

Opinion No. 15-1673

November 5, 1915

BY: FRANK W. CLANCY, Attorney General

TO: Mr. J. L. Paxton, Elida, New Mexico.

County surveyor has no authority to ignore a government corner.

OPINION

{*245} I have just received your letter of the 3rd inst. in which you ask me to advise you if a county surveyor has the right to ignore a government corner because he fails to find it where he thinks it should be, and also whether the surveyor can leave a man several acres short of what his patent calls for.

I cannot understand how a surveyor can have any authority to ignore a government corner, but it has sometimes happened that the monuments to mark such corners have been moved, as would appear from an examination of the notes of the survey which are preserved in the office of the Surveyor General. If, upon an examination {*246} of the original field notes, the county surveyor became satisfied that the monument on the ground was not at the spot where it had been originally placed, it would seem proper for him to correct that location and re-establish the corner at its proper place. This would not be an ignoring of the government corner, but only a re-establishment of it according to the original survey.

There is also a statute to be taken into consideration which appears as Section 1301 of the new codification of the laws, and which was originally Section 16 of Chapter 33 of the Laws of 1891, which declares that nothing in the statute shall be construed to empower any county surveyor to change the established lines or corners of any land owned or possessed by any person or persons.

As to the authority of the county surveyor to leave a man several acres short of what his patent calls for, attention should be called to the fact that a man who holds land under a patent from the United States, is not dependent upon any other authority for his title. Of course, there is always a possibility that the government surveyor may have made some error in running the lines so that a quarter section of land, which ought to be one hundred and sixty acres, falls short of that actual amount, and such shortage might not be apparent until after an examination of the lines on the ground with the original field notes as a guide.

There would be nothing authoritative about the action of the county surveyor so that the holder of a patent would lose any of his land, and if the loss or variation should be serious, the patentee could obtain a copy of the field notes from the office of the Surveyor General and employ any competent surveyor to revise the work of the county

surveyor, and if necessary, the matter could be taken into court by means of any appropriate suit.