

County Surveyors:



11-13

1. County surveyor must keep records and leave same for new County surveyor.
2. County Court may employ surveyors other than County surveyor to survey river bars and other accreted lands.

November 3, 1933.



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Mr. J. B. Dearmont  
Prosecuting Attorney  
Mound City, Missouri.

Dear Mr. Dearmont:

We have received your letter of September 18, 1933, in which was contained a request for an opinion as follows:

"I have been requested to ask from your office an opinion on Section 11606 R. S. 1929 as to the duty of county surveyor to leave a record for the new county surveyor. The outgoing surveyor did not record any of the surveys made by him out of his office. Among the numerous surveys made during the four years were: a river bar survey, of about 2200 hundred acres; several small bars; an addition to the cemetery in Oregon, and many others. He refuses to give any information to the present surveyor and there is no record left by him.

Can the county court under Section 11179 employ surveyors other than the county surveyor to survey river bars and deprive the county surveyor of the work and a recorded record outside said surveyor's private record.

Thanking you in advance for these opinions, I remain"

As to the first question above quoted, it is the opinion of this office that it is the duty of the county surveyor to leave with the recorder of deeds of said county a record to which the new surveyor shall of course have access, and that failure to perform such duty shall subject him to the penalty provided in Section 11606 R. S. Mo. 1929, in addition to the liability on his bond provided in Section 11573 R. S. Mo. 1929.

Section 11583 R. S. Mo., 1929, Art. 1, Chap. 75, provides in part as follows:

"Surveyor to keep a record - The county surveyor of every county or city shall: First, keep a fair and

correct record of all surveys made by himself and his deputies, in a well-bound book, with a convenient index, to be procured at the expense of the county or city for that purpose, which books and indexes shall be the property of such county or city, and shall be known as the "Record of surveys," and every such surveyor shall record in such book a full and complete description of all corners established by him or his deputies, within two weeks after the survey has been certified to, and such books shall be preserved by the recorder of deeds the same as the records of conveyances of such county or city and subject to inspection by any person interested therein, under the supervision of the recorder of deeds for such county or city;"

Section 11573 R. S. Mo. 1929, Art. 1, Chap. 75, provides as follows:

"Oath of office and bond. - Every county surveyor shall, within sixty days after receiving his commission, and before entering upon the duties of his office, take the oath prescribed by the Constitution, and enter into bond to the state of Missouri, in a sum not less than one thousand nor more than five thousand dollars, to be determined by the county court, conditioned that he will faithfully perform all the duties of the office of county surveyor, and that at the expiration of his term of office he, or in case of his death, his executors or administrators, will immediately deliver to the recorder of deeds of the county all the records, books and papers appertaining to his office; and it is hereby made the duty of the clerk of the county court to deliver to the recorder of deeds of their respective counties all the books plats and copies of surveys of any county surveyor, or which may be on file in their respective offices, and take the recorder's receipt for the same."

Section 11606, R. S. Mo., 1929, Art. 1, Chap. 75, provides as follows:

"Penalty for failure of surveyor to perform duties.- Any county surveyor who shall fail to perform the duties required of him by this chapter shall be fined in a sum not exceeding ninety dollars, to be recovered by civil action, at the suit of the injured party."

A diligent search has provided us with no authorities in the State of Missouri on this question but the language of the above quoted statutes is perfectly clear. These sections being all part

of the same article and chapter can be read together and when this is done it is evident that not only is the duty provided for but also the liability both on the bond and under the statutory penalty.

As to the second question in your letter above quoted, we can find nothing in our statutes or decisions to prevent the county court from employing surveyors other than the county surveyor to survey river bars without providing the county surveyor with a record thereof.

Section 11179, R. S. Mo., 1929, Art. 6, Chap. 66, provides as follows:

"County court may employ surveyors and attorneys. - The county court may employ surveyors to survey said lands and islands, and attorneys to represent them in any suits pertaining thereto, and shall pay such surveyors and attorneys reasonable compensation for their services, to be paid out of any funds arising out of the sale of such lands and islands, or out of the general revenue fund of the county as may be agreed upon at the time such surveyors and attorneys are employed."

The above quoted section which is found in the above numbered article entitled Accreted Lands clearly gives the county court the power to employ surveyors for the surveying of such lands and since county surveyors are not mentioned the word "surveyor" must be taken to mean any surveyor. The duties of surveyors as to keeping and furnishing records, mentioned in the first part of this opinion, apply only to county surveyors and cannot be held to apply to all surveyors doing work for the county court. The power given by the above section seems rather broad but since it stands alone and is not qualified by other sections we are bound by its terms.

Very truly yours,

Charles M. Howell, Jr.,  
Assistant Attorney General.

Approved:

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Attorney General.