



February 2018

# BACKSIGHTS & FORESIGHTS

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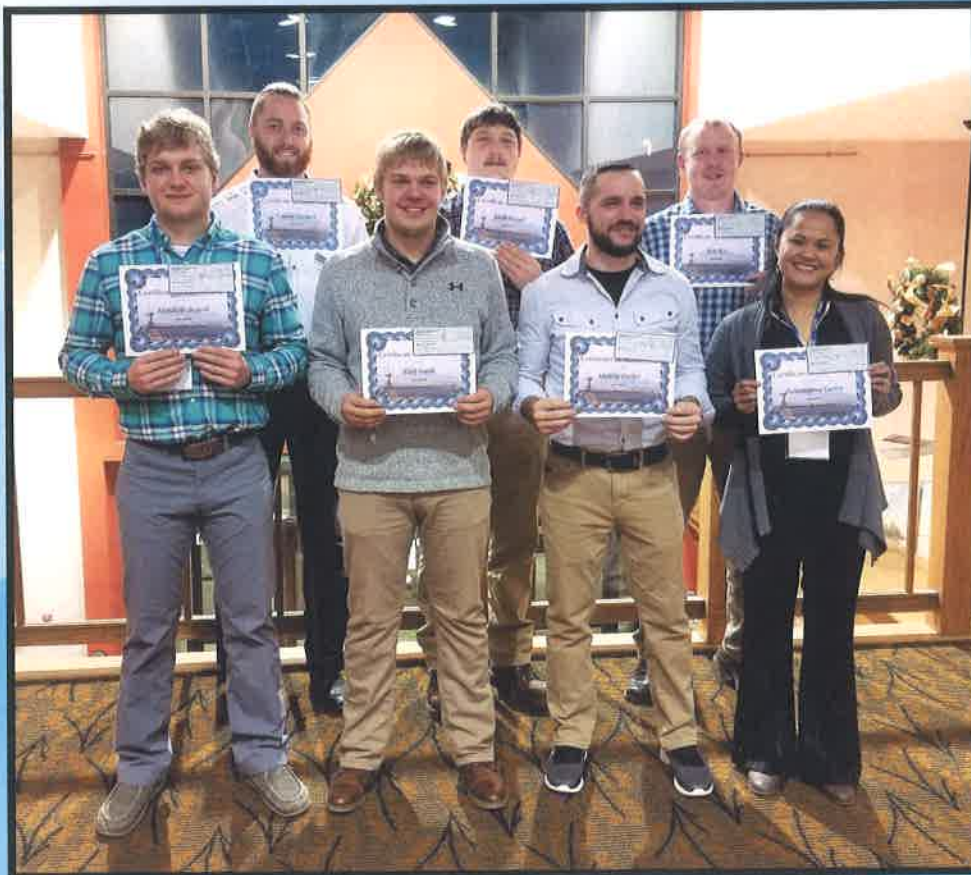
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The Land Surveyor's  
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Part 21



Congratulations to our 2018 Scholarship recipients- all from Southeast Technical Institute.  
(Front row left to right) Marshall Beynon, Cory Smith, Mattius Fisher and Took Gustin  
(Back row left to right) Connor Vlasman, Jacob Brandt and Eric Kor.

**"For to be free is not merely to cast off one's chains,  
but to live in a way that respects and  
enhances the freedom of others."**

*Nelson Mandela*

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## PUBLICATION DEADLINES

| Material Cutoff | Publication |
|-----------------|-------------|
| January 15      | February 1  |
| April 15        | May 1       |
| July 15         | August 1    |
| October 15      | November 1  |

### Backsights and Foresights

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Articles and columns appearing in the publication do not necessarily reflect the viewpoint of SDSPLS but are published as a service to its members, the general public and for the betterment of the surveying profession. No responsibility is assumed for errors, misquotes or deletions.

## FROM THE PRESIDENT:

Greetings fellow SDSPLS members! I hope that the first couple months of 2018 have been treating everyone well. I am hoping that the deep freeze of winter is past us and that our thoughts can turn toward gearing up for the busy season that lies ahead.

A great deal has transpired since transitioning to President just a few short weeks ago. The process to select a new Executive Director continues and our 2018 legislative session has been anything but quiet. We have two bills that have been particularly active (HB 1319 and SB 172), both dealing with the temporary licensure issue that we discussed at the Annual Meeting. Rarely does a day go by that there aren't multiple emails and/or phone call relating to these two issues. In dealing with these two bills I would like to take a moment to thank all of those who have helped with the opposition of HB 1319 and support of SB 172 (Opt Out). When I began this legislative session I would have put my knowledge of the legislative process at about a two on a one to ten scale. Now I think I have worked my way up to a four or maybe even a five. Don Jacobson, Gary Andersh, Diane Aas, Janelle and our DPC lobbyist Justin Bell are all extremely knowledgeable and have been incredibly helpful with the whole process (all of them are eight or higher on the ten scale). It is obvious to me that this is not the first rodeo for any of them. It is truly a benefit to the SDSPLS to have the experience that these people provide - not to mention the time they put in representing us.

At the time of writing this HB 1319 was defeated in the House of Representatives by a margin of 46 to 18. However, the Governor still has a window of opportunity to amend this bill and bring it back so we will remain on watch. To date I have not heard of a specific group other than the governor's office voice support for HB 1319. This legislation has been closely watched by our neighboring states and societies as well as the National Society of Professional Surveyors - none of which are in support of this type of Temporary Licensure legislation. We reached out to our sister societies in Colorado, North Dakota and Minnesota and received prompt and eloquent letters of opposition that we were able to share with our legislators. Curt Sumner, Executive Director of NSPS, also provided a clear and concise letter of opposition. Locally, Minnehaha County Register of Deeds Julie Risty joined our effort as well. We are fortunate to have had this response and support.

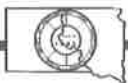
Getting away from politics - I did have the pleasure of attending the NDSPLS convention in Bismarck. They were gracious hosts and it was very enjoyable and informative to experience a neighboring state's convention. I found it very interesting how similar our conventions are. One of the differences that struck me was how involved the North Dakota membership is with their organization. Outside of the state board they have

fifteen committees, three chapters, and the NDSPLS Foundation. To top it off, they all had activity! Every committee had a lengthy written report detailing what they had accomplished for the year. It amazed me that an organization with membership that appears to be less than half of ours had so much involvement. You couldn't talk to anyone who didn't have some sort of involvement in the organization in some way, shape or form.

I am not pointing this out to make our organization look bad - but in comparison it is obvious that we could do much better in engagement and participation from our members. I am not sure what the secret ingredient is to making it happen, but it would be nice to be able to ease the burden from those in our group who seem to always put in more than their share of time. When I started in the profession I was fortunate enough to have mentors that encouraged involvement in SDSPLS and I was also fortunate to witness and participate in involved meetings. I always looked forward to going to chapter meetings and hearing the "old guys" talk about the real world issues they were facing. I think having dialogue with fellow surveyors in a comfortable setting makes it easier for us to call each other when potential problems arise. I believe that the more involved we become, the better we are individually and as a profession. One of my goals for this year as your President is to get more people involved in our Chapters, Committees and organization.

Another goal that I would like to see us work towards is increasing interest and awareness in our profession for kids - not only in high school but as early as elementary and middle school. Unfortunately most students don't even know that surveying exists let alone what a surveyor actually does. Other members have brought forward some great ideas on how to get this idea off the ground. Our NSPS Director Beau Koopal brought up the "Augmented Sandbox" which I think is a great idea that will really capture the attention of the kids. If you haven't seen an Augmented Sandbox - there are videos that can be Googled and there is one at the Washington Pavilion Science Center in Sioux Falls. It is essentially a sandbox with an X-Box projector that projects contours (land and water) onto the sand in the box. As the kids move and sculpt the sand the projector changes the contours and colors to reflect land (high ground) and water (low areas). I would like to take this a step further and have some other surveying related items and activities lined up to keep the kids interested and engaged while they are waiting in line for the Augmented Sandbox. The NDSPLS Missouri River Chapter went around to 17 different schools this past fall to talk to different groups about the career of surveying. I would really like to try and do something similar to that and incorporate the Augmented Sandbox into the presentation. I have asked them for a copy of the Power Point that they use and they were more than happy to share it. I feel that it is time that we do our own

*Continued on Page 7*



## SDSPLS – Board of Directors Meeting

Wednesday – January 10, 2018

Arrowwood (Cedar Shore) Resort (River Run & Wetlands)  
Chamberlain, SD

(This report subject to Board approval)

Participants: President Fred Leetch, President Elect Nathan Nielsen, Past President Louis O'Donnell, Secretary Eric Howard, Treasurer Travis Kropuenske, NSPS Director Beau Koopal, NSPS Young Surveyor Dani Huewe, Big Sioux Chapter President Aaron Norman, Missouri River Chapter President Dana Edwards, West River Chapter President Linda Foster, Legislation Chair Gary Andersh, DPC Chair Don Jacobson, Public Information Committee Chair Mark Lippincott, Professionalism & Practice Committee Chair Dean Scott, SDBOTP Member J. Steve Peters, Members Diane Aas and Todd Schlunsen, and Executive Director Janelle Finck.

