

**THE COUNTY SURVEYOR IN KENTUCKY**  
to be presented by Wm. Ralph Paris, KLS 2091

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## THE COUNTY SURVEYOR IN KENTUCKY

### **Background**

In 1655, the Virginia Assembly enacted legislation "giving county courts power to appoint their own surveyors". It is the first document that definitely associated surveyors with county office. The Act also allowed the county courts to dismiss those lacking sufficient qualifications.<sup>1</sup> Surveyors in Virginia were qualified by the Surveyor General and the College of William & Mary. The westward expansion during the last half of the 18<sup>th</sup>. Century created the need for many county surveyors and deputies. The County Surveyors became practically autonomous and the previous system of qualification lost its force. This situation prevailed with the settling of the western lands before and after Kentucky statehood.

Thomas Jefferson in his "Notes on Virginia" describes the background and process very well.

### The Surveyor Office 1792-2014

The second constitution of Kentucky was the first to mention the office of surveyor. It provided for the appointment of a surveyor for any county when needed [(1799), Art. IV, sec. 8]<sup>2</sup>. From 1792 until the first constitution, even with a lack of constitutional language, the counties had county surveyors by title who prepared and signed documents with the title. The documents were standard, probably using the form required and customary by the Virginia County Surveyors that preceded them. Some had probably been Virginia County Surveyors themselves. The third constitution called for the election of a surveyor for each county for a term of four years [(1850), Art. VI, sec. 1]<sup>2</sup>.

The present Constitution also calls for the election in each county for a term of four years (Sec. 99)<sup>2</sup>.

Until about 1920, the office was well-engaged in surveying the vacant land of the Commonwealth and conducting the Processions that resolved the overlaps by the means of senior rights. The process slowed down in the following decades and with the reduced demand for surveyors and deputies, the public was no longer concerned about education of and qualifications of surveyors. A de-facto duty of the County Surveyor and Processioners had been the guardianship of the land system and when the offices became vacant, the role of surveyor was often played by any private person who declared himself a surveyor. Civil Engineers helped fill the vacuum, but there were not enough of those (none in most counties) to retrace and divide the land as the decades passed.

The week-by-week drama surrounding the one term of Mr. Charles M. Van Winkle, Jefferson County Surveyor, 1970-1974, as reported thoroughly and regularly by the Courier-Journal in 33 articles<sup>3</sup>, illustrates the depths that the office of Surveyor had fallen. Mr. Van Winkle energetically insisted that the county meet all the statutory requirements of the Surveyors Office and the county energetically resisted. Out of that controversy, such statements emerged in the Attorney-General's Office as "the duty of the county surveyor is that of making land surveys and determining boundary line and corners.....Today there is little need for that type of service..."<sup>4</sup> and that boundaries in Kentucky were stable and further surveying was unnecessary". This is evidenced by the language in the Bulletin "*Duties of Elected County Officials*" (as late as the 2003 Revision) published by the Legislative Research Commission. Also precipitated by the Van Winkle situation was the astute observation by Attorney General Breckinridge<sup>5</sup> "In states like Kentucky, where the monuments of boundaries are marked trees or stones, or other natural or artificial objects, the original boundaries having been laid out...in irregular shape... it is a matter of importance that such monuments be preserved, or, if lost or destroyed, be restored. ... This is the function of the Processioners". In 1990, the antiquated fee schedule for the Surveyor was replaced with a more reasonable means of compensation. The 1942 fee schedule for the Processioners was not replaced and has yet to be.

Since, renewed interest has been shown in the office by the efforts of a group of surveyors who have encouraged licensed surveyors to run for the office or be appointed. Due to the efforts of the now-inactive Kentucky Association of County Surveyors and the County Surveyors Committee of the Kentucky Association of Professional Surveyors, a Kentucky-licensure requirement for the Office was enacted by the General Assembly in 2012.

### **Qualifications for Office**

24 years of age  
Citizen of Kentucky  
Resident of Commonwealth for two years  
Resident of County for one year  
Licensed Land Surveyor in Kentucky

### **Installation - KRS 73.020**

Bond, no less than \$10,000, with approved sureties filed in the County Clerk's Office  
Swearing-In

### **Deputies - KRS 73.030**

On the recommendation of the Surveyor, the County Judge/executive may appoint one or more deputy surveyors, if the County Judge/executive is satisfied that they are competent. The Surveyor shall be answerable for the conduct of his deputies, and may remove any deputy at his discretion. The removal of a deputy must be entered on the records of the County Judge/executive.

