

Land Grant-Merced Laws and Statutes



2023

Land Grant-Merced Laws and Statutes

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Preface

The Land Grant-Merced Laws and Statutes book is a compilation of federal and state laws relating to land grants-mercedes. It covers relevant treaties between the United States and Mexico, existing New Mexico statutes affecting land grants-mercedes, and federal laws relating to land grants-mercedes in New Mexico. The book covers laws and statutes in place as of June 2023. This Land Grant-Merced Laws and Statutes book supersedes the 2020 version. This book is provided by the New Mexico Land Grant Council for free distribution to active land grants-mercedes, government agencies and interested parties as a public service.

Transcript of the Treaty of Guadalupe Hidalgo (February 2, 1848)

TREATY OF PEACE, FRIENDSHIP, LIMITS, AND SETTLEMENT BETWEEN THE UNITED STATES OF AMERICA AND THE UNITED MEXICAN STATES CONCLUDED AT GUADALUPE HIDALGO, FEBRUARY 2, 1848; RATIFICATION ADVISED BY SENATE, WITH AMENDMENTS, MARCH 10, 1848; RATIFIED BY PRESIDENT, MARCH 16, 1848; RATIFICATIONS EXCHANGED AT QUERETARO, MAY 30, 1848; PROCLAIMED, JULY 4, 1848.

IN THE NAME OF ALMIGHTY GOD

The United States of America and the United Mexican States animated by a sincere desire to put an end to the calamities of the war which unhappily exists between the two Republics and to establish Upon a solid basis relations of peace and friendship, which shall confer reciprocal benefits upon the citizens of both, and assure the concord, harmony, and mutual confidence wherein the two people should live, as good neighbors have for that purpose appointed their respective plenipotentiaries, that is to say: The President of the United States has appointed Nicholas P. Trist, a citizen of the United States, and the President of the Mexican Republic has appointed Don Luis Gonzaga Cuevas, Don Bernardo Couto, and Don Miguel Atristain, citizens of the said Republic; Who, after a reciprocal communication of their respective full powers, have, under the protection of Almighty God, the author of peace, arranged, agreed upon, and signed the following: Treaty of Peace, Friendship, Limits, and Settlement between the United States of America and the Mexican Republic.

ARTICLE I

There shall be firm and universal peace between the United States of America and the Mexican Republic, and between their respective countries, territories, cities, towns, and people, without exception of places or persons.

ARTICLE II

Immediately upon the signature of this treaty, a convention shall be entered into between a commissioner or commissioners appointed by the General-in-chief of the forces of the United States, and such as may be appointed by the Mexican Government, to the end that a provisional suspension of hostilities shall take place, and that, in the places occupied by the said forces, constitutional order may be reestablished, as regards the political, administrative, and judicial branches, so far as this shall be permitted by the circumstances of military occupation.

ARTICLE III

Immediately upon the ratification of the present treaty by the Government of the United States, orders shall be transmitted to the commanders of their land and naval forces, requiring the latter (provided this treaty shall then have been ratified by the Government of the Mexican Republic, and the ratifications exchanged) immediately to desist from blockading any Mexican ports and requiring the former (under the same condition) to commence, at the earliest moment practicable, withdrawing all troops of the United States then in the interior of the Mexican Republic, to points that shall be selected by common

agreement, at a distance from the seaports not exceeding thirty leagues; and such evacuation of the interior of the Republic shall be completed with the least possible delay; the Mexican Government hereby binding itself to afford every facility in its power for rendering the same convenient to the troops, on their march and in their new positions, and for promoting a good understanding between them and the inhabitants. In like manner orders shall be despatched to the persons in charge of the custom houses at all ports occupied by the forces of the United States, requiring them (under the same condition) immediately to deliver possession of the same to the persons authorized by the Mexican Government to receive it, together with all bonds and evidences of debt for duties on importations and on exportations, not yet fallen due. Moreover, a faithful and exact account shall be made out, showing the entire amount of all duties on imports and on exports, collected at such custom-houses, or elsewhere in Mexico, by authority of the United States, from and after the day of ratification of this treaty by the Government of the Mexican Republic; and also an account of the cost of collection; and such entire amount, deducting only the cost of collection, shall be delivered to the Mexican Government, at the city of Mexico, within three months after the exchange of ratifications.

The evacuation of the capital of the Mexican Republic by the troops of the United States, in virtue of the above stipulation, shall be completed in one month after the orders there stipulated for shall have been received by the commander of said troops, or sooner if possible.

ARTICLE IV

Immediately after the exchange of ratifications of the present treaty all castles, forts, territories, places, and possessions, which have been taken or occupied by the forces of the United States during the present war, within the limits of the Mexican Republic, as about to be established by the following article, shall be definitely restored to the said Republic, together with all the artillery, arms, apparatus of war, munitions, and other public property, which were in the said castles and forts when captured, and which shall remain there at the time when this treaty shall be duly ratified by the Government of the Mexican Republic. To this end, immediately upon the signature of this treaty, orders shall be despatched to the American officers commanding such castles and forts, securing against the removal or destruction of any such artillery, arms, apparatus of war, munitions, or other public property. The city of Mexico, within the inner line of intrenchments surrounding the said city, is comprehended in the above stipulation, as regards the restoration of artillery, apparatus of war, & c.

The final evacuation of the territory of the Mexican Republic, by the forces of the United States, shall be completed in three months from the said exchange of ratifications, or sooner if possible; the Mexican Government hereby engaging, as in the foregoing article to use all means in its power for facilitating such evacuation, and rendering it convenient to the troops, and for promoting a good understanding between them and the inhabitants.

If, however, the ratification of this treaty by both parties should not take place in time to allow the embarkation of the troops of the United States to be completed before the commencement of the sickly season, at the Mexican ports on the Gulf of Mexico, in such

case a friendly arrangement shall be entered into between the General-in-Chief of the said troops and the Mexican Government, whereby healthy and otherwise suitable places, at a distance from the ports not exceeding thirty leagues, shall be designated for the residence of such troops as may not yet have embarked, until the return of the healthy season. And the space of time here referred to as, comprehending the sickly season shall be understood to extend from the first day of May to the first day of November.

All prisoners of war taken on either side, on land or on sea, shall be restored as soon as practicable after the exchange of ratifications of this treaty. It is also agreed that if any Mexicans should now be held as captives by any savage tribe within the limits of the United States, as about to be established by the following article, the Government of the said United States will exact the release of such captives and cause them to be restored to their country.

ARTICLE V

The boundary line between the two Republics shall commence in the Gulf of Mexico, three leagues from land, opposite the mouth of the Rio Grande, otherwise called Rio Bravo del Norte, or Opposite the mouth of its deepest branch, if it should have more than one branch emptying directly into the sea; from thence up the middle of that river, following the deepest channel, where it has more than one, to the point where it strikes the southern boundary of New Mexico; thence, westwardly, along the whole southern boundary of New Mexico (which runs north of the town called Paso) to its western termination; thence, northward, along the western line of New Mexico, until it intersects the first branch of the river Gila; (or if it should not intersect any branch of that river, then to the point on the said line nearest to such branch, and thence in a direct line to the same); thence down the middle of the said branch and of the said river, until it empties into the Rio Colorado; thence across the Rio Colorado, following the division line between Upper and Lower California, to the Pacific Ocean.

The southern and western limits of New Mexico, mentioned in the article, are those laid down in the map entitled "Map of the United Mexican States, as organized and defined by various acts of the Congress of said republic, and constructed according to the best authorities. Revised edition. Published at New York, in 1847, by J. Disturnell," of which map a copy is added to this treaty, bearing the signatures and seals of the undersigned Plenipotentiaries. And, in order to preclude all difficulty in tracing upon the ground the limit separating Upper from Lower California, it is agreed that the said limit shall consist of a straight line drawn from the middle of the Rio Gila, where it unites with the Colorado, to a point on the coast of the Pacific Ocean, distant one marine league due south of the southernmost point of the port of San Diego, according to the plan of said port made in the year 1782 by Don Juan Pantoja, second sailing-master of the Spanish fleet, and published at Madrid in the year 1802, in the atlas to the voyage of the schooners Sutil and Mexicana; of which plan a copy is hereunto added, signed and sealed by the respective Plenipotentiaries.

In order to designate the boundary line with due precision, upon authoritative maps, and to establish upon the ground land-marks which shall show the limits of both republics, as

described in the present article, the two Governments shall each appoint a commissioner and a surveyor, who, before the expiration of one year from the date of the exchange of ratifications of this treaty, shall meet at the port of San Diego, and proceed to run and mark the said boundary in its whole course to the mouth of the Rio Bravo del Norte. They shall keep journals and make out plans of their operations; and the result agreed upon by them shall be deemed a part of this treaty, and shall have the same force as if it were inserted therein. The two Governments will amicably agree regarding what may be necessary to these persons, and also as to their respective escorts, should such be necessary.

The boundary line established by this article shall be religiously respected by each of the two republics, and no change shall ever be made therein, except by the express and free consent of both nations, lawfully given by the General Government of each, in conformity with its own constitution.

ARTICLE VI

The vessels and citizens of the United States shall, in all time, have a free and uninterrupted passage by the Gulf of California, and by the river Colorado below its confluence with the Gila, to and from their possessions situated north of the boundary line defined in the preceding article; it being understood that this passage is to be by navigating the Gulf of California and the river Colorado, and not by land, without the express consent of the Mexican Government.

If, by the examinations which may be made, it should be ascertained to be practicable and advantageous to construct a road, canal, or railway, which should in whole or in part run upon the river Gila, or upon its right or its left bank, within the space of one marine league from either margin of the river, the Governments of both republics will form an agreement regarding its construction, in order that it may serve equally for the use and advantage of both countries.

ARTICLE VII

The river Gila, and the part of the Rio Bravo del Norte lying below the southern boundary of New Mexico, being, agreeably to the fifth article, divided in the middle between the two republics, the navigation of the Gila and of the Bravo below said boundary shall be free and common to the vessels and citizens of both countries; and neither shall, without the consent of the other, construct any work that may impede or interrupt, in whole or in part, the exercise of this right; not even for the purpose of favoring new methods of navigation. Nor shall any tax or contribution, under any denomination or title, be levied upon vessels or persons navigating the same or upon merchandise or effects transported thereon, except in the case of landing upon one of their shores. If, for the purpose of making the said rivers navigable, or for maintaining them in such state, it should be necessary or advantageous to establish any tax or contribution, this shall not be done without the consent of both Governments.

