

**OPINION NO. 83-018**

**Syllabus:**

A county engineer may reestablish a lost corner, but, if a dispute should arise, the corner so reestablished will not necessarily take priority over a corner reestablished by a private surveyor.

**To: Peter R. Seibel, Defiance County Prosecuting Attorney, Defiance, Ohio**  
**By: Anthony J. Celebrezze, Jr., Attorney General, April 18, 1983**

I have before me your request for an opinion concerning the reestablishment of lost or obliterated cornerstones. Your specific questions are whether the county engineer has the authority to reestablish a lost corner and whether such reestablishment would take priority over a corner which had been reestablished by a private surveyor.

The county engineer<sup>1</sup> is elected every four years, pursuant to R.C. 315.01, and has the authority and duties set forth in R.C. Chapter 315 and related provisions. R.C. 315.08 provides generally that the "county engineer shall perform for the county all duties authorized or declared by law to be done by a registered professional engineer or registered surveyor." R.C. 315.14 states, in part:

[The county engineer] shall make all surveys required by law and perform all necessary services to be performed by a registered surveyor or registered professional engineer in connection with the construction, repair, or opening of all county roads or ditches constructed under the authority of the board and shall perform such other duties as the board requires.

Your question goes specifically to the reestablishment of a "lost" or "obliterated" cornerstone. It is my understanding that there is a distinction between the two terms. As explained by the court in Sellman v. Schaaf, 26 Ohio App. 2d 35, 269 N.E.2d 60 (Logan County 1971), the primary function of a resurvey is to establish the boundaries of the first survey. This can be done by reference to monuments, such as cornerstones or stakes. When no visible evidence of a cornerstone remains, but its location may be established by competent evidence, the corner is considered "obliterated." If the corner cannot be replaced by reference to existing sources of information, then the corner is considered "lost," and must be relocated by a new survey. See generally United States v. Doyle, 468 F.2d 633 (10th Cir. 1972); Bureau of Land Management, U.S. Dep't of the Interior, Restoration of Lost or Obliterated Corners & Subdivision of Sections (1974 ed.).

While early surveys of certain land in Ohio were carried out pursuant to acts of Congress, see In re Lessee of Reed v. Marsh, 8 Ohio 147, error dismissed, 38 U.S. 153 (1837); L. Cazier, Surveys and Surveyors of the Public Domain 1785-1975 24-45, the federal government has not retained general authority to restore lost corners on land which it does not own.<sup>2</sup> Rather, resurveys of such land and resolutions of

<sup>1</sup> Prior to the adoption of G.C. 2782-1, 1935 Ohio Laws 283, the county engineer was known as the "county surveyor."

<sup>2</sup> With respect to public lands owned by the federal government, the Secretary of the Interior has authority to order resurveys to reestablish corners and boundaries. Such resurveys may not, however, impair the bona fide rights of private landowners. 43 U.S.C. §772 (1976) states:

controversies involving such land are, in most instances, to be made under state and local law. See Restoration of Lost or Obliterated Corners & Subdivision of Sections. See generally In re Lessee of Reed v. Marsh.

Under Ohio law, the county engineer has authority both to replace obliterated corners and to establish lost corners, if he is requested to do so by interested persons. R.C. 315.28 states, in part:

Any person who owns or is interested in a tract of land within this state, any corner or line of which has become lost or uncertain, or is in danger of becoming lost or uncertain by the removal, destruction, defacement, or perishing condition of any corner, witness or line tree, monument, or other cause, may call on the county engineer of the county in which the land lies to make a survey of such land, and may cause to be planted at any corner, or at proper places in any line thereof, a stone or post, noting particularly the situation and condition of the original corner trees or monuments called for in the original survey, if found, and of all other trees or monuments which it may be important or advisable to note, and of all the places of notoriety over or by which the lines of such survey pass.

R.C. 315.29 provides that, if the corners of a survey under R.C. 315.28 have been destroyed, the owner of such survey or of other lands affected by the loss of the corner may call on the county engineer to establish corners. The engineer is authorized to subpoena and examine witnesses, take their testimony in writing, and plant stones or posts in accordance with such depositions. See R.C. 315.30 (notice of taking depositions). Thus, the county engineer may, upon request, plant stones or posts to mark corners where the corners have become lost or uncertain, or are in danger of becoming lost or uncertain. See generally 1966 Op. Att'y Gen. No. 66-084.