## **The Surveyor – Scope of Duties**<sup>2</sup>

A county surveyor must perform any business in the civil engineering profession that he is lawfully ordered to do by any court in his county and may select chainmen and other necessary assistants to aid him in carrying out the orders of the court. The fees of assistants shall be taxed as costs (KRS 73.040).

Fiscal Court

District Court

Circuit Court

Investigations, research and report concerning boundary disputes

Note: When responding to an order of a court, if the county surveyor is not licensed as a civil engineer, he should contract with a Civil Engineer to perform duties belonging exclusively to that profession.

Note: In the state of Ohio, only persons who hold registration certificates as both "Registered Professional Engineer" and "Registered Surveyor" may qualify for the office titled "County Engineer" in that state.

Courts may direct orders of surveys to any person, but in considering an application for the appointment of some other surveyor for a special work, the courts must give preference to the Surveyor (KRS 73.050).

The Surveyor must promptly and faithfully execute every order of survey made by any court in his county. He must make out and return a true plat (map) and certificate of his survey, accompanied by explanatory notes (KRS 73.060).

The Surveyor shall make every survey by horizontal measurement. He must execute the survey by the magnetic meridian, but he shall certify and show on his plat the

degree of variation in the magnetic needle from the true meridian at the periods of the original survey and of the resurvey, if it can be done. (KRS 73.070)

The Surveyor shall append to the field notes of every survey the date of the survey and the variation of the needle from the true meridian at the time of making the survey. (KRS 080)

The Surveyor shall be made a member of committees or commissions appointed by the courts to locate, inspect, care for and report on bridges and other public improvements, and may, without taking additional oath, be made a commissioner to divide land, lay off dower or homestead, or open, alter or close a public road or open or close a private passway. (KRS 73.090)

Surveyors and their deputies may administer oaths to commissioners appointed to divide land, to lay off dower or homestead, to open, alter or close a public road or open or close a private passway (KRS 73.100)

The county may provide the Surveyor with an office at the county seat, and with record books. The records shall be county property and shall be kept in the office of the Surveyor or the County Clerk. (KRS 73.110)

The Surveyor shall keep a record of plats, and explanatory notes of all surveys made by him or his deputies, and copies of the record, certified to by the Surveyor, shall be legal evidence in any court. No survey or resurvey of real estate made by any person except the Surveyor or his deputy, shall be considered as legal evidence in any court, unless such survey is made by mutual consent in writing, signed by the parties, and recorded in the County Clerk's or Surveyor's office, or made by order of court. Any survey or resurvey filed with the county clerk shall meet the requirements of KRS 64.012 and shall have required fees attached. (KRS 73.120) KRS 64.012 requires that the Clerk shall receive for recording plats, maps and surveys, not exceeding 24 inches by 36 inches, \$20 per page.

In counties where there have been no record plat books kept by the county surveyors, the fiscal court, by contract with the county surveyor, may order him to record by plat and explanatory notes all or any part of the surveys he has made and preserved while in office, and any other surveys made and certified to by his predecessors in office. Surveys made in the past by a person other than the Surveyor shall not be platted in the record books except to explain some work done on the ground by the Surveyor. Anyone having a certified copy of a survey made by a Surveyor may have the survey platted and recorded at his expense in the County Clerk's or Surveyor's Office. Any such survey filed with the Clerk shall meet the requirements of KRS 64.012. (KRS 73.130)

When the office of Surveyor is vacant, the County Judge/executive shall order the County Clerk to take charge of the books and papers of the office, and the Clerk shall give certified copies of the records when demanded, and the requirements of KRS 64.012 have been satisfied. (KRS 73.140)

When the records of the Surveyor have been lost, mutilated or destroyed, they shall be supplied upon request of the Surveyor and County Judge/executive from the records of the Land Office. (KRS 73.150) This is in reference only to certain records attached to the land-granting process.

The county for which lost, mutilated or destroyed records are supplied shall furnish or pay for the necessary books in which to make the records and for the necessary clerk hired to transcribe the records, but no fees shall be due or payable to the state or any officer for such records. (KRS 73.160)

The Secretary of State shall certify to each book and at the end of each record, when supplied as directed in KRS 73.150 and 73.160. Such records when compiled and certified by the Secretary of State shall be prima facie evidence in court of all matters therein contained.

Any Surveyor who violates any of the provisions of KRS 73.160 shall forfeit twenty dollars to the person injured, and shall be jointly and severally liable, with his sureties, to an action on his bond for damages.

Any surveyor who violates any of the provisions of KRS 73.070 shall forfeit to the person injured fifteen dollars, and shall be liable as stated.

