

GENERAL LAND OFFICE

STATE OF TEXAS

AUSTIN

September 28, 1903.

Dear Sir:

This department is in receipt of your favor of the 25th inst., which is as follows:

" J.C. Russell filed on a tract of 213.42 acres of land in Nueces County, under Act of Feb. 23, 1900, and as amended by special session of 1901. This tract is a portion of a vacancy that was more than 640 acres at the date of the passage of the law. The balance has been sold and Mr. Russell now insists on buying these 213 acres as detached land without condition of settlement. I beg your opinion as to whether or not these 213 acres can be sold as detached land. The language in this statute is so similar to that of the Act of July 14, 1879, that this office has been following the construction placed upon the Act of 1879 by the courts."

In reply, you are advised that the 213 acres of land referred to in your letter can not be sold as detached land without actual settlement under the provisions of section 5 of the Act of February 23rd, 1900, or any other of the provisions of that act. We think that the provisions of section 5 of the Act of 1900 must be construed to refer to tracts that contain 640 acres or less at the time of the passage of that Act, and that the case of Garrett vs. Weaver, 70 Tex. Rep., 463, is in point and conclusive of this question. The purchaser who claims the right to buy this 213 acres as detached land evidently basis his contention upon the case of Thomas vs. Wolfe, 16 C.C.A., 23. We do not think the latter decision applies. This, as we understand, is in accordance with the ruling of your department, which we think is correct.

Yours very truly,

counter 32863

Note—All payments for School and Asylum Lands must be made to the State Treasurer, and not be sent to this office.

Sketch 53
File No. Nueces County
Letter on vacancy application
Filed Dec 3 19 04
By GARRY MAURO, Com'r
Howell

Evans
Copy Opinion atty
Gen. detached
Lund.
Oct 1900

counter 32864

GENERAL LAND OFFICE
STATE OF TEXAS.
AUSTIN

CHARLES ROGAN, Commissioner.
J. J. TERRELL, Chief Clerk.