The stipulations contained in the present article shall not impair the territorial rights of either republic within its established limits.

ARTICLE VIII

Mexicans now established in territories previously belonging to Mexico, and which remain for the future within the limits of the United States, as defined by the present treaty, shall be free to continue where they now reside, or to remove at any time to the Mexican Republic, retaining the property which they possess in the said territories, or disposing thereof, and removing the proceeds wherever they please, without their being subjected, on this account, to any contribution, tax, or charge whatever.

Those who shall prefer to remain in the said territories may either retain the title and rights of Mexican citizens, or acquire those of citizens of the United States. But they shall be under the obligation to make their election within one year from the date of the exchange of ratifications of this treaty; and those who shall remain in the said territories after the expiration of that year, without having declared their intention to retain the character of Mexicans, shall be considered to have elected to become citizens of the United States.

In the said territories, property of every kind, now belonging to Mexicans not established there, shall be inviolably respected. The present owners, the heirs of these, and all Mexicans who may hereafter acquire said property by contract, shall enjoy with respect to it guarantees equally ample as if the same belonged to citizens of the United States.

ARTICLE IX

The Mexicans who, in the territories aforesaid, shall not preserve the character of citizens of the Mexican Republic, conformably with what is stipulated in the preceding article, shall be incorporated into the Union of the United States. and be admitted at the proper time (to be judged of by the Congress of the United States) to the enjoyment of all the rights of citizens of the United States, according to the principles of the Constitution; and in the meantime, shall be maintained and protected in the free enjoyment of their liberty and property, and secured in the free exercise of their religion without restriction.

ARTICLE X - [Stricken out by United States; replaced by Protocol of Querétaro]

All grants of land made by the Mexican Government or by the competent authorities, in territories previously appertaining to Mexico, and remaining for the future within the limits of the United States, shall be respected as valid to the same extent if the said territories had remained within the limits of Mexico. But the grantees of lands in Texas, put in possession thereof, who, by reason of the circumstances of the country since the beginning of the troubles between Texas and the Mexican Government, may have been prevented from fulfilling all the conditions of their grants, shall be under the obligation to fulfill the said conditions within the periods limited in the same respectively; such periods to be now counted from the date of the exchange of ratifications of this treaty; in default of which the said grants shall not be obligatory upon the State of Texas, in virtue of the stipulations contained in this Article.

The foregoing stipulation in regard to grantees of land in Texas, is extended to all grantees of land in the territories aforesaid, elsewhere than in Texas, put in possession under such grants; and, in default of the fulfillment of the conditions of any such grant, within the new period, which as is above stipulated, begins with the day of the exchange of ratifications of

this treaty, the same shall be null and void. The Mexican government declares that no grant whatever of lands in Texas has been made since the second day of March one thousand eight hundred and thirty six; and that no grant whatever of lands in any of the territories aforesaid has been made since the thirteenth day of May one thousand eight hundred and forty-six.

Article XI

Considering that a great part of the territories, which, by the present treaty, are to be comprehended for the future within the limits of the United States, is now occupied by savage tribes, who will hereafter be under the exclusive control of the Government of the United States, and whose incursions within the territory of Mexico would be prejudicial in the extreme, it is solemnly agreed that all such incursions shall be forcibly restrained by the Government of the United States whensoever this may be necessary; and that when they cannot be prevented, they shall be punished by the said Government, and satisfaction for the same shall be exacted all in the same way, and with equal diligence and energy, as if the same incursions were meditated or committed within its own territory, against its own citizens.

It shall not be lawful, under any pretext whatever, for any inhabitant of the United States to purchase or acquire any Mexican, or any foreigner residing in Mexico, who may have been captured by Indians inhabiting the territory of either of the two republics; nor to purchase or acquire horses, mules, cattle, or property of any kind, stolen within Mexican territory by such Indians.

And in the event of any person or persons, captured within Mexican territory by Indians, being carried into the territory of the United States, the Government of the latter engages and binds itself, in the most solemn manner, so soon as it shall know of such captives being within its territory, and shall be able so to do, through the faithful exercise of its influence and power, to rescue them and return them to their country. or deliver them to the agent or representative of the Mexican Government. The Mexican authorities will, as far as practicable, give to the Government of the United States notice of such captures; and its agents shall pay the expenses incurred in the maintenance and transmission of the rescued captives; who, in the mean time, shall be treated with the utmost hospitality by the American authorities at the place where they may be. But if the Government of the United States, before receiving such notice from Mexico, should obtain intelligence, through any other channel, of the existence of Mexican captives within its territory, it will proceed forthwith to effect their release and delivery to the Mexican agent, as above stipulated.

For the purpose of giving to these stipulations the fullest possible efficacy, thereby affording the security and redress demanded by their true spirit and intent, the Government of the United States will now and hereafter pass, without unnecessary delay, and always vigilantly enforce, such laws as the nature of the subject may require. And, finally, the sacredness of this obligation shall never be lost sight of by the said Government, when providing for the removal of the Indians from any portion of the said territories, or for its being settled by citizens of the United States; but, on the contrary, special care shall then be taken not to place its Indian occupants under the necessity of seeking new homes, by

committing those invasions which the United States have solemnly obliged themselves to restrain.

ARTICLE XII

In consideration of the extension acquired by the boundaries of the United States, as defined in the fifth article of the present treaty, the Government of the United States engages to pay to that of the Mexican Republic the sum of fifteen millions of dollars.

Immediately after the treaty shall have been duly ratified by the Government of the Mexican Republic, the sum of three millions of dollars shall be paid to the said Government by that of the United States, at the city of Mexico, in the gold or silver coin of Mexico. The remaining twelve millions of dollars shall be paid at the same place, and in the same coin, in annual installments of three millions of dollars each, together with interest on the same at the rate of six per centum per annum. This interest shall begin to run upon the whole sum of twelve millions from the day of the ratification of the present treaty by--the Mexican Government, and the first of the installments shall be paid-at the expiration of one year from the same day. Together with each annual installment, as it falls due, the whole interest accruing on such installment from the beginning shall also be paid.

ARTICLE XIII

The United States engage, moreover, to assume and pay to the claimants all the amounts now due them, and those hereafter to become due, by reason of the claims already liquidated and decided against the Mexican Republic, under the conventions between the two republics severally concluded on the eleventh day of April, eighteen hundred and thirty-nine, and on the thirtieth day of January, eighteen hundred and forty-three; so that the Mexican Republic shall be absolutely exempt, for the future, from all expense whatever on account of the said claims.

ARTICLE XIV

The United States do furthermore discharge the Mexican Republic from all claims of citizens of the United States, not heretofore decided against the Mexican Government, which may have arisen previously to the date of the signature of this treaty; which discharge shall be final and perpetual, whether the said claims be rejected or be allowed by the board of commissioners provided for in the following article, and whatever shall be the total amount of those allowed.

ARTICLE XV

The United States, exonerating Mexico from all demands on account of the claims of their citizens mentioned in the preceding article, and considering them entirely and forever canceled, whatever their amount may be, undertake to make satisfaction for the same, to an amount not exceeding three and one-quarter millions of dollars. To ascertain the validity and amount of those claims, a board of commissioners shall be established by the Government of the United States, whose awards shall be final and conclusive; provided that, in deciding upon the validity of each claim, the board shall be guided and governed by the principles and rules of decision prescribed by the first and fifth articles of the unratified convention, concluded at the city of Mexico on the twentieth day of November, one

thousand eight hundred and forty-three; and in no case shall an award be made in favour of any claim not embraced by these principles and rules.

If, in the opinion of the said board of commissioners or of the claimants, any books, records, or documents, in the possession or power of the Government of the Mexican Republic, shall be deemed necessary to the just decision of any claim, the commissioners, or the claimants through them, shall, within such period as Congress may designate, make an application in writing for the same, addressed to the Mexican Minister of Foreign Affairs, to be transmitted by the Secretary of State of the United States; and the Mexican Government engages, at the earliest possible moment after the receipt of such demand, to cause any of the books, records, or documents so specified, which shall be in their possession or power (or authenticated copies or extracts of the same), to be transmitted to the said Secretary of State, who shall immediately deliver them over to the said board of commissioners; provided that no such application shall be made by or at the instance of any claimant, until the facts which it is expected to prove by such books, records, or documents, shall have been stated under oath or affirmation.

ARTICLE XVI

Each of the contracting parties reserves to itself the entire right to fortify whatever point within its territory it may judge proper so to fortify for its security.

ARTICLE XVII

The treaty of amity, commerce, and navigation, concluded at the city of Mexico, on the fifth day of April, A. D. 1831, between the United States of America and the United Mexican States, except the additional article, and except so far as the stipulations of the said treaty may be incompatible with any stipulation contained in the present treaty, is hereby revived for the period of eight years from the day of the exchange of ratifications of this treaty, with the same force and virtue as if incorporated therein; it being understood that each of the contracting parties reserves to itself the right, at any time after the said period of eight years shall have expired, to terminate the same by giving one year's notice of such intention to the other party.

ARTICLE XVIII

All supplies whatever for troops of the United States in Mexico, arriving at ports in the occupation of such troops previous to the final evacuation thereof, although subsequently to the restoration of the custom-houses at such ports, shall be entirely exempt from duties and charges of any kind; the Government of the United States hereby engaging and pledging its faith to establish and vigilantly to enforce, all possible guards for securing the revenue of Mexico, by preventing the importation, under cover of this stipulation, of any articles other than such, both in kind and in quantity, as shall really be wanted for the use and consumption of the forces of the United States during the time they may remain in Mexico. To this end it shall be the duty of all officers and agents of the United States to denounce to the Mexican authorities at the respective ports any attempts at a fraudulent abuse of this stipulation, which they may know of, or may have reason to suspect, and to give to such authorities all the aid in their power with regard thereto; and every such attempt, when duly proved and established by sentence of a competent tribunal, They shall

be punished by the confiscation of the property so attempted to be fraudulently introduced.

