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Settlement of County Boundary Disputes

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SETTLEMENT OF COUNTY BOUNDARY DISPUTES

INTRODUCTION

A potentially important, but seldom encountered aspect of county government law is the law governing boundary disputes between adjoining counties. This comment will examine various state statutory methods for resolution of boundary disputes and will analyze existing case law involving the application of boundary dispute statutes to specific fact situations. Further, cases involving the issue of admissibility of laches, estoppel and acquiescence evidence in the solution of boundary disputes will be discussed.

The most obvious situation in which a boundary dispute between counties will arise involves the issue of which county is entitled to assess a strip of disputed land.[1] Another common situation which necessitates the definite determination of a boundary line involves the jurisdiction of a county court in regard to matters of title and property ownership.[2] It should be strongly emphasized that the overwhelming number of cases in this area, however, are precipitated by county arguments involving tax assessment rights. Especially in the western states, mineral deposits of all kinds are being discovered in increasing numbers and volume. The location of such a deposit within the boundary of a certain county can mean a large increment in tax revenues for that county. Therefore, the chances for county boundary disputes involving the right to assess monies derived from a "borderline" deposit are likely to be greatly increased.

Two important elements which must be constantly kept in mind in regard to county boundaries are: (1) counties are creatures of the state and their boundaries are defined by the state legislature,[3] and (2) settlement procedures for boundary disputes between counties are often subject to

1. San Juan County v. Grand County, 13 Utah 2d 242, 371 P.2d 855 (1962).
2. Randolph v. Moberly Hunting and Fishing Club, 321 Mo. 995, 15 S.W.2d 834 (1929).
3. For a representative statute in this area, *see:* WYO. STAT. §§ 18-1 to 18-26 (1957).

statutory proceedings. Therefore, it must not be assumed that county boundary law is merely the equivalent of the general law regarding boundaries. In fact, it will be shown that the law of county boundaries is a specialized area which has developed case and statutory law peculiar to itself.

ANALYSIS OF BOUNDARY DISPUTE STATUTES

Emphasis in this section will be placed on the efficiency and comprehensiveness of various types of boundary dispute statutes to resolve the kinds of boundary issues most likely to be raised under the statute. There are three basic fact situations in which such issues arise: (1) Where the language of the statutes is so ambiguous or the calls, monuments, or other natural objects are so obliterated that it would be impossible for a surveyor to determine with any degree of accuracy where the line should run; (2) Where the words of the statute are susceptible to more than one interpretation as to the placement of the boundary line, but nevertheless the "true" line can be determined by reference to legal concepts and definition; and (3) Where the statutory boundary line as fixed by the legislature can be determined on the ground, but a different line created by acquiescence or mutual recognition between the counties has been utilized for many years.

Three approaches to the resolution of county boundary disputes will be examined. Under the first method, county boundary disputes are decided solely by the courts, and no statutory procedure for the settlement of such disputes is provided by the legislature of the state in question. Second, certain states have created a statutory system under which a conclusive survey of the boundary in question is made by a non-interested third party, which survey then becomes conclusive of the location of the disputed line. Third, analysis will be made of various types of statutory procedures which combine use of the survey approach above mentioned with judicial proceedings should the survey technique for deciding the immediate issue prove inadequate for an equitable and logical resolution of the question. Throughout the

discussion of the above-mentioned methods for settlement of county boundary disputes, attention should be focused upon the degree of judicial participation permitted by the various settlement systems. In states having no county boundary dispute statute, boundary settlements are by necessity left to judicial determination. In the "conclusive survey" procedure, it can be argued that the courts are precluded from decision making participation. In the third settlement technique, an amalgam of survey and judicial proceedings are incorporated in the quest for equitable solutions of county boundary dispute questions. Therefore, each of the settlement methods must be examined for their adequacy in the solution of the issues likely to be raised under the general fact situations previously discussed, and also for the role of the judiciary in arriving at the resolution of such issues.

