

Opinion No. 15-1641

September 27, 1915

BY: FRANK W. CLANCY, Attorney General

TO: Arthur C. Ringland, Esq., District Forester, Albuquerque, New Mexico.

Power of Commissioner of Lands to deed by quit claim to the United States.

OPINION

{*213} Your letter of the 8th inst. was received here while I was in Las Cruces, at which place I was detained for more than two weeks, which will account for my not having sooner written to you.

I have this morning had a little conference with Mr. Ervien, the State Land Commissioner, and I have advised him that I believe that so far as authority from the State is concerned, he is fully authorized to make conveyance to the United States of lands within the exterior boundaries of the Alamo National Forest or of any other forest. It would be difficult to give broader power than that contained in Section 5179 of the new codification of our statutes which was originally Section 2 of Chapter 82 of the Laws of 1912. The Commissioner is authorized "to deed by quit claim or otherwise to the United States, any or all claims that the state may have in and to lands within any private land grant or reservation made or confirmed in pursuance of authority of congress, or to such of those lands as may be needed by the United States or for reclamation or water power sites for the purpose of selecting indemnity lands therefor."

The only practical difficulty that I can see is as to the terms upon which the proposed exchange should be made and as to that it may be necessary to obtain the approval of congress. If the exchange could be made on equal terms, acre for acre, I have no doubt that the Land Department of the United States could carry out such an arrangement and the State would need nothing more than the approval of the authorities at Washington to the lieu selections which our Commissioner would make. I find, however, that the Commissioner takes the obvious view that the land included within the forests must be of greater value than the average of land now remaining open for selection by him, and that he ought to be allowed three or four acres for each one of the acres within the forest. If the commissioner of the General Land Office and the Secretary of the Interior would approve such an arrangement and accept our selections on that basis, I believe there would be no practical danger to the State. The safer course, however, would be for you and the Commissioner to agree on a basis of exchange and then, as you suggest, try to obtain congressional approval of it. I cannot see any reason why such approval could not be easily had as it is so clearly for the benefit of the administration of the forestry service to have full and complete control of all lands within the forests. If it were possible to do so, congressional action should not be limited to the Alamo National Forest alone, but should give {*214} authority to the officers of the Land Department to

make like exchanges as to lands in other forests provided that the forestry service and the state officers agree upon a basis of exchange.