ARTICLE XIX

With respect to all merchandise, effects, and property whatsoever, imported into ports of Mexico, whilst in the occupation of the forces of the United States, whether by citizens of either republic, or by citizens or subjects of any neutral nation, the following rules shall be observed:

- (1) All such merchandise, effects, and property, if imported previously to the restoration of the custom-houses to the Mexican authorities, as stipulated for in the third article of this treaty, shall be exempt from confiscation, although the importation of the same be prohibited by the Mexican tariff.
- (2) The same perfect exemption shall be enjoyed by all such merchandise, effects, and property, imported subsequently to the restoration of the custom-houses, and previously to the sixty days fixed in the following article for the coming into force of the Mexican tariff at such ports respectively; the said merchandise, effects, and property being, however, at the time of their importation, subject to the payment of duties, as provided for in the said following article.
- (3) All merchandise, effects, and property described in the two rules foregoing shall, during their continuance at the place of importation, and upon their leaving such place for the interior, be exempt from all duty, tax, or imposts of every kind, under whatsoever title or denomination. Nor shall they be there subject to any charge whatsoever upon the sale thereof.
- (4) All merchandise, effects, and property, described in the first and second rules, which shall have been removed to any place in the interior, whilst such place was in the occupation of the forces of the United States, shall, during their continuance therein, be exempt from all tax upon the sale or consumption thereof, and from every kind of impost or contribution, under whatsoever title or denomination.
- (5) But if any merchandise, effects, or property, described in the first and second rules, shall be removed to any place not occupied at the time by the forces of the United States, they shall, upon their introduction into such place, or upon their sale or consumption there, be subject to the same duties which, under the Mexican laws, they would be required to pay in such cases if they had been imported in time of peace, through the maritime custom-houses, and had there paid the duties conformably with the Mexican tariff.
- (6) The owners of all merchandise, effects, or property, described in the first and second rules, and existing in any port of Mexico, shall have the right to reship the same, exempt from all tax, impost, or contribution whatever.

With respect to the metals, or other property, exported from any Mexican port whilst in the occupation of the forces of the United States, and previously to the restoration of the

custom-house at such port, no person shall be required by the Mexican authorities, whether general or state, to pay any tax, duty, or contribution upon any such exportation, or in any manner to account for the same to the said authorities.

ARTICLE XX

Through consideration for the interests of commerce generally, it is agreed, that if less than sixty days should elapse between the date of the signature of this treaty and the restoration of the custom houses, conformably with the stipulation in the third article, in such case all merchandise, effects and property whatsoever, arriving at the Mexican ports after the restoration of the said custom-houses, and previously to the expiration of sixty days after the day of signature of this treaty, shall be admitted to entry; and no other duties shall be levied thereon than the duties established by the tariff found in force at such custom-houses at the time of the restoration of the same. And to all such merchandise, effects, and property, the rules established by the preceding article shall apply.

ARTICLE XXI

If unhappily any disagreement should hereafter arise between the Governments of the two republics, whether with respect to the interpretation of any stipulation in this treaty, or with respect to any other particular concerning the political or commercial relations of the two nations, the said Governments, in the name of those nations, do promise to each other that they will endeavour, in the most sincere and earnest manner, to settle the differences so arising, and to preserve the state of peace and friendship in which the two countries are now placing themselves, using, for this end, mutual representations and pacific negotiations. And if, by these means, they should not be enabled to come to an agreement, a resort shall not, on this account, be had to reprisals, aggression, or hostility of any kind, by the one republic against the other, until the Government of that which deems itself aggrieved shall have maturely considered, in the spirit of peace and good neighbourship, whether it would not be better that such difference should be settled by the arbitration of commissioners appointed on each side, or by that of a friendly nation. And should such course be proposed by either party, it shall be acceded to by the other, unless deemed by it altogether incompatible with the nature of the difference, or the circumstances of the case.

ARTICLE XXII

If (which is not to be expected, and which God forbid) war should unhappily break out between the two republics, they do now, with a view to such calamity, solemnly pledge themselves to each other and to the world to observe the following rules; absolutely where the nature of the subject permits, and as closely as possible in all cases where such absolute observance shall be impossible:

- (1) The merchants of either republic then residing in the other shall be allowed to remain twelve months (for those dwelling in the interior), and six months (for those dwelling at the seaports) to collect their debts and settle their affairs; during which periods they shall enjoy the same protection, and be on the same footing, in all respects, as the citizens or subjects of the most friendly nations; and, at the expiration thereof, or at any time before, they shall have full liberty to depart, carrying off all their effects without molestation or hindrance, conforming therein

to the same laws which the citizens or subjects of the most friendly nations are required to conform to. Upon the entrance of the armies of either nation into the territories of the other, women and children, ecclesiastics, scholars of every faculty, cultivators of the earth, merchants, artisans, manufacturers, and fishermen, unarmed and inhabiting unfortified towns, villages, or places, and in general all persons whose occupations are for the common subsistence and benefit of mankind, shall be allowed to continue their respective employments, unmolested in their persons. Nor shall their houses or goods be burnt or otherwise destroyed, nor their cattle taken, nor their fields wasted, by the armed force into whose power, by the events of war, they may happen to fall; but if the necessity arise to take anything from them for the use of such armed force, the same shall be paid for at an equitable price. All churches, hospitals, schools, colleges, libraries, and other establishments for charitable and beneficent purposes, shall be respected, and all persons connected with the same protected in the discharge of their duties, and the pursuit of their vocations.

(2). In order that the fate of prisoners of war may be alleviated all such practices as those of sending them into distant, inclement or unwholesome districts, or crowding them into close and noxious places, shall be studiously avoided. They shall not be confined in dungeons, prison ships, or prisons; nor be put in irons, or bound or otherwise restrained in the use of their limbs. The officers shall enjoy liberty on their paroles, within convenient districts, and have comfortable quarters; and the common soldiers shall be disposed in cantonments, open and extensive enough for air and exercise and lodged in barracks as roomy and good as are provided by the party in whose power they are for its own troops. But if any officer shall break his parole by leaving the district so assigned him, or any other prisoner shall escape from the limits of his cantonment after they shall have been designated to him, such individual, officer, or other prisoner, shall forfeit so much of the benefit of this article as provides for his liberty on parole or in cantonment. And if any officer so breaking his parole or any common soldier so escaping from the limits assigned him, shall afterwards be found in arms previously to his being regularly exchanged, the person so offending shall be dealt with according to the established laws of war. The officers shall be daily furnished, by the party in whose power they are, with as many rations, and of the same articles, as are allowed either in kind or by commutation, to officers of equal rank in its own army; and all others shall be daily furnished with such ration as is allowed to a common soldier in its own service; the value of all which supplies shall, at the close of the war, or at periods to be agreed upon between the respective commanders, be paid by the other party, on a mutual adjustment of accounts for the subsistence of prisoners; and such accounts shall not be mingled with or set off against any others, nor the balance due on them withheld, as a compensation or reprisal for any cause whatever, real or pretended Each party shall be allowed to keep a commissary of prisoners, appointed by itself, with every cantonment of prisoners, in possession of the other; which commissary shall see the prisoners as often as he pleases; shall be allowed to receive, exempt from all duties a taxes, and to distribute, whatever comforts may be sent to them by their friends; and shall be free to transmit his reports in open letters to the party by whom

he is employed. And it is declared that neither the pretense that war dissolves all treaties, nor any other whatever, shall be considered as annulling or suspending the solemn covenant contained in this article. On the contrary, the state of war is precisely that for which it is provided; and, during which, its stipulations are to be as sacredly observed as the most acknowledged obligations under the law of nature or nations.

ARTICLE XXIII

This treaty shall be ratified by the President of the United States of America, by and with the advice and consent of the Senate thereof; and by the President of the Mexican Republic, with the previous approbation of its general Congress; and the ratifications shall be exchanged in the City of Washington, or at the seat of Government of Mexico, in four months from the date of the signature hereof, or sooner if practicable. In faith whereof we, the respective Plenipotentiaries, have signed this treaty of peace, friendship, limits, and settlement, and have hereunto affixed our seals respectively. Done in quintuplicate, at the city of Guadalupe Hidalgo, on the second day of February, in the year of our Lord one thousand eight hundred and forty-eight.

N. P. TRIST
LUIS P. CUEVAS
BERNARDO COUTO
MIGL. ATRISTAIN

Transcript of the Protocol of Querétaro (May 30, 1848)

In the city of Querétaro on the twenty sixth of the month of May eighteen hundred and forty-eight at a conference between Their Excellencies Nathan Clifford and Ambrose H. Sevier Commissioners of the United States of America, with full powers from their Government to make to the Mexican Republic suitable explanations in regard to the amendments which the Senate and Government of the said United States have made in the treaty of peace, friendship, limits and definitive settlement between the two Republics signed in Guadalupe Hidalgo, on the second day of February of the present year and his Excellency Don Luis de la Rosa, Minister of Foreign Affairs of the Republic of Mexico, it was agreed, after adequate conversation respecting the changes alluded to, to record in the present protocol the following explanations which those aforesaid Excellencies the Commissioners gave in the name of the Government and in fulfillment of the Commission conferred upon them near the Mexican Republic.

First. - The American Government by suppressing the IXth article of the Treaty of Guadalupe and substituting the III. article of the Treaty of Louisiana did not intend to diminish in any way what was agreed upon by the aforesaid article IXth in favor of the inhabitants of the territories ceded by Mexico. Its understanding that all of that agreement is contained in the IIIrd article of the Treaty of Louisiana. In consequence, all the privileges and guarantees, civil, political and religious, which would have been possessed by the inhabitants of the ceded territories, if the IXth article of the Treaty had been retained, will be enjoyed by them without any difference under the article which has been substituted.