1. Call to order at 9:05 (central) by President Leetch.
  2. Acceptance of Agenda: Move item 8c after item 5. ++Motion by Koopal to approve Agenda, 2<sup>nd</sup> by Nielsen. Motion approved.
  3. Secretary's Report – Eric Howard: Approval of minutes for the November 3, 2017 BOD Meeting Minutes. ++Motion by Nielsen to approve minutes, 2<sup>nd</sup> by Kropuenske. Motion approved.
  4. Treasurer's Report – Travis Kropuenske: Written report submitted for review. Discussion: Finck states the cost to mail out newsletter is expensive. There is a survey being handed out to decide to go all electronic with the newsletter. It is budgeted \$3500 for 2 mailers, should leave \$1000 for graphic design, \$250 for each issue. ++Motion by Norman to approve the report, 2<sup>nd</sup> by O'Donnell. Motion approved.
  5. President's Report – Fred Leetch: Written report in the Annual Report.
  8. c) 2018 Convention Update – Janelle Finck: Registration is just shy of 200 which is up by 15. There are two Guests, Dan Stueber Minnesota Society president, and Chuck Rebsch, North Dakota Society president. Nielsen states Minnesota's convention is Feb 14-16 and Nebraska's is Feb 8 & 9, if anyone can attend. Finck requests everyone to take photos at the convention and send to her, please monitor your talking, and no straggling at breaks. Discussion of Andy Scott's Hardship application and an update from Dean Scott. Sound system is being setup and will need to be put away, please assist if you can.
  6. Committee Reports:
    - a) Education Committee – Kristi Goehring: Written report in Annual Report.
    - b) Legislative Committee – Gary Andersh: Written report in Annual Report. Discussion on Temporary Licensure. Andersh states the bill has not been introduced yet, Peters states it would be introduced today with a briefing with legislators. The draft is in the speaking materials. There are 88 listed professions affected.
    - c) DPC Report – Don Jacobson: Jacobson state the when and why DPC was started. It was started in the mid '80's, legislators suggested the Architects, Engineers and Surveyors work together. Nothing has been going
- on for the last 3-4 years, they have been acting as a watch dog organization. Architects, no longer participate in DPC. Lobbyists are paid \$5,000 per year and have agreed to take on the Temporary Licensing fight for an additional \$5,000 of which SDSPLS is responsible for ¼ or \$1,250.00. Peters had brought the Licensing issue to the BOTP in November for comments, but not to discuss. Peters questions the legislative process and asks what this group can do. Jacobson says to talk to your legislators. Further discussion follows. Koopal asks if it would be help to contact NSPS. Peters will put together talking points and encourage attendance to cracker barrel meetings. ADHOC committee is formed: Andersh, Nielsen, Scott, Schlunsen, Lippincott, and Leetch - will meet after the Auction.
- d) Professionalism & Practice Committee – Dean Scott: 2019 Draft is circulating, less comprehensive edit, but necessary. Empty sections will need to be worked on. Hoping for another edition next convention.
  - e) Public Information Committee – Mark Lippincott: No report.
  - f) Membership Committee – Ron Fisk: Summary report in Annual Report.
  - g) NSPS/Young Surveyors – Beau Koopal & Dani Huewe: Written report in Annual Report. Discussion about Augmented Sandbox. Koopal –states a committee or task force should be formed to take to events. Huewe states the Young Surveyor position can be kept until age 35.
  - h) Trig Star – Steve Thinglestad: Written Report in Annual Report.
7. Chapter Reports
    - a) West River Chapter – Written report in Annual Report. Foster states there were about 30 people for the PDH conference in September.
    - b) Big Sioux Chapter – Aaron Norman: Written report in Annual Report. Norman adds there was a meeting in November. Final Marker and Stone was also presented to Chuck Hanson's wife.
    - c) Missouri River Chapter – Dana Edwards. Written report in Annual Report.
  8. Old Business
    - a) Corner Records / On-Line Records / Systems - Foster, Koopal, Nielson, Peters & Jacobson – Foster had progress, DOT interested in the concept. Also spoke with ESRI. Technically possible, now working out the logistics.
    - b) SDBOTP – Licensure Applicant Evaluation Form – Norman, Breitling, Lippincott, Meyer – Idea is to look at application forms to detail experience time vs. generalized experience.
    - d) Executive Director Search – Leetch states there have been 5 applicants, very well qualified. BOD is to recommend an interview list.
    - e) Board of Directors Positions.
      - 1) Secretary – Jon Nelson.
      - 2) President Elect – Todd Schlunsen.

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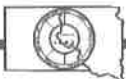
## SDSPLS – ANNUAL MEETING

Thursday, January 11, 2018

Arrowwood (Cedar Shore) Resort – Chamberlain, SD

This report is subject to BOD approval.

1. Call to order at 3:58 (CST) by President Leetch.
  2. Acceptance of Agenda: Leetch asks that Items 6b and 6c be moved to the end of New Business. Beau Koopal requests to add Item 8e - Augmented Sandbox Funding. ++Motion by Steve Peters to approve the agenda, 2<sup>nd</sup> by Diane Aas. Motion approved.
  3. Secretary's Report – Eric Howard. Approval of minutes for the 2017 meetings submitted- pages 1-6. ++Motion by Chuck Tiltrum to approve minutes, 2<sup>nd</sup> by Chad Dodds. Motion approved.
  4. Treasurer's Report – Travis Kropuenske. Written report submitted for review page 7 of the Annual Report. Kropuenske adds the expenditure is close to budgeted. There is approximately \$142,000 in the scholarship fund. ++Motion by Dean Scott to approve the report, 2<sup>nd</sup> by Diane Aas. Motion approved.
  5. President's Report – Fred Leetch: As submitted on page 8 in the Annual Report.
  6. Committee Reports:
    - a) Education Committee – Kristi Goehring: Written report located on page 9 of the Annual Report. Steve Peters asks about having 3 Scholarships. Goehring states that the 3 scholarships consist of traditional students at state schools; the Turner Scholarship for a student pursuing a 4 year degree, and Tuition Reimbursement scholarships for those employed members that are pursuing education outside of full time academic enrollment. Scholarships can be extended or awarded as decided by the BOD . Goehring explains that the Turner Scholarship is \$4,000 over 2 or more years and that tuition reimbursement can be made for up to \$300 for each approved course.
    - d) Professionalism & Practice Committee – Dean Scott: Scott states a website copy of the third edition of the Recommended Guidelines is available and the revisions are not as comprehensive as the second edition. Discussion was had at the West River Chapter Meeting. Please get in touch with Dean for welcomed input.
    - e) Public Information Committee – Mark Lippincott: No report.
    - f) Membership Committee –Ron Fisk: Membership Summary located on page 11 of the Annual Report. Fisk is requesting a new committee chair be selected. Fred Leetch asks membership to send nominations to Janelle Finck.
    - g) NSPS – Beau Koopal: Written report located on pages 12-14 of the Annual Report.  
NSPS Young Surveyor's Group – Danielle Huewe: Discussion of forming and funding a young surveyors group.
    - h) West River Chapter – Linda Foster: Written report located on page 15 of the Annual Report. Foster states the highlight was one day fall PDH conference.
    - i) Big Sioux Chapter – Aaron Normans: Written report located on page 17 of the Annual Report.
  - j) Missouri River Chapter – Dana Edwards: Written report located on page 14 of the Annual Report. Edwards adds they finished the two trap houses and adds last year there were 21 schools and 500 students participating in the sport.
  - k) Trig Star – Steve Thinglestad: Thinglestad states he will do Trig Star for one more year at least. Thinglestad also adds that last year was the best year with 9 scoring an 82 or better and our state winner placing 9<sup>th</sup> in the national competition. \$75 was also awarded to the runner-ups scores that tied for 3<sup>rd</sup> place but did not qualify for an award based on time of completion.
7. Old Business – none. Eric Howard states the sound system works great. Fred Leetch states assistance will be needed to help pack up the equipment.
  8. New Business
    - a) 2018 Proposed Operating Budget. Located on pages 19-20 of the Annual Report. Fred Leetch gives an overview of the budget. Don Jacobson discusses the Legislation Watch Fees and states the cost to register as a lobbyist of \$40 per year, and more of the budgeted \$500 may be used this year due to the proposed legislation. Additional funds for the DPC lobbyist is coming from surplus so no need to be placed in the operating budget. Janelle Finck states the projected income from the convention in on sheet 2 of the budget. ++Motion by Dean Scott to approve the 2018 budget as presented, 2<sup>nd</sup> by Steve Peters. Motion approved.
    - b) NSPS – 2019 Dues Increase. Fred Leetch state NSPS dues are proposing to increase by \$5 for 2019 which would mean that the SDSPLS dues to NSPS would increase from \$40 per regular member to \$45 per regular member. The proposed increase is due to generally increased cost of operations and NSPS planning for potential staff replacements. NSPS Executive Director Curt Sumner is expected to retire in the next few years. ++Motion by Gary Andersh to approve the \$5 increase, 2<sup>nd</sup> by Myron Adam. Motion approved.
    - c) SDSPLS 2019 Membership Dues Discussion – The BOD has approved the following membership dues:: Full Member \$160 to \$175; LSIT \$90 to \$100; Technician \$60 to \$75. Janelle Finck states the last increase was 5 years ago. We are in the median of dues of the surrounding states. Steve Peters states it would take effect in 2019. ++Motion by Don Jacobson to approve the due increase, 2<sup>nd</sup> by Bob Thielen. Motion approved.
    - d) Election of Officers – The Board of Directors has nominated the following members for the listed offices:
      - 1) President-Elect Todd Schlusen
      - 2) Secretary Jon Nelson++Motion by Kristi Goehring to approve nominations. 2<sup>nd</sup> by Dean Scott. Motion approved.
    - e) Augmented Sandbox Funding – Fred Leetch states this could possibly be a Special Use Fund project but will take suggestions on other funds.  
Beau Koopal states the cost is \$1500-\$2000 for the equipment and materials. Steve Peters asks if Southeast Tech could possibly build it? Discussion follows regarding construction, use, transportation and storage.



Steve Thingelstad said that this could be useful at the Trig-Star competition and Myron Adam indicated that this could dovetail with SD Engineering Society activities such as Math Counts. ++Motion by Kristi Goehring to fund up to \$2000 for the Augmented Sandbox, 2<sup>nd</sup> by Steve Peters. Motion approved.