---

The Secretary of the Interior may, as of March 3, 1909, in his discretion cause to be made, as he may deem wise under the rectangular system on that date provided by law, such resurveys or retracements of the surveys of public lands as, after full investigation, he may deem essential to properly mark the boundaries of the public lands remaining undisposed of: Provided, that no such resurvey or retracement shall be so executed as to impair the bona fide rights or claims of any claimant, entryman, or owner of lands affected by such resurvey or retracement.

43 U.S.C. §773 (1976) authorizes the Secretary of the Interior to resurvey townships covered by federal public land surveys in which more than fifty percent of the area is privately owned. Such resurveys may be undertaken only upon proper application and upon a deposit of the proportionate estimated cost of the resurvey. See also 43 U.S.C. §759 (1976) (authorizing settlers in certain townships to request federal surveys, provided that they pay the expenses). Apart from these provisions, which do not appear to be of general applicability in Ohio, the federal government has no authority to reestablish lost or obliterated corners. Thus, the reestablishment of corners for purposes other than defining property of the federal government ordinarily depends upon local provisions and judicial determination. See generally United States v. Hudspeth, 384 F.2d 683, 688 n. 7 (9th Cir. 1967) ("The accuracy of surveys of the public lands of the United States prior to their disposition is a matter committed exclusively to the executive branch. But in disputes with, or between, private owners after disposition by the government 'where the lines run by such survey lie on the ground, and whether any particular tract is on one side or the other of the line, are questions of fact always open to inquiry in the courts.' Russell v. Maxwell Land-Grant Co., 158 U.S. 253, 259, 15 S.Ct. 827, 830, 39 L.Ed. 971 (1895)"); Restoration of Lost or Obliterated Corners & Subdivision of Sections; Bureau of Land Management, U.S. Dep't of the Interior, Manual Of Instructions for the Survey of the Public Lands of the United States (1973 ed.).

In addition, R.C. 307.36 provides that, "[w]hen the board of county commissioners considers that the public good so requires, it shall authorize and require the county engineer to ascertain, by actual survey and evidence, the corners of each or any of the originally surveyed townships in such county" and mark the corners with stone posts. R.C. 503.06 provides for the county commissioners and county engineers to "determine and suitably mark the township boundary lines at all points where they intersect a public road when the point of such intersection is in dispute."

It is clear, then, that there are instances in which the county engineer is expressly authorized to reestablish a lost corner. See also R.C. 315.34 (authorizing county engineer to take testimony concerning the establishment of a surveyed or agreed corner).

In addition to the express statutory authority to plant cornerstones or posts and establish lost corners, the county engineer has a variety of duties that involve surveying. See R.C. 315.08, 315.14. For example, R.C. 5553.06 provides for the county engineer to make a survey of a proposed road improvement. R.C. 5553.18 through 5553.20 provide for the county engineer to view and survey a road to find its true line, if so directed by the county commissioners in response to a petition filed by residents in the vicinity of the road. R.C. 5555.06 provides that a resolution by a board of county commissioners for the improvement of a public road shall "order the county engineer to prepare the necessary surveys," and R.C. 5573.01 contains a similar provision concerning improvement of a road by a township. R.C. 315.18 authorizes the county engineer, upon proper application, to survey lands which have been sold for taxes. See also R.C. 315.17 (survey of land in two counties).

The statutes governing the county engineer clearly contemplate that, in carrying out these and similar duties, the county engineer may find it necessary to fix corners or monuments. R.C. 315.25 provides for him to keep a record of all surveys made by him or his deputies "for the purpose of locating any land or road lines, or fixing any corner or monument by which it may be determined, whether official or otherwise. Such surveys shall include corners. . . and a description of the monuments set up. . . ." Thus, in performing surveys to locate land or road lines, whether official or otherwise, the county engineer may, as needed, set up monuments or corners.

Your first question may, thus, be answered affirmatively. The county engineer is authorized to reestablish lost corners pursuant to the procedures established by statute, and to fix corners as necessary for the purpose of locating land or road lines. See R.C. 315.25.

