

9-21-35 Blocher,

COUNTY LINE FILE
LIPSCOMB CO.

LIPSCOMB-OCHILTREE

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Recd 8/26/30 Blushen

IN THE MATTER OF THE BOUNDARY LINE BETWEEN LIPSCOMB AND OCHILTREE COUNTIES.

INVOLVING DISAGREEMENT OF SURVEYORS AS TO PLACE AT WHICH SURVEY SHOULD BEGIN.

TO THE HONORABLE J. H. WALKER, COMMISSIONER OF THE GENERAL LAND OFFICE OF TEXAS:

The undersigned, E. H. Ervin, surveyor for Lipscomb county, submits below his report upon a disagreement between himself and Rupert C. Allen, surveyor for Ochiltree county, as to the true boundary line between said counties, and begs to request that you examine the disputed matter and to designate the line to be run, stating at what specific point said surveyors shall begin and to what specific point they shall run.

Surveyor Allen understands that in locating said boundary line the survey should begin at the intersection of the 100th Meridian and the $36\frac{1}{2}^{\circ}$ of Latitude as found by Commissioner Gannett in the recent survey made under the direction of the United States Supreme Court, but Surveyor Ervin understands that the survey should begin at a stone monument located on State Line North of the NE corner of Section 1, Block 10, the 132nd mile post.

The location of said boundary line is a matter of considerable importance, especially to the town of Booker and the Booker Independent School District, both of which are located on said boundary line and supposedly entirely in Lipscomb county except a small acreage at the extreme west side of the town of Booker.

So far as appears, said county boundary line has never been surveyed or designated by monuments or markers, but since said counties were created, both of them seem to have assumed, and the State of Texas has assumed, that said boundary line coincided with the west lines of Section 1174 and the sections lying south thereof, and the town of Booker was laid out and the Booker Independent School District was created upon the assumption that the long-recognized line was the true line, and each of said municipalities has outstanding a considerable amount of bonds, and great confusion would result if at this late day said line should be re-located.

To illustrate: If the contention of the surveyor of Ochiltree county should be sustained, the schoolhouse of the Booker Independent School District would be found to be in Ochiltree county, and if this should occur, said district would have no schoolhouse and yet would have a considerable amount of schoolhouse bonds outstanding which it must pay, and practically all of the town of Booker would be in Ochiltree county.

Attention is respectfully called to the original attitude and understanding of the State of Texas with reference to the location of the west line of Lipscomb county, as shown by patents issued by the State to the H. & T. C. Ry. Co. upon the lands granted to said railway company, all of which patents locate said railroad sections entirely in Lipscomb county. The same is true of the field notes to the school land sections.

Ever since Ochiltree and Lipscomb counties were created, Ochiltree county has not considered that any part of the west tier of Sections in Block 43 of Lipscomb county was in Ochiltree county and has not assessed any part thereof for taxes, whereas the entire acreage of said sections has been assessed for taxes by Lipscomb county, and by reason of the 60-year-old understanding by the State and by said counties that the west line of Lipscomb county was the west line of ~~Lipscomb county~~ Section 1174 and of the sections south thereof, and because the Booker School District and other school districts of Lipscomb county were established in dependence upon such fact, Ochiltree county's long acquiescence with reference thereto ought to fix such line as the east line of Ochiltree county.

Attention is also called to the description of Section 1 in Block D, whose east line is an extension of the east line of Block 10 and Block 43. The patent to said section was issued on November 2, 1883, and contains the following field notes:

Beginning at the NE cor. of Sur. 1, Blk. 10, HT&BRRCo., a md. of earth and stones 9 ft. sq. and 6 ft. high covered with stones 1 ft. thick, a C.W. 10 ins. brs. No. 62° E. 780 vrs. do double 10 ins. brs. N. 72 $\frac{1}{2}$ ° E. 132 vrs. large cropping stone mkd. H. & T. C. R. R. Co. on N. side of branch brs. N. 64° E. 60 vrs. Thence N. 586.44 vrs. to the N.E. cor. of the Panhandle of Texas, the same being an old md. of earth about 1 ft. high and 30 ft. across. Thence W. with the N.B. line of the State of Texas 6165 vrs. stake. Thence S. 586.44 vrs. to stake in N.B. line of Sur. No. 4. Thence E. 6165 vrs. to the beginning, containing 640 acres of land.

At the date of this patent the State recognized the NE corner of Section 1 in Block D to be the NE corner of the Panhandle. Lipscomb county had previously been established, and the east line of Block D, Block 10 and Block 43 definitely became the east line of Lipscomb county.

The patent to Survey 1, Block 10, was issued on May 24, 1876. The east line of this survey was undoubtedly understood by the State to be the east line of Lipscomb county and of the Panhandle of Texas and to be the 100th meridian, and it certainly was the purpose of the Legislature in the Act creating Lipscomb county to fix the NE corner of Lipscomb county at the NE corner of Survey 1, Block D, and it was obviously the further intention of the Legislature to extend the north line of the county westerly to the 30th mile post.

Several surveys have been made in the effort to locate the true 100th meridian. The latest was that which is known as the Gannett survey and which was made under the direction of the United States Supreme Court in 1928, and it appears that the 100th meridian has at last been definitely established. By this Survey the NE corner of the Panhandle of Texas was found to be farther east than any former survey had shown it to be.

