

1) Q: Should a conflict develop between an individual survey and a school survey, neither of which have been patented and both of which were surveyed on the same date, which of the surveys should be held superior?

A: Should a conflict occur in the case of companion surveys, which would be unlikely, these surveys would undoubtedly be designated by numbers, 1 and 2, number 1 being the senior survey and number 2, calling to begin from and adjoin number 1, the junior.

Granting, however, that the surveys are found to be in conflict the question of superiority should not be considered, each survey taking its prorata part of the loss, it having been set out in the certificate that for each survey made for the company a like number of acres shall be surveyed for the State.

If the 2 surveys are parts of different systems surveyed by different surveyors on the same day and found in conflict, then the school survey should be considered superior unless it is proved that the individual survey was already on the ground before the State survey was located, in which case the State survey conflicting and its companion should share alike the loss.

2) Q: In the above cited premise, if the individual survey is patented and the school survey is unpatented, which survey is superior?

A: The matter of patenting would not change the status of the survey as to superiority. The first survey on the ground, if valid, is the senior and superior survey, first, last and all the time.

3) Q: Granted the same premise, if your answer to the second question above is "The school survey is superior", are we then to infer that the existence or nonexistence of a patent has no bearing on the question of superiority as between a school survey and an individual survey?

A: The existence or nonexistence of a patent has no bearing whatsoever on the question of superiority as between a school survey and an individual survey. If the school survey is found in fault, it should lose whether patent has issued or not.

The possession of a patent cannot be used as a subterfuge to hold land found in conflict with a valid senior survey.

4) Q: Granted the same premise, if your answer to the second question is "The individual survey is superior by reason of the existence of the patent thereon", would this answer be modified or reversed contingent on the priority of the original date of survey of the school land survey?

A: The individual survey is not superior by reason of the existence of a patent thereon. If in conflict with an unpatented senior State survey, or any other senior survey for that part, the patent should be corrected to eliminate the conflict.

5) Q: If condition of the surveys in question above reflected an excess rather than a conflict, would the superiority of the survey in question govern its right to this excess in the case of the issuance of a Deed of Acquittance, or would the school survey be entitled thereto regardless of its superiority or inferiority?

A: A survey is only superior by virtue of its seniority and could be held to course and distance (where no corners can be found), however, in the case of companion surveys, the excess should be prorated. A school survey has no more dignity than an individual survey and therefore no right to special consideration.

6) Q: All of the above questions have been propounded under the assumption that no original corners are identifiable. In each instance cited above, what would be the effect of the recovery of the original corners of the surveys held inferior but failure to recover original corners on the superior surveys?

A: The finding of the corners of the junior or inferior survey would make no difference. If the inferior survey was found to be in conflict, it would lose to the extent of the conflict. In the case of excess, the inferior survey would be entitled only to the excess within the corners of that portion out of conflict, the balance of the excess going to the superior survey.

7) Q: As between 2 individual surveys, how should superiority be determined and how should the assignment of excess be handled?

A: There could be no superiority between 2 individual surveys located on the same day without adjoiner or beginning calls to determine which was senior. The excess should be prorated according to the acreage called for in each.

8) Q: In the case of surveys both individual and school that have been surveyed and patented over Spanish and Mexican grants of doubtful authenticity be treated in compiling county maps and in making working sketches?

A: Patented surveys both individual and school found to be in conflict with Spanish or Mexican grants of doubtful authenticity must not be lost sight of and should be shown on county maps and working sketches, until eliminated by court procedure.

9) Q: Other things being equal, under what conditions or circumstances would the class (other than school surveys) of certificate, donations or pre-emptions, determine superiority?

A: In the case of several surveys of different class being located at the same time, if found in conflict and without information to determine the seniority, the superiority would be determined by the class - first, second, third, donation and pre-emption, in the order given.

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SURVEYING QUESTIONS

AND ANSWERS

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