

Opinion No. 24-3757

February 19, 1924

BY: MILTON J. HELMICK, Attorney General

TO: Requested by: Hon. Justiniano Baca, Commissioner of Public Lands, Santa Fe, New Mexico.

The Capital of New Mexico is Permanently Located at Santa Fe, Although it may be Changed by a Vote of the People in 1926 or Thereafter.

"Permanently Located" Defined.

OPINION

{*130} This inquiry arises upon the following facts: Congress in 1898 granted 32,000 acres of land for the purpose of erecting public buildings at the capital of the State of New Mexico, on the admission of the State into the Union "when said capital shall be permanently located by the people of New Mexico." In view of the provisions of Art. 21 Sec. 6 of the Constitution of New Mexico, inquiry is made whether the capital of New Mexico is permanently located at Santa Fe, so that the land grant may be used for the purposes for which it was granted.

The Constitutional provision is as follows:

"The capital of this state shall, until changed by the electors voting at an election provided for by the legislature of this state for that purpose, be at the city of Santa Fe, but no such election shall be called or provided for prior to the thirty-first day of December, nineteen hundred and twenty-five."

The effect of the adoption of the constitution which contained this provision was, in my opinion, to locate permanently the capital at Santa Fe. It is true that the location may be changed by vote of the people in 1926 or thereafter, but so long as the people do not elect to change the location, Santa Fe remains the established capital of the State. I think the phrase "permanently located", as used in the congressional grant does not mean an irrevocable location. The word "permanent" does not mean forever. The Supreme Court of the United States has twice defined the phrase "permanently located" as not meaning an irrevocable location. The cases are: *Mead v. Ballard*, 7 Wall 290; *Texas Railway Company v. Marshall*, 136 U.S. 393. The first case held that where a grant of land to a certain institute of learning was made on condition that it be permanently located upon the lands, the condition was fulfilled when the Trustees passed a resolution locating the building on the land with the intention that it should be the permanent place of conducting the business of the institute, and this notwithstanding that the building erected in pursuance of the resolution was afterwards destroyed by fire, and the institute subsequently erected upon another piece of land.

In the second case, the Supreme Court of the United States held that where a city gave a railway certain land on consideration that the railroad would permanently establish its terminus thereon, the consideration was fully executed when the railway set up its car works and machine shops on the land, and operated them for 8 years before removing the terminus to another city. The Supreme Court said the establishment of the terminus with no intention at the time of removing or abandoning it, constituted a permanent establishment. The court said, in its opinion:

{*131} "This was the establishment at that point of the things contracted for in the agreement. It was the fair meaning of the words, permanent establishment as there was no intention, at the time, of removing or abandoning them. The word permanent does not mean forever, or lasting forever or existing forever."

In my opinion, the congressional grant may be now used for the purposes of the grant because the capital of New Mexico, although subject to change by vote of the people, is, nevertheless, permanently located at Santa Fe.