6. b) Legislative Committee – Gary Andersh: Written report located on page 10 of the Annual Report.
6. c) DPC report – Don Jacobson. Myron Adam indicates that SDES is in opposition to the proposed Temporary License Compact. Justin Bell is the lobbyist for DPC and will monitor and lead the opposition. The Governor’s stated objective is to make it easier for professionals to move from state to state and to spur economic development. Concerns are expressed that the legislation is too broad and that it does not adequately account for the specific state requirements for land surveyors. General discussion regarding the legislative process – committees to the floor. General discussion regarding DPC structure and budget and the additional \$5,000 approved for lobbying fees. SDSPLS will be responsible for ¼ or \$1,250 of the additional lobbying fee. General discussion of the current comity process – references and background review and timeframe (2-8 weeks). A list of talking points will be developed and provided to SDSPLS members. Emails and letters are not as effective as direct individual contact. Members should watch their email and the website for future information and direction.
9. Next Meeting: Annual Meeting, Thursday January 10, 2019 at Cedar Shores Resort – Chamberlain.
10. Adjourn at 5:26 pm. (CST)

Respectfully Submitted

Eric Howard,  
SDSPLS Secretary

*The hardest thing, I think,  
is to live richly in the present,  
without letting it be tainted  
and spoiled out of fear  
for the future or regret  
for a badly managed past.*

*- Sylvia Plath -*

## 1-10-18 BOD Meeting Minutes - Continued from Page 5

- ++Motion by O’Donnell to approve the nominees, 2<sup>nd</sup> by Koopal. Motion approved.
- f) 2018 Proposed Operating Budget. Leetch gives overview of budget. Aas states it might be time to phase out the hard copy of the Newsletter. ++Motion by Nielsen to approve the budget, 2<sup>nd</sup> by Foster. Motion approved.
9. New Business
    - a) Temporary License Legislation – Jacobson & Andersh. Discussed in committee reports. ADHOC committee to meet tonight.
    - b) Special Use Fund Transfer – Kropuenske. Discussion follows. ++Motion by Kropuenske to approve the \$15,000 transfer, 2<sup>nd</sup> by Koopal. Motion approved.
    - c) NSPS 2019 Membership Dues Increase. NSPS has increase their membership dues. ++Motion by Koopal to approve the \$5 increase for 2019, 2<sup>nd</sup> by Nielson. Motion approved.
    - d) SDSPLS 2019 Membership Dues. Discussion. ++Motion by Nielsen to approve the membership dues of a full member to \$180, a LSIT member to \$100 and a Technician member to \$75, 2<sup>nd</sup> by Kropuenske. Motion approved.
    - e) Young Surveyors Virtual Committee & Social Media (Facebook) – Huewe discusses Facebook, Instagram, and Twitter for posting of information and looking to possibly form a Young Surveyors Chapter. Discussion follows. BOD is in support of moving forward.
    - f) Hardship Grant Application (AS) ++Motion by O’Donnell to approve the grant 2<sup>nd</sup> by Edwards. Motion approved.
  10. Next Meeting: TBD
  11. Adjourn at 11:50 am (central)

Respectfully Submitted  
Eric Howard,  
SDSPLS Secretary

## From The President – Continued from Page 4

recruiting to the profession and we need to stop relying on our schools to do it for us. This is an investment that will continue to bring dividends to our profession. If we interact more often and in a more engaging manner with our schools and students we can anticipate greater interest in surveying and hopefully we will see more and better qualified candidates entering the profession and becoming active participants in SDSPLS. I will be working on a more detailed plan and I hope that when the opportunity is presented that you will be ready to volunteer.

In closing - I am adjusting to the learning curve and have been enjoying the start of what looks to be busy year. I look forward to what the rest of this year will bring.

Nathan Nielson, PLS  
SDSPLS 2018 President



# Occupational Licensing – Threats on the Horizon

By: Carl C. deBaca, PLS

Excerpt from an Obama White House Press Release – June 2016

*Today nearly one-quarter of all U.S. workers need a government license to do their jobs. The prevalence of occupational licensing has risen from less than 5 percent in the early 1950s with the majority of the growth coming from an increase in the number of professions that require a license rather than composition in the workforce. While licensing can offer important health and safety protections to consumers, as well as benefits to workers, the current system often requires unnecessary training, lengthy delays, or high fees. This can in turn artificially create higher costs for consumers and prohibit skilled American workers ... from entering jobs in which they could otherwise excel. Research shows that licensing can not only reduce total employment in licensed professions, but also that unlicensed workers earn roughly 7 percent lower wages than licensed workers with similar levels of education, training, and experience. In addition, the patchwork of state-by-state licensing rules leads to dramatically different requirements for the same occupations depending on the state in which one lives, burdening workers who aim to move across state lines ...*

There is a movement going on across the nation to weaken or eliminate occupational licensing. This movement crosses party lines and geographic boundaries. It is a shotgun approach meaning that most advocates see no difference between teeth whitening, manicurists and land surveying. Even the medical profession is not exempt. In a commentary entitled: "End State Licensing of Physicians" found on the Cato Institute, a prominent Libertarian think tank website, Shirley Svorny had this to say:

*The ... White House report, "Occupational Licensing: A Framework for Policymakers" takes on an important labor market issue. But like many other reviews of licensing, it exempts physician licensing from its critiques. The exception is based on the premise that physician licensing "plays an important role in protecting consumers and ensuring quality." This is not true. The benefits of state licensing are overstated. Licensing authorities verify education and training, but little else. State licenses do not indicate an individual physician's specialty-specific skills. Specialty certification is the purview of medical specialty boards, which are private.*

The National Society of Professional Engineers is aggressively monitoring the situation and a quick look at their interactive map of state activities shows some

interesting things happening around us and across the country.

## Virginia

*HB 1937 (died in committee – 2017) seeks to establish a statewide policy for the regulation of professions and occupations specifying criteria for government regulation with the objective of increasing opportunities, promoting competition, encouraging innovation, protecting consumers, and complying with applicable federal antitrust laws. In addition, the bill establishes a process for the active supervision of state regulatory boards pursuant to the U.S. Supreme Court decision in North Carolina State Board of Dental Examiners v. Federal Trade Commission, in which the Court held that a state regulatory board that includes active market participants among its board membership must be actively supervised by the state for such board and its members to be entitled to immunity for federal antitrust violations.*

## Arizona

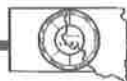
*HB 26113 introduced to the Arizona legislature eliminates several occupational licenses and the related statutes. This measure also requires a cost-benefit analysis and feasibility report concerning the transfer of all non-health regulatory boards, including the Board of Technical Registration to a new division within the Arizona Department of Administration (ADOA). This bill was signed into law in 2016 by the Arizona governor.*

## Ohio

*HB 289 – introduced in 2017 and referred to House Government Accountability Committee. If passed, occupational licensing boards will expire on December 31, 2023 or five years after the board's creation, whichever is later. This emancipates a person to engage in the profession without an occupational license, notwithstanding any law that requires a person to possess a license to lawfully engage in that profession. An occupational licensing board may be renewed by enactment of a law that continues the statutes creating, empowering, governing, or regulating the board. A standing committee will be created to review licensing boards. The licensing boards must submit their workload and purpose, as well as demonstrating public need to the standing committee.*

## Nevada

*Legislators introduce AB353 in the spring of 2017. The bill stated that occupational regulations must use the least restrictive regulation to protect consumers from harms that threaten public health and safety. The bill dies in committee, (this time).*





## U.S. Senate

*The ALLOW Act authored by Senators Mike Lee (R-UT) and Ben Sasse (R-NE) and Representatives Mark Meadows (R-NS) and Dave Brat (R-VA) starts a targeted erosion of some of the more egregious licensing issues, but supporters of the bill and the authors themselves think it is only a start.*

*Section 207 of the ALLOW Act states that private parties may pursue a lawful occupation unless the government can prove that a licensing requirement reflects "an important interest in protecting against present and recognizable harm to public health, safety, or welfare" and that the requirement is "substantially related to achievement of" that interest. Section 208 enforces Section 207. Under Section 208, if the government brings an administrative or civil action against someone for practicing without a license, the defendant can raise as a defense the claim that the licensing scheme is invalid under Section 207.*

*(Author's note: Does my stink about the 2015 U.S. Supreme Court case – North Carolina State Board of Dental examiners v. Federal Trade Commission have a little more context now?)*

As you can see, there are serious campaigns at work to reign in or eliminate occupational licensing. This movement is supported by the Republican Party, the Heritage Foundation, the Brookings Institute, the aforementioned Cato Institute, The Institute for Justice and liberal bastions such as the Progressive Policy Institute and the National Employment Law Project. More than half the states in the US have seen attempts to move on this issue. Perhaps I am exaggerating the import of all this. I'm not a conspiracy theorist. Do a little research on your own – it's not very hard. Google "Occupational Licensing Reform" or visit the National Society of Professional Engineers website (NSPS is lagging behind on this).

What does this mean to you and me? As time goes on, licensing boards, like our own Board of Professional Engineers and Land Surveyors, are going to be more closely governed and their hands are going to be increasingly tied with respect to board rules, disciplinary policy and action. There will be an increased push for license mobility across the nation and the world. We're already seeing an increased focus on license mobility with our own licensing board. While this serves to solve the problem of a shortage of surveyors and engineers, (*hopefully a short-term problem ...*), it will also tend to allow for an increase in the amount of minimally-competent practitioners (what a confidence-inspiring phrase that is ...) holding a license in Nevada. An influx of low-quality surveyors will keep our rates down and frustrate our client base with error-plagued survey products. In the coming years NALS will need to put additional emphasis on ethics, maintaining high

standards of practice and self-policing. Does any of this sound familiar? Hate to be a blunt instrument all the time but please consider giving some more thought to last year's PPC proposal in the context of the information contained in this article.

Thanks to John Palatiello of the NSPS Government Affairs Committee and the National Society of Professional Engineers for giving me some places to start my research.

