

Opinion No. 21-2957

May 9, 1921

BY: A. M. EDWARDS, Assistant Attorney General

TO: Honorable N. A. Field, Commissioner of Public Lands, Santa Fe, New Mexico.

Procedure to Grant Right of Way for Railroad Across School Section.

OPINION

{*54} This office is in receipt of your inquiry of May 6th as to what procedure you shall take in granting a right of way for a railroad across a part of a school section by the Mutual Coal, Light and Power Company, of Gallup.

There is no specific provision in either Chapter 109 of the 1919 Session Laws or any other of our laws, with which we are familiar, which permits an individual or a corporation to exercise the right of eminent domain upon state lands. Unless there is express statutory authority to take such action, lands belonging to the state cannot be condemned.

Under Section 5231 of the 1915 Codification, it is provided that the Commissioner may grant rights of way, etc., across state lands for mining or logging or other purposes upon payment of the price fixed by the Commissioner, which shall not be less than the minimum price for the lands used as fixed by law.

The matter of granting this right of way is, therefore, in our opinion, left to your discretion, and we do not believe that condemnation proceedings can be successfully maintained in court.