

SURVEYORS AND THE REGISTERED PUBLIC SURVEYORS ACT

by

A. T. MULLINS, Attorney  
General Land Office  
Austin, Texas

Paper Presented at June Meeting

EAST TEXAS CHAPTER NO. 4  
TEXAS SURVEYORS ASSOCIATION

Jacksonville, Texas, June 13, 1957

## SURVEYORS AND THE REGISTERED PUBLIC SURVEYORS ACT

In discussing and comparing the duties and functions of County Surveyors, Licensed State Land Surveyors, Registered Professional Engineers, and Registered Public Surveyors, I will take them up in the order of date they came into existence or were provided for by statute.

The first statute in regard to the County Surveyor was in 1837 even before Texas became a State.

As you know, the County Surveyor is elected for two years. He has numerous duties fixed by law, among which are:

1. To receive, examine and record all field notes of surveys made in his county upon which patents are to be obtained, and certify to such field notes according to law (Article 5287).
2. To record all surveys in his county with the plats thereof that he may make, whether private or official surveys (Article 5290).
3. To furnish the County Surveyor of an adjoining county the complete copy of all field notes of surveys made in an area which may become a part of the adjoining county as a result of a change in county boundaries (Article 5293).
4. To obtain from the Commissioner of the General Land Office a transcript or certified copy of any maps, field notes or other records if such records of his office should be destroyed or lost (Article 5294).
5. To receive and file applications for the survey of mining claims (Article 5391).
6. To receive and file vacancy applications by applicants (as distinguished from a good faith claimant) (Article 5421c, Section 6 (c) ).

The County Surveyor is prohibited by law from being directly or indirectly concerned in the purchase of any right, title or interest in any public land in his own name or in the name of another person (Article 142, Penal Code).

The law providing for licensing State Land Surveyors was enacted in 1919, and amended in 1941. The Licensed State Land Surveyor is authorized to perform the

duties that may be performed by the County Surveyor and he is subject to the direction of the Commissioner of the General Land Office in matters of land surveying in such cases as come under the jurisdiction of the Commissioner (Article 5276). He is not limited, as is the County Surveyor, to one county but his jurisdiction is co-extensive with the limits of the State (Article 5276). He may hold the office of County Surveyor if he is elected as provided by law, but even so he is still not limited in his work to that county (Article 5276).

The Licensed State Land Surveyor is required to have recorded in the County Surveyor's records the field notes and plats of every survey of public land, and must forward them to the General Land Office after they have been recorded.

He is prohibited by law from disclosing the existence of a vacancy to anyone except the person who may have it enclosed, and the Commissioner of the General Land Office. (Article 5278 and Article 145, Penal Code.)

The practice of a Licensed State Land Surveyor is what might be termed a specialized field of surveying. It might be compared to the practice of an attorney who specializes, for example, in tax law, or insurance law, or corporation law, except, of course, that an attorney does not have to pass a special examination nor have a special license to practice in those fields. I think the key to the specialized feature of the Licensed State Land Surveyor is in Article 5270. That statute requires the Board of Examiners to prepare written questions upon the theory of survey, practical surveying, theory and use of surveying instruments, calculation of acreage, closing field notes, the law of land boundaries, the history and functions of the General Land Office, and such other matters pertaining to surveying as the Board may deem important. The two things I want to emphasize are the last two named; that is, with regard to questions on the law of land boundaries and the

history and functions of the General Land Office. For the every day practice of surveying, the knowledge of these two items is possibly not of significant importance, but in the work of the Licensed State Land Surveyor, they are of vital importance.

John Baker who, as you may know, is a member of the Board of Examiners, has listed four requirements for applicants seeking licenses as State Land Surveyors. They are:

1. The applicant should have an understanding of the purpose of the Licensed State Land Surveyors Act and of his duties and obligations.
2. He should be familiar with the history, functions, contents and procedures of the General Land Office. In addition, he should be familiar with the way the records are kept in the County Surveyor's office as well as how to search for what information might be available in the deed records of that county.
3. He should be well grounded in the theory of surveying, familiar with the use and operation of instruments and have a sufficient knowledge of mathematics to make all necessary calculations to verify closures and determine areas.
4. The applicant should have a familiarity with the statutes enacted by the Legislature pertaining to the establishment of boundaries and a working knowledge of the precedents set up by the courts for surveyors to follow in the re-establishment of the lines of surveys. Mr. Baker summarizes the requirements by stating that "All he needs to have is a capacity for an unlimited amount of detailed work; an inquiring mind; be a better than fair abstracter; know the records of the Land Office as well as, or better than, the oldest employee; be able to find plenty of original corners; do his work in the field efficiently and without error; have a knowledge of boundary law equal to that of a Supreme Court Justice; and have an employer who has unlimited capital and is willing to spend it."

