

L.B. ¹⁹⁴⁴
212-219

September 16, 1935

Mr. Rupert C. Allen,
County Surveyor Ochiltree County,
Perryton, Texas.

Mr. E. H. Ervin,
Acting as Surveyor for Lipscomb County,
Follett, Texas.

Gentlemen:

In the matter of the boundary line between Lipscomb and Ochiltree Counties, involving a disagreement on your part as surveyors of the respective counties as to the places at which the boundary line should begin and end, which matter you have referred to me as Commissioner of the General Land Office in accordance with Article 1589, Revised Statutes, I submit the following answer and directions as to how such line should be run.

The law requires the Land Commissioner to examine the disputed matter and from such data as the maps and archives of his office furnish, to designate to you as the inquiring surveyors the line to be run, stating at what specific point you shall begin, and to what specific point you shall run, adhering as nearly as possible to the line designated in the Act creating such county line. I have examined the disputed matter, and have made a thorough personal search of the archives of the Land Office for data bearing upon it. The Act of 1876 creating Lipscomb County describes its boundaries as follows:

Sept.16, 1935

"Beginning at a monument on the intersection of the 100th meridian and the $36\frac{1}{2}^{\circ}$ of latitude, one thousand six hundred and twenty-nine feet north of the one hundred and thirty-second mile post on the 100th meridian; thence west thirty miles to the thirtieth mile post on the $36\frac{1}{2}^{\circ}$ of latitude; thence south thirty miles and one thousand six hundred and twenty-nine feet; thence east thirty miles to the one hundred and second mile post; thence north thirty miles and one thousand six hundred and twenty-nine feet to beginning."

The Act fails to call for the Northeast corner of Texas or for the East boundary of Texas. At that time the east and the north boundary of the Panhandle had not been legally established, that is to say the two governments had not agreed on a line. I am handing you copies of the boundary lines by State Surveyor B. Timmons, which the Legislature had before it in 1876, when the Act creating the Panhandle counties was passed. Clark's line had not then been drawn from the pigeon-hole in the Interior Department at Washington, nor was it public until 1882, but it is manifest that Timmons found Clark's ground marks and followed them. Darling's line, which Kidder says was run in 1875, from the terminus of the Brown-Jones line to the South line of Kansas, could not have been before the Legislature. Darling made no attempt to establish the Northeast corner of Texas, nor to identify parallel $36^{\circ}30'$, nor was his line in any sense the legal boundary of the State.

In 1858 John H. Clark, as the Commissioner of the United States, met General Wm.R. Scurry, as Commissioner of the State of Texas, with Governor Runnels in the city of San Antonio, and

made arrangements for the survey of the lines between Texas and the Federal territories adjoining it. Scurry resigned soon after the work started near El Paso. Later Scurry's assistant, who succeeded him, disagreed with Clark and left the field. Mr. Clark, however, continued the work. He undertook to run and mark latitude $36^{\circ}30'$ from the 103rd meridian to the 100th meridian, and to connect the intersection of the 100th meridian with latitude $36^{\circ}30'$ to the terminus of the Brown-Jones survey. (U.S. Survey Bul. No. 194)

Clark erected some monuments on the 100th meridian as established by him and 15 markers on latitude $36^{\circ}30'$, the fifteenth being his northeast corner of Texas. It appears that Wm. R. Russell was appointed Commissioner for Texas for a boundary survey. B. Timmons surveying under Commissioner Russell's direction did not begin his eastern boundary at the initial monument on Prairiedog Town Fork, but on the bank of what was claimed by Texas to be Red River, 158 feet north of a monument (doubtless Clark's). If you will trace Timmons' survey you will find it fits Clark's line as we now understand the latter to have been run. The monuments along the line called for by Timmons are surely Clark's. The latter ran his line just two years before, and no other line had been run. As stated, Clark did not set up mile posts, but monuments at convenient distances to mark his survey. Timmons sets his 82nd mile post 1629 feet south of a monument on parallel $36:30$. Any sort of reasoning open to my mind leads me to the conclusion that Timmons completed his line on a monument

which he assumed to be Clark's.

The Act creating Lipscomb County calls for it to begin 1629 feet north of the 132nd mile post. That the Legislature took this description from Timmons' sketch is evidenced by the fact that such distance appears on no paper, sketch or map except Timmons' sketch, approved by Wm.H. Russell, Commissioner, and filed in the General Land Office April 19,1862, and marked "A". A description of this 132nd mile post is in Dinkins' field notes of Section 1, Blk. 10, H T & B Ry. Co. surveyed in 1873.

On April 19,1862, there was also filed in this office sketch marked "B", showing Timmons survey of the "Texas boundary formed by the parallel of 36:30 extending from the meridian 100 W.L. to meridian 103 W. L." Beyond any doubt this is the sketch for the north line before the Legislature, and accounts for the expression in the description of the North line of Lipscomb County "to the 30th mile post." On no other sketch or map, filed prior to 1876, is the line divided into miles. The Legislature running west on Timmons' line made the combined distance of the first four counties 120 miles and Dallam County 47 miles, the total of which is practically Timmons' distance from his 100th meridian to the 103rd meridian.

Twichell's line run in 1898 fits Timmons well, but I feel reasonably sure that Twichell ran a little north of Timmons for the first few miles. It is reasonably certain that Timmons tracked Clark through the latter's monuments in running this 100th meridian,

and followed him fairly well in running parallel 36:30.