States With No Statutory County Boundary Settlement Procedures

Significantly there are many states which have no specific statutes providing procedures for the settlement of county boundary disputes.[4] In those states, counties having boundary problems simply bring an equitable action in court for determination of the issue.[5] In such cases, the language of the statute creating the disputed boundary is utilized as a starting point for determination of the issue. This nonmethodized approach to resolution of county boundary disputes has much to recommend it in terms of simplicity and reliable procedure for getting the matter finally solved. Since boundary disputes arise in very few instances, it cannot be argued that such direct recourse to the courts would put any additional case load on the courts. Everything considered, it is submitted that this is a very realistic approach to resolution of county boundary problems.

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4. Four states having no boundary dispute statutes are Kentucky, Tennessee, Alabama, and Illinois.

5. Marengo County v. Wilcox County, 215 Ala. 640, 112 So. 243 (1927); Putnam County v. White County, 140 Tenn. 19, 203 S.W. 334 (1918).

"CONCLUSIVE SURVEY" TYPE STATUTES

Another approach to the resolution of county boundary disputes is illustrated in the statutes of Wyoming,[6] and Utah.[7] In these states, counties having boundary determination problems are required to appoint separate county surveyors, who jointly attempt to work out a common and agreeable placement of the line. Failing such agreement, the issue is then taken to a district court in Wyoming[8] or to the state engineer in Utah.[9] In Wyoming, the court then appoints a court surveyor whose survey is conclusive of the boundary in question.[10] In Utah the state engineer performs the same function. [11] The survey having been finally made by a supposedly unbiased third party, therefore, the dispute is eliminated and the boundary conclusively determined. These procedures have the virtue of a relatively quick and uncomplicated solution to boundary dispute problems. It is submitted, however, that certain fact situations and issues may arise which would appear to be outside the scope of such statutes.

If the common fact situation arises where there is a statutory boundary line determinable in fact yet the adjoining counties have used a line established by mutual recognition, then the resolution of the issue would appear to be within the purview of the Wyoming and Utah statutes. The surveyor appointed to make the "conclusive" survey under either statutory survey could determine the statutory line, and the matter would be ended. In this situation, however, it is to be stressed that American courts have taken two different positions regarding the types of admissible evidence which may be used to determine the location of the boundary line. While the positions of the two opposing schools of thought will be explained more thoroughly in the third section of this article, for present purposes the following explanation will suffice: In the fact situation where there is a determinable statutory boundary line and a line established by mutual

6. WYO. STAT. §§ 18-1 to 18-26 (1957).
7. UTAH CODE ANN. § 17-1-33 (1953).
8. WYO. STAT. § 18-336 (1957).
9. UTAH CODE ANN. § 17-1-33 (1953).
10. WYO. STAT. § 18-336 (1957).
11. UTAH CODE ANN. § 17-1-33 (1953).

recognition, one position holds that since the boundary line is determinable in fact, that is the only line which can be established, and evidence of acquiescence, laches, or estoppel cannot be admitted.[12] It would appear that Utah has adopted this position.[13] Under the rationale of this position the Utah and Wyoming statutes would present an adequate solution, because the surveyor could simply determine the statutory line and the matter would be decided with no reference to any extrinsic evidence. The other school of thought, however, argues that in the determinable statutory line—line of mutual recognition situation, extrinsic evidence of laches, estoppel, mutual recognition, and acquiescence should be taken into consideration as to the placement of the line. If this school of thought was to be adopted by the Wyoming court, it would appear that the court would have to go outside the specific wording of the statute and allow an equitable cause of action to come before the court so that the extrinsic evidence could be presented. Further, if the court adopted this position, it would appear that the survey taken as provided in the statute would become just one of the elements to be considered in fixing the boundary line location.

