

Opinion No. 20-2603

June 3, 1920

BY: H. S. BOWMAN, Assistant Attorney General

TO: Mr. E. J. H. Roy, Roy, New Mexico.

Use of State Lands and Power to Condemn Land for Cemetery Purposes.

OPINION

We have your letter of the 31st ultimo requesting an opinion regarding the right of the community of Mills to use a part of a school section for cemetery purposes, stating that no permission had ever been received to use the land for that purpose.

It would appear that the purchaser of the school section could insist upon the removal of the bodies that have been buried in the plot, since the Commissioner of Public Lands had never authorized the use of the school section for cemetery purposes, and of course, since he is now the owner of the school section he can prohibit the use of any part of it for a cemetery if he so desires.

You also inquire whether the County Commissioners have power to condemn property for cemetery purposes.

The power of eminent domain is conferred upon counties and other municipalities by the provisions of Section 2112, Code of 1915, wherein it is provided that:

"Property may be condemned under the provisions of this chapter for * * * public parks, and all other public uses for the benefit of any county, incorporated city or city and county, village or town or the inhabitants thereof which may be authorized by law."

The question then arises as to whether cemeteries are such places of public use as are contemplated by this statute.

In 1 Lewis on Eminent Domain, Section 273, page 542, it is provided that public places of burial are undoubtedly a public use and the power of eminent domain may be exercised for this purpose when the cemetery is under the control of public authority, or when the right of sepulchre is public and general.

From the foregoing we are of the opinion that in view of the wording of the statute granting to counties and other municipalities the right of eminent domain, that land or property may be condemned for cemetery purposes.