Referring again to the Act creating Lipscomb County, I find it begins in " the $36\frac{1}{2}$ degree of latitude 1629 feet North of the 132nd mile post on the 100th meridian." A call for latitude $36^{\circ} 30'$ would control over the distance of 1629 feet and the point in said latitude due north of the Timmons-Dinkins 132nd mile post would be the original corner of Lipscomb County, as created by the Act of 1876. That point was marked appropriately by Chaney and Smith, and accepted by W. D. Twichell as the Northeast corner of Lipscomb County, and is in the north extension of the Clark-Timmons-Dinkins 100th meridian.

In 1890 the records of the Land Office show that W. D. Twichell began negotiations with Potter County for the establishment of its boundaries. As this county was dependent for its position on the location of the counties lying to the north and east, it was necessary for Mr. Twichell to make a long connection from the Northeast corner of Lipscomb County to a corner of Potter County. In a letter dated June 14, 1890, he submitted an inquiry about the proper way in which to lay out the counties, and concluded with an expression of his own opinion, to-wit:

" The intention of the statutes is that the boundary shall be on parallels and meridians, and that the corner of one county shall be the common corner of all counties adjacent."

I am unable to find a copy of the departmental answer, if one was made. Mr. Twichell's suggestion was partially if not altogether adopted in

running the county lines of that area. The Court, in the case of Dallam County v. Hartley County, cited by Mr. Allen, in determining the proper way to run the boundary between Dallam and Hartley counties, caused the surveyors to ascertain and extend the parallel running through the 102nd mile post in Darling's line (termed the Southeast corner of Lipscomb County) and to fix the boundary between Dallam and Hartley on this parallel. The Court, in his instructions to the surveyors, in effect accepted Twichell's measurements along the parallel of 36:30 as fixing the East boundary of the Dallam-Hartley line. Further than accepting meridians and parallels as the boundary lines, I am unable to see what bearing this case has on the boundaries of Lipscomb County, as that county was not a party to the suit. The records show that Mr. Twichell obtained contracts with nearly all the counties in that area to run some of their lines. In the case of Ochiltree County the Land Office records show he made a contract with Ochiltree County to establish its northeast and northwest corners in conformity with the statutes of 1895, and accordingly established them on the ground. Lipscomb County, having accepted notice and responded that it was satisfied, the north boundary of Ochiltree County was approved by the Land Office July 21, 1898. Twichell's measurements conform to Kidder's and Gannett's as well as Timmons.

I find that in accordance with the line designated in the Act creating Lipscomb and Ochiltree counties, and from the maps and

Sept.16, 1935

archives of the General Land Office, that the Northwest corner of Lipscomb County and the Northeast corner of Ochiltree County, being one and the same, is on a large stone set by W. D.Twihell in 1898 and marked:

"N.E.Ochiltree, N.W.Lipscomb, in ground and dig 4 large pits. Long's mound and 4 pits N.W.corner of 1029 Bl.43 H & T C brs. S.7 miles and 960 vrs. and E. 1 mile and 1848 vrs."

This corner, according to Twihell's measurements, is 30 miles 363.7 varas East of Clark's monument No. 10 on parallel 36:30, and is 30 miles and 703.44 varas West of Gannett's monument for the Northeast corner of Texas on the same parallel of latitude. This corner is designated as the proper point for you to begin your survey of the boundary between Lipscomb and Ochiltree counties.

From said point you are directed to run a line south on the true meridian to be the common boundary between Lipscomb and Ochiltree counties, and as between said counties to terminate said line at the point of its intersection with the west extension of a line between Lipscomb and Hemphill counties for the Southwest corner of Lipscomb and Southeast corner of Ochiltree.

The observation may not be amiss that Timmons made his survey within less than two years of the time Clark ran his lines, and that Timmons could readily have identified Clark's monuments and markers; that Dinkins followed Timmons within eleven years, and before Darling had run his line; and that Darling admittedly deflected his line to the East and ran on through to the southern

R'C.Allen & E.H.Ervin

-8-

Sept.16, 1935

boundary of Kansas without thought of the Northeast corner of Texas. Darling's line could not have fixed the east boundary of Texas any more than Kidder's, Timmons', or Dinkin's. It would be absurd to assume that the Legislature, with the maps and sketches of its own State surveyor before it, did not follow that surveyor, particularly in view of the fact it could have known nothing about Darling's line at that time. I cannot forego calling your attention to the description of Dinkins 132nd mile post, and to Twichell's topography of his starting point, which information you have before you.

Respectfully submitted,

Commissioner

JHW-ewr

County-Line File
LIPSCOMB CO.

132nd Mile Post
DINKIN'S LINE
Twichell's Topography

County-Line File
LIPSCOMB CO.

10

Lipscomb-Ochiltree Line

INSTRUCTIONS FOR
LOCATING CO. LINE.

BY COMMISSIONER.

Dated Sept. 16th, 1935.

Respectfully submitted,

Commissioner

V. C. ALLEN & E. H. BROWN

-8-

Sept. 16, 1935

boundary of Kansas without thought of the Northwest corner of

Texas. Darius's line could not have fixed the east boundary of

Texas any more than Kinderhook, Timmons', or Dickinson's. It would

be absurd to assume that the Legislature, with the maps and

copies of its own State surveyors before it, did not follow that

policy of its own State surveyors before it. I cannot forget calling

attention to the description of Dickinson 1830s mile post, and to

the description of Darius's line at that time. I cannot forget calling

attention to the starting point, which information you

Lipscomb Co. Bdry. Line 10