

Opinion No. [30-01]

June 25, 1930

BY: J. A. MILLER, Assistant Attorney General

TO: Mr. Joseph W. Hodges, Lawyer, Silver City, New Mexico.

ALIENS -- Certain aliens may not acquire title to an interest in real estate. Const. Art. II, Sec. 22.

OPINION

Before me is your letter of the 21st inst. addressed to Miguel A. Otero, Jr., Attorney General.

You request an interpretation of section 22, article 2 of the Constitution of the State of New Mexico, as amended in 1921, your question more specifically having to do with the meaning of the word "leasehold" and whether or not that precludes any tenancy whatsoever under the amendment.

Section 22, article 2 of the Constitution, as adopted in 1911, reads as follows:

"Rights of Aliens. Sec. 22. No distinction shall ever be made by law between resident aliens and citizens in regard to the ownership or descent of property."

At the time of the adoption of the Constitution, there was in force and effect in New Mexico chapter 5, section 1, Laws of '71-'72, Compiled Laws of '97, § 3936, Codification of 1929, sec. 117-116, as follows:

"Aliens. Foreigners shall have full power and authority to acquire or hold real estate by deed, will, inheritance, or otherwise, when the same may be acquired in good faith and in due form of law, and also to alienate, sell, assign and transfer the same to their heirs or other persons, whether such heirs or other persons be, or not, citizens of the United States; and when a foreigner having title or interest in any lands or estate dies, such lands or estate shall descend and vest in the same manner as if such foreigner were a citizen of the United States, and such circumstance shall not be an impediment to any person holding an interest in said estate, although not a citizen of the United States, for all said persons shall have the same rights and resources and shall, in all respects, be treated on the same footing as native citizens of the United States with respect to the personal estate of a foreigner dying intestate, and all persons interested in said estate, under the laws of this state, whether foreigners or not."

The Constitution, as adopted, also contained this provision, article 22, section 4:

"All laws of the Territory of New Mexico in force at the time of its admission into the Union as a state, not inconsistent with this constitution, shall be and remain in force as the laws of the state until they expire by their own limitation, or are altered or repealed; and all rights, actions, claims, contracts, liabilities and obligations, shall continue and remain unaffected by the change in the form of government."

There apparently being no conflict or inconsistency between the old territorial law, above quoted, and the constitution at the time of its adoption, the territorial law remained in full force and effect at least until the amendment to section 22, article 2 of the Constitution, as follows:

"Until otherwise provided by law no alien, ineligible to citizenship under the laws of the United States, or corporation, co-partnership or association, a majority of the stock or interest in which is owned or held by such aliens, shall acquire title, leasehold or other interest in or to real estate in New Mexico."

The language of the amendment just quoted seems to be clear and unambiguous and sufficiently broad and comprehensive to prohibit the acquiring of **any interest whatever** in real estate by an alien ineligible to citizenship under the laws of the United States, unless and until such privilege is conferred upon such ineligible aliens by statute. We are not aware of any legislative act since 1921 which would in any way modify or remove the prohibition thus placed in the Constitution. Nor is it our opinion that legislation enacted prior to the adoption of the amendment could be construed to be such "provision of law" as is contemplated by the first words of the amendment.

The old territorial statute, above quoted, was, in our opinion, modified by the amendment in so far as it might have been made applicable to the acquiring of interests in real estate by an alien "ineligible to citizenship", though it probably remains operative as to other foreigners or aliens whether citizens of the United States or not.