

Opinion No. 68-74

July 19, 1968

BY: OPINION OF BOSTON E. WITT, Attorney General

TO: Mr. Walter Bruce Administrative Assistant to Governor David F. Cargo Legislative-Executive Building Santa Fe, New Mexico

QUESTION

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Is it legal for this State to own real property in another state.

CONCLUSION

Yes.

OPINION

{*118} ANALYSIS

In our research we have found no New Mexico constitutional provision or statutes that would prevent this state from owning real property in another state. Nor have we found any case law that would prevent it. To the contrary, we have found several cases from other jurisdictions which have concluded that such action is lawful.

There are numerous cases from several jurisdictions which have discussed this question. Almost without exception they rely on **Georgia v. Chattanooga**, 264 U.S. 472 44 S. Ct. 369, 68 L. Ed. 796. This case involved land owned by the State of Georgia in the City of Chattanooga, Tennessee. The land was used as a railroad terminal for a railroad owned by the State of Georgia. The legislature {*119} of Tennessee had granted Georgia the authority to acquire right-of-way and land for the terminal in Tennessee. The City of Chattanooga was seeking to condemn part of the terminal land and the State of Georgia was resisting. The Supreme Court made the following pertinent remarks:

"Land acquired by one state in another state is held subject to the laws of the latter, and to all the incidents of private ownership. The proprietary right of the owning state does not restrict or modify the power of eminent domain of the state wherein the land is situated. (Cities Omitted). Tennessee, by giving Georgia permission to construct a line of railroad from the state boundary to Chattanooga, did not surrender any of its territory, or give up any of its governmental power over the right of way and other lands to be acquired by Georgia [481] for railroad purposes. The sovereignty of Georgia was not extended into Tennessee. Its enterprise in Tennessee is a private undertaking. It

occupies the same position there as does a private corporation authorized to own and operate a railroad; and, as to that property it cannot claim sovereign privilege or immunity." (Citations omitted).

Another decision generally relied on is **Dodge v. Briggs**, 27 Fed. 160, which is cited for the proposition that the owning state must have the permission of the state where the property is located to own the property. In **Dodge** it should be noted, the court recognized the validity of a tacit approval.

From the foregoing we have concluded that this state may own real property in other states. However the permission of the other state is required and this state will be treated as a private owner insofar as the property is concerned.

This opinion has dealt with the very narrow question as stated above. In your letter, you stated that the question was in reference to the acquisition of the Denver and Rio Grande Narrow Gauge Railroad. We feel that we should point out that this opinion is in no way intended to approve that particular transaction. There are several other possible areas that may present legal problems that would prevent the acquisition, for instance the money that is to be used. Other problems could arise with the question of which laws would govern the operation of the railroad since it operates in interstate commerce.

By: Roy G. Hill

Deputy Attorney General