Want to know more? Check out the following:

<http://www.heritage.org/government-regulation/report/positive-step-toward-occupational-licensing-reform=the-allow-act>

<https://www.brookings.edu/opinions/the-future-of-occupational-licensing-reform/>

As seen in The Nevada Traverse, Vol. 4 No. 4, 2017

## **DATES TO REMEMBER**

### **National Surveyor's Week**

March 18 – 24, 2018

### **2019 SDSPLS Annual Convention**

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# 6 Common Sense Rules for Resolving Boundary Disputes

Lee Spurgeon, PLS

I know that most of you would just prefer that all boundary lines are pretty much settled affairs and that you could go your whole career without ever having to resolve a real Donnybrook boundary dispute involving lawyers, the rats, and the brandishing of weapons. Some of us – the mental defectives, if you will – actually enjoy resolving these issues and bringing previously unseen peace into a neighborhood. It can also be a decent revenue source when the economy is in a downturn. I was considering taking out a television ad that said something like this:

*“You know your neighbor, the one who just put up a fence? Yeah, the big jerk with the loud dog. How do you know he put it in the right place? How do you know he isn’t trying to steal your land? Contact a local surveyor before he permanently snags it.”*

If you are going to deal with boundary disputes, you may as well learn these few simple rules:

## **RULE 1: Barbecues are cheaper than lawyers.**

Even a simple adverse possession lawsuit can run anywhere from \$20,000 to \$25,000. Even if your client spends that much, there is absolutely no guarantee your client will prevail. Most land cases require a very high standard of proof. In adverse possession cases, your client will need to prove all elements of the law by clear and convincing evidence. The higher the burden of proof, then it generally follows the greater expense of the lawsuit.

A good barbecue with marinated tri-tip steaks can be thrown for around \$20 per person, which includes the requisite amount of beer required in order to believe your neighbor isn’t a repulsive slug. I know it sounds like a no-brainer in financial terms, but for some reason, land attorneys still manage to make a living. Perhaps the Weber Grill Company needs to get its message out there.

## **RULE 2: The first person to accuse their neighbor of being a jerk is generally the jerk.**

This rule is based on the psychological principle of reciprocity of attribution. We tend to attribute to other people those attributes, which we see as a flaw in ourselves. Thieves will accuse other people of being thieves. Liars believe that someone else is a liar. And jerks will think other people are jerks. This principle was summed up perfectly by Raylan Givens on the show “Justified”:

*“If at the end of the day, you look in the mirror and you have seen one jerk, then you have seen a jerk. On the other hand, while you look into that mirror and think you have seen a hundred jerks, then you are probably looking at the jerk.”* (Author’s note: Raylan didn’t use the word ‘jerk’, but having actually read the editor’s e-mail, I thought I would clean things up on my own.)

Even though you have a professional and fiduciary obligation to your client, as surveyors we also have an obligation to the truth, and often times we end up working for seriously bad actors. Knowing who the problem is can also be a key unraveling the conflict.

## **RULE 3: Surveyors do not wear Kevlar.**

Even though you feel you have an absolute right to go onto people’s property to survey boundary lines as long as you follow the dictates of our state’s Right-of-Entry law, high velocity, copper-jacketed lead slugs tend to trump those rights. I figure that it requires a stack of PLSO provided door hangers three and a half inches thick to stop a typical handgun bullet. Considering how surveyors are always working in the rain (at least in Oregon), door hangers have rather dubious value as a personal protection garment. Talk to the neighbors first and assure them that you are there trying to discover the truth and that your survey may work out in their favor and if that doesn’t work, call the sheriff, but no boundary line is worth anyone’s life.

## **RULE 4: Two things you never want to see are sausages being made and your government at work.**

There is nothing worse than working out some sort of boundary resolution over which two warring factions can abide to, only to then have a planning department reject the solution because of Type 2 density overlay in a Type 3 Historical District.

Arriving at any solution in some cases, involves a sea change in the way that neighbors view one another. Many neighbors need to work past more than a little paranoia in order to come to an accord, and having a planning glitch scuttle the agreement can degenerate into a lifetime of open hostility between neighbors. Before you ever propose any solutions, make sure you have already talked to planning and have ensured that a hostile boundary problem will cruise through planning without any problems.

## **RULE 5: Some people just want to fight.**

Yes, this is correct.

I was asked to bid on a survey to determine the Really Truly Absolutely Definitive Boundary between two geezers who have been fighting over the same fence line for over 20 years.

There were perhaps a half dozen iron rods set within one or two tenths of each other. These two old men may



have spent close to \$100,000 over one or two tenths of land that is usually buried in blackberries. Their dispute may have been the only fun and exercise they ever got. If they want to fight, then I don't see why it falls upon sensible surveyors to be psychic vampires and ruin their best recreational activity.

**RULE 6: It is rarely about where the boundary is located.**

Most boundary disputes I have worked on have been about dogs, junk, noise, unnecessary police complaints or some other offense, which may not be readily apparent.

The light over the boundary location is merely the symptom of a bigger problem, which may have been festering for years. Although fixing the boundary line in an authoritative manner is a worthwhile goal in and of itself, a surveyor may end up merely treating a symptom instead of the underlying cause.

I came across a boundary dispute in which I was asked to determine a property line between two neighbors, which was a direct result of the neighbor's dogs. One neighbor had two large caliber dogs, which barked incessantly. Our client responded by using his sand wedge to knock his own dog's effluvium over the fence on the boundary line while on more than one occasion sending some into his neighbor's swimming pool.

Now if you were a surveyor who was merely treating symptoms, you would dutifully determine the boundary line and make an authoritative determination of the location of the fence. A better surveyor would suggest that bending one's knees a bit more, using a seven iron, and always using a full follow-through would get more loft and reduce the chances of an errant lie in the water hazard. The superior surveyor would suggest to his client that if he stopped launching effluvium over the fence, the neighbor might consider doing something about his barking dogs. The best surveyor would suggest to the aggrieved recipient of the effluvium that a can of white spray paint and some freshies from his own dogs put into his neighbor's backyard at night may create a very messy golfing experience and end the problem in a real hurry.

**RULE 7: Happy clients are paying clients.**

I think this speaks for itself. If you think your client doesn't have much of a case, consider getting a larger deposit.

I hope this will now make you all experts in solving boundary disputes, and yes, it is all that easy.

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As Seen in The UCLS Newsletter, March 2017

Custom Survey Markers & Monuments • Signs & Witness Posts • Flagging & Targets • Nails & Washers

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# The Future of Surveying?

## Quantum Computing and Blockchain

By: **Robert W. Foster**  
Wednesday, July 26, 2017  
From MultiBriefs  
(<http://exclusive.multibriefs.com>)

*GPS for the surveyor in private practice  
has become ubiquitous.*

Forty-four years ago, the U.S. Government introduced the global navigation satellite system – what’s known today as GPS. I remember attending a seminar where this amazing technology was described with speculation about its application in surveying.

The primary purpose of GPS was as a navigation system, but in its ability to solve positioning with precision, some futurist thinkers in the surveying profession could see an application, not only for the geodesist but for the land surveyor as well. To a flat-land surveyor familiar with chains and links, this was Buck Rogers stuff and highly theoretical.

In those early days from 1978 to 1985 during which the first constellation Block 1 satellites were launched, our own ACSM futurists – Like Larry Hothem – were explaining to us how GPS was about to change our world.

Since then, a total of 70 satellites have been launched into the system with 32 currently in healthy orbit. GPS for the surveyor in private practice has become ubiquitous; the rest is history.

Now fast-forward to 2017 when things like quantum computing and blockchain technology are being discussed with wonder and speculation that these could be the beginning of something big, like the advent of GPS all over again.

Quantum mechanics is that branch of theoretical physics that seems to contradict everything about classical physics upon which computer technology is based. We read about quantum flexibility theory, string theory and quantum fluctuations and the new D-Wave Computer. One writer has called it “the black box that could change the world,” able to process unheard of volumes of data at ever greater speeds.

As an example of the possibilities, our attention is drawn to the challenge of dealing with the so-called Big Data produced by “the internet of things.” In the (theoretical) smart cities of tomorrow, thousands of sensors will

collect millions of bits of data for municipal administration over everything from traffic control to voting patterns. Only the processing marvels of quantum computing, it is said, will be able to handle the information overload.

Blockchain technology is no less exciting and equally mysterious in its potential applications for us. The block chain has been described as an electronic digital auditing system in the cloud. One of its anticipated applications - aside from bitcoin and other cryptocurrencies - is a virtual cadaster-in-the-cloud in which property records will be maintained and made accessible from any location with perfect accuracy and security. Several FIG commissions have added blockchain to their areas of study.

In the mid-1970s we watched and wondered at a technology that might or might not have relevance for the surveying profession. But with the global satellite navigation system, we could understand that measurement – a subject dear to our hearts – was part of the promise.

With quantum mechanics and block chain technology, it is more difficult to see clearly how the surveying world will be affected.

But stay tuned: Our new wave of young, tech-savvy surveyors will see it and adapt to everything new as we once did with the digital computer and GPS. And somewhere there’s a young Larry Hothem who will explain it all to the rest of us.

