Land Office
State of Texas
Stephen F. Austin Building
1700 North Congress Avenue
Austin, Texas 78701

Re: Ownership of Submerged Lands in Eckert Bayou

Dear Mr. Smith:

Attached please find the referenced enclosures which were inadvertently omitted from my letter dated March 20, 1997.

I appreciate your attention in proceeding with my request as you have indicated. I look forward to receiving your evaluation of the above-referenced matter.

Sincerely,

A. Karen West
A. Karen West
Counsel

AKW/djz
Enclosures

File No. Sketch File 63 F
Galveston County
Filed April 28 19 97
By GARRY MAURO, Clerk
Royles Howard

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June 1, 1987

Mr. C. Bruce Smith
Encroachment Program Coordinator
General Land Office
Stephen F. Austin Building
1700 North Congress Avenue
Austin, Texas 78701

Dear Mr. Smith:

By letter dated August 15, 1986, your office asserted that portions of the work proposed in Corps of Engineers Permit Number 17800 by Mitchell Development Corporation of the Southwest would affect state-owned submerged land. The work is proposed to take place in Eckert Bayou, Galveston County, Texas. Mr. G. David Baumgardner, of Mitchell Development Corporation of the Southwest, subsequently informed your office that all land proposed to be affected in Eckert Bayou was privately owned. Your office requested that Mitchell provide analysis to support this position. Mitchell Development Corporation of the Southwest has requested that we review the reported cases concerning private ownership of submerged lands on Galveston Island for the specific purpose of determining whether it must obtain authorization from your office for the work proposed by Permit Number 17800. While we have not made an examination of the chain of title, the reported cases indicate that the State of Texas does not own these submerged lands, rather, title long ago passed to private parties. Thus, all activity authorized by Corps Permit Number 17800 are to be done on privately owned lands.

Title to the property in Eckert Bayou affected by Permit Number 17800 originally passed out of Government hands by a patent from the Republic of Texas, through its President, Mirabeau B. Lamar, to Edward Hall and Levi Jones,

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which was issued on November 28, 1840. This initial patent of 18,215 acres was held void by the Supreme Court of the Republic of Texas in State v. Delesdenier, 7 Tex. 75 (1851). The Texas legislature, by an act dated February 8, 1854, confirmed the patent and stated that "Texas disclaims any title in and to the lands described in said patent."

The clear intent of the Jones and Hall patent was to grant title to certain submerged lands to private parties. Indeed, the proposition that the State can convey land beneath navigable waters to private parties was established as early as 1899, in a case involving land submerged beneath Offats Bayou, Galveston Island, Texas. In Baylor v. Tillebach, 49 S.W. 720 (Tex. Civ. App. - Galveston 1899, no writ), the court considered a trespass to try title suit involving a tract of land submerged beneath Offats Bayou. There, the original survey expressly called for meander of the Bay. The court held that the effect of the patent was to convey the land comprising the bed of the bayou. The court also expressly held that the sovereign could convey lands beneath navigable waters. Accord State v. Bradford, 50 S.W.2d 1065 (Tex. Supp. 1931); North American Dredging Company v. Jennings, 184 S.W. 287 (Tex. Civ. App. - Galveston 1916, no writ).

Survey calls that meander the bay, such as those contained in the Jones and Hall patent across the mouth of Eckert Bayou, clearly convey the bed of the water body inside the mouth to a private party. The Texas Supreme Court has clearly ruled on the issue of where a bay survey line is located:

[I]n following the shoreline of a bay...the survey, when it comes to a smaller body of water or a river entering a bay, should go from headland to headland rather than up the river or smaller body of water to the limits of the tide.

Giles v. Basore, 278 S.W.2d 830, 836 (Tex. Supp. 1955). The Giles court also cited as supporting authority for this proposition Knight v. United States Land Association, 142 U.S. 161 (1891), State v. Bradford, 121 Texas 515 (1932), and Horton v. Pace, 9 Tex. 81 (1854).