In the situations where the statutory line cannot be determined because of statutory language ambiguity or obliteration of calls, monuments, or other natural objects, or where the statutory line can be determined by reference to legal principles, it would appear that the Wyoming and Utah statutes would provide inadequate remedies. If it is impossible to locate the statutory line on the ground because of language ambiguity or destruction of natural guidelines, it would seem fruitless to order a surveyor to make a "conclusive" survey of such a line because the surveyor would have no evidence upon which to base his determination. The court would have to consider extrinsic evidence of some sort to arrive at a logical conclusion. Similarly, in the situation where the line of the statute can be determined as a matter of law, it would be necessary for a court judicially to make

12. Elmore County v. Tallapoosa County, 222 Ala. 147, 131 So. 552 (1930). This case states the general rule for this position.
13. San Juan County v. Grand County, *supra* note 1, at 857.

legal decisions regarding the statutory line. It is submitted that such decisions should be made by the court, not by the surveyor.

It is highly posible that in the above-described situations, courts in Wyoming and Utah would have to make decisions in many matters requiring judicial interpretation. The conclusive surveys as provided for in the statutes would not, therefore, in every instance, be the exclusive remedy for solutions of boundary disputes. Rather, in situations calling for judicial interpretation, the results of the survey would be only one of the elements to be considered in arriving at a decision.

The only case which touches upon the issue of whether the statutory remedy under the Wyoming-Utah type of statute would be exclusive in all instances is the Utah case of *San Juan County v. Grand County*.[14] In that case, San Juan County brought an action to enjoin Grand County from exercising jurisdiction over territory as to which a boundary dispute existed. The district court dismissed the suit on the ground that there had been no substantial compliance with the Utah boundary dispute statute. The Supreme Court of Utah upheld the district court decision.

Two interpretations can be made of the *San Juan* decision. First, it can be interpreted to mean that the statutory procedure is the *exclusive* remedy for boundary disputes regardless of what types of fact situations or issues are involved. Second, and perhaps more logically, it can be contended that the decision means that an attempt at bona fide compliance with the statute must be made by the counties involved before a court suit could lie to determine any judicial issues involved. To support this interpretation, it is noted that the Utah Court discussed situations in which evidence of laches and acquiescence would be admissible in a boundary dispute case.[15] The fact that the court would discuss such a "judicial" issue would imply that following a bona fide attempt by the counties to utilize the statutory procedure, the

14. *Id.*

15. *Id.* at 857.

court would entertain a suit on the judicial issue, providing such issue in fact existed.

STATUTES PROVIDING COMBINATION SURVEY AND JUDICIAL BOUNDARY SETTLEMENT TECHNIQUES

The Texas statutory system provides an illustration of what might be considered to be a more complete statutory procedure. The statute provides that when it appears to the satisfaction of the county court or notice is given . . . by the Land Commissioner that the boundary . . . of the county is not sufficiently definite and well defined, . . . a competent surveyor will be appointed to establish the county boundary lines.[16] Notice is then given to the courts in other interested counties, which proceed to appoint surveyors to represent their respective interests.[17] If the surveyors fail to agree, the State Land Commissioner then examines the survey data and designates beginning points for a new survey, which survey becomes the conclusive determination of the boundary.[18] At this point, it should be noted that Texas has utilized the basic procedures of the Wyoming and Utah statutes, which is to provide for a "conclusive survey" settlement for the dispute. Texas, however, goes one step further in its statutory procedure by providing, "Notwithstanding any preceding article of this chapter, any county in this state may bring suit against any adjoining county or counties, for the purpose of establishing boundary line between them."[19] By the addition of the above settlement provision, the Texas boundary dispute settlement system is explicitly provided with authorization to settle the kind of disputes involving the unsurveyable and ambiguous statute situation previously described in connection with the Wyoming and Utah statutes.

