

**Opinion No. 14-1309**

September 1, 1914

**BY:** FRANK W. CLANCY, Attorney General

**TO:** Honorable Edward D. Tittman, District Attorney, Hillsboro, New Mexico.

**ELEPHANT BUTTE DAM.**

Jurisdiction of the state at the Elephant Butte Dam.

**OPINION**

{\*165} Your letter of the 22nd ultimo was received several days ago, but in some way has been overlooked until the present time, and I trust that you will pardon us for the delay.

You say you have in jail a woman, a citizen of old Mexico, who is violently insane and who was insane when she left her former residence and came to live at the Elephant Butte Dam, and you say the question arises whether she, under Section 3618 of the Compiled Laws of 1897, can be admitted to the asylum for the insane at {\*166} Las Vegas, that section providing that no non-resident, indigent insane person shall be received at the asylum unless he became insane within the territory, and you take the position that she was a non-resident because she lived on the government reservation at the dam, jurisdiction over which was ceded to the United States by Chapter 47 of the Laws of 1912.

I am of opinion that Chapter 47 of the Laws of 1912 has no reference to the land of the United States acquired for use in connection with the irrigation project at the Elephant Butte, but if this woman were insane when she left her former residence in Mexico, that question becomes unimportant, as under the statute of the United States the federal government would cause her to be returned to the Republic of Mexico. I suggest that you ascertain the fact as to whether she was insane before she left Mexico, and if that is so I suggest that you communicate with Anthony Caminetti, Commissioner General of Immigration in the Department of Labor at Washington, as this matter would seem to come under the jurisdiction of his bureau. From what I find in the Congressional directory the nearest commissioner of immigration is Samuel W. Baccus, Angel Island, San Francisco.

I will state as briefly as possible why I do not believe that Chapter 47 of the Laws of 1912 has any relation to the land of the United States acquired and used in connection with the Elephant Butte Irrigation Project.

You will notice that said Chapter 47 gives the consent of the State in accordance with the seventeenth clause of the eighth section of the first article of the Constitution of the

United States, to the acquisition by the United States of any land required for site for certain enumerated buildings "or for any other purposes of the government." The last clause is the only one that could be construed to cover the case of land acquired for reservoir or dam sites and there would be room for argument that the rule of ejusdem generis would apply, and that this general clause would be limited to land for public buildings. It goes beyond the language in the federal constitution which speaks only of "forts, magazines, arsenals, dock yards, and other needful buildings."

However this may be, the case of *Ft. Leavenworth Railroad Co. v. Lowe*, 114 U.S. 525, appears to be decisive, and directly applicable. In that case the military reservation at Ft. Leavenworth was the property of the United States even before Kansas became a state, and in 1875 the Kansas legislature passed an act ceding to the United States exclusive jurisdiction over all the territory included within the limits of the military reservation known as Ft. Leavenworth, with some reservations among which was the right of the state to tax railroad, bridge or other corporations on franchises and property on said reservation. The railroad company was assessed for state purposes, and the tax was paid under protest in order to prevent a sale of the property, and suit was then brought to recover the money upon the ground that the property, being entirely within the reservation, was exempt from assessment and taxation by the state. The Supreme Court, at page 532, distinctly declares that when the title is acquired by purchase by consent of the legislatures {\*167} of the states the federal jurisdiction is exclusive of all state authority, but held in substance that as the military reservation was not so purchased, the constitutional provision would not apply, so that there was, therefore, no constitutional prohibition against the enforcement of the saving clause in the act of cession.

It will be seen that the land at the Elephant Butte, which had been all acquired by the United States prior to the enactment of the Statute of 1912, and indeed prior to the establishment of our state government, does not fall within the scope of Chapter 47, as no consent by the state was necessary to the acquisition of title by the United States by way of purchase to land to which the government had already obtained title. There is nothing in the statute to show that it was intended to have any retroactive effect. It merely gives the consent of the state in accordance with the provision in the federal constitution to the acquisition by the United States by purchase, of land for public uses. That consent was unnecessary to an acquisition which was already an accomplished fact. Had it been the intention of our legislature to cede exclusive jurisdiction over the Elephant Butte land, it would undoubtedly have proceeded as it did in Chapter 35 of the Laws of 1913 with regard to the military reservation at Fort Bayard.

I call your attention also, as being of interest in this connection, to another case, also in 114 U. S., at page 545, which is cited in my opinion No. 1094, at page 266 of the opinions of this office for 1912 and 1913. In that case it was held, with regard to the Ft. Leavenworth military reservation, that a statute of Kansas relating to the killing of stock by railroads continued in force within the reservation after the cession of jurisdiction to the United States. The court said, at page 547, that the government of the state extended over the reservation, and its legislation was operative therein, except so far as

the use of the land, as an instrumentality of the general government may have excepted it from such legislation.