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LINCOLN, NEBRASKA 68509

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June 11, 1985

SUBJECT: Filing of "Land Patents."  
REQUESTED BY: Dale C. Crandall, Garfield County Attorney  
Burwell, Nebraska  
OPINION BY: Robert M. Spire, Attorney General  
Sharon M. Lindgren, Assistant Attorney General

QUESTION: Is a "Land Patent" of the type submitted for  
for examination entitled to recording?

CONCLUSION: No.

QUESTION: In the event a document is determined to not  
be entitled to recording, after the Clerk has  
initially accepted it for filing, assigned a  
book and page number, affixed his stamp and  
collected the filing fee, but before actually  
indexing and recording in the County records,  
may the Clerk/Register of Deeds void the filing,  
and return the documents and the recording fee?

CONCLUSION: Yes.

QUESTION: What duty, if any, does the Clerk/Register  
of Deeds have to determine the actual nature  
of a document presented for filing, notwith-  
standing its purported status by reason of  
the title of the document?

CONCLUSION: The Clerk/Register of Deeds must review the  
document in order to determine whether the  
document is entitled to be filed under the  
laws of the State of Nebraska.

QUESTION: Does the Clerk/Register of Deeds have any  
authority to determine if the persons pre-  
senting such documents have any interest in  
the real estate in question?

CONCLUSION: No.

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The Clerk/Register of Deeds of Garfield County, Nebraska and of several other counties have been receiving documents that are entitled "land patents." These documents are presented to the various Clerks/Registers of Deeds for the purpose of being filed.

Copies of documents that have been presented to the Clerk/Register of Deeds of Garfield County, Nebraska were included with the request for this opinion. The document, that we received, has five pages. It consists of a "land patent", a certified copy of a land patent granted by the United States, and a three page caveat. It is the first of these documents, the "land patent", that is the subject of this opinion.

The "land patent" is seemingly a grant of a land patent to an individual or individuals by the same individuals. It states that its purpose is to "bring up this land patent" in the names of the specified individuals. Further, it describes a tract of land, cites various court decisions, and states that it must be challenged within sixty days. We do not know what the persons desiring to file this document actually believe its effect to be, but would presume that it is intended in some manner to clear title to the property.

A land patent is "[a] muniment of title issued by a government or state for the conveyance of some portion of the public domain." Black's Law Dictionary (5th Ed. 1979). Therefore, to be valid a land patent must be issued by the United States government, signed by a governmental official authorized to grant land patents, and with the purpose of conveying public land. It is not a document signed by an individual purporting to in some manner grant that same individual an interest in a tract of land.

A document similar to that submitted to the Clerk was reviewed by a United States District Court in Hildeford v. People's Bank, \_\_\_\_\_ F.S. \_\_\_\_\_ (N.D. Ind. 1985). In that case, the plaintiffs' filed a quiet title action claiming that their title to their land was superior to defendant bank's interest in the property that was derived from mortgages that the plaintiffs had granted to the defendant bank. The plaintiffs' claims were based on a "land patent" that the plaintiffs had granted to themselves. The court discussed the difference between the plaintiffs' purported "land patent" and a land patent issued by the United States government:

. . . These provisions [43 U.S.C. § 1, et seq.] allow the United States to grant title to public land to private individuals, thereby creating private title in the patent holder, and extinguishing title in the United States. The

"patent" here is not a grant by the United States; it is a grant by the plaintiffs. The "patent" here is not a grant to some other holder so as to pass title on to another party; it is a self-serving document whereby the plaintiffs grant the patent to themselves. This "patent" does not involve or concern "public land;" it relates to plaintiffs' private property.

Further, the court discussed the problems that would arise, if the plaintiffs' "land patent" was valid:

. . . [T]he "land patent" attached to the plaintiffs' various filings is a grant of a land patent from the plaintiffs to the plaintiffs. It is, quite simply, an attempt to improve title by saying it is better. The court cannot conceive of a potentially more disruptive force in the world of property law than the ability of a person to get "superior" title to land by simply filling out a document granting himself a "land patent" and then filing it with the recorder of deeds. Such self-serving, gratuitous activity does not, cannot and will not be sufficient by itself to create good title.

Like the "land patent" considered by the court in Hildeford, supra, the "land patent" submitted to the Garfield County Clerk is a purported grant of a land patent to two individuals by the same two individuals. It is not a transfer of title to public land to a private individual by the government. Therefore, the "land patent," being considered in this opinion, is invalid, null and void ab initio with no force or effect under the laws of the state. Consequently, the filing of such a document is improper.

Because these "land patents" are a legal nullity, any such "land patents" that have been presented to the Clerk/Register of Deeds and partially processed, or even filed, can be treated as if they had never been filed in the first place. These "land patents" should be returned to the filer, along with any filing fees, and an explanation that there is no authority for filing such documents.

When presented with a "land patent," such as that submitted with this opinion request, a Clerk/Register of Deeds has a duty to review the document, to determine whether the "land patent" is a grant of public land by the United States to an individual, and to reject any "land patents" that do not meet these requirements. The Clerk/Register of Deed's authority to reject these "land patents" is based on the provisions of

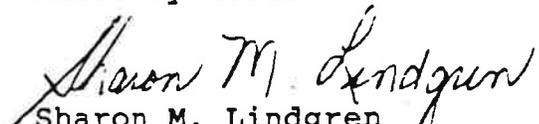
Neb.Rev.Stat. §76-237 (Reissue 1981) and Neb.Rev.Stat. §76-238 (Reissue 1981).

These sections were interpreted in Attorney General's Opinion No. 233, dated November 2, 1984. They provide that deeds, and other instruments affecting real estate, can be filed only if the instruments are entitled by law to be recorded. The Clerk/Register of Deeds must reject any documents that are not valid under Nebraska law.

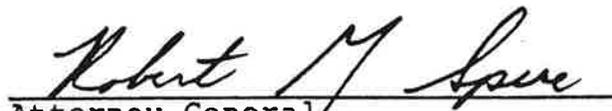
However, it would not be appropriate for the Clerk/Register of Deeds to review the various documents presented for filing in order to determine if the person presenting such documents has any interest in the real estate in question. An interest in real estate can arise in many situations, and often documents affecting title to land are not filed. The determination of the existence and extent of a valid interest in land is best resolved in a state court action. The Clerk/Register of Deed's duty is solely to review the form of the document, to determine if it is in fact a document affecting title to land that is recognized by Nebraska law and entitled to be filed under Nebraska law, and to reject those documents that do not meet these requirements.

Sincerely,

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APPROVED:

  
Attorney General