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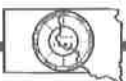
*Robert W. Foster, PS, PE, of Hopkinton, MA, is in private practice, offering professional consulting services nationally in arbitration, dispute, resolution and litigation involving surveying and civil engineering issues. He is past president of the International Federation of Surveyors (FIG).*

---

As Seen in Missouri Surveyor, September 2017

*All we have to decide  
is what to do with  
the time that is given us.*

*J.R.R. Tolkien*



# PHOTO CONTEST WINNER



First Place - Chad Dodds



Second Place - Jeremy Wolbrink



Third Place - Banner Associates

See Page 16 for more photo contest entries



**Don Borchering  
as Captian Andrew Talcott**



**Feature Speaker Wendy Lathrop**



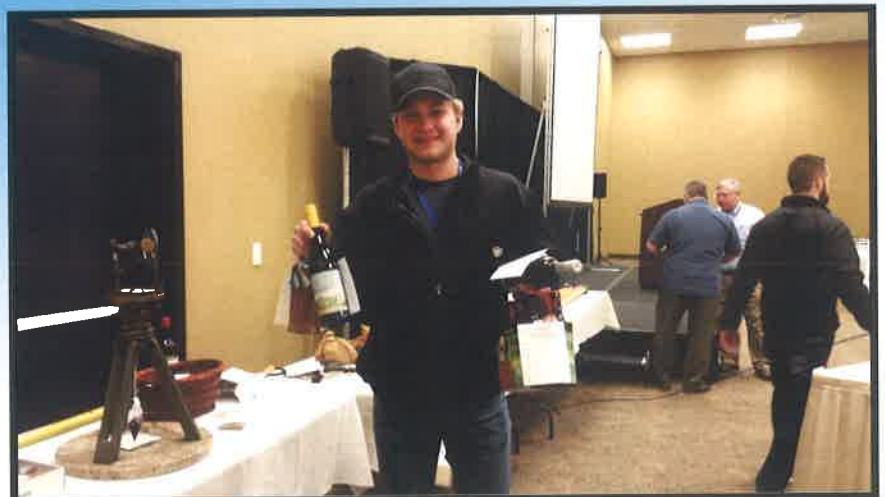
**The raffle was popular again this year  
bringing in nearly \$1,600  
Marty Mack was the lucky winner**



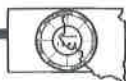
**Boyd Poppen getting his share of the  
raffle tickets**



**Beau Koopal and Robert Kummer took home the traveling  
trophy this year from the auction**



**Scholarship Recipient Marshall Beynon helping out at the auction**



# CONVENTION SNAPSHOTS



2017 SDSPLS President Fred Leetch (right) passes the gavel to incoming 2018 President Nathan Nielson



Another beautiful sunrise across the Missouri River



(Left to right) 2018 SDSPLS President Nathan Neilson, NDSPLS President Chuck Rebsch MSPS President Dan Stueber and 2017 SDSPLS President Fred Leetch



(Left to right) SDSPLS 2018 Board of Directors, NSPS Director Beau Koopal, President - Elect Todd Schlunsen, West River Chapter President Linda Foster, President Nathan Neilson, Secretary Jon Nelson Past President Fred Leetch and, Treasurer Travis Kropuenske, Not Pictured Big Sioux Chapter Aaron Norman and Missouri River Chapter President, Keith Howe

# PHOTO CONTEST



Linda Foster



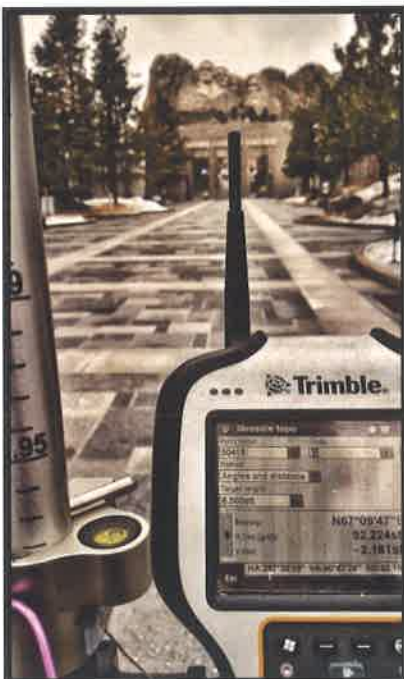
Lundee Stadler



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Civil Design



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John Gale



John Gale



John Gale





# The Ministry of the Rev. C.B. Clark

He was the man who got Calamity Jane to church.

Dr. Charles B. Clark preached the sermon at the funeral of Martha Jane Canary, also known as Martha Jane Burke or Calamity Jane, at the Deadwood Methodist Church on Aug. 4, 1903. Calamity Jane had died at nearby Terry on Aug. 1.

Clark was pastor of the church. According to "Calamity Jane: The Woman and the Legend" by James D. McLaird, Clark emphasized Calamity Jane's humanitarian acts during Deadwood's early years in the eulogy. "Echoing popular sentiment, Clark asked, 'How often amid the snows of winter did this woman find her way to the lonely cabin of the miner' to help one suffering from illness?"

The minister's son and namesake, poet Charles Badger Clark, often lamented that his father was the person to preside over Calamity Jane's funeral.

"My father's deeds of mercy are unnumbered, but such is the irony of human nature, he'll be remembered longest, because he buried Calamity Jane," Badger Clark was quoted as saying in articles by Helen F. Morganti.

The elder Clark did, indeed, do much more than bury the notorious woman of the West. In his 57 years as a minister, the Rev. C.B. Clark built four churches and took more than 2,000 people into the church, most of them being converts under his preaching.

"The primary job of a preacher in those days was to preach and Dr. Clark could preach. His sermons were to the point and well thought out," wrote Morganti.

In Clark's obituary in the "Journal of Dakota Conference," an unnamed minister is quoted as saying, "I think that all who heard him speak felt as I did --- that I was ashamed of every mean thing I had ever thought or done and wanted to do better. Dr. Clark loved men as he loved God; this made him a believer in them and a rare friend and sympathizer. In all the thirty-five years I was acquainted with him, I never heard him say an unkind thing of friend or foe."

Badger Clark described his father as "a man of above middle height, had a full black beard which gave him a practical aspect but which was offset by kindly crinkles around his eyes. He wore the true badge of professional men of those days, the Prince Albert coat and topped the costume with a Stetson hat, always cocked slightly to the right."

The Rev. C.B. Clark also possessed a mellow bass voice, a fluent command of English and a sunny temperament.

Clark was born around 1840 in Sauquoit, N.Y. The family moved west in 1857, finally settling at Mount Pleasant, Iowa. He attended Iowa Wesleyan University, leaving to enlist in the 25th Iowa Infantry in 1862, fighting for the Union Army in the American Civil War. The private received a shell wound to his head at the battle of Arkansas Post in 1863 and was discharged from the service.

His injury resulted in the total loss of hearing in his right ear. He returned to Iowa, resumed his studies, was ordained as a Methodist minister and became a circuit-riding minister in Iowa. A patriotic man, Clark was active in the Grand Army of the Republic, serving as president of the South Dakota department of that organization for a year.

The work and outdoor life restored Clark's strength, and he developed into an able and popular preacher, occupying some of the best pulpits in the Iowa conference.

Overwork took a toll on him, and, as Badger Clark put it, "doctors told him that he could remain a citizen of this world only if he dropped preaching and all the nerve-straining activities of his profession and took up outdoor work, not too heavy, for the rest of his life."

The family moved to Dakota Territory in 1883 and homesteaded four miles south of Plankinton.

The minister's health improved and he returned to his first love of preaching. He was appointed to the Methodist pastorate at Mitchell. He later became district superintendent at Mitchell and pastor at Huron. He was one of the original promoters of Dakota Wesleyan University, which conferred upon him an honorary doctor of divinity degree in 1892.

Clark accepted a transfer to Deadwood in 1898, as the health of his wife, Mary Ellen, was declining due to tuberculosis and he thought the change in altitude would benefit her. However, his wife died that October.

Clark married Rachel Anna Morris three years later. He closed his active ministry as chaplain at Battle Mountain Sanitarium in Hot Springs. He died in Hot Springs on June 10, 1921, and was buried in Graceland Cemetery in Mitchell.

*This moment in South Dakota history is provided by the South Dakota Historical Society Foundation, the nonprofit fundraising partner of the South Dakota State Historical Society at the Cultural Heritage Center in Pierre. Find us on the web at [www.sdhsf.org](http://www.sdhsf.org). Contact us at [info@sdhsf.org](mailto:info@sdhsf.org) to submit a story idea.*



# It Pays to Belong

## How NSPS benefits members/ the profession:

### Advocacy Program

- Political Action Committee (PAC)
- US Congress
- Federal Agencies
- Assistance on state specific matters (if requested)
- Other geospatial organizations
  - International Federation of Surveyors (FIG)
  - Coalition of Geospatial Organizations (COGO)

### Education

- ABET-Lead Society for surveying/geomatics program evaluation for accreditation
- Scholarship Program 15 annual awards

### Licensing/Standards

- NCEES Participating Organizations Liaisons Council (POLC)
- ALTA/ACSM Land Title Survey Requirements
- NSPS Model Standards

### Outreach Opportunities

- Trig-Star
- Boys Scouts Surveying Merit Badge
- National Surveyors Week

### Certification Programs

- Reduced rates for Certified Survey Technician Program
- Hydrographic Certification opportunities

## Media

- NSPS News and Views* weekly newsletter Sign up by visiting <http://multibriefs.com/optin.php?nsp>
- NSPS Radio Hour on [www.americaswebradio.com](http://www.americaswebradio.com) 11:00 am Eastern every Monday
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## Member Discount Programs

### Apparel

- NSPS Apparel through Lands End  
[http://ocs.landsend.com/cd/frontdoor?store\\_name=NSPSINC&store\\_type=3](http://ocs.landsend.com/cd/frontdoor?store_name=NSPSINC&store_type=3)

### Insurance

- NSPS Exclusive Insurance Program
- Assurance Risk Managers
- 888-454-9562
- [www.arm-i.com](http://www.arm-i.com)

### PerksCard - a great way to save money!

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### Other Insurance programs available

- Professional Liability
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- 2 Wisconsin Circle, Chevy Chase, MD 20815-7003
- 301-951-9746
- [http://www.schinnerer.com/product\\_info/design\\_firms/land-surv.html](http://www.schinnerer.com/product_info/design_firms/land-surv.html)

- Individual Life and Health Insurance
- Marsh Affinity Group Services
- 1255 23rd Street, NW
- Washington, DC 20037
- 800-424-9883
- [www.insurancetrustsite.com/acsm/default.asp](http://www.insurancetrustsite.com/acsm/default.asp)

- Group Health
- Mass Marketing Insurance Consultants
- 4616 John Humphrey Drive
- Orland Park, IL 60462
- 800-349-1039
- [www.mmicinurance.com](http://www.mmicinurance.com)

### Automotive

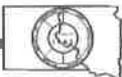
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# The Land Surveyor's Guide to the Supreme Court of South Dakota Part 21 – 1934 to 1936

*This article represents the twenty-first in a series of excerpts from a book prepared by South Dakota licensee Brian Portwood. The complete book can be obtained in PDF form by double clicking on the link in the lower left portion of the SDSPLS Homepage. It covers 120 years of historic South Dakota cases, answering fundamental land rights questions of potential interest to land surveyors, which are being presented in chronological order here in Backsights & Foresights.*

