

Brief of Authorities in regard to applications for permits on university lands in Winkler County, Texas.

PROPOSITION.

Applications for permits to prospect for petroleum and gas on the unsurveyed university land in Winkler County, Texas, should be filed with the County Surveyor of Reeves County because Winkler County was never organized as a land district, and is attached to Reeves County for surveying purposes, and the County Surveyor of Reeves County, or his deputy is ex-officio County Surveyor of Winkler County, Texas, and the County Clerk of said county has no records in which to record such applications.

Statement of Facts.

The following affidavit as made by the County Surveyor of Reeves County shows the facts with regard to the records, to-wit:

STATE OF TEXAS |

COUNTY OF REEVES |

I, A. M. Randolph, County Surveyor of Reeves County, Texas, and by virtue of law County Surveyor of Reeves, Loving and Winkler Counties, Texas, hereby certify under oath:

1. That I am the duly elected, qualified and acting surveyor of Reeves County, Texas, and have been such surveyor for 32 years, except the years, 1909, 1910, 1911 and 1912 when John C. Allen was such surveyor.

2. That during all of said time, by virtue of law, I have had the custody, control, and care of the surveyor's records of Winkler County, which said County during all of said period and at the present time is attached to Reeves County for land surveying purposes; that as such surveyor my surveys in Winkler County, Texas, have at all times been accepted by the General Land Office as the official surveys of and in that County.

3. That Winkler County has never qualified under the law as a separate land district; that it has never elected a surveyor, fixed the County lines, or had any surveyor's records, except such as are now in my possession as surveyor of the land district including Winkler County; that said County has never been provided with the map or maps of surveys made in such County, nor with a file or entry book of the field notes of the surveys made in such county, but all such records have been filed in my office and are in my custody as the surveyor of said district including Winkler County.

4. That among the surveys and records of Winkler County in my custody are volumes A, B, and C, being copies of the field notes of Public School Land in Winkler County, Texas, made under the direction of the General Land Office, by W. D. Twitchell, State Surveyor, and certified by him in form, substantially as follows:

"I, W. D. Twitchell, State Surveyor, hereby certify, that the field notes contained in this volume, from page 1 to 46 inclusive, are true and correct copies of the original field notes, being filed in the General Land Office on the 1st day of August, 1920. W. D. Twitchell, State Surveyor."

which said certified copies were deposited in my office by the General Land Office of the States of Texas, and with me, as the custodian of the surveyor's records of Winkler County, as provided by Law, and said records and all other surveyor's records of said Winkler County, before and since said time to the present date have been kept by me and in my possession, and all official surveys made in said County, and the field notes thereof, are recorded in my office as provided by law, and such surveys in said County made by me have at all times been recognized by the General Land Office as the official surveys of said County, and no other surveyor, outside of the State Surveyor, has any jurisdiction over surveys made in said County.

5. That the County Clerk of Winkler County is not the custodian of the surveyor's records of said County, and has no surveyor's records of said County, nor the records required to be kept by law by the County Surveyor of said County, but all such records are in my custody, control, and possession as ex officio county surveyor of said Winkler County.

6. That the General Land Office of the State of Texas has always recognized the County Surveyor of Reeves County as being the official custodian of the surveyor's records of Winkler County, Texas, and as such the Commissioner of the General Land Office has under Art. 5349, R. S., forwarded to my office certified copies of all field notes made by State Surveyors in Winkler County, Texas, and same have been kept in my office as part of the official surveyor's records of Winkler County, Texas.

Given under my hand officially at Pecos, Texas, this 2nd day of April, A. D. 1920.

(Signed) A. M. Randolph
County Surveyor of Winkler,
Reeves and Loving Counties,
Texas.

Subscribed and sworn to before me this 2nd day of April, A. D. 1920.

(Signed) J. F. Caroline
Notary Public, Reeves County, Tex.

SMAL.

The County Clerk of Winkler County certifies as follows:

STATE OF TEXAS |
COUNTY OF WINKLER

I, G. C. Dawson, County Clerk of Winkler County, Texas, hereby certify:

1. That I am the duly elected, qualified, and acting County Clerk of Winkler County, Texas, and have held said position for all the period since the organization of said County except the first three years; that as such officer I have charge and custody of all the records of Winkler County.