Second. - The American Government by suppressing the Xth article of the Treaty of Guadalupe did not in any way intend to annul the grants of lands made by Mexico in the ceded territories. Those grants, notwithstanding the suppression of the article of the Treaty, preserve the legal value which they may possess; and the grantees may cause their legitimate titles to be acknowledged before the american tribunals. Conformably to the law of the United States, legitimate titles to every description of property personal and real, existing in the ceded territories, are those which were legitimate titles under the Mexican law in California and New Mexico up to the 13th of May 1,846 and in Texas up to the 2d march 1,836. ix

Third. - The Government of the United States by suppressing the concluding paragraph of article XIIth of the Treaty, did not intend to deprive the Mexican Republic of the free and unrestrained faculty of ceding, conveying or transferring at any time (as it may judge best) the sum the twelve millions of dollars which the same Government of the United States is to deliver in the place designated by the amended article. And these explanations having been accepted by the Minister of Foreign Affairs of the Mexican Republic, he declared in name of his Government that with the understanding conveyed by them, the same Government would proceed to ratify the Treaty of Guadalupe as modified by the Senate and Government of the United States. In testimony of which their Excellencies the aforesaid Commissioners and the Minister have signed and sealed in quintuplicate the present protocol.

Transcript of the Gadsden Purchase Treaty (Treaty of Mesilla) (December 30, 1853)

IN THE NAME OF ALMIGHTY GOD:

The Republic of Mexico and the United States of America desiring to remove every cause of disagreement which might interfere in any manner with the better friendship and intercourse between the two countries, and especially in respect to the true limits which should be established, when, notwithstanding what was covenanted in the treaty of Guadalupe Hidalgo in the year 1848, opposite interpretations have been urged, which might give occasion to questions of serious moment: to avoid these, and to strengthen and more firmly maintain the peace which happily prevails between the two republics, the President of the United States has, for this purpose, appointed James Gadsden, Envoy Extraordinary and Minister Plenipotentiary of the same, near the Mexican government, and the President of Mexico has appointed as Plenipotentiary "ad hoc" his excellency Don Manuel Diez de Bonilla, cavalier grand cross of the national and distinguished order of Guadalupe, and Secretary of State, and of the office of Foreign Relations, and Don Jose Salazar Ylarregui and General Mariano Monterde as scientific commissioners, invested with full powers for this negotiation, who, having communicated their respective full powers, and finding them in due and proper form, have agreed upon the articles following:

ARTICLE I

The Mexican Republic agrees to designate the following as her true limits with the United States for the future: retaining the same dividing line between the two Californias as already defined and established, according to the 5th article of the treaty of Guadalupe Hidalgo, the limits between the two republics shall be as follows: Beginning in the Gulf of Mexico, three leagues from land, opposite the mouth of the Rio Grande, as provided in the 5th article of the treaty of Guadalupe Hidalgo; thence, as defined in the said article, up the middle of that river to the point where the parallel of 31° 47' north latitude crosses the same; thence due west one hundred miles; thence south to the parallel of 31° 20' north latitude; thence along the said parallel of 31° 20' to the 111th meridian of longitude west of Greenwich; thence in a straight line to a point on the Colorado River twenty English miles below the junction of the Gila and Colorado rivers; thence up the middle of the said river Colorado until it intersects the present line between the United States and Mexico.

For the performance of this portion of the treaty, each of the two governments shall nominate one commissioner, to the end that, by common consent the two thus nominated, having met in the city of Paso del Norte, three months after the exchange of the ratifications of this treaty, may proceed to survey and mark out upon the land the dividing line stipulated by this article, where it shall not have already been surveyed and established by the mixed commission, according to the treaty of Guadalupe, keeping a journal and making proper plans of their operations. For this purpose, if they should judge it necessary, the contracting parties shall be at liberty each to unite to its respective commissioner, scientific or other assistants, such as astronomers and surveyors, whose concurrence shall not be considered necessary for the settlement and of a true line of division between the two Republics; that

line shall be alone established upon which the commissioners may fix, their consent in this particular being considered decisive and an integral part of this treaty, without necessity of ulterior ratification or approval, and without room for interpretation of any kind by either of the parties contracting.

The dividing line thus established shall, in all time, be faithfully respected by the two governments, without any variation therein, unless of the express and free consent of the two, given in conformity to the principles of the law of nations, and in accordance with the constitution of each country respectively.

In consequence, the stipulation in the 5th article of the treaty of Guadalupe upon the boundary line therein described is no longer of any force, wherein it may conflict with that here established, the said line being considered annulled and abolished wherever it may not coincide with the present, and in the same manner remaining in full force where in accordance with the same.

ARTICLE II.

The government of Mexico hereby releases the United States from all liability on account of the obligations contained in the eleventh article of the treaty of Guadalupe Hidalgo; and the said article and the thirty-third article of the treaty of amity, commerce, and navigation between the United States of America and the United Mexican States concluded at Mexico, on the fifth day of April, 1831, are hereby abrogated.

ARTICLE III.

In consideration of the foregoing stipulations, the Government of the United States agrees to pay to the government of Mexico, in the city of New York, the sum of ten millions of dollars, of which seven millions shall be paid immediately upon the exchange of the ratifications of this treaty, and the remaining three millions as soon as the boundary line shall be surveyed, marked, and established.

ARTICLE IV.

The provisions of the 6th and 7th articles of the treaty of Guadalupe Hidalgo having been rendered nugatory, for the most part, by the cession of territory granted in the first article of this treaty, the said articles are hereby abrogated and annulled, and the provisions as herein expressed substituted therefor. The vessels, and citizens of the United States shall, in all time, have free and uninterrupted passage through the Gulf of California, to and from their possessions situated north of the boundary line of the two countries. It being understood that this passage is to be by navigating the Gulf of California and the river Colorado, and not by land, without the express consent of the Mexican government; and precisely the same provisions, stipulations, and restrictions, in all respects, are hereby agreed upon and adopted, and shall be scrupulously observed and enforced by the two contracting governments in reference to the Rio Colorado, so far and for such distance as the middle of that river is made their common boundary line by the first article of this treaty.

The several provisions, stipulations, and restrictions contained in the 7th article of the treaty of Guadalupe Hidalgo shall remain in force only so far as regards the Rio Bravo del Norte, below the initial of the said boundary provided in the first article of this treaty; that is to say, below the intersection of the 31° 47'30" parallel of latitude, with the boundary line established by the late treaty dividing said river from its mouth upwards, according to the fifth article of the treaty of Guadalupe.

ARTICLE V.

All the provisions of the eighth and ninth, sixteenth and seventeenth articles of the treaty of Guadalupe Hidalgo, shall apply to the territory ceded by the Mexican Republic in the first article of the present treaty, and to all the rights of persons and property, both civil and ecclesiastical, within the same, as fully and as effectually as if the said articles were herein again recited and set forth.

ARTICLE VI.

No grants of land within the territory ceded by the first article of this treaty bearing date subsequent to the day-twenty-fifth of September-when the minister and subscriber to this treaty on the part of the United States, proposed to the Government of Mexico to terminate the question of boundary, will be considered valid or be recognized by the United States, or will any grants made previously be respected or be considered as obligatory which have not been located and duly recorded in the archives of Mexico.

ARTICLE VII.

Should there at any future period (which God forbid) occur any disagreement between the two nations which might lead to a rupture of their relations and reciprocal peace, they bind themselves in like manner to procure by every possible method the adjustment of every difference; and should they still in this manner not succeed, never will they proceed to a declaration of war, without having previously paid attention to what has been set forth in article twenty-one of the treaty of Guadalupe for similar cases; which article, as well as the twenty-second is here reaffirmed.

ARTICLE VIII.

The Mexican Government having on the 5th of February, 1853, authorized the early construction of a plank and railroad across the Isthmus of Tehuantepec, and, to secure the stable benefits of said transit way to the persons and merchandise of the citizens of Mexico and the United States, it is stipulated that neither government will interpose any obstacle to the transit of persons and merchandise of both nations; and at no time shall higher charges be made on the transit of persons and property of citizens of the United States, than may be made on the persons and property of other foreign nations, nor shall any interest in said transit way, nor in the proceeds thereof, be transferred to any foreign government.

The United States, by its agents, shall have the right to transport across the isthmus, in closed bags, the mails of the United States not intended for distribution along the line of communication; also the effects of the United States government and its citizens, which may be intended for transit, and not for distribution on the isthmus, free of custom-house

or other charges by the Mexican government. Neither passports nor letters of security will be required of persons crossing the isthmus and not remaining in the country.

When the construction of the railroad shall be completed, the Mexican government agrees to open a port of entry in addition to the port of Vera Cruz, at or near the terminus of said road on the Gulf of Mexico.

The two governments will enter into arrangements for the prompt transit of troops and munitions of the United States, which that government may have occasion to send from one part of its territory to another, lying on opposite sides of the continent.

The Mexican government having e agreed to protect with its whole power the prosecution, preservation, and security of the work, the United States may extend its protection as it shall judge wise to it when it may feel sanctioned and warranted by the public or international law.

ARTICLE IX.

This treaty shall be ratified, and the respective ratifications shall be exchanged at the city of Washington within the exact period of six months from the date of its signature, or sooner, if possible.

In testimony whereof, we, the plenipotentiaries of the contracting parties, have hereunto affixed our hands and seals at Mexico, the thirtieth (30th) day of December, in the year of our Lord one thousand eight hundred and fifty-three, in the thirty-third year of the independence of the Mexican republic, and the seventy-eighth of that of the United States.

JAMES GADSDEN,
MANUEL DIEZ DE BONILLA
JOSE SALAZAR YLARBEGUI
J. MARIANO MONTERDE

The Constitution of the United States Article VI – Debts, Supremacy, Oaths

All Debts contracted and Engagements entered into, before the Adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.

The Constitution of the State of New Mexico Article II - Bill of Rights

Section 5:

Rights under Treaty of Guadalupe Hidalgo Preserved

The rights, privileges and immunities, civil, political and religious guaranteed to the people of New Mexico by the Treaty of Guadalupe Hidalgo shall be preserved inviolate.

