

Opinion No. 15-1707

January 7, 1915

BY: H. S. CLANCY, Assistant Attorney General

TO: Mr. J. H. Rapp, Central, New Mexico.

Annual assessment work on mining claim.

OPINION

{*278} I am in receipt of your letter of the 5th instant in which you ask for the opinion of this office as to whether annual assessment work, commenced upon a mining claim in the latter part of December but not completed until after January 1, of the following year, works a forfeiture of the claim so that the same becomes open to location by some person other than the original locator.

Answering this question I have to say that when the locator of a mining claim actually commences the annual assessment work in December upon the same, with the bona fide intention of prosecuting it as required by law but does not complete such work until some time in January, of the succeeding year, such work being continuously prosecuted, no other person could enter upon such claim and make a valid location. This question has been passed upon by the courts, notably in the case of *Fee v. Durham*, 121 Fed., 468. In that case the facts shown were that on the 26th day of December the original locators of the claim commenced to do the assessment work for the year. They worked continuously during the usual working hours of each day from the 26th of December up to Saturday evening, December 30, when they left off work intending to resume on Monday morning, January 1, which they did, and thereafter prosecuted it diligently until the assessment work required by law had been done. Acting on the assumption that the original location of the claim was forfeited, and that it was open to relocation, because the full amount of the assessment work had not been done before the expiration of the year, another person, a few minutes past midnight on the last day of December, entered upon and re-located the claim. It was held by the court that there was no suspension of the work during this time, and that there was no period of time during which a person other than the original locators could enter and make a valid location. There are other cases to the same effect, and it would, therefore, appear that where assessment work is commenced upon a mining claim at any time prior to midnight of December 31, and the work is continuously prosecuted until finished, the claim is not subject to forfeiture for failure to do the annual assessment work required by law.