A statutory system similar to the Texas procedure is used in Colorado, where the counties affected by the boundary dispute, after having attempted arbitration and joint surveys, may commence a suit in an unbiased district court within a

16. TEX. STAT. ANN. ch. 4, § 1582 (Vernon 1962).
17. TEX. STAT. ANN. ch. 4, § 1585 (Vernon 1962).
18. TEX. STAT. ANN. ch. 4, § 1584 (Vernon 1962).
19. TEX. STAT. ANN. ch. 4, § 1591 (Vernon 1962).

six month period after the official filing of the survey made by the state engineer upon the failure of the counties to agree to the location of the line.[20]

Arizona, with a greatly simplified version of the Colorado and Texas statutes, provides that "[W]hen a dispute arises between two counties respecting the location of the boundary line between such counties, . . . either county may commence an action against the other in the supreme court for the purpose of having the boundary determined."[21] The statute further provides that the supreme court may order a survey to be made of the disputed boundary any time before the final hearing of the action,[22] and finally, that the supreme court's judgment shall define and designate the true boundary between the counties.[23]

The California case of *County of Alpine v. County of Tuolumne*[24] involved factors which serve to explain the California systems for handling boundary disputes and which also serve to illustrate more clearly what may possibly be the deficiencies of the Wyoming and Utah statutes. In *County of Alpine,* a county initiated boundary dispute settlement proceedings under an administrative survey system controlled by the state land commission, which gave the commission authority to establish, by virtue of a ministerial survey method, the boundary line between affected counties.[25] Before the State land commission survey was completed, however, the county brought another action under a "judicial" settlement of boundary dispute system, also provided for in the California statutes.[26] The court held that the county was not estopped to bring the "judicial" action in spite of the fact that it had previously commenced an action under the ministerial procedure. The court stated that the issue involved the interpretation of the statutory language fixing the boundary, and that such an issue called for judicial interpretation as opposed to ministerial action for merely finding the

20. COLO. REV. STAT. §§ 34-2-1 to 34- 2-12 (1963).
21. ARIZ. REV. STAT. ANN. § 11-121 (1956).
22. ARIZ. REV. STAT. ANN. § 11-122 (1956).
23. ARIZ. REV. STAT. ANN. § 11-123 (1965).
24. 322 P.2d 449 (Cal., 1958).
25. CAL. GOV. CODE ANN. §§ 23170-23178 (West 1968).
26. CAL. GOV. CODE ANN. §§ 51000-51004 (West 1968).

line of the ground. Therefore, the state land commission was found to have no jurisdiction over the matter. The court held that the jurisdiction of the state land commissioner extended only to the determination of disputed boundary lines through the machinery of surveys to mark the boundary lines defined by the legislature, "not to define those lines by interpreting legislative language which leaves uncertain the point where the survey shall start or the courses it must follow."[27]

The court described issues contemplating resolution by judicial proceedings as follows:

> In respect to disputes of the latter character (i.e., those which involve not merely running a survey to mark legally defined lines, but rather conducting a proceeding to legally define the lines so that thereafter they may be marked on the making of a survey) it is clear . . . that the legislative plan contemplates . . . judicial proceedings.[28]

The *Alpine* case states succinctly the difference between ministerial and judicial issues, and therefore points up possible problem areas in the application of the Wyoming and Utah statutes, under which, on the basis of the statutory wording with no other facts considered, only ministerial (finding the location on the ground) issues may adequately be determined. The case further suggests the point that California may have created more statutory procedures than it really needs for the settlement of boundary disputes. Under the relatively simple terms of the Texas, Arizona, and Colorado statutes, it would not appear that such jurisdictional issues as presented in the *County of Alpine* case would so readily arise.

UTILIZATION OF EXTRINSIC EVIDENCE IN JUDICIAL BOUNDARY DISPUTE PROCEEDINGS

At various points in this comment reference has been made to use by courts of the doctrines of laches, acquiescence,

27. *Supra* note 24, at 452.
28. *Id.* at 452.

and estoppel in the solution of boundary dispute problems. This section is included to explain the types of fact situations in which evidentiary use of the above-named doctrines is sanctioned.