Your second question is whether a corner reestablished by the county engineer takes priority over a corner reestablished by a private surveyor. Because the answer to this question may vary depending upon the context in which it is raised, I will not attempt to apply my analysis to a particular situation but will, instead, set forth a general discussion concerning the legal status of surveys made and cornerstones reestablished by a county engineer.

R.C. 315.25, which requires the county engineer to keep a record of surveys made by him or his deputies, including surveys made to fix corners, provides that the book holding such surveys shall be a public record, open to examination and inspection. It also provides that "[a]ny other surveys made in the county by competent surveyors, certified by such surveyor to be correct and deemed worthy of preservation, may, by order of the board of county commissioners, be recorded by the engineer."

R.C. 315.25 does not specify the legal significance of a survey which is recorded by the county engineer. It is clear that when such a survey is made in connection with the establishment of a road or a road improvement under such provisions as R.C. 5553.06, R.C. 5553.18 through 5553.20, R.C. 5555.06, or R.C. 5573.01 and is subsequently acted upon, the findings of the survey and any cornerstones reestablished pursuant to the survey will be adopted by the public body involved and will, in that sense, take priority over a survey by a private

surveyor. See, e.g., R.C. 5553.20 ("[t]he engineer and board may not change the line of any road under [R.C. 5553.18 and 5553.19] from that which has been opened and used by the public for a period of seven years immediately preceding the application [to determine the true line of the road]"); R.C. Chapter 5563 (providing for appeals in county road cases). Apart from such practical effects, it appears that the significance of the fact that a survey is recorded is that it is designated and preserved as a public record and is available for public inspection. R.C. 315.25. See Kramp v. Toledo Edison Co., 114 Ohio App. 9, 180 N.E.2d 172 (Lucas County 1961) (court finding significant testimony that witness from county engineer's office consulted records for certain information). As was stated by the court in Strawn v. Columbiana County, 47 Ohio St. 404, 406, 26 N.E. 635, 636 (1890):

The purpose of this section [R.S. 1178, predecessor to R.C. 315.25] is to preserve surveys that are of sufficient general importance to make it probable that they may be wanted in the future, as evidence, and thus worthy of being preserved by a public record. . . .

See generally 1964 Op. Att'y Gen. No. 1198, p. 2-253; 1913 Op. Att'y Gen. No. 381, vol. II, p. 1328.

Related sections of the Revised Code discuss the admissibility of surveys of the county engineer and other records held in his office. The general rule is set forth in R.C. 315.22, as follows:

No survey made by the county engineer or his deputy, unless made by an order of the court of common pleas, or made in accordance with sections 315.15 to 315.18, inclusive, of the Revised Code, or made by the consent of the parties, as provided in section 315.20, shall be considered evidence.

R.C. 315.15 through R.C. 315.17 set forth procedures by which a county engineer or his deputy may make a survey to be offered as evidence, and R.C. 315.21 authorizes the court of common pleas to direct that a resurvey be made by a capable disinterested person if it appears that the county engineer is interested in the survey or if he is not commissioned and qualified.

R.C. 315.31 provides that, in making surveys and establishing corners under R.C. 315.28 to 315.30, the county engineer shall record the plat and certificate of the surveys, together with the depositions and related evidence and documents. R.C. 315.32 provides that the plat, certificate, and depositions, or certified copies thereof, "shall be evidence in any court in any cause in which the title of any land to which they apply is affected," but that the depositions of witnesses shall be received only when such witnesses are dead or outside the jurisdiction of the court.

R.C. 315.24 authorizes the county engineer, at the direction of the board of county commissioners, to procure certified plats (together with field notes) from offices in the state, and preserve them in a book in his office, for the use of the landholders in the county. It provides that certified copies of those items "shall be received as prima-facie evidence in all cases in which the original would be received."<sup>3</sup>

R.C. 315.26 and 315.35 authorize the county engineer, upon direction of the board of county commissioners, to transcribe dilapidated maps, records of plats, and field notes of surveys from his office, from the records of a court, from the office of the county auditor or recorder, or from other offices in the state into suitable books to be made part of the records of his office. They provide that such records shall have the "same validity and legal effect as [other] similar records in his office." R.C. 315.36 provides that, after items have been transcribed and placed

<sup>3</sup> The Director of Highways is responsible for setting monuments to mark highways and for preserving cornerstones set within the limits of a highway to be improved. R.C. 5519.05. Cornerstones must be set at the direction of a competent surveyor when a village, subdivision, or addition to a municipal corporation is laid out. R.C. 711.01, 711.03.

among the other records pursuant to R.C. 315.35, copies of such items "shall be received in evidence in the same manner, and shall have the same force and effect as is given to copies of other records of maps, records of plats, and field notes of surveys."