2. That Winkler County has never organized as a separate land district, nor surveyed and fixed its boundary lines; nor has it ever had a county surveyor, duly elected and qualified; that since the organization of said County, as well as prior thereto it has been attached to Reeves County for land surveying purposes, and the surveyor's records of said County, so far as I know are still in the possession and custody of the County Surveyor of Reeves County.

3. That prior to about June 12th, 1919, no applications to prospect for minerals on the States unsurveyed areas situated in Winkler County, nor any applications to purchase such unsurveyed areas had ever been filed in my office; that on or about said date I received the first application to prospect for such minerals upon a portion of the States unsurveyed areas, which said application was forwarded to me by A. H. Dunlap, County Surveyor of Ward County, who wrote me to procure a blank book and mark it "County Surveyor's Record", and to record such applications in said book. Since said date there have been filed with me a number of such applications to prospect for minerals on such unsurveyed areas, and some field notes purporting to have been made by the County Surveyor of Reeves County have been forwarded to me. Having no other record in which to record such matters, I procured a blank book and have recorded such applications as have been received by me in such book, which I expect to label "Surveyor's Record". That all of the entries in said book were made by me or under my direction.

4. There are no surveyor's records in my custody as County Clerk of Winkler, other than the volume started by me, as aforesaid on or about June 12, 1919.

5. It has been my understanding that all the official surveys made in Winkler County, since its organization, have been made by the County Surveyor of Reeves County, and of the land district in which Winkler County is located, and that his records of such surveys are kept by him at Pecos, Texas.

6. There are in Winkler County between thirty and forty voters living on ranches scattered over the County. There is no settled community or town in the County, other than Kermit, the County seat, where three families only live, that is, the County Clerk, County Judge and Sheriff. That Pecos, Reeves County, Texas, is the nearest settled community to Winkler County located in the land district of Reeves, Loving, and Winkler Counties, but there are other settled communities nearer, but same are not located in either Reeves, Loving or Winkler Counties.

Given under my hand and seal of office this 3rd day of April, A. D. 1920.

(Signed) G. C. DAWSON
County Clerk, Winkler County, Texas.

SEAL.

The County Surveyor of Reeves County certifies that he has never appointed a deputy under the provisions of article 5317 to be the County Surveyor of Winkler County. His certificate is as follows:

STATE OF TEXAS |
COUNTY OF REEVES |

I, A. H. Randolph, County Surveyor of Reeves, Loving and Winkler Counties, Texas, hereby certify that I have been County Surveyor of Reeves, Loving and Winkler Counties since the year 1887, with the exception of the years 1910, 1911, 1912 and 1913, and as such have had charge and custody of the Surveyor's records of said counties. That I have never appointed a deputy surveyor to be the county surveyor of Winkler County under the provisions of Art. 5317, R. S., because Winkler County is a sparsely settled county, having only about 30 or 40 voters in the County, and without any settled community, and there has never been sufficient surveying work in said county to justify the appointment of such a deputy, and all such work has been done

or district for which he was elected, with the plats thereof that he may make, whether private or official; and such record shall be open to the inspection of the public; for which service the surveyor may charge, in addition to the fees now allowed by law for field work, twenty cents per hundred words for such record.

Art. 5317 - SPECIAL COUNTY SURVEYOR FOR UNORGANIZED COUNTIES - It shall be the duty of each district surveyor, within twenty days after his election, to appoint as his deputy a special county surveyor for each organized county within his district, who shall hold his office during the term of his principal, unless sooner superceded by the appointment of another as his successor. The district surveyor shall immediately notify the commissioner of the general land office of every such appointment. Each special county surveyor so appointed shall have all the powers, perform all the duties and be subject to all the penalties appertaining to county surveyors, and shall keep, in addition to the returns to be made to his principal, a record and map of all the transactions in his office, to become part of the county surveyor's records of such county whenever it may be organized. All such special county surveyors shall reside and keep their offices in their respective counties, if there be settlements in the same, but if there be no settlements in the county, then at the nearest town to such county. Whenever any county may elect a county surveyor, who shall have qualified and given bond and who shall have procured the maps and records required by law, the district surveyor, within whose district such county may have been or may be at the time, and his deputy shall cease to exercise any official acts within the same.

Art. 5322. - SURVEYOR NOT AUTHORIZED TO SURVEY, UNTIL, ETC - Any surveyor, elected as provided by law, in a county not previously a separate land district, shall procure a certified map of the surveys of said county, and a certified copy of all files, applications and locations of said county belonged, and file the same in his office for the inspection of any one interested in examining the same.