## **What is the legal significance of deed delivery? Benson v Benson (1934)**

Here we again look beyond those cases involving boundary and survey issues, to enhance our understanding of how the Court perceives the value and significance of deeds as evidence of land rights, and how it deals with the wide range of disputes and conflicts that invariably arise over documents conveying real property and related rights, since land surveyors are routinely required to analyze, interpret or create some of the vital components of such documents. The basic thrust of the case that we are about to review is to demonstrate that the actual content of a document can be rendered inconsequential, if it can be shown by means of extrinsic evidence that the document itself is invalid for some reason that may be not be readily apparent, and can therefore hold no controlling value, which brings the consideration of factors such as deed delivery and recordation into focus, making a few earlier cases pertaining to those topics worthy of note. In 1904, in *Lund v Thackery*, Thackery signed a blank deed, to facilitate the conveyance of a certain quarter section that he owned, and sent it to his land agent, with instructions that the agent should proceed with the intended conveyance to Lund only under certain specified conditions. The agent sent the deed on to a bank however, which either ignored or was unaware of the terms that had been specified by Thackery, and completed the deed, and gave it to Lund. Since his specified conditions had never been met, Thackery proceeded to deed the same quarter to another party, whereupon Lund filed an action seeking to clear his title, by having Thackery's subsequent deed voided. The Court reversed a lower court ruling in Lund's favor however, and voided Lund's deed instead, on the basis that it had never been legally delivered to him, holding that Thackery's agent had acted improperly, since an agent has no authority to deliver a deed on behalf of a grantor who provided the deed to the agent only conditionally, therefore Thackery was not bound by his

agent's unauthorized decision to prematurely proceed with the proposed transaction. In *Hingtgen v Thackery*, in 1909, the same controversy was again in play, because Lund had deeded his alleged interest in the quarter to Hingtgen, who then claimed that he was an innocent grantee of Lund, and for that reason he could not be required to honor the subsequent deed that had been issued by Thackery. The Court again ruled however, that Thackery had retained ownership of the quarter, finding that Hingtgen's deed was just as invalid as Lund's deed, and denying Hingtgen the status of an innocent grantee, by charging him with notice of the fact that Lund's deed was void, through the application of the equitable principle that "the law will not permit a man to shut his eyes, when his ignorance is to benefit himself", thereby illustrating that even a clearly senior deed cannot always be relied upon. In the 1905 case of *Moran v Thomas*, Moran attacked the validity of a tax deed held by Thomas, on the basis that it contained inadequate PLSS abbreviations, of the kind that had been repeatedly rejected by the Court in other cases, as we have previously noted. Thomas conceded the invalidity of the description at issue, yet argued that his deed should be treated as valid and controlling, because it had been recorded, leading the Court to remind Thomas that recordation does not operate to validate otherwise illegitimate documents, so an insufficient description such as the one in his deed acquires no legitimacy or controlling force through mere recordation.

**Prior to 1930** - Anna Benson was a wife and mother with three adult sons, Chris, Emil and Sverdrup, and one adult daughter, Matilda. Anna was an elderly immigrant from an unidentified country, who could read, write and speak only very little English, but her children were evidently all fully competent in the use of the English language. Where Anna lived, and whether or not any of her children lived with her, are both unknown, but when her husband died, at an unspecified date, his ownership rights in two quarter sections passed to her. Anna thus held a two thirds interest in an unspecified quarter section in Minnehaha County, and a one third interest in an unspecified quarter section in Moody County, but whether or not anyone was living on either of these properties, and what actual use was being made of them, if any, is unknown.

**1930** - Anna reached the age of 89 at this time, and some of her children apparently became concerned about the fate of her land ownership interests, so they evidently developed a plan of some kind to obtain her land interests prior to her death. There is no indication that any of the actions of any of the Benson children with respect to their mother were nefarious or evil in

*(Continued on Page 20)*

any way, or that any of them had any intention of defrauding her or otherwise taking any unfair advantage of her, presumably their intentions were all upright and amounted only to the typical preparations for the passage of land rights from one generation to the next. Nothing is known about Anna's specific relations with each of her children, presumably they were all equal in her eyes, and there is no indication that any of them held a position of higher or lower favor with her than the others. In August of this year, while Chris and Emil were apparently out of the state, Matilda and Sverdrup presented Anna with two warranty deeds, conveying her lands, presumably to them, and she agreed to sign the deeds, and she did so. Although there is no indication that Anna was placed under any duress or pressure to sign the deeds, nor is there any indication that she did not understand what she was doing, she did express some concern about the fact that Chris and Emil were not present, so she told Matilda and Sverdrup to hold onto the signed deeds and to do nothing with them until their brothers returned, so Anna could have a chance to consult them, regarding the proposed transaction. Matilda and Sverdrup then took the deeds back to the third party scrivener who had prepared them, presumably an attorney, with instructions for him to hold onto the deeds indefinitely, as their mother had requested. In September however, for unknown reasons, the composer of the deeds had them recorded, but there is no indication that any further action was taken, nor that the occupation or use of any of the land at issue changed hands. When Chris and Emil eventually returned and spoke with their mother about what had been done, Chris agreed that the transaction was acceptable to him, but Emil did not, so Anna decided to nix the deal, and she evidently informed her children that she wanted the deeds to be either returned to her or destroyed. When she was told that the deeds had been recorded, and it was too late to undo the conveyance, she filed an action against Chris, Matilda and Sverdrup, seeking to have the recorded deeds declared to be legally void.

Anna did not assert that she had been forced, coerced or tricked into signing the deeds in question, instead she argued that she had signed them only on a tentative basis, without intending her signature upon them to operate as a final or conclusive act, and she had communicated that to Matilda and Sverdrup at that time, so her signature was not emblematic of any absolute intention on her part to convey the land at issue, since she had reserved the right to nullify the deeds, therefore her subsequent decision to do so should be honored and given legal effect. Chris, Matilda and Sverdrup argued

that the deeds had been properly executed in all respects, and their mother was merely attempting to withdraw them based upon a plain change of heart, so the deeds were legally binding upon their mother, and she had no legitimate basis upon which to reverse her decision to convey her land to them. The trial court was naturally sympathetic to Anna's plight and held that she had the right to demand that the deeds be cancelled and set aside.

While its definitely possible that there may have been some nefarious element, or some unseen motives, involved in the transaction that was proposed by Matilda and Sverdrup, that is not necessarily the case, and if the Court observed anything suggesting the presence of fraud of any variety, it made no allusion to anything of the sort in resolving this controversy, nor did the Court address this matter as a family dispute, it followed the same basic principles that would have been applicable had the litigants been strangers. Although children certainly can, and often do, take unfair advantage of their aged parents, the Court gave no indication that it saw Anna as weak or defenseless, and in fact its quite possible that she had used her land holdings as a tool of manipulation to control her children, but no such schemes or treachery were evident to the Court, so the matter stood as a typical land rights conflict, to be objectively adjudicated, just as would any other honest disagreement over the true intent of the parties to an alleged conveyance. The fact that Anna did not fully understand or comprehend the English language was the most important external factor inherent in this situation, the Court noted, since that unfamiliarity on her part could easily have resulted in a failure to recognize the potential significance of her signature on the documents in question, depending upon what she was told, or not told, about the content of those documents and their purported legal effect. Just as in virtually every dispute over the true meaning and effect of a conveyance, the Court determined, the principal controlling element must be the intent of the grantor, provided that it was satisfactorily expressed in a manner that is clearly and fully understandable to the grantee, thereby fulfilling that basic obligation of the grantor, and making the intent truly mutual. In this instance however, the deeds had not been prepared either by the grantor, or under the direction of the grantor, as is typically the case, just the contrary, they had been prepared under the direction of the grantees, employing a language that the grantor could not critically review in detail, which had the effect of shifting the crucial burden of proof, in the eyes of the Court, away from Anna and toward her grantees. Nevertheless, the actual content of the deeds was not the focal point of this controversy, the Court realized, this conflict was centered upon the intent with which the documents were signed, so the linguistic details of the deeds were only marginally relevant, the decisive factor would be the intent regarding the purpose of the deeds, and given the presence of the grantor, her testimony was available to supply the strongest evidence of her intent, as to the manner in



which she wanted and expected the deeds to be used, at the moment she handed them over to her children. As we have learned from numerous prior cases, the Court normally very diligently protects grantees and enforces all agreements, but this scenario forms an interesting counterpoint with those more typical cases, showing that no such rules are truly without exception, because here the Court recognized that the deeds at issue had been placed before the grantor with an expectation of action on her part, putting her in the position typically occupied by a grantee, making her testimony concerning her intent especially relevant:

*"It is respondent's contention that there was no complete delivery ... It is essential to the validity of a deed that there be a delivery ... it was agreed at the time the deeds were left with the scrivener that they should be retained by him ... it was agreed in the scrivener's office that the deeds should remain there ... the deeds were recorded ... respondent disapproved the transaction ... to constitute a delivery it is necessary that the grantor part with the legal possession of the deed and all right to retain or control it ... there was no valid delivery of the deeds."*