It is now the contention of Ochiltree county and her surveyor that the NE corner of Ochiltree county should be ascertained by running a line west 30 miles from the new Gannett NE corner of the Panhandle, thus disregarding all former surveys and all former established corners, and disregarding the intention of the Legislature when nearly 60 years ago it created Lipscomb county and located it westerly of a line running south from the NE corner of Survey 1, Block D.

The Gannett survey did not purport to locate the NE corner of Lipscomb county, but simply established the NE corner of the Panhandle of Texas. The corner of Texas and the corner of the county are not necessarily the same, the county having been definitely created and its NE corner definitely established long prior to the Gannett survey. *Art. 5721 a. Statutes of 1929.*

My view is that when the Legislature in 1876 described Lipscomb county and gave as the beginning point "a monument", it had in mind a particular point or marker then in existence and then supposed to be located on the 100th meridian and north of the 132nd mile post (the NE corner of Sec. 1, Blk. 10.). Such definite object became the NE corner of Lipscomb county though not in fact the NE corner of Texas.

From said beginning point or monument the north line of the county ran west 30 miles to the 30th mile post on the $36\frac{1}{2}^{\circ}$ of Latitude, which mile post was evidently located at a point on said $36\frac{1}{2}^{\circ}$ degree of Latitude directly north of the NW corner of Section 30, Block 10. No mile posts have been found on the north line of Block D, but they appear to have been located on the north line of Block 10, so that evidently the expression, "to the 30th mile post" meant to a point directly north of the NW corner of Section 30, Block 10. Hence the NW corner of Lipscomb county was intended to be on the $36\frac{1}{2}^{\circ}$ of Latitude directly north of the NW corner of said Section 30.

The Commissioner well understands that in ascertaining the boundaries of surveys, wherever natural or artificial objects are called for, they control, and distances must yield.

I respectfully dissent from the opinion recently rendered by the Attorney General's Department to Mr. Max W. Boyer, County Attorney of Ochiltree county, same bearing date of August 13th, a copy of which appears to have been furnished you without your request therefor, so far as appears. Such opinion is merely advisory and is not binding upon you. It seems that Mr. Kennedy did not give due consideration to the various matters which affect the boundary line in question and that he was not in possession of all the facts.

He says Lipscomb county's "boundaries begin at a point," whereas the field notes call for a monument, and he says "its northwest corner is 30 miles west of the place of beginning;" but he omits the call for the 30th mile post.

He further says, "the judgment of the Supreme Court settled the matter and finally established the 100th meridian," whereas the judgment of the Supreme Court located the meridian farther east than it was understood to be, but had nothing to do with putting the added territory into Lipscomb county. That judgment put the additional land into Texas, but not into Lipscomb county. The county had been well established long before the Supreme Court decision.

He further says that the boundaries of all the counties in the Panhandle were affected by that decision. He evidently overlooked the effect of Art. 1606 of the statutes, under which the boundaries of many Panhandle counties have been settled. It seems to me that the lines of none of the counties in the Panhandle were affected by the shifting of the state line, as the county lines are not determined by the location of the state, ^{line} but rather by the acts of the Legislature creating them, and the counties are located as described by the Legislature.

Question: If the 100th meridian had been found to be 30 or more miles east of the old supposed line, would Lipscomb county and the other counties have automatically been moved 30 miles east, leaving their court houses, etc.? Or wouldn't they have remained as they are and wouldn't the state have made some other disposition of the added territory?

Titles are disturbed by the shifting of county lines. School districts are disrupted, and much confusion results; and it is the policy of the law that such disturbances be avoided.

Art. IX of the Constitution does not seem to confer on the Legislature the unlimited power to re-county the Panhandle as the Legislature may see fit and as Mr. Kennedy believes it can do. I believe it would require still another amendment to the Constitution to give the Legislature such power.

If, in accordance with Mr. Kennedy's opinion, Lipscomb county is 30 miles

wide and if the west line of Lipscomb county must be located by a survey from the Gannett corner, Ochiltree county will receive such a width of territory as will extend her borders and include therein a distance of more than 30 miles. This would be inequitable and unfair to Lipscomb county and would amount to a special favor to Ochiltree county. This would result because the boundary line between Ochiltree and Hansford counties was established by a valid survey in 1929, and such territory as Ochiltree county receives out of Lipscomb county, or any part thereof, could not be taken by Hansford county, inasmuch as the line between those counties has been finally determined by proper survey.

Art. 1589 of the statutes provides that in a case of this kind the Commissioner shall designate the line to be run, "adhering as nearly as possible to the line designated in the act creating such county line." Of course the Legislature of 1876 did not have in mind that the Lipscomb-Ochiltree county line should be determined by any measurement from the new Gannett corner. The Legislature had a then-existing monument in mind and it said that Lipscomb county should extend west to the 30th mile post.

Submitted herewith are plats and data which may be helpful in arriving at a just and correct conclusion.

Respectfully submitted,

E. H. Erwin,
Surveyor for Lipscomb County.

Received and filed Aug, 26, 1935.
J. H. Walker, Comm.
C. F. Blucher, clk.

County Line File ^{1.}
LIPSCOMB CO.
LIPSCOMB-OCHILTREE

statement by E. H. Erwin,
Surveyor for Lipscomb Co.

Filed Aug. 26, 1935.

J. H. Walker, Comm.
C. F. Bluster, clk.