These acts relating to the organization of a county as a separate land district are followed by the following provision:

Art. 5333 - COUNTY CLERK SHALL TAKE CHARGE OF BOOKS, ETC - WHEN - Whenever an organized county from any cause has not a qualified county surveyor, the county clerk of such county is hereby required to take charge of all records, maps and papers belonging to the county surveyor's office and safely keep the same in his office.

In construing the act of June 20, 1917, it must be considered in conjunction with these other statutes so as to make them all harmonize in a workable scheme. Winkler County, since the act of 1886, has been attached to the land district of Reeves and Loving Counties, and is under the jurisdiction of the county surveyor of that district who is the only surveyor authorized by law to make surveys in Winkler County, and who is the only one authorized by law, except his deputy, to have possession of the surveyor's records of such county.

As certified to by the County Clerk, he has no surveyor's records in which to record such applications, if filed with him. The

only time he can take charge of such surveyor's records is where the county has such records by reason of having organized as a land district and subsequently failed to have a qualified surveyor.

If the County Surveyor of Reeves County had, under the provisions of Article 5317, appointed a deputy for Winkler County, the question here discussed could hardly arise because this article specifically says that such deputy shall be the County Surveyor of such county,

It hardly needs argument to support the contention that the failure of Randolph, the principal, to appoint a deputy as special county surveyor of Winkler County would preclude him from acting as the county surveyor of that county. Certainly his failure to appoint a deputy would only result in the duties of the deputy reverting to his principal.

Under the law, as we construe it, Winkler County has a county surveyor. The County Surveyor of Reeves County is, under the law by virtue of his office, also the county surveyor of Winkler County. He has possession and custody of all the books and records, of all surveys made in Winkler County. The surveyor of the nearest county would have no authority in law to make a survey in that county. (See Clark vs. Goss, 12 Texas, 395). In fact, there is no surveyor except Randolph who could make these surveys under the act of 1917.

In Clark vs. Goss, 12 Texas 395, the Supreme Court holds as follows:

There is no question that the plaintiffs' location and survey were prior in point of time to the defendant's, and if valid must give them the superior and better title. But it is contended that the survey was invalid, because made by a surveyor of Shelby county after the passage of the act establishing and providing for the organization of the new county of Harrison, which embraced within its limits that part of the old county of Shelby in which the land was situated. And in support of the objection we are referred by counsel for the appellant to the case of Linn vs. Scott (3 Texas R. 67). To this it is answered by the counsel for the appellee that the new county of Harrison was not organized at the date of the plaintiffs' survey, and consequently that the territory remained within and subject to the jurisdiction of the county of Shelby.

.....
The proposition is undoubtedly true that a surveyor could not legally make a survey beyond the limits of the county or district in which he was appointed and empowered to exercise his employment or office. And this principle is maintained by the case of Lynn vs. Scott (and see Peacock vs. Hammond, 6 Texas R. 544). But in that case the question in the present as to the authority or right of the officers of the old county to continue to exercise the functions of office over territory erected into a new county within the limits of the old one, until the organization in fact of the new county, did not arise and was not considered. The question arose and was first determined in the case cited by counsel for the appellee, (O'Shea vs. Twohig) which decides that, until the new county is actually organized, the territory remains subject to the jurisdiction of the old county, a principle, the correctness of which though the question were a new one, we could not hesitate to recognize. Otherwise we must admit the anomaly and absurdity of a community of persons within the State entitled to all the benefits conferred by civil government, and all the rights and privileges secured by the Constitution and laws, and yet, by law, deprived of

those benefits and rights; neither amenable to the law, nor enjoying its protection; disfranchised and in effect expatriated. An act intended to have such effect, or which required to be so construed as to give it such effect, would be a nullity. The case of O'Shea vs. Twéhic is decisive of the present question, and rightly so on principle. The officers of the county of Shelby were not precluded from exercising the functions of their offices, in all the extent of their former jurisdiction, until the new jurisdiction became operative by its complete organization.

