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EXTRA SPECIAL ISSUE

To all licensed land surveyors

Dear reader:

This is intended to stir you up and turn you on. It is very important that you review and analyze the two letters in the following pages.

These two documents are considered to be extremely pertinent to the confrontation between the world of civil engineering and the world of land surveying in California. Interest in them lies not in their controversial nature, but in the way they expose the question "Who are we to believe?" These are perhaps the two most crucial letters ever written with respect to the land surveying profession.

The letter from the Attorney General's Office is not only well-written. It is superb. Question No. 2 ---- "Why did the Board of Registration state, publicly, the exact opposite?" Note the dates of the letters.

It is this writer's opinion that the time has come when the entire land surveying profession should unite for the purpose of asking the California Legislature for a "Board of Registration for Professional Land Surveyors" based on the "Model Registration Act for Land Surveyors" approved by the National Council of Engineering Examiners and the American Congress on Surveying and Mapping.

After you have read these letters over, carefully, three times, I would like for you to sit down and write me, Editor of the California Surveyor, a letter explaining what your thoughts are on this subject. Try very hard to become a member of your state Association. It is the continuation of your professional career that we are fighting for but we really need your help. (\$15.00 admission fee plus \$25.00 annual dues.)

To help you think objectively in reading the letters, keep in mind the following question: "What agency would be expected to interpret the law, the Attorney General's Office or the Board of Registration for Professional Engineers?" It seems to me that the State Board is charged only with administration of the Land Surveyors Act under State law.

Eugene L. Foster, Editor

LETTER FROM THE BOARD OF REGISTRATION FOR PE'S

February 5, 1970

Mr. Bud Uses, State Land Division
1600 I Street, Sacramento, California

Dear Mr. Uses

The Board has stated:

"The term 'material evidence', as used in Section 8762 (a) of Chapter 15, Division 3 of the Business and Professions Code (Land Surveyor Act) does not relate itself to either old or new (found or set) evidence."

"Conversely, survey points found or set do not necessarily constitute 'material evidence', which would require recordation of a map according to Section 8762 (a). If the evidence (found or set) is not significant enough to make a difference, then it cannot be deemed 'material evidence'.

"However, it can be stated that recordation of a map is not required according to Section 8762 (a) if points were set which do not appear on any map, but which points would not significantly affect the outcome of the survey; and the best interest of the public would not be significantly enhanced by the recordation."

Sincerely,
LOGAN MUIR, Executive Secretary
By
John F. Quinlan
Supervising Special Investigator

LETTER FROM THE ATTORNEY GENERAL'S OFFICE

February 24, 1969

Arthur Flaherty, Executive Secretary
Board of Registration for Civil and Professional Engineers
1021 O Street, Rm. A-102, Sacramento, California

This is in response to your memorandum of October 25, 1968, wherein you asked the following four questions pertaining to Business and Professions Code Section 8762:

1. Should the term "material evidence" referred to in Section 8762(a) be construed to indicate only evidence which the surveyor discovered in the field and does not appear of record, or should the term also include new monuments which the surveyor himself establishes?
2. If more than one new monument is established, is a record, map required?
3. If there exists no recorded map (but a recorded deed) for a particular property, and the surveyor establishes all the corners, is a recorded map required?
4. If a surveyor recovers monuments other than that which was previously recorded, is a new record map required?

Responding to your questions requires construing the meaning of Business and Professions Code sections 8762, 8763 and 8764. They follow:

(Sections 8762, 8763 and 8764 are in here) (See the Act in your roster)

These sections were enacted for the purpose of perpetuating the survey work of civil engineers and surveyors as public records in the form of maps. Through the years, the Legislature has on occasion amended this law to limit the instances when the filing of a record of survey is mandatory for the purpose of avoiding unnecessary and expensive duplication of records. Your questions deal with the second paragraph of section 8762 which makes the filing of a record of survey mandatory, as opposed to the first paragraph which makes the filing discretionary.

In responding to question 1, sections 8762 and 8764 must be read together. It is apparent that the words "material evidence" in section 8762 include the particular items mentioned in section 8764. Section 8764 requires that the record of survey must show both monuments "found" and "set". Therefore, it is apparent that section 8762 makes no distinction between monuments found during the survey and those set by the surveyor; both are material evidence which necessitates the filing of a record of survey.

The answer to question 2 is affirmative, since section 8764 requires the filing of a record of survey on "all monuments found, set reset, replaced or removed . . . "

In response to question 3, it is our opinion that a deed is not a "record" for the purposes of Business and Professions Code section 8762. Therefore, the factual situation set out in question 3 would require the filing of a "record of survey" within the meaning of section 8763, that is, a "map".

In reaching this conclusion, we recognize the possible ambiguity in section 8762 when it says "any map or record" in subsection (a), "such record" in subsection (b) and "such map" in subsection (d). While it is possible from this language, particularly subsection (a), to argue that since a recorded deed is a record, no record of survey need be filed, in our judgment, this argument ignores the legislative history of the section and the fact that section 8762 must be construed together with sections 8763 and 8764.

Business and Professions Code section 8763, added to the law in 1939, defines a record of survey as a map. The Legislature also amended section 8762 subsection (b) in 1939 to add "or record". Prior to this time, the exclusive concern of section 8762 had been with maps, and it seems highly unlikely that the Legislature would have intended by the use of the word "record" to abrogate the need for a record of survey where there was a prior recorded deed. Certainly a deed does not perform the same function as a map; it does not perpetuate the survey. It appears that the reference to the "record" was a shorthand reference to records of survey previously recorded as distinguished from "any map". This is supported by the fact that both the enactment of section 8763 and the amending in of "or record" occurred in 1939.

You have advised that although many of the land surveyors follow the above interpretation, the practice in the profession has not been universal in this respect, and that this divergence in practice results largely from disagreement as to the construction of section 8762 (a). If substantial disagreement continues, it would seem evident that legislative clarification should be sought.

In response to question No. 4, a record of survey should be filed where monuments not previously of record are recovered, inasmuch as this is specifically required by section 8764. However, I do not believe that the resetting of a previously recorded monument which has become dilapidated requires the filing of a new record of survey, despite the fact that section 8764 requires the inclusion in the record of survey of any monuments "reset" or "replaced". This is because the resetting or replacing of monuments, in the nature of maintenance, does not change the purpose and functional identity of a previously recorded monument. It is already shown on a record of survey, and the filing of a new record of survey would not add to the public knowledge. However, where any resetting or replacing of a monument so changes the nature of a monument as to de hors the record, a new record of survey should be filed.

ROBERT J. SULLIVAN
Deputy Attorney General

FINAL PARAGRAPH OF A LETTER TO HERB SCHUMACHER

The second thing I believe most people overlook is the idea of what is meant by "record of survey". The law does not intend that a map be filed showing the entire survey being made. Rather, the intent is just what it says, "Show on the map material evidence (monuments) which in whole or in part do not already show in the record (added, replaced or amended). Your client is paying for your service and is entitled to a map showing everything you did or found. The public record (via the law) is only asking you to show it that which it does not already know about. This seems to me to be such a simple thing and I fail to see how a county surveyor can argue much about a bunch of descriptions of physical monuments and the relationships between them.

Eugene L. Foster
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