

MEMORANDUM.

Information to be furnished Honorable E. L. Hamilton, Chairman House Committee on Territories, in response to his inquiries in connection with H.R.27891, 60th Congress, 2nd Session, for the admission of the Territories of Arizona and New Mexico into the Union.

LAND GRANTS.

The bill grants New Mexico over 4,000,000 acres in quantities for specific purposes, of which 3,000,000 acres are granted for paying valid county and other public debts assumed by the Territory or to be assumed by the State. The bill also grants four sections in each township, viz: 2, 16, 32 and 36, for the support of common schools. The area of the State being in excess of 78,000,000 acres, the school grant will amount to nearly 9,000,000 acres, one-ninth of the entire land area of the State.

*As it is not much more?*  
By the act of June 21, 1898 (30 Stat., 484), there were granted to the <sup>Ter</sup>State for specific purposes over 1,300,000 acres. The aggregate of the grants already made, including those proposed in the bill, will exceed 14,000,000 acres.

The bill grants to Arizona more than 5,000,000 acres for specific purposes. Of this amount, 3,300,000 are granted for paying debts assumed by the Territory or to be assumed by the State. For school purposes the bill also grants four sections in each township, which will amount to more than 8,100,000

acres. The aggregate area of the land granted to Arizona will exceed 13,200,000 acres. Arizona had been previously granted only about 45,000 acres for university purposes. While the grant to the two States proposed in the bill is practically the same for most specific purposes, the bill provides a grant of 600,000 acres for Arizona for the improvement of rivers, etc., while no similar provision is made for New Mexico. This is probably due to the fact that, by the act of 1898, supra, New Mexico was granted 500,000 acres for water reservoirs and 100,000 acres for the improvement of the Rio Grande.

The proposed grant to the two new States of four sections for school purposes is somewhat unusual. The earlier States admitted into the Union, or indeed all admitted prior to 1850, were granted only one section in each township, viz: section 16. After the admission of California, the States were granted two sections for this purpose - 16 and 36 - up to the time of the admission of Utah, which was granted four sections - 2, 16, 32 and 36, while the new State of Oklahoma was granted two sections for portions of the State and four sections for other portions. On the whole, the proposed grants of land to the new States of Arizona and New Mexico greatly exceed any land grants heretofore made by Congress to any of the States excluding the grants of swamp and overflowed lands.

In this connection, it may be stated that the act of June 16, 1906 (34 Stat., 267), which provided for the admission of

the two Territories as one State under the name of Arizona, contains a grant of approximately 2,000,000 acres for specific purposes, and a grant of four sections in each township for common schools, and, in addition, the sum of \$5,000,000 in money.

#### INDEBTEDNESS.

Practically the only information in the possession of the Department respecting the indebtedness of the two Territories is contained in the Annual Reports of the Governors. As shown by the Report of the Governor of New Mexico, the net debt of the Territory on June 1, 1908, was \$773,010.70, while the counties of the Territory had an aggregate bonded indebtedness of \$2,797,089.91. From the report of the House Committee on the bill under consideration, however, viz: Report 2079, submitted by Mr. Hamilton, it appears that on January 1, of the present year, the outstanding bonded debt of the Territory of New Mexico was more than \$1,000,000 - over \$305,000 having been issued in the past year for the improvement of territorial institutions.

According to the same report, the bonded indebtedness of the Territory of Arizona on June 30, 1908, was \$3,113,275.29, which included the indebtedness of the various counties which had been assumed by the Territory. Whether or not the indebtedness mentioned above was incurred under the authority of Congress

cannot at this time be positively stated. However, the Department has by telegraph requested submission of detailed reports from both Territories respecting this matter and, as soon as such reports are received, additional information will be furnished on this subject.

It would seem that, contrary to the provisions of the act of June 18, 1878 (20 Stat.,101), amending Section 1889, Revised Statutes, and possibly contrary also to the provisions of the act of July 30, 1886, limiting territorial indebtedness, etc. (24 Stat.,170), the Territories contracted certain debts, of which the debt contracted by Pima County, Arizona, under authority of the Territorial act of February 21, 1883, was declared invalid by the Supreme Court of the United States in the case of *Lewis v. Pima County* (155 U.S.,54).

It would also appear that certain debts contracted and bonds issued to secure the same by the Territory of New Mexico were also invalid in that they were prohibited by the acts of Congress, above cited, and certain of said debts were validated by act of Congress of January 16, 1897 (29 Stat.,487).

