

September 16, 1935

Judge W. H. Sewell,
Follett, Lipscomb County,
Texas.

Dear Judge Sewell:

Your letter of the 11th inst. in regard to the Lipscomb-Ochiltree County line has been received.

Under separate cover I am mailing you, instead of Mr. Ervin, my findings of fact and final instructions in the matter of establishing said boundary. You will note that the law requires me to base my instructions on such data as the maps and archives of the Land Office furnish. It is not contemplated that other matters be considered by the Land Commissioner, as the law does not confer judicial functions upon him. It may be true that in the courts the boundary could be, and would be, established where you think it should be, but the records of this office, following the statute creating the county, I think would place it where instructions now given the surveyors will place it.

I am persuaded that Timmons' ground marks lie west of Trichell's and conform practically to Dinkins land measurements, but this is only an opinion based on calculations. The figures that I have made impress me that Timmons gave a slight excess to his measurements, which would have the effect of pinching the distance between the two meridians. A minute on latitude 36 30 in varas is 1766.6. Accordingly three degrees or 188 minutes would be slightly over 147 miles.

You will note from copy of Timmons' sketch, which is sent you, the distance is not quite 147 miles.

My reaction to the subject of boundaries, both as between counties and individuals, is that any sort of disturbance works to the injury of the people concerned, but as suggested, the law hedges my action in such matters.

Very truly yours,

Commissioner

JHW-ewr

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FOLLETT, LIPSCOMB CO., TEXAS

W. H. SEWELL
RICHARD H. SEWELL

September 11, 1935.

Hon. J. H. Walker,
Commissioner General Land Office,
Austin, Texas.

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In re: Lipscomb-Ochiltree County Line.

Dear Mr. Walker:

We are quite surprised at the continued manoeuvring of Ochiltree County with reference to your findings and directions.

After we received your tentative directions, the surveyors of the two counties proceeded with the survey of this county line and have completed the survey and marked the line as required by the statute. They have written up their field notes and made the required plat, and we understand Mr. Allen, surveyor for Ochiltree county, yesterday agreed to sign the surveyors' report, field notes, etc.

When your tentative conclusions were received, the officials of Lipscomb county expressed their willingness to abide thereby rather than to insist that the common understanding of the counties and of the state during the last 59 years should determine the location of the line. We believed, and still believe, that in view of the circumstances, and particularly the long acquiescence of Ochiltree county, the county line should coincide with the section lines. Lipscomb county's contention was based upon such decisions as Hale County vs. Lubbock County, 194 SW 678, wherein, at page 681, it is said,

"Article 1400 (now 1606) was a validating or curative statute merely making definite the boundary lines of counties which had not theretofore been fixed upon the ground when the counties were organized."

15 Corpus Juris, p. 399, says: "Until reliable marks can be found to indicate where the statutory line between counties should be run, the safest guide will be the line hitherto practically adopted by the people in the locality. County lines are subject to the general rule that in the ascertainment of the location of ancient lines, long acquiescence, explicitly proved, of the parties interested in the location of a line at a particular place should have great, if not controlling, weight, where there are no existing marks or living witnesses to show original location, and the calls and traditions are themselves vague and indefinite."

State vs. St. Louis County, 117 Minn. 42, 134 NW 299, holds that acquiescence by the state and the counties concerned for fifteen years precludes inquiry into the correctness of the location.

Edwards County vs. White County, 85 Ill. 390, holds that where the public authorities for a long series of years have recognized a certain line as the boundary between their respective counties, public policy forbids that such line shall be changed, even though such line was not the one originally intended.

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Ochiltree county seems disposed to be a little "piggish" with reference to her lines. She would have "grabbed" from Lipscomb county the whole width of Block JW and the new strip added by the Gannett survey, thus materially enlarging her boundaries beyond the 30 miles square allotted to her by the Legislature. We understand she is now claiming a considerable strip of Roberts county.

Lipscomb county officials have tried to be agreeable, and when the county judge of Ochiltree county expressed her desire to have the line marked, Lipscomb county's officials agreed to waive every possible formality and to co-operate in removing any confusion as to the location of the line.

With reference to Ochiltree county's suggestion that Lipscomb county has recognized a county line other than the section-line county line, ~~xxxxxxx~~ such a view is erroneous. When the state was opening Highway 4 across the extreme southwest part of Lipscomb county and wished this county to furnish the right of way, the county declined to do so because it had no funds which it could use for such purpose. The State Highway Commission paid for the right of way and for the necessary fencing and all other damages. It is our understanding that Lipscomb county did not erect the fences, but if one of the county commissioners supervised the work--and we do not understand that he did--the fences were built for the distances which the highway engineers understood were in Lipscomb county, and without any concern so far as Lipscomb county was concerned as to the location of the county line, and none of Lipscomb county's officials agreed or in any manner assented that the highway engineer's idea as to the location of the line was correct. In that case we were again simply trying to co-operate with Ochiltree county in getting a highway completed which is of very little value to the people of this county and in which Ochiltree county was greatly interested.

With reference to the Dallam-Hartley County case, Lipscomb county was not involved in it and could not be bound by any judgment rendered therein. This is another illustration as to the uncertainty involved in the location of these county lines and another very good reason why the well-recognized Lipscomb-Ochiltree county line, to wit, the section lines, should be recognized by your department.

However, if Ochiltree county is willing to accept the survey as made and now completed by Mr. Allen and Mr. Ervin, Lipscomb county will not quarrel about it, notwithstanding the patents described those west sections as being in Lipscomb county and notwithstanding nobody has until recently doubted that the whole of such sections was in Lipscomb county.

We shall be obliged if you will advise us of any change which you contemplate making in your tentative findings before same are made and give us an opportunity to be heard. Our county has incurred considerable expense in having this surveying done, and we hope to avoid any further expense, if possible.

Thanking you for yours of the 5 and 9th instant, we remain

Yours very cordially,

SEWELL & SEWELL

By



