

Opinion No. 17-2038

August 3, 1917

BY: HARRY L. PATTON, Attorney General

TO: State Boundary Commission, Santa Fe, New Mexico.

Status of the Colorado Boundary Dispute. The State of New Mexico Has a Cause of Action Against the State of Colorado.

The Attorney General's Office Is Ready and Willing to Institute and Prosecute Suit Against Colorado As a Part of the Duties of the Office.

OPINION

I am writing this pursuant to your request for an opinion as to whether I consider the State of New Mexico has a cause of action against the State of Colorado, arising over the controversy as to the boundary line between the two states. From various sources I have gathered the following information:

The Organic Act of Colorado, the same being the Act of Congress of 1861 establishing the Territory of Colorado, fixed the southern boundary of said Territory as the 37th parallel of north latitude. Part of this territory was originally embraced in the Territory of New Mexico, established in 1850. It follows that the establishment of the south boundary line of the Territory of Colorado was likewise the establishment of the north boundary line of the Territory of New Mexico. The Enabling Act, creating the State of Colorado, passed by Congress in 1875, fixes the same parallel as the south boundary of said state. In the same year the constitution adopted by the people of the State of Colorado fixed the same line as the boundary line of said State, which constitution was approved by Congress. The Constitution of the State of New Mexico, adopted in 1911, defines the north boundary of the said State as the 37th parallel of north latitude. The constitution containing such provision was subsequently ratified and approved both by Congress and the President of the United States.

In 1868 Ehad N. Darling, upon behalf of the United States Government, surveyed and marked the 37th parallel of north latitude between the Territories of New Mexico and Colorado. In 1904 Howard B. Carpenter, United States Surveyor and Astronomer, by authority of the United States Government, resurveyed and re-established this line. It appears that the Carpenter line is north of the Darling line. From the evidence available it appears that the line established and marked by Carpenter is the true boundary line between the states, As to whether there is an actual dispute as to the boundary line between the two states, I am not prepared to state, or as to whether the entire difficulty originates in the desire of the United States Surveyor General's office to correct their difficulties, due to their own defective survey. I am reliably informed that at places along this line the Carpenter line is recognized by the State of Colorado as the correct

boundary line. On the other hand, it is contended that the State of Colorado insists that the Darling line is the correct line. As to whether there is an actual dispute is a question of fact which your Commission must determine before instituting suit.

I have read a number of authorities relating to this subject, and, without citing or commenting upon the same, I state that, in my opinion, this State has a cause of action against the State of Colorado for the establishment of said boundary line and to recover to the sovereignty of the people of this State, the territory embraced between the two lines, provided, there is an actual dispute. I further state that, in my opinion, such action should be instituted as an original proceeding in the Supreme Court of the United States.

I believe that the duty of instituting and prosecuting this suit, as well as the prosecution of the suit now pending before the Supreme Court of the United States in which the State of New Mexico is plaintiff and the State of Texas is defendant, is one that is incumbent upon the Attorney General of this State. At this time, without recognizing the lawful authority of your commission to act, I state that I am ready and willing to discharge the duties of my office relative to the suit pending and the proposed suit, and tender the services of my office for such purpose, and, especially do I request that I be permitted to institute and prosecute the suit against the State of Colorado, if such action is deemed necessary and advisable.