It appears from page 867 of the Congressional Record of April 5, 1909, that the counties of Santa Fe and Grant, in the Territory of New Mexico, memorialized Congress for an appropriation of money or land scrip for the purpose of relieving

said counties from the burden imposed upon them by Congressional statutes confirming and validating certain bonds which had been issued by said counties without lawful authority. It seems that some of the bonded indebtedness validated by the aforesaid act of January 16, 1897, might have been declared invalid if the cases had been taken to the Supreme Court of the United States, and the counties of Santa Fe and Grant have applied to Congress for relief, claiming that if the issue of the bonds had not been validated by Congress the bonds could have been declared null and the counties would not be forced to pay them.

It is presumed that the proposed grants of 3,000,000 acres to New Mexico and of 3,300,000 acres to Arizona are intended to liquidate such debts as those mentioned in the memorial from the counties of Santa Fe and Grant in New Mexico. However, the Territory of New Mexico has not, so far as present information goes, assumed the county debts, as it is understood has been done in Arizona.

While the bill, which was introduced and favorably reported by the last House Committee, does not in terms validate any indebtedness, at the same time the bill provides that the proceeds of the land grant for that purpose may be used "for the payment of the debts of said Territory and of such valid county and other public debts existing at the date of the approval of

this act, as said Territory may have assumed or said State shall assume." It is obvious that the holders of the bonds will be more likely to be paid if the proposed grant of land for the purpose of paying debts is made because the proceeds of the lands granted should be amply sufficient to pay the debts shown by the reports, and there would seem to be nothing to prevent the new States from assuming all of the county debts whether the same are valid or invalid.

#### ELECTIONS.

The bill, as now drawn, provides that the election for the adoption of the constitution and the election of the State officials shall take place at the same time; and it is desired that provision be made for holding the constitutional election separately from the election of the State officials. To do this, it is necessary to reconstruct the bill in part and changes should be made as follows:

In line 1, page 3, the word "first" should be inserted before the word "election", and all that portion of line 2, same page, commencing with the word "taking" should be eliminated and there should be inserted the following: "provided for by the said constitution."

In line 19, page 6, the word "first", preceding the word "Tuesday" in said line, should be omitted and the word

"fourth" inserted instead, and the word "first" at the end of said line 19 should be omitted, also the words "Monday in November after the", in line 20, should be omitted so that the bill shall read, "at an election which shall be held on the fourth Tuesday after the adjournment of the convention".

All of line 12, page 8, preceding the word "adoption" should be stricken out and there should be inserted instead the following: "first Tuesday after the first Monday in November after the", so that, as amended, the bill shall read "shall be elected on the first Tuesday after the first Monday in November after the adoption of the constitution."

The foregoing changes relate only to the elections in New Mexico and similar changes should be made on pages 23, 26 and 28 of the bill respecting the elections in Arizona. Of course the fixing of the time of the election on the constitution for the fourth Tuesday following the adjournment of the convention is merely arbitrary, but that time would allow for sufficient notice to the people; as it is not known when the convention will be held because it is not known when the bill will be passed by Congress, it cannot be stated how much time will intervene between the election held upon the constitution and the election of the State officials in November following.

#### MISCELLANEOUS MATTERS.

While it does not appear that Mr. Hamilton made any

inquiry respecting the manner of selecting the lands granted by the bill, it is deemed proper to invite attention to the fact that, under the terms of the bill, selections may be made of unsurveyed lands. See Sec.12 respecting New Mexico and Sec. 30 respecting Arizona.

The difficulties attendant upon the administration of a law allowing the entry or selection of unsurveyed lands are so great and the conflicting claims resulting therefrom are frequently of so serious a nature that it is not believed that Congress should ever provide for the disposition of public lands prior to their identification by survey.

It is suggested that instead of allowing the selection of unsurveyed lands, the provisions of the act of August 18, 1898 (28 Stat., 372, 394), granting a period of preference right to certain States, should be extended to the new States. In this manner the end desired by the States would be secured, and at the same time the dangers accompanying the selection of unsurveyed lands would be avoided.

The school grant to all of the States now in the Union is administered in accordance with the provisions of Sections 2275 and 2276, Revised Statutes, as amended by the act of February 28, 1891 (26 Stat., 796), but the bill under consideration does not follow in terms the provisions of those sections.

