

## Opinion No. 22-3255

January 30, 1922

**BY:** HARRY S. BOWMAN, Attorney General

**TO:** Hon. L. A. Gillett, State Highway Engineer, Santa Fe, New Mexico.

### **Right of State to Acquire Right of Way for State Road Through Indian Lands by Condemnation.**

#### **OPINION**

{\*115} Referring to our conversation this morning, regarding the power and right of the State of New Mexico, or its agencies, to acquire by the exercise of the right of eminent domain a right of way for road purposes through Indian lands in the pueblo of Ysleta, I wish to advise you as follows:

It is my understanding that the lands in question are owned in common by the community of the pueblo. The federal government as such, has no title to these lands. But by reason of the relationship existing between the government and these pueblo Indians, the government exercises a certain indefinable supervisory control and jurisdiction over both the Indians and their lands, and this peculiar relationship must be kept in mind in the treatment of the problem presented by your inquiry.

The question involves many angles concerning which the courts of this country have not as yet expressed themselves with sufficient clarity to furnish any guide to those who are interested in such matters

The general rule is that the federally owned lands in a state, if not used for some governmental purpose, may be acquired by a State under the sovereign right of the state to take property by eminent domain, but if the state should cede to the general government political jurisdiction over such lands, then Congress has the exclusive power to legislate concerning them and the state would, therefore, be deprived of condemning such lands for public use.

In Section 2 of Article XXI of the Constitution (The Compact with the United States) the people of the State of New Mexico, forever disclaim all right and title to lands owned or held by any Indian or Indian tribes, the right or title to which shall have been acquired through the United States or any prior sovereignty, and that until the title of such Indian or Indian tribes shall have been extinguished, the said lands shall be and remain subject to the disposition and under the absolute jurisdiction and control of the Congress of the United States.

{\*116} The absolute control and sovereignty of the pueblo Indian lands having been ceded to the United States by the provisions of the Constitution last above mentioned, it

would appear as if the State had no power or control over such lands, and, therefore, that the State could not by eminent domain proceedings condemn such lands for right of way purposes for public highways.