I think that probably the last requirement is the most important because if your employer has plenty of money and is willing to spend it, you can acquire a lot of knowledge and to a lot of work.

The Act providing for registration of Professional Engineers was enacted in 1937. It defines a Professional Engineer as being,

"...a person who, by reason of his knowledge of mathematics, the physical sciences, and the principles of engineering, acquired by professional education and practical experience, is qualified to engage in engineering practice as hereinafter defined."

It then defines the practice of professional engineering as including,

"...any professional service, such as consultation, investigation, evaluation, planning, designing, or responsible supervision of construction in connection with any public or private utilities, structures, buildings, machines, equipment, processes, works or projects, wherein the public welfare, or the safeguarding of life, health or property is concerned or involved, when such professional service requires the application of engineering principles and interpretation of engineering data."

Certain classes of persons are exempt from the operation of the Act, and Section 25 provides that the Act, "shall not be construed as repealing or amending any law affecting or regulating Licensed State Land Surveyors; and such Licensed State Land Surveyors in performing their duties as such shall not be subject to the provisions of this Act;".

The Registered Public Surveyors law was enacted, as you know, in 1955. It defines a Registered Public Surveyor as a person engaged in the practice of public surveying as defined in the Act, and who is registered as provided for by the Act. Public surveying is defined as,

"The science or practice of land measurement according to established and recognized methods engaged in and practiced as a profession or service available to the public generally for compensation, and comprises the determination by means of survey of the location or relocation of land boundaries and land boundary corners; the calculation of area and the preparation of field note description of surveyed land; the preparation of maps showing the boundaries and areas of the subdivision of tracts of land into smaller tracts; the preparation of official plats or maps of said land and subdivisions in compliance with the laws of the State of Texas and the political "subdivisions thereof; and such other duties as sound surveying practice would direct."

The Act goes further and defines a public surveyor (as distinguished from a registered public surveyor) as any person engaged in public surveying and who is employed as a surveyor or who holds himself out to the public as such.

The Act provides that it shall not be applicable to:

"(a) County Surveyor acting in his official capacity as authorized by law.

do 4

"(b) Licensed State Land Surveyor when acting in his official capacity as authorized by law.

"(c) Registered Professional Engineer when practicing his profession as authorized by law.

"(d) Officer of a State, County, City or other political subdivision whose official duties include land surveying when acting in his official capacity.

"(e) Deputy, assistant or employee of any person exempted from the provisions of this Act by subsections (a), (b), and (c) of this Section when acting under the direction and supervision of such exempted persons.

"(f) Assistant or employee of any Public Surveyor registered under the provisions of this Act while acting under the direction and supervision of such Registered Public Surveyor."

Section 11 of the Act provides in part:

"...that this Act shall not be construed as repealing or amending any laws affecting or regulating licensed state land surveyors or registered professional engineers, and such licensed state land surveyors or registered professional engineers in performing their duties or profession as such shall not be subject to the provisions of this Act; provided further that registration under this Act shall not of itself qualify the registrant to conduct surveys of Public Lands under the provisions of Article 5299, Revised Civil Statutes, nor to make any surveys, the field notes of which are to be filed in the General Land Office of Texas; nor shall this Act be construed to affect or prevent the practice of any other legally recognized profession by the members of such profession licensed or registered by the State or under its authority."

Since the passage of the Registered Public Surveyors Act, we have been asked several questions regarding the proper construction of the Act, particularly with regard to the exemptions.

You will note that County Surveyors and Licensed State Land Surveyors are exempt from the provisions of the Act when acting in their official capacity as authorized by law. Thus, the question arises as to what constitutes "official acts" of the County Surveyor and Licensed State Land Surveyor. It has been my view that a County Surveyor is acting in his official capacity only when he is surveying lands in which the State or his county has an ownership interest, surveys which require the filing

do<sup>s</sup>

of field notes, sketches or reports in the General Land Office of Texas, surveys of county boundary lines, county roads, and any other survey that is required by the State or county in the performance of governmental or proprietary functions. Where County Surveyor is employed by a private individual to do any surveying over which the Commissioner of the General Land Office has no supervisory control and the results of which need not be passed upon by the Commissioner, I consider such work to be "public surveying" as defined in the Act, not being done in his official capacity, and, consequently, requiring that the County Surveyor so employed be at the same time a Registered Public Surveyor.