Deputy surveyors shall be subject to the same penalties as the surveyor. (KRS 73.990)

The Kentucky Code does not define the duties of the county surveyor as carefully as that of some other states, but neither does it much limit the courts in their use of the Surveyor's Office.

### **Compensation**

In 1990, the General Assembly provided that any court shall pay or order payment of reasonable compensation for any services it orders the Surveyor and his agents to perform. He may refuse to deliver to any party or file in court any plat or report of survey until his fees for making it have been paid. (KRS 64.320)

Chain carriers and markers shall be paid, by the person causing the survey to be made, one dollar per day. If the survey is made under an order of court their services and the fees to which they are entitled shall be reported by the surveyor in his report.

Viewers of a road shall be paid, by the applicant, one dollar per day.

Processioners shall be paid, by the employer, two dollars per day. (KRS 64.330)

### **The Surveyor and Original Surveys - KRS 56**

1. The Petition
2. Payment for Entry and Survey

Fee not less than \$5 per 100 acres. No more than 200 acres in any one county

3. County Court Order



4. Affidavit of Petitioner that land is vacant & unappropriated
5. Research
6. Affidavit of Surveyor that land is vacant & unappropriated  
(Note: Must be based on a record search of all entries, surveys and grants from Virginia Grants to the present.)  
Entry or survey of lands previously patented is unlawful (KRS 56.250)
7. The Entry - issued by Surveyor to petitioner
8. The Survey - executed by Surveyor assisted by householder/chainmen
9. Application for Patent at Kentucky Land Office
10. Review by the Attorney General for Statutory Compliance
11. The Grant - of record at the Land Office and sent to the petitioner.

### **The Surveyor and Processions KRS 73**

An act of the assembly for ascertaining the boundaries of and processioning lands was approved 7 January 1815.

The Processioners are appointed by the County Judge/Executive.

Application  
Advertisement  
Research  
The Procession  
Report

### **The Surveyor and Divisions**

Research  
Report

### **County surveys performed on an Academy Grant**

In 1799, Justinian Cartwright, a Deputy Surveyor of Christian County surveyed a tract for the Winchester Academy, pursuant to an act of the assembly for the endowment of certain seminaries. It was laid out in a square along the cardinal directions containing 1000 acres. Cartwright was a Scots-Irishman native of Maryland who had fought in the Revolution. He had been the first settler on the land that would eventually become Todd County. He was said to be “small in stature, but well made, and no mean antagonist in any contest.”

In 1820, William Lander petitioned for a procession of the survey and the appointed Processioners and the Surveyor were ordered to procession the tract for the purpose of perpetuating testimony.

William Lander advertised the date, meeting place and purpose in the county paper three times successively. The editor made an oath to that effect.

The Processioners and seven witnesses were sworn before a justice of the peace. One of the witnesses was Justinian Cartwright, the original surveyor.

According to the Processioners' Report, a Monday in January 1821 the party met and proceeded to the beginning black oak corner of the survey, which was shown by the depositions of four of the witnesses.

They proceeded to the fourth corner and the surveyor determined the course to be S 3 E 408 poles (2 chains greater than reported in the original survey report). They adjourned until the next Friday. At that time, the seven witnesses proved the fourth corner by deposition. They then proceeded to the third corner, the course to which the surveyor reported to be N 89 W 482 poles (8 chains greater than reported in the original report). Four of the witnesses confirmed the corner. From thence they proceeded to the second corner which was N 9 ½ W 624 poles (56 chains greater than originally reported). Two of the witnesses confirmed two post oaks to be the corner). The Surveyor reported the course from the beginning corner to

the fourth corner to be S 59 W 412 poles (3 chains longer than originally reported). The surveyor reported the existence of a new cabin built by Morrison on the Academy land which would be proven to be an encroachment. He also noted the location of licks, springs and an Indian mound.

In his deposition, Cartwright testified that he knew his marks of 22 years ago because he had been accustomed to make his marks low on a tree.

The beginning black oak corner is now marked with a stone with an engraved "X". The north line is actually 420 poles (5 chains greater than the distance originally reported). The northeast corner is now marked with a rod and tablet stamped "POST OAK". The southeast corner is now marked with a rod and tablet stamped "STONE". The south line is actually 490 1/2 poles (22 1/2 chains greater than the distance originally reported). The southwest corner is now marked with a record 12-inch osage-orange post.

In 1823 the Circuit Court ordered the Surveyor to report the evidence concerning a suit by said William Lander against James Morrison. Morrison purchased two tracts that had been surveyed on land already granted to the Winchester Academy Survey. They had been surveyed in 1818 and were null and void in favor of the senior 1799 Academy Survey.

