DEPARTMENT OF THE INTERIOR,
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File 1406.

April 13, 1906.

The Governor of New Mexico,
Santa Fe, N. M.

Replying to Dept. reference of 27th ult., reports on H. R. #10,706 "to condemn land for public purposes in the Territories of the United States."

Sept. 23, 1906.
Letter H.R. Com. on Terrs.

SRP0622

HERBERT J. HAGERMAN.
GOVERNOR

TERRITORY OF NEW MEXICO.
OFFICE OF THE EXECUTIVE.
SANTA FE.

April 13, 1906.

To the Honorable

Secretary of the Interior,

Washington, D.C.

Sir:

House Bill #10,706, entitled "A Bill in respect to condemnation of land for public purposes in the Territories of the United States," has been referred to me under date of March 27th for my opinion as to the necessity and advisability of the enactment of the legislation contemplated so far as relates to the Territory of New Mexico.

The purpose and effect of this bill is to confirm proceedings in condemnation heretofore brought under the laws of the Territory with respect to lands of the United States pledged or reserved by the United States with a view to a future grant to the Territory, or to some municipal organization; and to authorize, hereafter, such proceedings under the laws of the Territory.

So far as I am advised there have been no proceedings in condemnation of lands reserved for the benefit of this Territory, where the legal title was in the United States.

By Act of September 9, 1850 (9 S.L.452), carried into the revised Statutes, Section 1946, sections 16 and 36 in each township in the Territory of New Mexico were reserved for common schools, and by Act of June 21, 1898 (30 S.L. 484), said sections in each township in the Territory were granted to the Territory

in fee (29 L.D. 364), with the restriction, however, that the lands embraced therein could be leased only in tracts not exceeding 640 acres to any one person, corporation or association.

Prior to these grants of land to the Territory, rights of way through the public lands of the United States were granted by the United States under the provisions of the Act of March 3, 1875 (18 S.L. 482.), and, under such grant, rights of way were projected through some of the reserved school sections in this Territory, and those lands are now so occupied, but I am advised there have been no proceedings to condemn the rights of the Territory to the land, nor has the Territory received compensation for the easements enjoyed, though the private rights of the lessees of the Territory in these lands have in some instances been condemned under the laws of the Territory and such lessees paid for the damage sustained.

The grants of right of way under Act of March 3, 1875, did not apply to these reserved school sections, section 5 of the Act providing:

"That this Act shall not apply to any lands within the limits of any military, park or Indian reservation, or other lands specially reserved from sale, unless such right of way shall be provided for by treaty stipulation or by Act of Congress heretofore passed."

A distinction is to be made between the interest the Territory of New Mexico has in the school sections 16 and 36 in the Territory, and the interest enjoyed by the Territories of Arizona and Oklahoma in said sections in those Territories. In the Territories of Arizona and Oklahoma said sections are reserved only with a view to a future grant, but both of said Territories have the right to lease its reserved lands, the title remaining in the United States; and it follows, therefore, that proceedings in condemnation under Territorial laws

cannot affect the legal title of the United States. This Territory, however, has the legal title to these school sections, and if it is not inhibited by the restriction in the granting act providing that the lands may be leased only, then it is competent for the Territory to provide by suitable legislation for the acquisition of easements over its granted lands.

So far as the bill provides for the condemnation hereafter of lands reserved, but not granted, by the United States, this is a matter entirely within the discretion of Congress, and as there are no such reserved lands of which the Territory of New Mexico has the beneficial use, no right of the Territory is affected.

I do not think, however, that the bill if enacted would work any injury to the Territory of New Mexico.

I have the honor to be,

Your most obedient servant,

A. J. Hagerman.

Governor of New Mexico.

3 Enclosures.

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(COPY)

HERBERT J. HAGERMAN,
Governor.

TERRITORY OF NEW MEXICO,

Office of the Executive,

Santa Fe.,

April 13, 1906.

To the Honorable,

Secretary of the Interior,

Washington, D. C.

Sir:

House Bill #10,706, entitled "A Bill in respect to condemnation of land for public purposes in the Territories of the United States," has been referred to me under date of March 27th for my opinion as to the necessity and advisability of the enactment of the legislation contemplated so far as relates to the Territory of New Mexico.

The purpose and effect of this bill is to confirm proceedings in condemnation heretofore brought under the laws of the Territory with respect to lands of the United States pledged or reserved by the United States with a view to a future grant to the Territory, or to some municipal organization; and to authorize, hereafter, such proceedings under the laws of the Territory.

So far as I am advised there have been no proceedings in condemnation of lands reserved for the benefit of this Territory, where the legal title was in the United States.

By Act of September 9, 1850 (9 S. L. 452), carried into the revised Statutes, Section 1946, sections 16 and 36 in each township in

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the Territory of New Mexico were reserved for common schools, and by Act of June 21, 1898, (30 S. L. 484), said sections in each township in the Territory were granted to the Territory in fee (29 L. D. 364), with the restriction, however, that the lands embraced therein could be leased only in tracts not exceeding 640 acres to any one person, corporation or association.

Prior to these grants of land to the Territory, rights of way through the public lands of the United States were granted by the United States under the provisions of the Act of March 3, 1875, (18 S. L. 482), and, under such grant, rights of way were projected through some of the reserved school sections in this Territory, and those lands are now so occupied, but I am advised there have been no proceedings to condemn the rights of the Territory to the land, nor has the Territory received compensation for the easements enjoyed, though the private rights of the lessees of the Territory in these lands have in some instances been condemned under the laws of the Territory and such lessees paid for the damage sustained.

The grants of right of way under Act of March 3, 1875, did not apply to these reserved school sections, section 5 of the Act providing:

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and Oklahoma said sections are reserved only with a view to a future grant, but both of said Territories have the right to lease its reserved lands, the title remaining in the United States; and it follows, therefore, that proceedings in condemnation under Territorial laws cannot affect the legal title of the United States. This Territory, however, has the legal title to these school sections, and if it is not inhibited by the restriction in the granting act providing that the lands may be leased only, then it is competent for the Territory to provide by suitable legislation for the acquisition of easements over its granted lands.

So far as the bill provides for the condemnation hereafter of lands reserved, but not granted, by the United States, this is a matter entirely within the discretion of Congress, and as there are no such reserved lands of which the Territory of New Mexico has the beneficial use, no right of the Territory is affected.

I do not think, however, that the bill if enacted would work any injury to the Territory of New Mexico.

I have the honor to be,

Your most obedient servant,

(Signed) H. J. Hagerman,

Governor of New Mexico.

3 Enclosures.

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