Similarly, a Licensed State Land Surveyor, when he is performing work which constitutes official surveying by the county surveyor, he, too, is exempt from the necessity of registration, the only difference being that the County Surveyor acting officially must restrict his efforts to land located within his own county, whereas the Licensed State Land Surveyor acting officially may perform anywhere within the limits of the State.

Another question is, in a case where a County or Licensed State Land Surveyor is not a Registered Public Surveyor, does the Act authorize him to accept employment on a project which will require first the determination and resurvey of original survey boundary lines, reporting corrections to the General Land Office, and then the surveying and marking of interior lots, the latter not being subject to approval of the Land Commissioner; or must perimeter work be done only by the County Surveyor or Licensed State Land Surveyor and the interior work on the same project by a Registered Public Surveyor?

In my opinion the answer to this question is that in order to accept such employment the County Surveyor or Licensed State Land Surveyor should also be a Registered Public Surveyor since he is, in that case, engaged in the practice of public surveying as defined by the Statute.

The next question is, where a person engaged in land surveying is on the payroll to do surveying work exclusively for a single employer and is not available generally to the public, must he be a registered public surveyor to be able to survey land for his employer without violating the Statute?

This, I think, is a close question. In the first place, we can assume, I think, that the purpose of the Registered Public Surveyors Act was to standardize the practice of the profession as a protection to the public interest. This is indicated by Section 6 (c) which provides that the examinations prescribed by the Board shall be, "with special reference to the applicant's ability which shall insure safety to the public welfare and property rights."

I call to your attention, too, the definition of a public surveyor I gave you a while ago as being one, "who is employed as a surveyor or who holds himself out to the public as such", and the further provision in Section 8 of a penalty imposed on, "any person who shall practice or offer to practice the profession of public surveying in this State without being registered or exempted in accordance with the provisions of this Act".

It can well be said that one who is employed as a surveyor by an individual or company is not doing public surveying in the sense that he is available to the public generally, or that he holds himself out to the public as a public surveyor. However, in my opinion, he does come within the provisions of the Act for the reasons, first, that he is within the definition of a public surveyor as one "who is employed as a surveyor"; secondly, if the Legislature had intended that he not be covered by the Act, he could have been listed as one of the exemptions; and, thirdly, if the purpose of the Act was to standardize the practice of surveying, the intent and purpose would be just as applicable to him as to an individual practicing and holding himself out to the public. Even though he is employed by an individual or company, the work he does will, in practically every case, affect not only the



welfare and property rights of his employer, but will also necessarily affect the public welfare and public property rights. For example, the work of a surveyor employed by an oil company is going to affect the rights of the company's lessors, and possibly also the owners of adjoining tracts. There will be many times when his testimony will be used as evidence in court, and certainly this will have an effect on the property rights of members of the general public.

A similar question, of course, with regard to a Registered Professional Engineer, and that is when does land surveying performed by him constitute the practice of his profession so as not to require registration under the Act? You will note that Section 11 provides that the Act shall not be construed as repealing or amending any laws affecting or regulating registered professional engineers in performing their duties or profession as such, and that they are exempt under Section 3(c). Now, what is their profession as such? To get the answer to this question we must go back to the definition of the practice of professional engineering in the law providing for their registration. You will recall that it defines the practice of professional engineering as including,

"Any professional service such as consultation, investigation, evaluation, planning, designing, or responsible supervision of construction in connection with any public or private utilities, structures, buildings, machines, equipment, processes, works, or projects wherein the public welfare or the safeguarding of life, health or property is concerned or involved when such professional service requires the application of engineering principles and interpretation of engineering data".

The only words I can find in the above definition which would exempt the registered professional engineer from the application of the Registered Public Surveyors Act are the words, "project", and "the safeguarding of property is concerned or involved". I do not believe they are sufficient of themselves to exempt the Registered Professional Engineer from registration under the Registered Public Surveyors Act if he is practicing land surveying.

While it is a close question, it would be my recommendation that a Registered Professional Engineer register under the Registered Public Surveyors Act and thereby eliminate any question.

V. T. MULLINS, GENERAL LAND OFFICE

BY

REGULATORS AND THE REGISTERED PUBLIC

CURRENT MISCELLANEOUS INFORMATION

CURRENT MISCELLANEOUS INFORMATION

"SURVEYORS AND THE REGISTERED PUBLIC  
SURVEYORS ACT"

BY

A. T. MULLINS, GENERAL LAND OFFICE

by eliminates any question.

Professional Engineers register under the Registered Public Surveyors Act and there-  
While it is a close question, it would be my recommendation that a Registered

- 2 -

10  
19