In 1846 William Lander petitioned the Circuit Court for a division of the remainder of the Academy tract and Commissioners were appointed to allot tracts to his widow and heirs.

### **The Surveyor – Possibilities**

GIS-LIS

Corporate boundaries

Perpetuation of Land System original corner monuments

Advisor to the Courts in Land Surveying matters

Mapping of original surveys of the Land System

Assist the courts in drainage issues.

Emulation of the successful programs of other states

## **The Surveyor in Other States -examples of duties**

### **Utah**

By Utah State Code, the Salt Lake County Surveyors Office is to:

- Perform all boundary, topographical, and property surveys of county properties, parks, recreational facilities, engineering improvements, and land to be purchased and/or sold by/to Lake County.
- Maintain a depository and review process for plats of all surveys where property corner monuments were set to establish property boundaries.
- Create and maintain a geographical mapping system showing voting, legislative, and school districts.
- Maintain the accuracy and integrity of section corner and accessory monumentation in Salt Lake County.
- Re-establish any lost or obliterated section corner monuments.
- Develop and maintain a street centerline addressing system to assist the County in parcel identification, law enforcement response time, and verification of special project boundaries.
- Preserve the location of section corner monuments by utilizing a Global Positioning System (GPS) to establish State Plane Coordinates.
- Establish and maintain an elevation bench mark system based on mean sea level datum.
- Maintain current and historical aerial photography maps of the County.
- Perform forensic surveys and recreate graphical depictions of crime scenes for law enforcement agencies.
- Perform surveys as requested by other County Government agencies.
- Perform survey work by court order.

## **Indiana**

### **The County Surveyor's Office and Duties:**

Statutory law requires the County Surveyor to locate and perpetuate the original section corners in the County, and to recheck at least five percent of the more than 1,940 corners each year.

The Office, by statutory law, also maintains a Legal Survey Record Book, and a Section Corner Record Book and maintains and publishes a county road and section map, which also shows points of interest within Marion County, IN.

Since 1991 the Marion County Surveyor has established State Plane Coordinates on section corners and aerial photographic control points with Geographical Positioning Systems. GPS yields valuable information to surveyors, engineers, city planners, utility companies and private enterprises. State Plane Coordinates help produce more accurate and efficient land surveys for the residents and businesses of Marion County.

The County Surveyors Office also provides vertical control information to various City-County Offices, as well as, private contractors, utilities and the general public.

All City-County Offices freely use the office's expertise to interpret, advise, and write legal descriptions. The office performs surveying services for the City, County, and Township Offices when requested. This includes right of way surveys, drainage surveys, building locations, locations of improvements with regard to zoning violations, property surveys of City, County, and Township owned property. The office's surveys are used to prepare plans for ditches, drains and streams. The office also prepares forensic maps for the Marion County Prosecutor when requested.

The Eagle Creek Dam is monitored by the County Surveyor for horizontal and vertical movement.

The Marion County Surveyor has been a member of and served on the Board of Directors of "IMAGIS", "Indianapolis Mapping and Geographic Information System", since 1989.

## **Colorado**

### INFORMATION AVAILABLE in the MESA COUNTY SURVEYOR'S OFFICE

Exemption Reviews

Flood Plain Maps

Land Survey Deposits

Microfiched Records

- Assessor two-year-old records
- BLM township/range information from original surveys
- Commissioner meeting notes
- Land survey plat deposits 1987 to current
- Old city records
- Old township records
- Old BLM records
- Road books

State Monument Records

Subdivision Plats

Subdivision Reviews

Surveys (not deposits, not recorded)

Township Book - hand drawn maps showing the location of Mesa County monuments that are currently in place.

## **California**

### Our Mission

*"To provide quality surveying services through the creation maintenance and protection of land based records for public and private resources."*

### Division Profile

The Surveyor Division is responsible for maintaining accurate land records within the County of Santa Barbara. The Division has been allocated 17 full-time positions and has four general areas of responsibility. They are:

- 1) Checking and recording subdivision maps and documents;
- 2) Providing survey related data to the general public;
- 3) Conducting field surveys for County projects and;
- 4) Administration of various State and local programs.

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<sup>1</sup> Surveyors and Statesmen...Land Measuring in Colonial Virginia, 1979, p. 11

<sup>2</sup> *Duties of Elected County Officials*, Legislative Research Commission, Informational Bulletin No. 114 (Frankfort Rev. 2007), pp. 147-149

<sup>3</sup> Louisville Courier-Journal, numerous issues 1970 -1974

<sup>4</sup> Ibid. 3/13/70, 3/14/70

<sup>5</sup> Ibid. 7/9/70