Once title to land has been granted in a patent, the sovereign is bound and is not entitled to disregard its grant. Courts do not look favorably on tardy arguments that a patent is invalid, or should be radically reinterpreted. In United States v. Certain Tracts of Land, 93 F.Supp 182 (S. D. Tex. 1950), the court was asked to determine whether private persons, or the State of Texas were to receive condemnation monies for lands submerged beneath Oyster Creek, Brazoria County, Texas. The court found that the landowners held the land under grants over one hundred years old, and that during that period the sovereign had not questioned their validity. The court noted that the grants were shown on official state maps and the state had received tax monies on the land, thereby acquiescing in the landowners' claims. The court wrote,

Texas courts recognize the sanctity of grants and patents and do not set them aside, wholly or in part, except for grave reasons. The grants here should not be lightly regarded. If this were a suit by the State to set the grants aside, or to recover excess therein, the State would have a laboring oar. It would, without doubt, have to combat all the presumption of regularity indulged in favor of the long asserted claim and title of landowners. It would unquestionably have the burden of showing that such surveys were and are excessive.

Id. at 185. The federal district court clearly and correctly stated Texas law. In considering the Jones and Hall patent, which is the original grant covering the property in Eckert Bayou, the Houston Court of Civil Appeals held that title had passed to private parties, and further held that a grant by the sovereign must be upheld as though it were a controversy between private persons: "The sovereign must fully honor its valid conveyances and contracts." Seaway Company v. State, 375 S.W.2d 923, 929 (Tex. Civ. App. - Houston 1964, writ ref'd N.R.E.). Other reported cases considering title to submerged lands around Galveston Island have uniformly concluded that title passed to private parties. E.g., Chuoke v. Filipas, 10 S.W.2d 807 (Tex. Civ. App. - Galveston 1928); State of Texas v. Chuoke, 154 F 2nd 1 (5th Cir. 1946), cert. denied, 329 U.S. 714 (1946).

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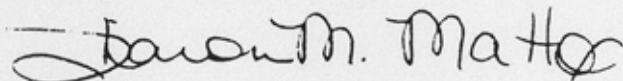
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Moreover, the conveyance to private parties made by the Jones and Hall grant has long been recognized in the community. The reputation of the submerged lands at issue is plainly that it belongs to private parties. Numerous maps exist showing lot lines on the disputed portion of Eckert Bayou. Private parties have paid taxes on the land for many years.

In summary, the state has not previously litigated the ownership of these particular lots submerged beneath the waters of Eckert Bayou, but the holdings of both state and Federal courts faced with similar questions over the ownership of land granted under the Jones and Hall patent have indicated that ownership of these similarly situated lands have passed out of the state and into private parties. Therefore, we believe that the work proposed under Corps of Engineers Permit 17800 will not affect state-owned submerged land. Accordingly, we do not intend to make application for an easement for this work. Should you have any questions, please feel free to telephone me at 713-654-4598.

Very truly yours,



Sharon M. Mattox
Attorney for
Mitchell Development Corpora-
tion of the Southwest

0559/2939
cc: Mr. -David Baumgardner
MITCH5/07

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LANELL ASTON → WLF
GENERAL LAND OFFICE 11-16-89

**THE ATTORNEY GENERAL
OF TEXAS**

**JIM MATTOX
ATTORNEY GENERAL**

August 29, 1986

File No. Sketch File 63
Galveston County
Ownership of Eckert's Bayou & Lake Como
Filed October 31
By DAVID H. HURD, Com'r
Douglas Howard

Mr. Spencer Reid
Director, Asset Analysis & Disposition
General Land Office, Room 738
Stephen F. Austin Building
1700 N. Congress
Austin, Texas 78701

INTER-AGENCY MAIL

Re: Inquiry Pertaining to Ownership
of Submerged Parcels of Land
on West Galveston Island

Dear Spence:

As you are aware, an informal opinion from a staff member of the Attorney General's Office is not tantamount to an Attorney General's Opinion. With this caveat, I am providing the following informal assessment regarding ownership of certain lands located on West Galveston Island, being those tracts known as Eckert's Bayou and Lake Como and a lot which appears on the Trimble and Lindsey Survey opposite Teichman's Point. This latter "upland" tract is now submerged; the former two not only are currently submerged, but also were submerged at the time of original survey.

After reviewing applicable evidence and law, I am of the opinion that the judiciary would reject the State's claims to Lake Como and Eckert's Bayou in favor of private interests. As for the "upland" lot, the mirror doctrine of erosion/accretion applies.

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Mr. Spencer Reid
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August 29, 1986

If you should desire further elaboration on this topic, please do not hesitate to contact me. I will be happy to furnish any information you may request.

It is always a pleasure to work with you.

Sincerely,

Sharon

SHARON GILLESPIE
Assistant Attorney General

Energy Division
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SG:csa

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