The position taken here by the Court clearly demonstrates that the circumstances surrounding the delivery of a deed represent the most vital evidence bearing upon its validity, and it also highlights the importance of recognizing the true nature and value of recordation, which neither sanctifies a purported conveyance nor adds validity to a deed, and can by no means fill the void left by an illegitimate or ineffective delivery. Recordation can neither create nor augment land rights of any kind, because rights are created only through the actions of the parties themselves, and recordation serves only as a vehicle with which one can provide notice to others, so although recordation can certainly serve to protect existing rights, it can never be used as a device through which to elevate false or flawed claims to the status of valid land rights. The essence of a contract does not reside in the documents that are created to portray it, the essence of the matter lies in the actual agreement between the parties, which motivated the creation of the contract, and so it is with all deeds, the mere document itself can be allowed to wield no power that it was not intended to have. Its important to keep in mind that such documents are called "deeds" expressly because they memorialize actual events, the event that takes place at the moment of transfer from grantor to grantee is the only truly vital "deed" that ever occurs, so the recorded document can have no legal force or effect, beyond providing color of title, if the event that the recorded document points to was in some manner false or incomplete. The dispositive evidence, the Court decided, was Anna's testimony as to her intent at the moment of the alleged deed delivery, when she signed the deeds and handed them to the grantees, and her subsequent actions had illustrated that in her mind there

was never any irrevocable delivery of the deeds, she had intended to retain control over them, trusting that they were only being taken from her for purposes of safe keeping, and that no unintended or premature use would be made of them. Had Anna been a fluent speaker and reader of the English language, or if she had been the author of the deeds in question, or if she had recorded the deeds herself, the outcome could very well have been just the opposite, because her burden of proof would have been altered or elevated by such factors bearing upon her intent, and the presumption of innocence may not have operated to her benefit, but under the conditions present here, the Court found her testimony quite convincing, so in the absence of any evidence of bad faith on her part, the Court fully upheld the lower court ruling in her favor. The outcome of this case, much like the Labore case just previously reviewed, in the context of the legitimacy of described boundaries, again reminds us that deeds cannot always safely be taken at face value, because many factors that may not be apparent to a stranger, such a surveyor, can have a powerful influence or effect on the controlling value, or even the validity, of such documents. For professionals dealing with land rights on a regular basis, its also essential to appreciate the importance of the fact that grantors have the right to retain full control over all aspects of any transactions involving their land, and in fact they are always presumed to do so, therefore third parties such as surveyors, when preparing documents such as deeds and plats, should be cognizant, unlike the scrivener here, that they have no independent authority to perform any acts involving the grantor's rights that have not been authorized by the grantor. In addition, it should always be kept in mind that documents of conveyance do not represent ownership itself, they represent only one form of evidence of ownership, which is always subject to all the failings and frailties of the people who create such documents, so their purported contents can often be overcome, either by superior evidence or by operation of law.

#### **Can a river have an impact on adverse possession? Walker v Sorenson (1936)**

The relentless and often dramatic movement of the Missouri River during the territorial period and the early years of statehood forms the backdrop for our next case, which took place in the portion of Clay County that became part of South Dakota by virtue of a 1905 boundary compact with Nebraska, the further ramifications of which we will encounter in reviewing a forthcoming case. The details pertaining to the movement of the river in the case we are about to review are outlined by the Court in its review of the evidence only in the Court's typically minimal fashion, yet a reasonably clear picture of the relevant action of the water emerges from the information provided, indicating that both accretion and avulsion were present in the subject area,

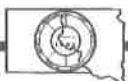
*(Continued on Page 22)*

as the river exhibited its habitual pattern of periodically moving back and forth over the same wide swath of bottom land. In this instance however, the details of the river's movements do not become the primary focal point of the Court's efforts to adjudicate the boundary and title issues that are presented here, because such factors can only control when they are not precluded from controlling by operation of law. As will also be noted in reviewing the timeline of this case, many different parties were successively engaged in activities involving the subject property, throughout the period when the river was perpetually redefining its course, and some of those parties, including the defendant, persisted in their efforts to make beneficial use of as much of the land at issue as the great river would allow at any given time. Given this consistently productive use of the otherwise marginally valuable bottom land, by one particular settler and his chain of successors, it should come as no surprise that the Court views their utilization of the land with favor, approving the use of adverse possession to assist in the protection of their land rights, thereby precluding any need to embark upon a detailed technical analysis of the impact of the river's activity upon any of the boundaries and the titles that are in play. The most vital specific issue in contention in this case, and the proposition for which it has been subsequently cited, is one of the same issues addressed by the Court in the Labore case, just 5 years earlier, and that is the often controversial and little understood concept of privity between successive occupants of any given tract of land. Here the Court follows and expands upon its liberal interpretation of the role of privity, initially set forth in resolving the Labore case, in support of adverse possession, by emphasizing that it is not privity of title which is relevant to adverse possession, it is privity of possession itself. On this occasion the Court also definitively points to the importance of comprehending that it is the physical absence or inaction of a record owner or title holder, functioning in combination with the acts of the adverse parties upon the land in dispute, which forms the conclusive bar that the Court envisions when invoking adverse possession. In addition, the Court's position in support of physical privity, as being the primary determinative factor in conclusively linking successive periods of land use, provides a foundation for the modern extension of adverse possession into the realm of boundary law, by removing privity of title as an obstacle to utilizing adverse possession as a means of boundary determination. Under the original doctrine of adverse possession, that prevailed in earlier centuries, the concept of privity of title operated to prevent the application of adverse possession to portions of adjoining properties that were undescribed in the deeds of grantees of adverse claimants, thereby restricting their adverse possession claims to the ownership of entire properties, rather than fragments of adjoining tracts, but the Court's position on privity is in alignment with the modern judicial abandonment of that historic limitation.

**Prior to 1894** - A township lying along the south boundary of the Dakota Territory was surveyed and platted by the GLO, and at this time the Missouri River ran in a generally easterly direction through the northerly portion of Section 14. At an unspecified time toward the end of this period, the course of a substantial portion of the river shifted dramatically to the south, apparently as the result of a specific avulsive event, after which the river flowed through the central portion of Section 23. What use was being made at this time of the land in these sections, if any, is unknown.

**1894** - Shortly after this change in the location of the river, the west half of the southeast quarter of Section 14, which had formerly been on the Nebraska side of the river, but was now on the South Dakota side, was acquired by Egan. Soon after acquiring his land, Egan fenced it, and he elected to take advantage of the movement of the river, by extending his fences southward, along both the east and west sides of his property, all the way to the river in Section 23. How Egan determined where his east and west boundaries were located is unknown, since there is no indication that monuments of any kind were ever found, or that any surveys were ever done in the area, subsequent to the original GLO survey work, but this proved to be irrelevant, because the location of these fences erected by Egan was never challenged.

**1902** - Austin was an elderly widow, whose husband had left his extensive land holdings to her, apparently stretching through many sections, which included a great deal of land that was situated along or near the river in this township, presumably lying on both sides of the river. There is no indication that Austin's late husband had ever made any particular use of any of his land in this area, which was apparently vacant and was used only as open range, if it was used at all. Austin evidently did not reside in this area, she never made any use of the land, and she may have never even visited the area. At this time however, for unknown reasons, the northwest quarter of the northeast quarter of Section 23 was added to the land holdings of Austin on the tax rolls, although it had never been deeded to either her or her husband. Who had owned this quarter previously is unknown, but it was apparently no longer part of the public domain by this time. Austin was apparently either unaware of this development or unconcerned about it, so she just went on paying the taxes on all of her land, including this additional area, without ever inquiring about why it had been added to her tax bill.



**1904** - Austin died, but her estate continued paying the taxes on all of the land that had been assessed under her name.

**1905** - Egan sold the west half of the southeast quarter of Section 14 to Powell. When conveying his land to Powell, Egan showed Powell the entire fenced area running all the way down to the river, so both men fully understood that Egan was retaining nothing, and it was Egan's intention to convey all of the land that he had been using to Powell. Powell either did not realize that part of the fenced area was outside the original boundaries of Section 14 and extended well into Section 23, or he did not care, so he went into possession of the entire ranch and continued to make use of the entire fenced area, just as Egan had.

**1911** - Whittemore, who had inherited the estate of Austin, deeded the northwest quarter of the northeast quarter of Section 23 to Walker. Whether or not Walker acquired or owned any other land in the area is unknown, but he evidently never made any attempt to use the land that he acquired at this time, and there is no indication that Powell was ever aware that Walker had acquired a portion of the fenced area, which Powell thought was part of the Egan ranch. Walker began paying the taxes on this portion of Section 23, just as Whittemore had during the period when it had been in her name, as the successor of Austin.

**1912** - Powell conveyed the Egan ranch to Sorenson, presumably once again describing it only as the west half of the southeast quarter of Section 14, but just as in the transaction between Egan and Powell, both the grantor and the grantee understood or presumed that the entire fenced area was being conveyed, and Sorenson continued to use all of the land just as each of his predecessors had, apparently unaware of the existence of any boundary or title issues related to it. Either shortly before or shortly after Sorenson made this acquisition, the river began to erode away its north bank and migrate back to the north, reducing the size of the ranch that Sorenson had acquired.

**1914** - By this time, the river had evidently eroded away all of the portion of Section 23 that had been fenced by Egan, because the northwest quarter of the northeast quarter of Section 23 was removed from the tax rolls at this time, so Walker ceased to pay any taxes upon it, evidently recognizing that it had become completely submerged under the river.

**1915 to 1918** - The north bank of the river continued to recede northward into the southerly portion of Section 14 during this time, until reaching the maximum extent of its lateral motion by the end of this period, and it then remained in this channel for an unspecified number of years, leaving Sorenson with a ranch that was presumably only about half the size that it had been when he acquired it. Evidently Sorenson's buildings were all situated in the northerly portion of the ranch however, since there is no indication that he ever moved any buildings or that he lost any of them to the river.

**1919 to 1935** - The river migrated gradually back to the south during this time, so by the end of this period it was once again occupying its southerly channel, and it was therefore more or less in the same location where it had been from 1894 to 1912, enabling Sorenson to once again make use of the full area that Egan had fenced in 1894, as cropland or pasture, although whether or not Sorenson ever rebuilt the washed out portions of the Egan fence is unknown. Around the end of this period, Walker evidently visited the area and noticed that all of the land he had purchased over 20 years before had once again been exposed by the river and become useful land, so he filed an action against Sorenson, seeking to quiet his title to the northwest quarter of the northeast quarter of Section 23, since that would enable him to either force Sorenson off the land at issue, or require Sorenson to pay Walker, if Sorenson wanted to continue using the portion of Section 23 that had been deeded to Walker in 1911.