Inasmuch as the land department has experienced no difficulty in administering the law as found in sections 2275 and 2276, Revised Statutes, it is suggested that it would be wise merely to embody the same provisions respecting the granting of indemnity for school sections lost in place in the legislation enacted for the admission of these two States, thus securing uniformity and avoiding possible controversy in adjustment.

Very respectfully,



MEMORANDUM ON ARIZONA AND NEW MEXICO STATEHOOD BILL.

Sec. 4, providing for submission to the President of the constitution and government for his examination and determination as to whether the same is republican in form, etc.

No such provision, so far as I have been able to discover, has been incorporated in any previous statehood bill, the duty of the President being left in a very indefinite condition. While there is no constitutional or statutory provision upon the subject, it may with some degree of reason, be suggested that Congress is the proper tribunal to determine as to whether the proposed constitution is republican in form and otherwise conforms to the provisions of the Enabling Act. No decisions have been found bearing upon the subject except the case of

3 Howard, p.

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Sec. 5, providing for determination by the President and announcement to the territorial governor as to whether the constitution and government are republican in form, etc., and proceedings to be had in the event he shall determine, adversely.

This provision would seem to be necessary. Certainly the President should not be called upon perfunctorily to proclaim admission under a constitution which he does not believe to conform to the requirements of the law, and, on the other hand, the labor and expense of forming the proposed constitution and government should not go for naught if the deficiencies can be cured.

You will observe the language in Sec. 5, "said convention, upon its reconvening, shall make such constitution and government conform to the requirements of this Act," etc. The Act in Sec. 3 requires the proposed constitution and government to be republican in form, etc. The reviewing authority cannot specify any particular provisions which must be incorporated in the constitution---in other words, cannot prescribe the form of the constitution. As a consequence, it is suggested that the convention, upon its reconvening, shall, in effect, make the constitution and government republican in form, etc., which it may do by adopting the views of the President or pursuing its own ideas.

At the end of Sec. 5 there is a provision to the effect

that when said constitution shall be re-formed, the same steps shall be taken in regard thereto as are prescribed for the original document. For your consideration the idea is advanced as to whether or not the limitation of compensation of delegates in Sec. 3 to a period of sixty days should not be so fortified as to prevent any compensation beyond that period in the event the convention is required to meet a second time for any extensive discussion. In other words, I think that the aggregate of all of the time spent at the convention should not exceed sixty days. Of course the Federal appropriation of \$100,000.00 will operate as a limitation on expense.

Sec. 6 provides for the calling of the ratification election in the event the President should be of opinion that the constitution and government are republican in form, etc.

Sec. 8, concerning election of state officers.

By this section the President's suggestion is sought to be covered, in that thereby the election of officers is required to be fixed for a time subsequent to the ratification election, and the following out of this provision will make a final proclamation effective immediately because the state officers will be ready to enter upon the performance of their duties. The land grant provisions have been covered in so far as quantity is concerned by the memorandum heretofore submitted.

As explained to you in person, in place of the provisions of the bill heretofore proposed (H. R. 27891), concerning selection of indemnity lands, etc., I have, in Sec. 11, suggested that the provisions of Secs. 2275 and 2276 of the Revised Statutes be made applicable. This will secure uniformity and save much confusion in the Department. I cannot conceive of any reason for making any other rule.

In the same section (11) with reference to payment to the State of a portion of the income from granted lands situated in forest reserves, the former bill provided for the payment of twenty percent of the gross proceeds of the national forests to the State for school purposes. I do not know how the area of granted lands within the reserves will compare with

the total area of such reserves, but it is eminently more fair to both parties from the provision I have drafted, it calling for the payment of the proportionate amount such income which the total forest area bears toward the amount of granted lands therein.

Office of the Governor  
Phoenix.

May 12, 1909.



Hon. R. A. Ballinger,  
Secretary of the Interior,  
Washington, D. C.

My Dear Mr. Secretary:-

I have been so busy since returning to the Territory, first, with the necessary court work which had to be done before retiring from the bench; and second, with the multitudinous things that had to be done after my assumption of the office of Governor that it has been impossible heretofore to send you anything on the subject of the land grant features of the Enabling Act.

I enclose herewith, however, a brief on the subject supplemented by one, prepared by Mr. John F. Wright, my Attorney General, which I hope will be helpful. If, however, you find that this does not cover the ground fully, I shall be glad to supplement it by any further statement which you may require.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Raymond E. Shanley".

*Have forwarded copies of these statements  
to Mr. Leavelle at Los Angeles*

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