

SWAMP LANDS: The Governor may relinquish the title of the State of
GOVERNOR OF Missouri to swamp land which was sold by the United States
MISSOURI: Government after the passage of the law donating said
lands to the State of Missouri when authorized so to do
by the County Court of the County in which such land is
located.

July 13, 1950



7/14/50

Honorable Forrest Smith
Governor, State of Missouri
Jefferson City, Missouri

Dear Governor Smith:

We are in receipt of your request for an opinion of this office asking whether the order of the County Court of Polk County is sufficient in itself to warrant your relinquishing the title of the State of Missouri to the land described therein, particularly under Section 12774, Revised Statutes of Missouri, 1939.

You quote the order of the County Court of Polk County as follows:

"IN THE COUNTY COURT OF POLK COUNTY, MISSOURI.

"BE IT REMEMBERED, that on this 20 day of June, 1950, the same being the 16th Judicial day of the May, 1950, Term of the County Court of Polk County, Missouri, the following among other proceedings, were had and entered of record, to wit:

"On this day came Earl E. Duncan and Agatha L. Duncan, husband and wife, who show to the Court that they are husband and wife and as such are in possession of and claiming to own in fee simple the Northeast quarter of the Northeast quarter of Section 23, Township 33, of Range 23, in Polk County, Missouri, and that they claim to own the same under, by, and through John West who entered said Northeast quarter of the Northeast quarter of Section 23, Township 33, of Range 23, on March 19, 1855, and to whom a patent was issued by the Government of the United States purporting to convey said land to him under date of October 1, 1858, and said parties further show to the Court that after their predecessor in title, John West, had entered said land as aforesaid, that the same land was selected by the State of Missouri as

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swamp land under the Act of Congress of September 28, 1850, and through oversight said selection was approved on January 17, 1857, and a patent was issued thereon by the United States Government unto the state of Missouri, under the date of March 26, 1857, purporting to convey said land to the State of Missouri.

"Said parties further show to the Court that John West had complied with all requirements of the law as to entrymen before the swamp selection by the State of Missouri was approved, and the Court therefore finds that the above described land had been sold by the Government of the United States after the passage of the law, donating said land to the State of Missouri, and by reason thereof, under and by virtue of provision of Section 12774 of the Revised Statutes of the State of Missouri, 1939, it is HEREBY ORDERED, ADJUDGED AND DECREED by the Court that Polk County, Missouri, by and through this order of the County Court of said County, does hereby authorize His Excellency, the Governor of the State of Missouri, to be, and he is hereby authorized to relinquish the title of the State of Missouri to said swamp and over-flowed land, namely the Northeast quarter of the Northeast quarter of Section 23, Township 33, of Range 23, in Polk County, Missouri, unto the said Earl E. and Agatha L. Duncan, husband and wife, of Polk County, Missouri.

"STATE OF MISSOURI()
() SS
COUNTY OF POLK ()

"I, Francis H. Roberts, Clerk of the County Court, of Polk County, Missouri, do hereby certify that the above and foregoing judgment and decree is a true copy of the same as it appears in my office.

"IN WITNESS WHEREOF, I hereunto set my hand and the official seal of said Court this 20 day of June, 1950.

FRANCIS H. ROBERTS /s/
CLERK OF THE COUNTY COURT
POLK COUNTY, MISSOURI"

(S E A L)

"Would you kindly advise whether or not this is sufficient, in itself, to warrant my relinquishing the title of the State of Missouri to the described land under the laws of this state, and particularly

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under Section 12774, R. S. Mo. 1939."

Section 12774, Revised Statutes of Missouri, 1939, authorizes the governor of the state to relinquish title of the state to swamp and overflow land which has been sold by the United States since the passage of the law donating said lands to the State of Missouri "whenever the counties interested in said lands may, by an order of the county court, authorize him so to do." This statute was first passed in 1859 (Laws of 1859, page 50). It refers to lands granted to the State of Missouri under an act of Congress approved September 28, 1850 (43 U.S.C.A., Sections 982-984). By an act of the General Assembly passed in 1851 (Laws of 1851, page 238), the lands were donated to the respective counties in which they were situated.

In the selection of the swamp lands, some selections were made and patents issued to the State of Missouri conveying tracts which have been entered by individuals and to which patent had been or was thereafter issued by the United States conveying the land to individuals.

Section 12774 has not been judicially construed, but quite plainly was enacted to provide for the relinquishment of the title of the state to the individual to whom the land was patented by the United States. The title of the state actually had passed to the counties under Section 12752, Revised Statutes of Missouri, 1939.

The order of the County Court, above quoted, recites adequately and properly that "John West had complied with all requirements of the law as to entrymen before the swamp selection by the State of Missouri was approved, and the Court therefore finds that the above described land had been sold by the Government of the United States after the passage of the law, donating said land to the State of Missouri." While the county court now has no judicial power it does have the general management of the business of the county, and it is believed that such determination by the county court may be considered adequate evidence of the facts therein stated. The order, however, does not show any determination or any evidence that Earl E. Duncan and Agatha L. Duncan, husband and wife, are the present owners of the land. It shows merely that they are "in possession of and claiming to own in fee simple" the land. The order does not show whether they claim by mesne conveyances from John West, the patentee or otherwise. The County Court of Polk County does not have any authority or power to determine the title to real estate. Their determination that the title to the land described in the above letter be relinquished unto Earl E. and Agatha L. Duncan, husband and wife, is not a legal finding that said parties are the present owners of said land.

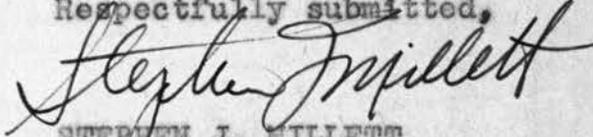
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The statute (Section 12774) authorizes the governor to relinquish the title to said land when authorized by an order of the county court. It does not purport to be mandatory in its terms, and under the statute the governor may relinquish title if, in his discretion, such relinquishment seems proper. Under the order of the county court in this case, the governor may properly relinquish title if, in his discretion, the evidence is sufficient to authorize the relinquishment to the persons desiring such conveyance. The governor may require such evidence as he deems proper as to the propriety of executing the conveyance. It would not be unreasonable for the governor to require in this case an abstract of title or other evidence that Earl E. Duncan and Agatha L. Duncan, husband and wife, are the present owners of the land.

CONCLUSION

It is the opinion of this department that under the provisions of Section 12774, Revised Statutes of Missouri, 1939, the governor may properly relinquish the title of the State of Missouri to swamp land which was sold by the United States after the passage of the law donating said lands to the State of Missouri when authorized so to do by an order of the county court of the county in which such land is situate. The statute is not mandatory and the governor in his discretion may require proof that the persons desiring the conveyance are the present owners of said land.

Respectfully submitted,


STEPHEN J. MILLETT
Assistant Attorney General

APPROVED:


J. E. TAYLOR
Attorney General

SJM:mw