

GOVERNOR: Governor may issue patent in correction of
PATENTS: a defective one.
PUBLIC LANDS:

September 2, 1941

Honorable Forrest C. Donnell
Governor of the State of Missouri
State Capitol Building
Jefferson City, Missouri



Dear Sir:

This will acknowledge your request for an opinion as to whether the Governor has authority to affix his signature to a patent which is issued in correction of a swamp land patent originally issued in 1859, but which was defective for the reason that there was not affixed thereto the Seal of the State of Missouri.

In a letter directed to you by D. E. Calton, Land Register Clerk, under date of August 6, 1941, we find the following statement:

"The laws relative to Swamp Lands are found in Vol. 2, Revised Statutes of Missouri, 1939, sections 12752 to 12788, inclusive. There seems to be no specific statute directing you to sign a patent, such as you now have before you for the purpose of correcting a defect, however we have records of patents having been issued in the past for similar reasons, signed by the Governor and not attested by the Secretary of State. The Legislature has not anticipated every circumstance that would arise, therefore no provision has been made to correct some of the defects which we may encounter. Prior to the year 1870, Swamp Land Patents were issued to individual purchasers, signed by the Governor and attested by the Secretary of State; the patent now in question was issued

in the year 1859. Now some attorney offers the suggestion that the title to the land is defective because the Seal of the State had not been affixed as provided by law. If this is true, of course there must be some way to remedy the situation. Personally, I believe the title now on record in Grundy County, would be held by the Courts, to be good and sufficient, however since some question has been raised, in order to satisfy all concerned, the best way to dispose of this is to issue the patent to correct the defect. The certificate of the County Clerk is sufficient evidence that the patent is going to the legal owner."

The corrected patent which you are requested to sign reads as follows:

"THE STATE OF MISSOURI,

"To ALL WHO SHALL SEE THESE PRESENTS,
GREETING:

"Whereas, It appears by the duplicate receipts of the Clerk of the County Court of Grundy County, Missouri, That Benjamin F. Sperry, of the County of Grundy, in the State of Missouri, did, on the Second day of November, in the year of our Lord, eighteen hundred and fifty seven, purchase, among other lands, the North one-half of the Northwest qr. of the Northeast qr. of Section Seventeen (17), in Township Sixty-three (63), North of the Base line, of Range Twenty-five West of the Fifth Principal Meridian, at the price of Fifty Cents per acre, being a part of the Lands selected under an Act of Congress, entitled, "An Act to enable the State of Arkansas and Other States to reclaim the Swamp

Lands within their limits," approved September 28, 1850, and whereas it further appears that the full purchase money for all the land involved in the transaction, was paid by the said Benjamin F. Sperry and that a patent to the Lands purchased by Sperry was issued and recorded in Vol. 4 at page 2063 of the records of Swamp Land Patents in the office of the Secretary of State, however it appears that said patent was defective in that the Seal of the State was not thereto affixed; and Whereas, it now appears that THE KANSAS CITY LIFE INSURANCE COMPANY is the owner through mesne conveyances by Benjamin F. Sperry, the original Purchaser; NOW, THEREFORE, KNOW YE, That I, FORREST C. DONNELL, GOVERNOR of the State of Missouri. in order to correct the title, and by virtue of authority in me vested by law, have GIVEN and Granted and by these Presents DO GIVE and GRANT unto the KANSAS CITY LIFE INSURANCE COMPANY and to ITS ASSIGNS, the LAND herein above described; to have and to hold the same, with the appurtenances, unto the said Kansas City Life Insurance Company and to its assigns forever;

"In witness whereof, I, Forrest C. Donnell, Governor of the State of Missouri, have hereunto set my hand and caused the GREAT SEAL of the State to be hereunto affixed by the Secretary of State; done at the City of Jefferson, this _____ day of August, in the Year of our Lord, Nineteen hundred and forty-one.

(SEAL)

By the Governor _____

DWIGHT H. BROWN Secretary of State."

We have been unable to find any Missouri case governing the above situation. However, we believe that the decision in the case of Newlon v. Allen, 106 Kan. 526, 188 Pac. 248, is controlling. Said case was an original mandamus against the Governor and the State Auditor to procure the issuance of a corrected patent for realty, originally school land. The court said:

"This action was brought by S. F. Newlon, owner of the east half of the northwest quarter of section 16, township 2 south, range 18, Brown county, Kan., to procure the issuance of a corrected patent for this tract originally school land.

"In 1879 this land was patented as lots 3 and 4 of the northwest quarter of section 16. The defendants in their answer admit that the land as last above described constitutes the east half of the northwest quarter of the section in question and is so described on the government plat, and express their willingness to issue the corrected patent applied for if they have the authority so to do.

"When the state enters the realm of business it should transact it on business principles, including that freedom from technicalities which is observed by the business world. No possible reason suggests itself why the owner of the land in question should have his title injuriously affected by a clerical error so easily correctable.

"As already seen, a state may, in the absence of constitutional restrictions, dispose of its property like any other owner, and when acting not in its capacity as a sovereign, but in its proprietary capacity as the owner of the lands, it is bound by the same rules as those which it applies to its citizens.' 25 R. C. L. 389, Section 23.

"A state entering into contracts lays aside its attributes of sovereignty and binds itself substantially as one of its citizens does when he enters into a contract, and, in general, its contracts are interpreted as the contracts of individuals are, and controlled by the same laws.' Page 392, Section 25.

"In *Mayse v. Belt*, 84 Kan. 211, 114 Pac. 232, the state was held liable for waiver of forfeiture of a school land certificate the same as a private party might have been.

"Feeling assured that the Governor and auditor will execute the proper patent, we deem it unnecessary at this time to allow the writ prayed for.

"All the Justices concurring."

Inasmuch as it appears that the full purchase price was paid for the land originally patented, and said patent is properly recorded in the swamp land patents in the Office of Secretary of State, we see no reason why the proper state officers may not issue another patent correcting the defect.

From the foregoing, we are of the opinion that the Governor has the authority to affix his signature to a patent which is issued in correction of a swamp land patent originally issued in 1859, but which was defective for the reason that there was not affixed thereto the Seal of the State of Missouri.

Respectfully submitted,

MAX WASSERMAN
Assistant Attorney General

APPROVED:

VANE C. THURLO
(Acting) Attorney General

MW:VC