New Mexico Statutes - Chapter 49 - Land Grants

Articles

1. General Provisions, 49-1-1 through 49-1-23.
2. Corporations for Management of Community Land Grants, 49-2-1 through 49-2-18.
3. Chaperito Grant, 49-3-1 through 49-3-8.
4. Chilili Grant, 49-4-1 through 49-4-21.
5. Doña Ana County Grants, 49-5-1 through 49-5-10.
6. Las Vegas Grant, 49-6-1 through 49-6-14.
7. Manzano Grant, 49-7-1 through 49-7-6.
8. Nuestra Señora del Rosario, San Fernando y Santiago Grant, 49-8-1 through 49-8-4.
9. Socorro Grant, 49-9-1 through 49-9-12.
10. Tecolote Grant, 49-10-1 through 49-10-6.
11. Land Grant Support, 49-11-1 through 49-11-5.

ARTICLE 1 General Provisions

Section	
49-1-1	Management of Spanish and Mexican grants.
49-1-1.1	Definitions.
49-1-2	Application.
49-1-3	Board of trustees; management of grant; powers.
49-1-4	Board of trustees; qualifications.
49-1-5	Election of members of board of trustees; voters' qualifications; registration; provisional ballots.
49-1-6	Repealed.
49-1-7	Election; votes required, canvassing votes.
49-1-8	Organization of board; bonds; vacancies.
49-1-9	Meetings.
49-1-10	Quorum.
49-1-11	Sale or mortgage of common lands; restrictions.
49-1-11.1	Rights of lessees and purchasers; rights to use of common lands.
49-1-11.2	Adverse possession.
49-1-12	Meetings to be public; annual report.
49-1-13	Vacancies.
49-1-14	Salaries of trustees; records; expenditures.
49-1-15	Removal from land grant-merced; delinquency; forfeiture.
49-1-16	Trespass on common lands or waters; injunctions.
49-1-17	Process; how served on board.
49-1-18	Construction.
49-1-19	Failure of trustee to perform duties; penalty.
49-1-20	Sevilleta de La Joya grant; provisions applicable.
49-1-21	Anton Chico grant; rights of lessees and purchasers.
49-1-22	Recompiled.
49-1-23	Community land grant registry established; reporting requirements.

49-1-1. Management of Spanish and Mexican grants.

All land grants-mercedes in the state or land grants-mercedes described in Section 49-1-2 NMSA 1978 shall be managed, controlled and governed by their bylaws, by the Treaty of Guadalupe Hidalgo and as provided in Sections 49-1-1 through 49-1-18 NMSA 1978 as political subdivisions of the state.

History: Laws 1907, ch. 42, § 1; Code 1915, § 799; C.S. 1929, § 29-101; 1941 Comp., § 9-101; 1953 Comp., § 8-1-1; 2004, ch. 124, § 3.

ANNOTATIONS

Cross references. — For corporations for management of community land grants, *see* 49-2-1 NMSA 1978 et seq.

The 2004 amendment, effective July 1, 2004, rewrote this section and designated land grants covered by Sections 49-1-1 to 49-1-18 NMSA 1978 as political subdivisions of the state.

Amendment by surviving grantor. — Where a trust is silent on amendment after the death of one of the grantors and provides that the surviving grantor has the unrestricted right to withdraw all assets from the trust estate, the power to amend the trust is implied. *Cable v. Wells Fargo Bank N.M., N.A.*, 2008-NMCA-005, 143 N.M. 269, 175 P.3d 937, *aff'd*, 2010-NMSC-017, 148 N.M. 127, 231 P.3d 108.

Third party claim. — The district court did not have jurisdiction to consider the plaintiffs' claim of title to a portion of the Tecolote land grant under the provisions of the congressional confirmation and patent, which provided that they "shall not affect any adverse valid rights" where plaintiffs' predecessors in interest had participated in proceedings to challenge the issuance of the patent as a community grant and lost, plaintiffs' claim sought to convert a portion of the land grant from a community land grant into private property and the grant to plaintiff's predecessors in title had not been confirmed. *Montoya v. Tecolote Land Grant*, 2008-NMCA-014, 143 N.M. 413, 176 P.3d 1145, cert. quashed, 2008-NMCERT-010, 145 N.M. 524, 201 P.3d 855.

Application of *Montoya v. Tecolote Land Grant*, 2008-NMCA-014, to land covered by a stipulated order granting title to Montoya. — Where, in 1999, Montoya filed an action against the land grant to quiet title to 19,320 acres within the land grant; the land grant counterclaimed to quiet title against Montoya; the land grant claimed no common lands within the property known as the "Montoya ranch" which consisted of approximately 5,000 acres within the larger 19,320 acre tract and the district court entered a stipulated judgment that Montoya had title against the land grant to the Montoya ranch; in 2008, in *Montoya v. Tecolote Land Grant*, 2008-NMCA-014, the court of appeals held that the district court did not have subject matter jurisdiction to determine title because the district court had no authority to alter the terms of the congressional confirmation of the United States patent to the land grant as a community land grant; and in 2010, the land grant sued

Montoya alleging that under *Montoya*, the district court did not have jurisdiction to enter the stipulated judgment confirming title to the Montoya ranch in *Montoya*, the district court had subject matter jurisdiction in the 1999 case over the land grant's counterclaim and jurisdiction to confirm the party's agreement by entering the stipulated judgment quieting title to the Montoya ranch in *Montoya*, the stipulated judgment removed the issue of the ownership of the Montoya ranch from the litigation, *Montoya* was limited to the dispute over the remaining portion of the 19,320 acres, excluding the Montoya ranch, and given the agreement that the Montoya ranch was not land grant common land, the stipulated judgment did not result in an impermissible alteration or alter the origin, nature, character, or size of the land grant. *Tecolote Land Grant v. Montoya*, 2014-NMCA-092, cert. denied, 2014-NMCERT-008.

Corporation rules applicable to grants. — A community land grant is in the nature of a quasi-municipal corporation and is governed by the rules of law applicable thereto. *Bibo v. Town of Cubero Land Grant*, 1958-NMSC-137, 65 N.M. 103, 332 P.2d 1020.

Estoppel from questioning land interests. — Where those under whom plaintiffs claim interest in common lands of Atrisco land grant procured incorporation of the town of Atrisco on the claim the grant was communal and procured decree of the court of private land claims similarly holding the grant to be communal, they have participated in its operation as such a grant for too long a time now to question their interest. *Armijo v. Town of Atrisco*, 1951-NMSC-085, 56 N.M. 2, 239 P.2d 535.

Congressional act conclusive. — Where congress has confirmed grant as a private land grant, without qualification or limitation, the confirmatory act of congress is final and conclusive and court may not go behind that act and determine the character or nature of the grant from antecedent documents. *Martinez v. Rivera*, 196 F.2d 192 (10th Cir.), cert. denied, 344 U.S. 828, 73 S. Ct. 30, 97 L. Ed. 644 (1952).

Corporation rules applicable to grants. — While a grant organized under this section would not be a corporation, it would be so nearly a corporation in its nature that the same rules should apply. 1943-44 Op. Att'y Gen. No. 44-4497.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 73B C.J.S. Public Lands § 205.

49-1-1.1. Definitions.

As used in Chapter 49 NMSA 1978:

A. "child" means a biological, adopted or foster child, a stepchild, a legal ward or a child of a person standing in loco parentis;

B. "heir" means a person who is a descendant of the original grantees and has an interest in the common land of a land grant-merced through inheritance, gift or purchase or as defined in the bylaws of a land grant-merced;

C. "land grant-merced" means a grant of land made by the government of Spain or by the government of Mexico to a community, town, colony or pueblo or to a person for the purpose of founding or establishing a community, town, colony or pueblo;

D. "parent" includes a biological, adoptive or foster parent, a stepparent or an individual who stands in loco parentis to a child;

E. "precinct" means a geographic location such as a community or town that is guaranteed an apportioned amount of positions on the board of trustees of a land grant-merced as defined in the land grant-merced bylaws;

F. "qualified voting member" means an heir who is registered to vote in a land grant-merced as prescribed in the land grant-merced bylaws; and

G. "sibling" includes a stepsibling and a half-sibling.

History: Laws 2004, ch. 124, § 1; 2019, ch. 248, § 1.

ANNOTATIONS

The 2019 amendment, effective June 14, 2019, defined "child", "parent", "precinct" and "sibling" as used in Chapter 49 NMSA 1978; added a new Subsection A and redesignated former Subsections A and B as Subsections B and C, respectively; in Subsection B, after "gift or purchase", added "or as defined in the bylaws of a land grant-merced"; added new Subsections D and E and redesignated former Subsection C as Subsection F; and added Subsection G.

Effective dates. — Laws 2004, ch. 124, § 22 makes the act effective July 1, 2004.

49-1-2. Application.

A. Chapter 49, Article 1 NMSA 1978 shall apply to all land grants-mercedes within the geographic boundaries of lands confirmed by the congress of the United States or by the court of private land claims or designated in any report or list of land grants prepared by the surveyor general in furtherance of meeting the obligations of the Treaty of Guadalupe Hidalgo and designated in this section but shall not apply to any land grant that is now managed or controlled pursuant to another section of Chapter 49 NMSA 1978.

B. If a majority of the members of the board of trustees of a land grant-merced covered by specific legislation determines that the specific legislation is no longer beneficial to the land grant-merced, the board has the authority to petition the legislature to repeal the legislation and to be governed by its bylaws and as provided in Chapter 49, Article 1 NMSA 1978.

