

Opinion No. 14-1266

July 3, 1914

BY: H. S. CLANCY, Assistant Attorney General

TO: Honorable Robert P. Ervien, Commissioner of Public Lands, Santa Fe, New Mexico.

RAILROADS.

Right of way through state lands may be granted to a railroad company.

OPINION

{*126} I have, by reference, a letter addressed to you by the president of the St. Louis, Rocky Mountain & Pacific Railway Company, in regard to the right of way occupied by its road through Sections 16 and 36, and inquiring whether you can furnish his road with title to lands so occupied by the road upon those sections.

The railroad company seems to be under the impression that the right of way through these sections should be granted to it under the provisions of Section 3878, Compiled Laws of 1897, but I am of opinion that such is not the case. A review of all the legislation upon this subject may be of advantage.

By the act of the Congress of the United States of June 21, 1898, Sections 16 and 36 were granted to the Territory of New Mexico.

{*127} By Section 11, Chapter 74 of the Laws of 1899, our board of public lands was authorized to grant the right of way across any territorial lands upon such terms as the board might determine for any railroad.

By Section 13, Chapter 111, Laws of 1905, it was provided that the Commissioner of Public Lands might grant a right of way across such lands upon such terms as he might deem for the best interests of the territory for any railroad.

By Section 30, Chapter 104 of the Laws of 1907, the Commissioner of Public Lands was authorized to grant a right of way across such lands upon such terms as he might deem for the best interests of the territory. This section was slightly amended by Section 1, Chapter 25, Laws of 1909, but not so as to affect its provision as to the granting of a right of way.

Section 53, Chapter 82 of the Laws of 1912, authorizes the Commissioner of Public Lands to grant a right of way to a railroad upon payment of a price to be fixed by him which shall not be less than the minimum price for the lands used as fixed by law.

The St. Louis, Rocky Mountain & Pacific Railway Company filed its articles of incorporation with the Secretary of the Territory of New Mexico upon June 26, 1905, subsequent to the passage of the act of that year, above referred to, and so far as its right of way over Sections 16 and 36 is concerned, was subject to the provisions of that act. It will be observed that all legislation by either territory or state, subsequent to 1905, in regard to the right of way, has been substantially the same as that of 1899 and 1905, and it is therefore the opinion of this office that you can grant a right of way to the St. Louis, Rocky Mountain & Pacific Railway Company through Sections 16 and 36 upon the terms provided for in Section 53, Chapter 83, Laws of 1912.

It is further the opinion of this office that Section 3878, Compiled Laws of 1897, which provided for the granting of a right of way to a railroad over any lands belonging to the Territory of New Mexico without compensation, has been done away with by the subsequent legislation above cited. This section of the Compiled Laws of 1897 was enacted on February 2, 1878, long prior to the grant by the Congress of the United States of Sections 16 and 36, and, even if it had not been superseded by the legislation of 1899, 1905, 1907 and 1912, might be considered as ineffectual because in conflict with the terms upon which the Congressional grants have been made. The state cannot give away the granted lands, but must use them only for the purposes for which they were given.