Austin Texas
Oct. 13th 1880

Hon W. C. Walsh
Comr G L O
Austin Tex

Sir

In answer to the opinion of Hon Geo McCormick Atty Gen of 10th inst, urging reasons why you should decline to issue patents applied for by Mrs Gunter & Munson on surveys made by virtue of certificates Nos 85 to 95 inclusive, issued to Denison & Pacific R R Co. we beg respectfully to call your attention to the following facts -

It seems that the Atty Gen predicates his opinion upon what he conceives to be the facts proven. and inferences deduced in the case of the State of Texas vs Cullinan and Summerfield tried before Justice Lee in this City in December last. It would be well to remark in this

connection that said case was criminal in its nature, the defendants being charged with the offence of forgery — and hence under the law disqualified as witness, being compelled therefore to stand mute, while the State assailed the integrity of their official acts. Notwithstanding this, you will remember that the strong testimony in this vindication, and as we believe, the testimony taken therein, established the validity and strict accuracy of all surveys in question.

In answer to the first general statement of the Atty Genl — "that file Book A of the Records of the Dade District, was not in the office, nor a record thereof, until after the death of the reservation &c &c" We beg to submit that the facts proven in the case do not establish such a conclusion, and that upon the contrary it was proven by Judge Williams Mr West and Mr Ham — that said file Book was a record of said office, and that each of them had seen it there

as such. There is no direct or positive testimony as to the exact day when it was perfected there - but having established its character - ~~the~~ in the absence of competent testimony impeaching its validity as a record - the law would certainly presume that it had been filed or deposited at the proper time - There was no testimony in the case tending to show that File Book A was not in the office - at and before the time the Reservation Act took effect - We ask that in verification of this statement that you refer to the written testimony now on file in your Office - There was no testimony in the case to show that the file was made after the reservation went into effect - as stated by the Atty Gen -

There is no evidence in the case that the Certificates were not on file in the Surveyors Office - when the Surveys were made - but all of the evidence including the Records and the Certificates themselves clearly establish the correctness of this statement of the Atty Gen - The

law presumes that an
official has properly discharged
his duty - unless the contrary
is proven -

To 1st Special objections:
we submit - The Records of
the Dist Surveyor Office of the
Dist Land Dist - show that an
entry and application describing
the land to be surveyed, was made
in writing - and was properly filed
and recorded - by the Surveyor in
his Office - in strict accordance
with the statute

To 2nd Special objections -
The Records of the Surveyor
Office show that the Certificate
was on file in his Office
at the time the survey was
made - There is no testimony
in the case to the contrary -

To 3d Special objections -
There is no
testimony in the case sustaining
or warranting the propositions
of the Atty Gen -

To 4th Special objections - The
Certificate of the Surveyor shows

that the Surveys were actually made in the field, as will appear by the field notes on file in your Office. And this Certificate is in no manner controlled or assailed by any testimony in the Case.

To 5th Special objection.

This has already been sufficiently answered.

The Atty Gen having based his opinion solely upon the facts proven in the case of Calloway Hunnefield, and having failed to assign any other reason why you should not issue the Patents applied for, it clearly becomes your duty to be guided in the premises by what was actually testified to, and not by inferences or conjectures unwarranted by the testimony. If the premises of the Atty Gen in this matter, from which his conclusions are drawn, are not supported by the testimony in the case, then his conclusions should in any judgment fall with his premises.

We therefore respectfully

suggest that the Patents applied for, should be issued by you for the following reasons, which appear of record in your office.

1st There was a valid entry and application in writing duly filed in the office of the Surveyor, for the survey of the land in question, on Sept 30th 1879 - accompanied by the Certificates by virtue of which the surveys were made - said Certificates being genuine and valid.

4th

2nd The surveys were actually made in the field within the time prescribed by law - to wit on the 7th of Oct 1879. and said field notes duly returned to the Land Office within twelve months from the date of survey - after having been duly recorded in the office of the Surveyor.

3d The land surveyed was vacant and unappropriated at the time the Entry was made - and application filed - and therefore subject to location -

The Atty Gen seems to

assume that the surveys were made prior to the Date of the Entry and application - and the certificates subsequently applied thereto - a proposition which we do not admit, but expressly deny - Had such been the fact, in our opinion the surveys would have been valid - as it is a well known historical fact - that such has been the Custom of Surveyors in this State for many years, and in fact has obtained almost exclusively - The validity of this Character of surveys is expressly recognized in the Case of Jones vs Burgett 46th Texas Rep. page 292 - 293.

The Revised Statutes certainly contain nothing that militates with, or is calculated to break down this reasonable - and well established Custom - It was simply the intention of the Legislature to require bona fide surveys - and not to deprive a party of the recognized right to apply a certificate to a genuine survey previously made - There would be no

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reason in requiring a resurvey, as it could not possibly aid in the better identification of the land — and this is of course the first and most important purpose or object of a survey.

The "Act creating Public Debt Revenue page 48 Gen Laws Special Session 16th Legislature — provides simply that land within the Reservation which was vacant at the date it took effect to wit Oct 7th 1879, should be reserved from location. This Act had no retroactive effect. And hence, as a valid entry from the moment it was made, segregates (the land designated,) from the Public Domain. Said Act could not legally apply to any land upon which an Entry has been made.

It will not be questioned that Entries have been made on the Certificates in question long prior to the date said Act took effect. There are no rights of third parties assailed in this case.

Respectfully
Wm O Pengelly
For Geo. O Maxon

counter # 75134

File No. 27c

Old Miscellaneous County

Letter reg. Attny. Genl. Opinion

Filed Jan 3 18 ~~19~~ 81

GARRY MAURO, Com'r

By

Jack Land Dist

Recd from Atty Gen
Jany 3, 1981

Counter # 75135