- C. The town of Tome land grant-merced, situated in Valencia county, confirmed by congress in 1858 and patented by the United States to the town of Tome, shall be governed by the provisions of Chapter 49, Article 1 NMSA 1978.
- D. The town of Atrisco land grant-merced, situated in Bernalillo county, confirmed by the court of private land claims in 1894 and patented by the United States to the town of Atrisco in 1905, shall be governed by the provisions of Chapter 49, Article 1 NMSA 1978; provided that the board of trustees shall not have regulatory jurisdiction over, and the provisions of Chapter 49, Article 1 NMSA 1978 shall not apply to or govern, any lands or interests in real property the title to which is held by any other person, including a public or private corporation, partnership or limited liability company.
- E. The Tecolote land grant-merced, also known as the town of Tecolote, situated in San Miguel county, confirmed by congress in 1858 and patented by the United States to the town of Tecolote in 1902, shall be governed by the provisions of Chapter 49, Article 1 NMSA 1978.
- F. The San Antonio del Rio Colorado land grant-merced, situated in Taos county, which claim was recommended for confirmation by surveyor general James K. Proudfit in 1874 and again in 1886 by surveyor general George W. Julian, but not confirmed by congress, shall be governed by the provisions of Chapter 49, Article 1 NMSA 1978.
- G. The Manzano land grant-merced, also known as la merced del Manzano land grant-merced, situated in Tarrant county, confirmed by congress in 1860 and patented by the United States to the town of Manzano in 1907, shall be governed by the provisions of Chapter 49, Article 1 NMSA 1978.
- H. The Arroyo Hondo Arriba community land grant-merced, also known as the community of San Antonio and as the community of Valdez, situated in Taos county, which was established in 1823 and whose heirs were recognized as the fee simple owners of the grant's common lands by the eighth judicial district court of New Mexico in 1914, shall be governed by the provisions of Chapter 49, Article 1 NMSA 1978.
- I. The Anton Chico land grant-merced, also known as the town of Anton Chico land grant, situated in Guadalupe and San Miguel counties, confirmed by congress in 1860 and patented by the United States to the town of Anton Chico in 1883, shall be governed by the provisions of Chapter 49, Article 1 NMSA 1978.
- J. The Abiquiu land grant-merced, also known as the merced del Pueblo Abiquiu and town of Abiquiu land grant, situated in Rio Arriba county, confirmed by the court of private land claims in 1894 and patented by the United States to the board of grant commissioners of the Abiquiu grant in 1909, shall be governed by the provisions of Chapter 49, Article 1 NMSA 1978.
- K. The Canon de Carnue land grant-merced, situated in Bernalillo county, confirmed by the court of private land claims in 1894 and patented by the United States to the

confirmees of the Canon de Carnue grant in 1903, shall be governed by the provisions of Chapter 49, Article 1 NMSA 1978.

L. The Cebolleta land grant-merced, also known as the town of Cebolleta land grant, situated in Cibola county, confirmed by congress in 1869 and patented by the United States to the town of Cebolleta land grant in 1882, shall be governed by the provisions of Chapter 49, Article 1 NMSA 1978.

M. The Cristobal de la Serna land grant-merced, situated in Taos county, confirmed by the court of private land claims in 1892 and patented by the United States to the Cristobal de la Serna grant in 1903, shall be governed by the provisions of Chapter 49, Article 1 NMSA 1978.

N. The Cubero land grant-merced, also known as the town of Cubero land grant, situated in Cibola county, confirmed by the court of private land claims in 1892 and patented by the United States to the confirmees of the town of Cubero grant in 1900, shall be governed by the provisions of Chapter 49, Article 1 NMSA 1978.

O. The Don Fernando de Taos land grant-merced, situated in Taos county, confirmed by the court of private land claims in 1897 and patented by the United States to the confirmees of the Don Fernando de Taos grant in 1907, shall be governed by the provisions of Chapter 49, Article 1 NMSA 1978.

P. The Santo Tomas Apostol del Rio de Las Trampas land grant-merced, situated in Taos county, also known as the town of Las Trampas land grant, confirmed by congress in 1860 and patented by the United States to the town of Las Trampas grant in 1903, shall be governed by the provisions of Chapter 49, Article 1 NMSA 1978.

Q. The Santa Barbara land grant-merced, also known as la merced de Santa Barbara, situated in Taos county, confirmed by the court of private land claims in 1894 and patented by the United States to the heirs of the Santa Barbara grant in 1905, shall be governed by the provisions of Chapter 49, Article 1 NMSA 1978.

R. The Juan Bautista Baldes land grant-merced, also known as the merced comunitara de Juan Bautista Baldes, situated in Rio Arriba county, confirmed by the court of private land claims in 1898 and patented by the United States to the heirs of Juan Bautista Baldes in 1913, shall be governed by the provisions of Chapter 49, Article 1 NMSA 1978.

S. The San Joaquin del Rio de Chama land grant-merced, also known as the merced de San Joaquin del Rio de Chama and the Canon de Chama land grant-merced, situated in Rio Arriba and Sandoval counties, confirmed by the court of private land claims in 1894 and patented by the United States to the heirs of the Canon de Chama grant in 1905, shall be governed by the provisions of Chapter 49, Article 1 NMSA 1978.

T. The San Miguel del Bado land grant-merced, also known as the merced de San Miguel del Bado, situated in San Miguel county, confirmed by the court of private land

claims in 1894 and patented by the United States to the board of the San Miguel del Bado grant in 1910, shall be governed by the provisions of Chapter 49, Article 1 NMSA 1978.

U. The Santo Domingo de Cundiyo land grant-merced, situated in Santa Fe county, confirmed by the court of private land claims in 1900 and patented by the United States to the confirmees of the Santo Domingo de Cundiyo grant in 1903, shall be governed by the provisions of Chapter 49, Article 1 NMSA 1978.

V. The Tierra Amarilla land grant-merced, also known as the merced de los Pueblos de Tierra Amarilla, situated in Rio Arriba county, confirmed by congress in 1860 and patented by the United States to Francisco Martinez in 1881, shall be governed by the provisions of Chapter 49, Article 1 NMSA 1978.

W. The San Antonio de las Huertas land grant-merced, also known as the merced de San Antonio de las Huertas, situated in Sandoval county, confirmed by the court of private land claims in 1897 and patented by the United States to the San Antonio de las Huertas grant claimants in 1907, shall be governed by the provisions of Chapter 49, Article 1 NMSA 1978.

X. The Tajique land grant-merced, also known as the town of Tajique land grant, situated in Tarrant county, confirmed by congress in 1860 and patented by the United States to the confirmees of the town of Tajique land grant in 1912, shall be governed by the provisions of Chapter 49, Article 1 NMSA 1978.

Y. The Torreon land grant-merced, also known as the town of Torreon, situated in Tarrant county, confirmed by congress in 1860 and patented by the United States to the confirmees of the town of Torreon grant in 1909, shall be governed by the provisions of Chapter 49, Article 1 NMSA 1978.

Z. The Los Vigiles land grant-merced situated in San Miguel county, which was partitioned from the town of Las Vegas grant through a deed of indenture issued by the board of trustees for the Las Vegas grant and approved by the fourth judicial district of New Mexico in 1951, shall be governed by the provisions of Chapter 49, Article 1 NMSA 1978.

AA. The Lower Gallinas land grant-merced, situated in San Miguel county, which was partitioned from the town of Las Vegas grant through a deed of indenture issued by the board of trustees for the Las Vegas grant in 1951 and approved by the fourth judicial district of New Mexico, the approval of which was reaffirmed by the court in 1997, shall be governed by the provisions of Chapter 49, Article 1 NMSA 1978.

BB. The San Augustin land grant-merced, situated in San Miguel county, which was partitioned from the town of Las Vegas grant through a deed of indenture issued by the board of trustees for the Las Vegas grant and approved by the fourth judicial district of New Mexico in 1929, shall be governed by the provisions of Chapter 49, Article 1 NMSA 1978.

History: Laws 1907, ch. 42, § 2; Code 1915, § 800; C.S. 1929, § 29-102; 1941 Comp., § 9-102; 1953 Comp., § 8-1-2.; 2004, ch. 124, § 4; 2007, ch. 36, § 1; 2011, ch. 68, § 1; 2013, ch. 8, § 1; 2013, ch. 83, § 1; 2019, ch. 241, § 1; 2023, ch. 21, § 1.

ANNOTATIONS

The 2023 amendment, effective June 16, 2023, specified the application of Chapter 49, Article 1 NMSA 1978 to certain land grants and certain land grants-mercedes, and made certain technical amendments; deleted "Sections 49-1-1 through 49-1-18" and added "Chapter 49, Article 1", throughout the section; in Subsection A, after "all land grants-mercedes", added "within the geographic boundaries of lands", after "designated", deleted "as land grants-mercedes", after "surveyor general", deleted "and confirmed by congress" and added "in furtherance of meeting the obligations of the Treaty of Guadalupe Hidalgo and designated in this section", and after "managed or controlled", deleted "in any manner other than as provided in Sections 49-1-1 through 49-1-18 NMSA 1978, by virtue of any general or specific act" and added "pursuant to another section of Chapter 49 NMSA 1978"; in Subsection F, deleted "Notwithstanding the provisions of Subsection A to the contrary"; and added Subsections H through BB.

The 2019 amendment, effective June 14, 2019, provided that the Manzano land grant-merced shall be governed by the provisions of Chapter 49, Article 1 NMSA 1978; and added Subsection G.

2013 Multiple Amendments. — Laws 2013, ch. 83, § 1, effective June 14, 2013, applied the provisions of Chapter 49, Article 1 NMSA 1978 to the Tecolote Land Grant-Merced, and added Subsection E.

Laws 2013, ch. 8, § 1, effective June 14, 2013, granted political subdivision status to the San Antonio Del Río Colorado Land Grant-Merced and added a new Subsection E, which was relettered in the reconciled amendment as Subsection F.

The 2011 amendment, effective June 17, 2011, applied Sections 49-1-1 through 49-1-18 NMSA 1978 to the Town of Atrisco land grant-merced, but excluded land or interests in real estate held by other persons from the application of those sections.

The 2007 amendment, effective June 15, 2007, added Subsection C to specifically include the town of Tome within the provisions of 49-1-1 to 49-1-18 NMSA 1978.

The 2004 amendment, effective July 1, 2004, redesignated the former section as Subsection A and added new Subsection B. Subsection A was amended to delete "replace the description of the land grants governed by Chapter 49, Article 1" with "land grants-mercedes".

Intent of section. — This general statute, enacted in 1907, for management of community land grants which provided for the sale of common property, was intended to apply to grants for which no legislative provision had been theretofore made for their management,

and did not apply to the Chilili grant. *Merrifield v. Buckner*, 1937-NMSC-045, 41 N.M. 442, 70 P.2d 896.

49-1-3. Board of trustees; management of grant; powers.