In the case of Rung & Company vs. Wyatt (25 Texas Sup. 292) the following language is used:

We are also of the opinion that Section 1 of the act was intended to apply to cases where the boundary lines of counties had never been established in compliance with its provisions, although they may have previously been organized as a separate land district; and section 10 was intended to require the boundary lines of all unorganized counties in future to be well defined under its provisions before being recognized as a separate land district. It follows, therefore, from what we have said, that we are of the opinion that the surveyor of Wilbarger County, at the time the surveys for both of the appellants were made, had no authority to make the same and in such cases it has been held that his acts are void. Cox vs. Railway Co., 68 Texas 226, 4 S. W. Rep. 455, Article 3822, 2 Sayles Civil St., provides that "any organized county or newly created district which may fail or refuse to organize as a separate land district as provided by law, shall continue to form a part of the district to which it was formerly attached, etc. From the findings of fact it will be seen that Wilbarger County formerly belonged to the Clay Land District, and as appellee had his survey made by the surveyor of that district, the patent issued thereon constituted the superior right to the land.

The following authorities are in line with these decisions:

Wilson vs. Catching 41, Tex. 591 holding court of old county has jurisdiction of administration until organization of new county shown; Lumpkin vs. Mouncey, 66 Tex. 312, 17 S. W. 733, holding old county has jurisdiction of territory until new county organized; Reeves County vs. Pecos County, 69 Tex. 178, 7 S. W. 56, holding taxes collected by officers of old county belong to old county; Dodson vs. Bunton 81, Tex. 657, 17 S. W. 508, Holding new county, until organized, subject to jurisdiction of parent county; Nelson vs. State 1 Texas, Ap. 46, holding jurisdiction of offenses in new county attached to old, in old county; Weller vs. State, 16 Tex. Ap. 210, holding parent county has jurisdiction of offense committed in new unorganized county; Henson vs. Sackville, 2 Tex. Civ. 419, 21 S. W. 188, holding execution sale of land in new unorganized County, properly made in old county; Broussard vs. Dull, 3 Texas Civ. 67, 21 S. W. 941, holding parent county proper place for registration of deed until new county organized. See note, 20 Am. St. Rep. 680 Approved in Trimble vs. Edwards, 84 Tex. 501, 19 S.W. 773 holding deed recorded in old county before organization of new deemed proper.

In fact, the courts have uniformly held that the officers of the county continued to exercise jurisdiction over the limits of any newly-organized county until a successor is provided by law. The whole history of the land-surveying legislature of the State of Texas uniformly leads to the conclusion that until Winkler County procured a surveyor and became

an organized land district, the County Surveyor of Reeves County continued to be its surveyor, and in charge of its surveyor's records. The history of the land office also shows that he has been recognized as the County Surveyor of Winkler County, ex officio, and that office has always filed with him its records, which, by law, the land office is required to deposit with the County Surveyor of Winkler County.

There are insuperable objections to that interpretation of the act of June 20, 1917, which would hold that such applications should be filed with the county clerk of Winkler County:

1. As has been shown, Winkler County has a County Surveyor in whose custody its records are, and who, alone, is authorized to make surveys in that county. *He is designated by law as such.*

2. If such applications were filed with the County Clerk of Winkler County, he has no surveyor's records in which to record same. The fact that he procures a blank book which he intends to label "Surveyor's Records" does not make them such records. *There being a surveyor designated by law to make surveys in Winkler County, the "surveyor of the nearest County" has no authority to make such surveys.*
The only way to construe the act of 1917 so as to make it a workable act in connection with the ~~legislation~~ on the subject is to hold that the language "If such county has no surveyor" means that if there is no person, either county or district surveyor in possession of the records of such county, *and authorized to make the official surveys in such county by law,* but that such records have, under the law, been taken by the clerk, then the application may be filed with him, and by him recorded in such records. Any other construction would absolutely prevent the operation of the act at all in Winkler County because it can not be complied with, under any other construction. *1st. Because such application cannot be "by him recorded in the surveyor's records." and 2nd. Because the "surveyor of the nearest county" has no authority "as now provided by law to make a survey in Winkler County.*

Respectfully submitted,

Clay Cooke

Attorney

Brief

On Filing of Applications
for Permits to prospect
unsurveyed areas in
Winkler County

^{sketch}
File No.

17

Winkler

County

Filed

Dec 6

19

84

GARRY MAURO, Com'r

By

Gene Hill

For

Hon. J. T. Robinson

Land Commissioner

COOKE, DEDMON & POTTER
FORT WORTH, TEXAS

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