Walker argued that he was still the owner of record of the northwest quarter of the northeast quarter of Section 23, by virtue of his deed from Whittemore, although he had never taken possession of any of it, and he had never attempted to make any actual use of it, so Sorenson should be compelled to vacate that area and relinquish his possession of it unto Walker. Walker further argued that Sorenson could not successfully rely upon adverse possession to defend his use of the quarter in question, because Sorenson had not possessed Walker's quarter for a full 20 years, either before or after it was submerged by the river. Walker acknowledged that the entire northwest quarter of the northeast quarter of Section 23 had been submerged for an unknown length of time, but he maintained that it had returned to his ownership upon re-emerging from beneath the water, so his deed to it had remained perfectly valid, despite all of the river's activity. Sorenson argued that he had acquired the Walker quarter by adverse possession, because the combined use that had been made of it by Egan, Powell and himself successively was all genuinely adverse, and their consecutive possessions tacked together were sufficient

*(Continued on Page 24)*

to bar any other claim of ownership relating to the quarter in controversy, such as that being made by Walker. The trial court ruled that adverse possession had taken place and quieted title to the disputed quarter in Sorenson on that basis, rejecting all of Walker's assertions to the contrary and finding Walker's deed to be worthless.

At the outset it should be clarified that there was no contention over whether the land at issue here was in South Dakota or Nebraska, because after the river had jumped to its southerly channel the two states had reached an agreement relinquishing any claims that either state may have had to any land on the opposite side of the river, so it was undisputed that all of the land in question was in South Dakota, and Nebraska had no claim to any of it based on the movement of the river having been avulsive in nature. The scenario presented by this case brought a rather unique mixture of legal and equitable elements before the Court, and two key concepts that had been adopted as important principles by the Court in previous cases would control its outcome, one being from the realm of riparian law, and the other concerning the application of adverse possession. The Court had set forth its perspective in regard to the key issue of privity in the 1931 Labore case, previously reviewed herein, in the context of adverse possession, taking the position that an absence of privity of title represents no obstacle to the progress of adverse possession in the presence of privity of possession, which had enabled Labore to successfully tack the possession of his grantor to his own directly subsequent possession, in order to complete the statutorily required 20 year period. In the Allard case of 1918, which we have also reviewed, the Court had chosen to approve the doctrine of re-emergence, which stipulates that submerged land is not forever lost to the party who stands as the owner of record of the property at the time it becomes entirely submerged beneath a navigable river, concluding that the adjoining upland owner, whose land is thus entered by a migrating river such as the Missouri, is not a true riparian owner, so that party can never acquire any accretion extending beyond their existing PLSS boundaries. These two crucial precedents established by the Court were obviously both relevant and in play here again, and each of them held the potential to shape the result of this litigation. Walker must have been aware of the Court's acceptance of the principle of re-emergence, or he could never have dared to assert ownership of the quarter that he had acquired in 1911, given his knowledge that it had subsequently been fully immersed in the river for at least 3 to 4 years, and it's not surprising that he found reason to be optimistic about his chances of prevailing in this situation, if he could persuade the Court that the doctrine of re-emergence was applicable to his property. Before the Court could reach the riparian issue however, and potentially apply the rule pertaining to riparian boundary disputes that it

had put in place 18 years earlier, in Walker's favor, the matter of adverse possession had to be dealt with, and Walker's case was destined not to survive that hurdle. Just as the Court had viewed Labore's acquisition of land based on a typical aliquot PLSS description, along with his observation of a line physically marked on the ground, as entirely innocent and legitimate, here the Court saw the acquisitions of the Egan ranch, as fenced by Egan and bounded by the river on the south, by first Powell and then Sorenson, as equally supportable, leading the Court to expound upon the effect of privity of possession in relation to the intent of both of those conveyances:

*"the decisive question in determining whether the bar is complete as against a claimant out of possession is whether he, his ancestor, predecessor, or grantor, has been in possession within 20 years prior to commencing his action ... courts are frequently met with the fact that a number of persons have been in adverse possession successively ... When no privity exists ... the law presumes that the true owner is in possession. When, however, there is privity of possession between the occupants ... adverse possession is made out against the claimant out of possession ... The entire scope of this is ... not to determine whether the occupant has been in possession for any fixed period of time, but is to determine whether the claimant out of possession has in fact, or in law, been in possession within the statutory period ... When, however, there is privity of possession ... for the statutory period, the bar is complete ... the facts are sufficient to show a privity between the Egans and Powell, and Powell and Sorenson ... the facts ... establish the required privity ... possession ... may commence in parol without deed or writing, and may be transferred and pass from one occupant to another by parol ... no written transfer was necessary to constitute the privity required ... verbal transfer of the actual possession, accompanied by the delivery, met all the requirements."*

Fully cognizant that both Powell and Sorenson, when each of them had successively played the role of a grantee, had presumably acted innocently and believed that they were acquiring all of the land that Egan had fenced, extending south all the way to the bank of the river, as it was located at such times, the Court found that their acquisitions included the entire fenced area, for purposes of the dominion and control over land that represents genuine adverse possession. It may well be pointed out that there was no indication that the original GLO line between Sections 14 and 23 was impossible for a surveyor to locate, so first Powell and then Sorenson failed to obtain a survey, which would have shown them the location of their south boundary of record, therefore they should not be treated as innocent grantees, but the Court has never adopted the position that a grantee has





any absolute obligation to order or demand a survey, and quite to the contrary, the Court has frequently upheld the right of a grantee to rely upon his grantor. In reality, the origin of Walker's title, being founded as it was upon a mistake that had been made in revising the tax rolls, was so weak that the Court might very well have declined to quiet his title as he had requested even in the absence of adverse possession, but the Court took this opportunity to drive home the point that privity of possession is all that is required to support adverse possession, because the Court realized that there can be no privity of title between and adverse occupant and his grantor. In the view of the Court, the concept of privity operates to confirm that the owner of record, such as Walker in this case, was never even in constructive possession of the land at issue, it does not serve as proof of the possession of the grantees, nor does it need to prove anything of the sort, because it is the absence of possession by the record owner that the relevant statute of limitation implicates. Wisely rejecting the arcane and perverse notion that land momentarily returns to the possession of the owner of record when it is conveyed from one adverse claimant to another, thereby resetting the clock for adverse possession, the Court fully upheld the decision of the lower court awarding the quarter in dispute to Sorenson, indicating that it makes no difference how many adverse possessors held the land in sequence, if the record owner was perpetually excluded from it, the law bars him from successfully claiming it. In so ruling, the Court clarified that the time aspect of adverse possession is focused solely upon the owner of record, and does not relate to the adverse occupant in any personal manner, while just the opposite is true for actions and intent, since the actions and intent of the record owner are immaterial, unless he effectively ousts the occupant, resulting in an actual cessation of the adverse use, it is the actions and intent of the occupant or occupants alone, that defines whether possession can be properly characterized as adverse. Since ownership through adverse possession had been proven, from 1894 to 1914, Sorenson had acquired title to the Walker quarter at that time, prior to it's submergence, so by the time the re-emergence doctrine took effect years later, Walker's rights to his quarter had been fully extinguished, therefore it re-emerged as Sorenson's, rather than Walker's, but if 20 years had not passed prior to the submergence of the entire quarter, Walker could potentially have prevailed on the issue of re-emergence. The section line was no obstacle to the re-emergence of the land at issue to the benefit of Sorenson, because the Court had not held in the Allard case that accretion can never extend across any PLSS line, it had held only that accretion cannot cross a PLSS line that represents an existing boundary of ownership at the time the line in question becomes submerged, so although Walker was right about the applicability of the re-emergence doctrine in this instance, he wound up with nothing, because adverse possession had already extended Sorenson's ownership rights into Section 23 before re-emergence occurred.

The following information is taken from meeting minutes of the  
**South Dakota Board of Technical Professions**  
complete meeting minutes can be found at:  
<http://dlr.sd.gov/btp>

**September 15, 2017**

**Approvals:**

Approve the following examinees passing the Principles of Surveying (PS) exam:

Dustin Curtis Fiebelkorn – LS 13483  
Daniel Kinney Johnson – LS 8610  
Lundee Michael Stadler – LS 13482

Approve the following examinees to take the Principles of Surveying (PS) Exam:

Tyler Alan Smith

Approve the following Land Surveyors (LS) by comity application:

Thomas Whitson Brooks – LS 13494  
Jeffery Michael Jensen – LS 13495  
Nathan Allen VanRaemdonck - LS 13496  
Jon Masao Yamashita – LS 13497

**November 17, 2017**

**Approvals:**

Approve the following examinee passing the Principles of Surveying (PS) exam:

Wrangler James Grohs – LS 13484

Approve the following examinee to take the Principles of Surveying (PS) exam:

Jeremy Alan Wolbrink

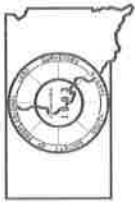
Approve the following Land Surveyor (LS) by comity application:

Mark Edward Meade – LS 13569

**Deny:**

Deny the previously reviewed Land Surveyor (LS) comity application based on lack of qualifying experience:

Tomas A. Toro Santos



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## APPLICATION FOR MEMBERSHIP

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| Member (Out of State):    | \$125 | Associate:  | \$50 | Life Member                    | \$25  |
| LSIT:                     | \$90  | *Student:   | \$25 | Sustaining:                    | \$250 |

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- c) An academician holding a bachelor's or higher degree and the rank of assistant professor or higher rank and teaching in an ABET accredited or a state land surveying registration board surveying program;
- d) A practicing surveyor or surveying teacher who has attained a minimum of six years experience in responsible charge of surveying activities or four years of education and two years of experience may submit credentials for consideration.

**LSIT:**

Any person who has successfully completed the LSIT examination according to state or pro-vincial statutes.

**Technician:**

Any person who has successfully completed any level of the Certified Surveying Technician program as administered by and through the National Society of Professional Surveyors.

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- b) Subscriber: Any person with an associative interest in Surveying whose qualifications do not meet the requirements of Member, LSIT, or Technician.

**\*Student:**

Any person who is a full-time student studying surveying or related fields.

**Sustaining:**

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Signature of Applicant

I certify that I qualify for the class of membership I have applied for as outlined below.

Date

\*Signature of Faculty Member (required for students)

I certify that the applicant is a full-time student. (12hrs or more)

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