

March 15, 1922.

Hon. A Winslow,
County Judge, Webb Co.,
Laredo, Texas.
Dear Sir:-

In yours of the 13th inst., you enclosed a judgment in the District Court of Jim Hogg county, being styled 'Zapata County vs Webb County, No. 116' and dated Dec. 5, 1921. This judgment indicates that Zapata county sued Webb county for the purpose of establishing the boundary line between Zapata and Webb counties at what would be styled the S.W. corner of Webb county on the Rio Grande. The Statute prescribes where the Webb and Zapata county common corner should be on the Rio Grande in the act which created these counties, and the line as fixed seems to run Northeast from the river a short distance and then about East. This judgment seems to go further up the river at a corner of the Borrego grant and runs Northeast and then there is a line that runs S 35 E in the judgment to a concrete monument marked 'Z.W.' for a corner of Webb and Zapata counties.

I am writing you for the purpose of calling attention to the fact that it seems this concrete corner has heretofore been the common corner between Zapata and Webb counties. The statutory description of the boundary line between Webb and Zapata counties has only one crook in the line instead of two, as this judgment would seek to make, and this Department has field notes of the boundary apparently supporting the original statute which describes the boundary between Zapata and Webb counties.

By reference to Art. 1400, R.S. 1911, you will note that the county boundaries that were recognized and established were adopted as the true boundaries of such counties, and the acts creating ~~the~~ such counties were continued in force. By Art. 1348 R.S. 1911, you will note that no part of any existing county can be detached from and attached to another existing county until the proposition of such change shall have been submitted to a vote of the electors of each county and shall have received a majority vote of such

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electors of each county. Your attention is directed to this because it is quite evident that a portion of Webb county has been detached and attached to Zapata county, according to the boundaries as fixed by the act creating those counties, and according to the field notes of those counties, as we have them on file in this office. Furthermore it seems that instead of the two counties proceeding in the manner prescribed in the chapter beginning with Art. 1375, R.S. 1911, for the purpose of having their boundaries properly and legally established, they have preferred to pass over all of that and proceed in the manner prescribed in Art. 1385, R.S. 1911, but in that article you will note this language "provided that if shall be found in any such cause that the boundary line in question has been heretofore established under the law, then in force, the same shall be declared to be the true line and shall be resurveyed and established as such".

Instead of taking the steps prescribed by the statute elsewhere in determining the county boundaries, it seems that the counties employed counsel, and as stated above, they proceeded under Art. 1385, so far as instituting the suit is concerned, but I find nothing in the statute that would authorize the counsel or lawyers, for the two counties, to enter into an agreement as to what is the boundary between the two counties, which agreed boundary would be different to that prescribed in the statute creating the counties, and if that agreement would be binding on the counties, or anyone else, would it not be an easy way to get around the constitution, subdivision 3 Art. 9, which is the same as Art. 1400, quoted above. In other words, I do not understand that attorneys employed by counties to establish the boundary, have a right to agree they will take a part of one county and add it to another county in contravention to the constitution.

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Owing to the foregoing facts, and law, I beg to herewith return the Decree of Court and field notes and will suggest that when you have shown this Department clearly that you are within the law concerning the establishment of boundaries in any form or in any manner, you may return them here for consideration, and I will suggest that you accompany them with the petition and answer in the suit. I also enclose the sketch.

Respectfully,

Commissioner.

c. c. County Judge,
Zapata County,
Zapata, Texas.
Robison/w.

September 9, 1922.

Mess. Mann & Mann,
Laredo, Texas.

Dear Sirs:-

I have yours of the 6th inst., relative to the boundary line between Webb and Zapata counties, in regard to the judgment of the District Court of Jim Hogg county, adjudicating said line.

May I direct your attention to Chapt. 27, page 40, Session Acts of 1870, found on foot page Garmels Laws, Vol. 6; also to the amendments of that statute by chapter 58, of the acts of April 26, 1871, page 62, found on foot page 964, Garmels Laws, vol. 6. The records here show an affidavit made by Juan Benavides before E F Hall, Notary Public of Webb county, dated Jan. 8, 1878, in which the said Benavides makes an affidavit that the stone he pointed out to the Commissioners for the purpose of surveying the line between Webb, Encinal, Duval, Nueces and Zapata counties, Starr, Hidalgo and Cameron counties, situated on the W bank of the Rio Grande, was the original stone placed here for the ancient jurisdiction of Guerro and Laredo; that he knows that stone to be that mark because he was one of the commissioners for the fixing of that boundary, and he knew that stone to be on the line that the commissioners adopted, and that was the stone at which the survey was begun on the East side of the river for the Webb county line between Webb and Zapata counties.

You will note that the statute of 1871 under which this boundary was being established declared to begin at that jurisdiction and then go with the ancient line of Webb county to the S W corner of Encinal county. Now, the old line of Webb county is shown on the maps of this office ~~in~~ had up to that time shown the line to run in a N E direction to the S W corner of Encinal county and from there the line was to run due East. Under that statute that line was run and it seems the Commissioners accepted the testimony of Benavides as being the proper beginning point on the jurisdiction between the two mexican towns. That line was

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run in January 1878, so say the records of this office, and is signed by John J Dix, surveyor of Duval county, and it was filed in this office March 1, 1878.

In this connection wish to refer you to chapter 61 page 67 of the act approved March 26, 1879, beginning on foot page 1376, Gammels Laws vol. 8, wherein it seems that act confirmed the line as shown by the field notes returned her by John J Dix, as above stated. Judging from Accepting the foregoing as being the facts and are the statutes bearing on the matter, may I direct your attention to the fact that it seems the judgment recently rendered in Jim Hogg county established the line between Webb and Zapata counties runs from the S W corne of Encinal county in a NW direction and thence on a S W direction to the river, to a point called St. Andrews Canyon. Under the foregoing, does it not appear that a portion of Webb county has been taken away and added to Zapata county, in contravention to what seems to be the provision in the constitution that no part of one county shall be taken away and added to another county without the consent of the majority of the voters of each county interested.

Lest you should desire to advance the proposition that the point described in the statute is not now known and the point established in the District Court was on the testimony of ancient citizens, I beg to say in advance that in my judgment the point determined by the surveyors upon such evidence as they deemed correct and adopted as a beginning point and upon which they based their survey, and which was confirmed by the Legislature would be of greater dignity than other witnesses at this date, or any date subsequent to the act of the Legislature confirming that survey. In other words it occurs to me the Legislative act precludes any further discussion in the matter until further legislation should reppen it, or it should be reopened by an action on the part of both counties and a vote of their citizens.

No. 3.

You understand this Department is not concerned in, nor has it any disposition to have anything to do with the location of boundary lines between those counties, except insofar as it may be called on to pass on the question of the boundary and the abstracting of the lands for taxation, and when that duty comes, as it is now, with us, we must determine whether it is lawful to recognize the boundary and ~~abstract~~ abstract the land differently from that they have heretofore done for the purpose of taxation in order to avoid futuer trouble. This is the only interest this department bears.

If you have any authority, or know of any facts or any statutes different from the foregoing I would be glad to consider them. I am aware of the fact that our statute provides that one county may sue another, but that is when the county boundary line has not been established and it is in dispute between the counties. There would be no dispute between the counties if the S line of Encinal and the S W corner of Encinal county and the N line of Zapata county were known prior to the time of the rendering of the judgment by the District Court. Under no conditions does it seem the boundary between Webb and Zapata counties would be permitted to go N W from the S W corner of old Encinal county, because no statute ever authorized such a course.

Respectfully,

Commissioner.

Robison/w.