

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SOLICITOR
WASHINGTON, D C 20240

SEP 27 1977

MEMORANDUM

To: Director, Bureau of Land Management (420) ✓

Through: Assistant Secretary--Land and Water Resources

From: Associate Solicitor
Division of Energy and Resources

Subject: Authority of the State of Missouri to Regulate BLM
Surveying Activities

This is in reply to your memorandum of May 17, 1977, asking whether BLM is required to resurvey public land boundaries in Missouri under the laws of that State rather than under federal law when the State statutes differ from the federal statutes. The memorandum and the enclosed letter from the Missouri Department of Natural Resources indicated that there was a question about whether BLM must follow Missouri survey statutes in the execution of resurveys where those statutes were incompatible with federal statutes; however, since then, in conversations with Mr. Kelly of this office, it appears that the only unresolved issue at this time is whether BLM surveyors must be licensed by the State of Missouri.

For a long time it has been settled that once the Federal Government employs agents to carry out its lawful functions and determines their qualifications a State may not impose additional licensing requirements for the activities of those agents. This matter was clearly addressed by the Supreme Court in Johnson v. Maryland, 254 U.S. 51 (1920), when it decided that the State of Maryland had no authority to require employees of the Post Office Department to obtain motor vehicle licenses in order to operate vehicles within the State. The Court said:

[T]he immunity of the instruments of the United States from state control in the performance of their duties extends to a requirement that they desist from performance until they satisfy a state officer upon examination that they are competent for a necessary part of them and pay a fee for permission to go on. Such a requirement does not merely touch the Government servants remotely by a general rule of conduct; it lays hold of them in their specific attempt to obey orders and requires qualifications in addition to those

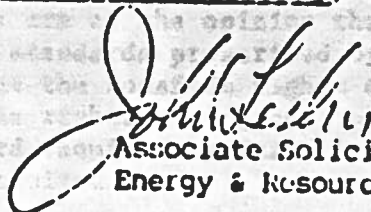
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that the Government has pronounced sufficient. It is the duty of the [Post Office] Department to employ persons competent for their work and that duty it must be presumed has been performed.

254 U.S. at 57. See also, Leslie Miller, Inc. v. Arkansas, 352 U.S. 187 (1956) (Air Force contractor immune from State licensing requirements); Sixty v. Florida, 373 U.S. 379, 385 (1962) (State may not enjoin person for unauthorized practice of law if that person has been licensed to practice before the United States Patent Office).

Although the question of whether BLM surveyors must follow State laws when they are inconsistent with federal laws may have been resolved informally, we note that it is also established beyond question that where Congress and one of its designated instrumentalities have lawfully acted to regulate a subject within their power (e.g., surveying of the public lands), any State laws which are incompatible with such regulations are of no effect, as is expressly stated in article VI, clause 2 of the Constitution.*/ See Klenn v. New Mexico, 426 U.S. 529 (1976) (Federal legislation respecting wildlife on public lands overrides any conflicting State laws).

Please note that the conclusions above apply only to surveys of public lands as opposed to acquired lands (although FIPMA does not retain this distinction). It may be necessary to resurvey boundaries of acquired lands in accordance with State laws where the boundaries of the lands were established by a private survey in accordance with State laws. See The Coast Indian Community, 3 IBLA 285, 290-91 (1971).


Associate Solicitor
Energy & Resources

*/ "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof ... shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

**Missouri Statute v. Federal Procedure
Reestablishing Corners along a Standard or Correction Line
Points of Discussion**

It is axiomatic where a senior boundary has been established and a subsequent survey is terminated and bounded with express reference to the senior boundary that the said senior boundary is controlling. This principle is guaranteed by the United States Constitution having been upheld and protected by the highest courts in the Nation. Any action serving to diminish valid vested rights without due process of law and just compensation is void.

The well established legal principle concerning surveys and resurveys of Public Lands in accordance with the rules and regulations promulgated by the United States is agreed to and undisputed by the Missouri Courts, and the USFS General Council. In the inevitable situation where Public Domain lands are a part of any survey conducted in Missouri by either the Forest Service or the Bureau of Land Management, the United States rules would have to be followed. This would undoubtedly lead to a conflict with an adjoining land owner who has had his lands surveyed in accordance with Missouri statutes, and located said lands and any improvements therefrom.

Subsurface Federal mineral interests reserved from the original patent, are properly located with a resurvey executed in accordance with Federal Rules. Consequently, if the surface land is privately owned, two sets of corners would be required to protect all valid rights.

According to the Missouri statutes, the boundaries as established in the original survey are unchangeable and standard parallels will be given precedence over other township exteriors. Using the same statutes in reference to the reestablishment of lost standard corners, would, if an original closing corner were used as control, generate results that violate the previous statutes. The senior boundary as originally established was fixed by the standard corners. *MO. case law recognizes junior senior surveys.*

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The utilization of a closing corner to control the reestablishment of a lost standard corner, irrespective of how close it is to the actual line closed upon, is a dubious proposition, considering that many of the ties to the standard corners were erroneous or even in some cases fictitious. Whatever the particular situation, you are left with the official record tie to use in the proportion. Considering also that the closing corner tie is to one standard corner only, its use as a controlling corner in any case will result in an undo influence on the senior boundary.

The State of Wisconsin repealed its conflicting legislation. Other Missouri statutes previously in conflict with the United States laws and or rules and regulations governing the Public Land Survey System have been repealed. To our knowledge, no other public land state is in agreement with the procedures prescribed by Missouri statute.

From these points of discussion, it is evident that the only way to dispense with all possible conflicting conditions, dictates that the Federal rule must be followed. It would not be necessary nor recommended that the State of Missouri adopt the Federal Manual of Surveying Instructions. Missouri State Statute 60.225.3, 4 and 6 could be repealed and replaced with the Federal rule on the specific issue. The good efforts of this office should be utilized to the maximum effect possible in assisting the State of Missouri in this endeavor.