It is clear that surveys made by the county engineer, and other records kept in his office, will be received as evidence as provided in the statutes discussed above.<sup>4</sup> It is not, however, clear that those surveys or corners reestablished in connection with those surveys will, in the event of controversy, necessarily be adopted over surveys or corners of a private surveyor.

R.C. 315.20 provides as follows:

No resurvey made after June 1, 1831, by any person except the county engineer or his deputy shall be considered as legal testimony in any court, unless it is made by mutual consent, reduced to writing, and signed by the parties, or is made by order of court.

Notwithstanding this provision, it has long been established that the testimony of surveyors as expert witnesses may properly be received by a court. Glass v. Dryden, 18 Ohio St. 2d 149, 154, 248 N.E.2d 54, 57 (1969) ("the trial court was entitled to consider the testimony of any expert upon a question involving technical skill and experience" in a controversy over a disputed lot line); Zipf v. Dalgarn, 114 Ohio St. 291, 151 N.E. 174 (1926) (permitting expert testimony of civil engineers in case concerning adverse possession); Sellman v. Schaaf, *supra* (permitting testimony of surveyors as expert witnesses in action to quiet title); Kramp v. Toledo Edison, *supra* (permitting surveyor to testify in action for trespass).

Thus, when a controversy arises, the reestablishment of a corner is a question of fact, which is to be determined by an evaluation of all relevant evidence, including the testimony of various expert witnesses. See generally United States v. Hudspeth, *supra* note 2; Eastman v. Wight, 4 Ohio St. 156, 162 (1854) ("[i]t is true that the recorded survey of a county surveyor is of itself only made evidence by the statute. But the actual location of a line, whether made by a county surveyor or not, may be shown by any one having knowledge of the fact"); R.C. 5301.252 (providing that affidavits stating facts relating to matters that may affect the title to real estate (including the location of monuments) may be recorded in the office of the county recorder and that such affidavits or certified copies thereof "shall be evidence of the facts therein stated, insofar as such facts affect title to real estate"; registered surveyors may include facts reconciling conflicts and ambiguities in descriptions of land in recorded instruments).

It may be that, as a practical matter, courts will generally accept corners reestablished by a county engineer over corners reestablished by other surveyors. Nevertheless, the determination of the site of the original corner is a factual one, and there is no general requirement that the corner reestablished by the county engineer must take priority over a corner reestablished by a private surveyor.

It is my conclusion, therefore, that while the county may take actions based upon surveys by the county engineer and, in that sense, adopt corners fixed by him, see, e.g., R.C. 5553.06, 5555.06, and while certain surveys made by a county engineer or his deputy shall be considered evidence, there is no legal requirement that, if the matter is reviewed by a court, a corner reestablished by a county engineer will take priority over a corner reestablished by a private surveyor. See generally, e.g., R.C. 307.31-34 (providing that county commissioners may require county engineer to ascertain and survey county boundary, but providing method for final determination of boundary by court action, based on survey by an independent surveyor); R.C. 5553.18-.20 (providing that county commissioners shall, upon receipt of petition, cause county engineer to view and find the true line of a road, but providing for civil action to ascertain the boundaries if the engineer cannot

<sup>4</sup> Under R.C. 307.58, the board of county commissioners may have records of the county engineer transcribed into other books by the engineer without changing the force and validity of such records as evidence.

ascertain them with certainty); R.C. 5563.01-.02 (providing for appeal of order for county road improvement); Re Boundary Line, 12 Ohio App. 173 (Guernsey County 1919) (permitting appeal of decision of county commissioners establishing township boundary under predecessors to R.C. 307.56 and 503.05).

It is, therefore, my opinion, and you are hereby advised, that a county engineer may reestablish a lost corner, but, if a dispute should arise, the corner so reestablished will not necessarily take priority over a corner reestablished by a private surveyor.