The management and control of all land grants-mercedes and tracts of land to which Sections 49-1-1 through 49-1-18 NMSA 1978 are applicable is vested in a board of trustees, to be known as the "board of trustees of the land grant-merced del pueblo de ____" (designating the name of the town, colony, pueblo or community), and the board shall have the power to:

A. control, care for and manage the land grant-merced and real estate, prescribe the terms and conditions under which the common lands may be used and enjoyed and make all necessary and proper bylaws, rules and regulations that shall be in substantial compliance with applicable statutes for the government thereof;

B. sue and be sued under the title as set forth in this section;

C. convey, lease or mortgage the common lands of the land grant-merced in accordance with the land grant-merced bylaws;

D. determine the number of animals that may be permitted to graze upon the common lands and determine other uses of the common lands that may be authorized;

E. prescribe the price to be paid for the use of the common lands and resources of the land grant-merced and prohibit a person failing or refusing to pay that amount from using a portion of the common lands while the person continues in default in those payments; provided that the amount fixed shall be in proportion to the number and kinds of livestock pasturing upon the common lands or to other authorized use of the common lands;

F. adopt and use an official seal;

G. appoint judges and clerks and a canvassing board of election at all elections provided for in Sections 49-1-1 through 49-1-18 NMSA 1978, subsequent to the first, and canvass the votes cast in those elections;

H. make bylaws, rules and regulations, not in conflict with the constitution and laws of the United States or the state of New Mexico, as may be necessary for the protection, improvement and management of the common lands and real estate and for the use and enjoyment of the common lands and of the common waters of the land grant-merced;

I. determine land use, local infrastructure and economic development of the common lands of the land grant-merced;

J. determine zoning of the common lands of the land grant-merced pursuant to a comprehensive plan approved by the board of trustees that considers the health, safety and general welfare of the residents and heirs of the land grant-merced; and

K. enter into memoranda of understanding, contracts and other agreements with a local, state or federal government or a government of a federally recognized Indian nation, tribe or pueblo, including but not limited to agreements concerning the protection and maintenance of cultural resources.

History: Laws 1907, ch. 42, § 3; Code 1915, § 801; C.S. 1929, § 29-103; 1941 Comp., § 9-103; 1953 Comp., § 8-1-3; Laws 1979, ch. 184, § 1; 2004, ch. 124, § 5; 2011, ch. 96, § 1; 2019, ch. 213, § 1; 2019, ch. 248, § 2.

ANNOTATIONS

2019 Multiple Amendments. — Laws 2019, ch. 213, § 1, July 1, 2019, and Laws 2019, ch. 248, § 2, effective June 14, 2019, enacted different amendments to this section that can be reconciled. Pursuant to 12-1-8 NMSA 1978, Laws 2019, ch. 248, § 2, as the last act signed by the governor, is set out above and incorporates both amendments. The amendments enacted by Laws 2019, ch. 213, § 1 and Laws 2019, ch. 248, § 2 are described below. To view the session laws in their entirety, *see* the 2019 session laws on *NMOneSource.com*.

The nature of the difference between the amendments is that Laws 2019, ch. 213, § 1, authorized land grant-merced boards of trustees to approve comprehensive plans, and Laws 2019, ch. 248, § 2, provided that the board of trustees of the land grant-merced has the power to appoint a canvassing board of election for certain elections.

Laws 2019, ch. 213, § 1, effective July 1, 2019, authorized land grant-merced boards of trustees to approve comprehensive plans; in Subsection J, after "approved by the", deleted "local government division of the department of finance and administration" and added "board of trustees", and after "residents and heirs of the land grant-merced", deleted "The department of finance and administration shall act as arbitrator for zoning conflicts between land grants-mercedes and neighboring municipalities and counties".

Laws 2019, ch. 248, § 2, effective June 14, 2019, provided that the board of trustees of the land grant-merced has the power to appoint a canvassing board of election for certain elections; in Subsection G, after "clerks", added "and a canvassing board".

The 2011 amendment, effective April 6, 2011, added Subsection K to authorize boards of trustees to enter into agreements with governmental entities and Indian tribes, including agreements concerning cultural resources.

The 2004 amendment, effective July 1, 2004, replaced "the grants" in Subsection A with "land grants-mercedes", added new Subsection D, redesignated former Subsections D to G as Subsections E to H and added new Subsections I and J.

The 1979 amendment added the catchline, substituted "Sections 49-1-1 through 49-1-18 NMSA 1978" for "this chapter" and "Section 49-1-2 NMSA 1978" for "Section 800" near the beginning of the introductory paragraph, added Subsection G and made other minor changes.

Section limited to land management. — This section, providing for the management of the lands of the grant is limited in scope to such management of the lands and nothing more. It is an authorization and direction for the creation of the machinery to perform such a function. The elective process therein involved does not change its character. There is no continuing supervision or control by the state over the trustees or what they do, nor is there a continuing relationship. *Mondragon v. Tenorio*, 554 F.2d 423 (10th Cir.), cert. denied, 434 U.S. 905, 98 S. Ct. 305, 54 L. Ed. 2d 193 (1977).

Power of board of trustees comes from the statutes providing for its creation. Where the mode of exercising this power is prescribed by the statutes, there must be substantial compliance therewith. *Bibo v. Town of Cubero Land Grant*, 1958-NMSC-137, 65 N.M. 103, 332 P.2d 1020.

Lack of standing in quiet title suit. — Where a land grant association's board of trustees had not called an election by its members or the trustees as required by law and had not identified the persons having an interest in the lands claimed by the association who had a right to vote at an election and the treasurer had not furnished a surety bond, the association lacked standing as a land grant community or board to assert a claim of title to lands at issue in a suit to quiet title. *Cordova v. Broadbent*, 1988-NMSC-042, 107 N.M. 215, 755 P.2d 59.

Heirs of land grant may hold as tenants in common with board. — If property is common land of a land grant, the parties who are valid heirs of the land grant may hold the property as tenants in common with the board of trustees. *Cebolleta Land Grant ex rel. Bd. of Trustees v. Romero*, 1982-NMSC-043, 98 N.M. 1, 644 P.2d 515.

Tax deed may give paramount title to property not common land. — If property is not common land of a land grant, then private parties, by virtue of a tax deed, would have paramount title to that of the land grant. *Cebolleta Land Grant ex rel. Bd. of Trustees v. Romero*, 1982-NMSC-043, 98 N.M. 1, 644 P.2d 515.

Noncomplying lease void. — A written lease of a portion of the common lands of the grant for a period of five years with an option to renew for five more years was void in the absence of compliance with the provisions of 49-1-11 NMSA 1978. *Bibo v. Town of Cubero Land Grant*, 1958-NMSC-137, 65 N.M. 103, 332 P.2d 1020.

49-1-4. Board of trustees; qualifications

The board of trustees shall consist of five members. In a land grant-merced with bylaws that include the use of precincts, no more than the apportioned number of members for any given precinct as set forth in the bylaws shall serve on the board of trustees. A person shall

be qualified to be a member of the board if the person is a qualified voting member and is not in default of any dues, rent or other payment for the use of any of the common lands of the land grant-merced; provided that no person convicted of a felonious or infamous crime, unless the person has been pardoned or restored to political rights, shall be qualified to be elected or appointed to any board of trustees of a land grant-merced.

History: Laws 1907, ch. 42, § 4; 1913, ch. 58, § 1; Code 1915, § 802; Laws 1929, ch. 137, § 4; C.S. 1929, § 29-104; Laws 1933, ch. 164, § 1; 1941 Comp., § 9-104; Laws 1951, ch. 151, § 1; 1953 Comp., § 8-1-4; 2004, ch. 124, § 6; 2019, ch. 248, § 3.

ANNOTATIONS

The 2019 amendment, effective June 14, 2019, revised the qualifications for members of the board of trustees of a land grant-merced; deleted "In land grants-mercedes where there is more than one precinct, no more than three members shall be residents of the same precinct." and added "In a land grant merced with bylaws that include the use of precincts, no more than the apportioned number of members for any given precinct as set forth in the bylaws shall serve on the board of trustees", and added "provided that no person convicted of a felonious or infamous crime, unless the person has been pardoned or restored to political rights, shall be qualified to be elected or appointed to any board of trustees of a land grant-merced".

The 2004 amendment, effective July 1, 2004, inserted at the beginning of the section "In land grants-mercedes where there is more than one precinct," before the restriction on the number of members from the same precinct and deleted the requirement that a voter be a qualified voter at a general election in this state.

49-1-5. Election of members of board of trustees; voters' qualifications; registration; provisional ballots.

A. Elections for the board of trustees shall be held on the first Monday in April or on a day designated in the bylaws, either every two or every four years as specified in the bylaws of the land grant-merced.

B. All qualified voting members of the land grant-merced are qualified to vote and may vote for trustees as specified in the land grant-merced bylaws.

C. The registration of qualified voting members shall be conducted in the manner prescribed in the land grant-merced bylaws. The secretary of the board of trustees shall maintain the registration books. Registration shall be closed beginning fifteen days before an election and reopened on the Monday following the election. The board of trustees shall meet to finalize the registration books by resolution at least five days prior to the election.

D. The registration books compiled before each election shall be used at that election. No person shall vote at the election unless duly registered in the books, and no ballot of any unregistered person shall be counted or canvassed.

E. A candidate for the board of trustees shall file a declaration of candidacy with the secretary of the board of trustees. The period when declarations of candidacy may be filed shall begin on the day the proclamation calling the election is published and shall remain open for at least ten days.

F. Whenever an election is to be called or is required by law, the board of trustees shall by resolution issue a public proclamation calling the election. The proclamation shall specify:

- (1) the date on which the election will be held;
- (2) the purpose for which the election is called;
- (3) if positions on the board of trustees are to be filled, the date and time by which declarations of candidacy are to be filed;
- (4) if a question is to be voted upon, the text of that question;
- (5) the location of each polling place in the land grant-merced;
- (6) the hours that each polling place will be open;
- (7) the date and time of the closing of the registration books; and
- (8) the date and time of the meeting to finalize the registration books.

G. Not less than thirty days nor more than forty-five days before the date of the election, the board of trustees shall publish in Spanish and English the proclamation in a local newspaper of general circulation available within the boundaries of the land grant-merced and post the proclamation in at least five public places within the land grant-merced.