It should be noted at this point that under the Wyoming and Utah "conclusive survey" systems, issues involving the use of acquiescence, laches, or estoppel evidence may never arise, because the courts could interpret such boundary dispute statutes as exclusive remedies in all types of fact situations. If those courts chose to adopt such a rationale, then the only pertinent factor would be the making of the survey. As has been previously noted, however, it can be contended on the basis of the Utah *San Juan County* case that the Utah Court, assuming a bona fide attempt at statutory compliance by the counties involved, might hear extrinsic evidence on the location of the boundary line. Also, under certain types of fact situations previously discussed, it would appear that the techniques and evidences needed for equitable resolution of the conflict would lie outside of the scope of the statute. In those situations, therefore, there is a valid possibility that both the Wyoming and Utah courts would hear extrinsic evidence as to the location of the boundary line.

States with no statutory procedure but with a history of direct resort to the courts to settle county boundary disputes, and those states which incorporate judicial procedures in their boundary statutes will be confronted with issues involving the use of acquiescence, laches, and estoppel evidence.

The first situation to be considered is when the language of the boundary statute is so ambiguous that it is impossible to determine the location of the line on the ground, or when the calls, monuments, and other natural objects used by surveyors to determine line locations are so obliterated that it is impossible to run an accurate survey. The general rule used by courts to cope with this kind of problem is stated in the Alabama case of *Elmore County v. Tallapoosa County* as follows:

> If a boundary line of a county can be determined as a question of law, acquiescence in another

> line by contiguous counties is immaterial. Acquiescence can be considered only where there is uncertainty because of a conflict in the calls, monuments, or description employed in the act fixing the line; as where 1) the monuments employed are equivocal and might be referred to one as well as another, or 2) where the monuments employed in defining the line have been removed, disappeared, or effaced by time or the course of nature, or 3) where the lines, calls, or descriptions employed in the act are inconsistent or not susceptible of certain observation and determination. It is in such contingencies that the rule of acquiescence is resorted to and applied from the rule of necessity.[29]

In the contingency where the statutory language may be subject to different interpretations, differentiation must be made between a problem where there is a basic ambiguity in the wording creating several possible practical interpretations, and a problem in which the ambiguity can be resolved as a matter of *law*. If the situation is such that the ambiguity creates only practical interpretation problems, then evidence of acquiescence, laches, or estoppel is always allowable. The divergence of judicial opinion as to the admissibility of such evidence occurs when the ambiguity is resolvable as a matter of law.

The debate as to the admissibility of extrinsic evidence arises in two situations: 1) where the interpretation of the statutory language can be resolved as a matter of law, and 2) where there is a determinable statutory line and also a line established by use and mutual acceptance.

On one side of the debate are the courts adopting the position taken by the Alabama court in the *Elmore County* case, to the effect that if the boundary line is "determinable" (either in *fact,* as in the statutory line—line of acquiescence situation, or in law, as in the statutory interpretation situaion), evidence of laches, estoppel, or acquiescence may not be introduced. "The true line, if determinable, cannot be changed by parol evidence; it is the line originally fixed that

29. Elmore County v. Tallapoosa County, *supra* note 12, at 554; *see also* 20 C.J.S. *Counties*, § 22, at 774 (1940).

is to be located."[30] The rationale of such a rule is that the legislature alone has the right to establish county boundary lines, and therefore the location of a line is determined by statute, and not by acts of omission or commission of public officers, or the action of the general public.[31]

A case involving the application of this "no acquiescence evidence" doctrine is *St. Clair County v. Calhoun County.*[32] In that case a question of interpretation of statutory language was involved (whether the boundary was to be fixed by law as the thread or the bank of a certain river defining a county boundary). The court held that the statutory language could be deciphered as a matter of *law,* and therefore, evidence as to which county had actually made use of the land in dispute was immaterial.[33]

On the other side of the controversy are the courts holding that in situations where the statutory boundary is determinable in law or in fact, acquiescence, laches, and estoppel evidence is admissible. The basic rationale for the position is expressed in the Kentucky case of *Thomas v. Parsley*:

> It may be of no great importance, certainly no great public importance, as to whether this property be taxed in the one county or the other. On the other hand it is of great importance to the public that settled conditions, if they be settled by acquiescence, and have existed for a long period of time, thereby fixing personal, civil and political rights be not disturbed, unless the disturbance be thoroughly justified, holding to the biblical admonition of Proverbs 22-28: "Remove not the ancient landmarks which thy fathers have set."[34]

