

Opinion No. 15-1526

May 14, 1915

BY: H. S. CLANCY, Assistant Attorney General

TO: R. D. Bowers, Esq., Attorney at Law, Roswell, New Mexico.

Cutting a fence and removing a gate where the fence crosses a public highway.

OPINION

{*111} I have your letter of the 13th instant in which you ask for the opinion of this office as to whether the cutting of the wires of a fence and the removing of a gate in such fence at a point where a public highway crosses land which the person, who erected the fence, has made application to the state to purchase, is a violation of Sec. 52 of Chap. 82 of the Session Laws of 1912.

As I understand the question, the person who erected the fence desires to purchase the land on which the fence was built, from the State of New Mexico, and has made a deposit of money with the Land Commissioner, together with a request that the land be advertised and sold at public auction, the land having been selected by the state, but such selection not as yet having been approved by the Department of the Interior at Washington. Sec. 52, above referred to, refers to land belonging to the state under "contract of sale," and as no contract at present exists between the person who built the fence and the state, it cannot be held that anyone can be prosecuted under this section of the law for taking down the gate. Until the owner of the fence has become the successful bidder for the land and has entered into a contract with the state, he has no right to fence the land. In the present case it would seem that the land is still the property of the United States, and he might be subject to prosecution by the federal authorities for fencing public land.