In the *Thomas* case, the court held that the disputed land was within the county where it had previously been assessed, rather than in an adjoining county pursuant to an early statute defining the limits of the county.[35]

30. Elmore County v. Tallapoosa County, *supra* note 12, at 554; *see also* San Juan County v. Grand County, *supra* note 1, at 855.
31. Board of Comn's v. Board of Comn's, 58 Colo. 67, 143 P. 841 (1914).
32. 94 So. 2d 777 (1957).
33. *Id.* at 782.
34. 283 Ky. 393, 141 S.W.2d 302 (1940).
35. *Id.*

Perhaps the leading case adopting the "allowance of acquiescence evidence" position is the Missouri case of *Randolph v Moberly Hunting & Fishing Club.* In the *Randolph* case a river which defined the boundary of two adjoining counties altered its course, removing (after the alteration) land from one county and placing it on the side of the river of the other county. For over 30 years, the county on whose side of the river the property had come to be situated assessed the property, arrested criminals on it, and did other acts commensurate with governmental control over it . The county line as fixed by statute was the original course of the river, which course could still be determined on the ground as a matter of fact. The court held that the county which had acquiesced in the adjoining county's jurisdiction over the land for 30 years was estopped to assert any jurisdiction over the property, in spite of the statutory boundary location. As bases for its decision, the court adopted a general philosophy similar to the *Thomas* case, and added a further argument to the effect that the United States Supreme Court had consistently settled state boundary disputes on the basis of evidence of long acquiescence. The court stated:

> While those (Supreme Court) cases establish a rule as between soverign states, there is no reason why it should not be applied to counties because counties are political subdivisions of the state and each exercises governmental functions within its territory to the exclusion of an adjoining county.[36]

The Missouri court has consistently affirmed the above position as stated by the *Moberly* court.[37] Other state courts adopting the position taken in the *Thomas* and *Moberly* cases are Texas[38] and Tennessee.[39]

At least one state, California,[40] has statutorily recognized the use of acquiescence to establish county boundary

36. Randolph v. Moberly Hunting and Fishing Club, *supra* note 2, at 837.
37. Moore v. Rone, 355 S.W.2d 398 (Mo. 1962); Randolph v. Fricke, 237 Mo. 130, 35 S.W.2d 912 (1930).
38. County of Callahan v. County of Coleman, 405 S.W.2d 145 (Tex. 1966); Lynn County v. Garza County, 58 S.W.2d 24 (Tex. 1933); Hunt County v. Rains County, 288 S.W. 805 (Tex. 1926).
39. Putnam County v. White County, 140 Tenn. 19, 203 S.W. 334 (1918).
40. CAL. GOV. CODE ANN. § 23170 (West 1968).

lines by passage of a "mutual recognition" statute, under which a county may acquire land outside its statutory boundaries by continuous use and control of the land for a 25 year period.

CONCLUSION

This comment was developed with an eye toward acquainting the reader with the kinds of fact situations under which county boundary disputes arise and then presenting the various statutory and non-statutory procedures by which such disputes might be resolved. It should be noted that any settlement procedure, whether statutory or non-statutory, will likely be complicated by the issue of whether or not to take laches, estoppel, and acquiescence evidence into consideration in deciding the question.

The only generalization which can safely be made in any discussion of this area of the law is that, not unlike many other areas of the law, there is a great diversity in the statutory and judicial methods available for the settlement of county boundary disputes. Therefore, the same factual boundary dispute situation could have a number of variant resolutions, depending strictly upon the statutory boundary dispute procedure (or lack of it) in the state wherein the dispute happened to arise, and also upon the judicial philosophy of that state in regard to the admission of laches, estoppel, or acquiescence evidence.

It is submitted that the law regarding resolution of county boundary disputes exists in the United States today as a geographical crazyquilt of statutory and judicial approaches to the resolution of such disputes. Settlement of such disputes, therefore, will depend upon which square of the quilt the issue arises.

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