H. The board of trustees shall appoint one election judge and at least two election clerks for each polling place. The election judge shall also be present for the canvass of the vote. No person shall be qualified for appointment or service as an election clerk or judge, or as a member of a canvassing board, who is a spouse, parent, child or sibling of any candidate to be voted for at the election.

I. The board of trustees shall provide in the bylaws for the forms and procedures by which the land grant-merced elections are conducted. If the board of trustees chooses to provide for early or absentee voting, it shall specify in its bylaws the procedures by which early or absentee voting shall be conducted.

History: Laws 1907, ch. 42, § 5; Code 1915, § 803; C.S. 1929, § 29-105; Laws 1933, ch. 164, § 2; 1937, ch. 194, § 1; 1941 Comp., § 9-105; Laws 1951, ch. 223, § 1; 1953 Comp., § 8-1-5; Laws 1979, ch. 184, § 2; 2004, ch. 124, § 7; 2009, ch. 131, § 1; 2019, ch. 248, § 4.

ANNOTATIONS

The 2019 amendment, effective June 14, 2019, provided a timeline for the board of trustees to finalize the registration books of qualified voting members, required the board of trustees to specify by proclamation the date and time of the meeting to finalize the registration books, and prohibited any person to serve as a member of a canvassing board who is a spouse, parent, child or sibling of any candidate to be voted for at the election; in the section heading, added "provisional ballots"; in Subsection C, added the last sentence; in Subsection F, added Paragraph F(8); and in Subsection H, after "clerk or judge", added "or as a member of a canvassing board", and after "child", deleted "brother or sister" and added "or sibling".

The 2009 amendment, effective June 19, 2009, in Subsection C, after "prescribed in the", deleted the remainder of the sentence which provided for substitution of terms used in the Election Code to make it applicable to the land grant and added the remainder of the first sentence and the second sentence; deleted former Subsection E, which provided for public notice of the election; deleted former Subsection F, which provided the procedure for conducting elections; and added Subsections E through I.

The 2004 amendment, effective July 1, 2004, deleted most of Subsection A and added in its place: "or on a day designated in the bylaws, either every two or every four years as specified in the bylaws of the land grant-merced", redesignated the last two sentences of former Subsection A as Subsection B and inserted at the beginning of the subsection: "All qualified voting members of the land grant-merced are qualified to vote", redesignated former Subsections B and C as Subsections C and D, deleted former Subsection D and added new Subsections E and F.

The 1979 amendment added the catchline, deleted "of members" following "of members" near the beginning of Subsection A, inserted "by inheritance or by purchase of an interest in the common lands" near the middle of the first sentence in Subsection A, substituted "the Election Code" for "Chapter 41, Laws of 1927 (56-203 - 56-245)" in Subsection B and made other minor changes.

Lack of standing in quiet title suit. — Where a land grant association's board of trustees had not called an election by its members or the trustees as required by law and had not identified the persons having an interest in the lands claimed by the association who had a right to vote at an election and the treasurer had not furnished a surety bond, the association lacked standing as a land grant community or board to assert a claim of title to lands at issue in a suit to quiet title. *Cordova v. Broadbent*, 1988-NMSC-042, 107 N.M. 215, 755 P.2d 59.

49-1-5.1. Provisional ballots; requirements for use; procedures.

A. A person shall be permitted to vote on a provisional paper ballot even though the person's name does not appear in the land grant-merced registration book; provided that the person:

(1) shows proof to the election judge and clerk that the person meets the qualified voting member provisions under Section 49-1-1.1 NMSA 1978 and the land grant-merced bylaws; and

(2) executes a statement swearing or affirming that to the best of the person's knowledge, the person:

(a) is a qualified voting member of the land grant-merced;

(b) is currently registered and eligible to vote in the land grant-merced election; and

(c) has not yet cast a ballot or voted in the election for which the person is seeking to vote by provisional ballot.

B. A judge or election clerk shall write the person's name on the voter roster, have the voter sign next to the voter's name and issue the voter a provisional paper ballot, an outer envelope and an official inner envelope. The voter shall vote on the provisional paper ballot in secrecy and, when done, place the ballot in the official inner envelope, place the official inner envelope in the outer envelope, sign the outer envelope and return the envelope to the judge or election clerk. The election judge or clerk shall ensure that the required information is completed on the outer envelope and will place the envelope in a container designated for provisional paper ballots.

C. At a minimum, the following information shall be printed on the outer envelope for a provisional paper ballot:

(1) the name and signature of the voter;

(2) the voter's registered address, both present and former, if applicable;

(3) the voter's date of birth;

(4) the reason for using the provisional ballot, including what proof was given to assert land grant-merced qualified voting member status; and

(5) sufficient space to list the disposition of the ballot after review by the canvassing board.

D. A provisional paper ballot shall not be rejected for lack of the information required by this section and shall be qualified as long as the voter provides a valid signature and sufficient information for the judge and canvassing board to determine whether the voter is a qualified voting member.

E. Knowingly executing a false statement constitutes perjury as provided in the Criminal Code [Chapter 30 NMSA 1978], and voting on the basis of such falsely executed statement constitutes fraudulent voting.

F. Upon closing of the polls, provisional ballots shall be kept by the election judge until the canvassing of the votes by the election judge and canvassing board, who shall determine if the ballots will be counted prior to certification of the election.

G. If the voter was registered with the land grant-merced and the canvassing board determines that the individual was left off of the registration book in error, the provisional paper ballot shall be counted; provided that if the qualified voting member did not sign either the signature roster or the ballot's envelope, the provisional paper ballot shall not be counted.

H. If there is no record of the voter ever having been registered with the land grant-merced, the voter shall be offered the opportunity to register and the provisional paper ballot shall not be counted.

History: 1978 Comp., § 49-1-5.1, as enacted by Laws 2019, ch. 248, § 5.

ANNOTATIONS

Effective dates. — Laws 2019, ch. 248, § 5, contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

49-1-6. Repealed.

History: Laws 1907, ch. 42, § 6; Code 1915, § 804; C.S. 1929, § 29-106; 1941 Comp., § 9-106; 1953 Comp., § 8-1-6; repealed by Laws 2004, ch. 124, § 21.

ANNOTATIONS

Repeals. — Laws 2004, ch. 124, § 21 repealed 49-1-6 NMSA 1978, as enacted by Laws 1907, ch. 42, § 6, relating to calling of elections, notices and ballots, effective July 1, 2004. For provisions of former section, *see* the 2003 NMSA 1978 on *NMOneSource.com*.

49-1-7. Election; votes required; canvassing votes.

A. The candidates receiving the most votes cast for the open seats on the board of trustees and meeting any precinct restriction requirements established pursuant to Section 49-1-4 NMSA 1978 shall be elected to the board.

B. The election judges and the canvassing board shall meet not later than seven days following the election and canvass the votes cast and issue to each candidate duly elected to a seat on the board a certificate of election.

C. In the event of a tie vote between any candidates for the board of trustees, the determination of which of the candidates shall be declared to have been elected shall be decided by lot. If the method for determining by lot is not set forth in the bylaws of the land grant-merced, the method shall be agreed upon by the tied candidates. The canvassing board shall issue the certificate of election to the candidate chosen by lot.

D. Any unsuccessful candidate for election to the board of trustees or any qualified voting member of a land grant-merced who believes that any portion of a land grant-merced election was conducted in violation of any requirements set forth in Chapter 49, Article 1 NMSA 1978 or the land grant-merced bylaws may contest the outcome of an election; provided that the election contest is filed with the Guadalupe Hidalgo treaty division of the office of the attorney general within thirty days from the issuance of the certificate of the election by the canvassing board.

E. In the event that the conduct or outcome of an election is contested, the person or persons holding a certificate of election shall take possession of and discharge the duties of the office until the contest is decided.

F. The Guadalupe Hidalgo treaty division of the office of the attorney general shall promulgate rules for investigating and deciding the outcome of contested elections, which rules shall include:

(1) forms for filing an official contest of an election;

(2) procedures for conducting investigations and collecting evidence for contested elections; and

(3) administrative procedures for appealing a decision made by the division.

G. The Guadalupe Hidalgo treaty division of the office of the attorney general shall render a decision on election contests within ninety days of the date on which the election contest was filed. If it is determined that the election requirements were violated, the decision shall include whether the election:

(1) could be remedied and the actions required, including dates of implementation, to effect a remedy; or

(2) is invalidated; provided that if a new election is required, the decision may include instructions for holding a new election to correct procedures that caused the violations.

History: Laws 1907, ch. 42, § 7; Code 1915, § 805; C.S. 1929, § 29-107; 1941 Comp., § 9-107; 1953 Comp., § 8-1-7; 2004, ch. 124, § 8; 2011, ch. 112, § 1; 2019, ch. 248, § 6.

ANNOTATIONS

The 2019 amendment, effective June 14, 2019, provided additional procedures for elections to the board of trustees of a land grant-merced; in Subsection A, after "board of trustees", added "and meeting any precinct restriction requirements established pursuant to Section 49-1-4 NMSA 1978"; in Subsection B, after "election judges and", deleted "board of trustees" and added "the canvassing board"; and added Subsections C through G.

The 2011 amendment, effective April 7, 2011, required a plurality of votes to be elected to the board of trustees and required that certificates of election be issued only to those candidates who are elected.

The 2004 amendment, effective July 1, 2004, changed the canvas date from the first Monday following the election to not later than seven days following the election.

49-1-8. Organization of board; bonds; vacancies.

A. All members of the newly elected board of trustees shall meet no later than seven days after the votes are canvassed and organize themselves by the election of a president, secretary and treasurer. The treasurer shall perform such duties as may be required by the board and shall furnish to the board a good and sufficient surety bond in a sum as set forth in this section, to be conditioned as are the bonds of other public officials handling public money. It is the duty of the treasurer to deposit all the money coming to the treasurer in a bank or credit union organized and doing business in New Mexico.

B. In the event of the death or resignation of the treasurer, the board shall fill the vacancy by appointing one of the members of the board as treasurer, who shall, before entering into the performance of duties as treasurer, execute and furnish to the board a good and sufficient surety bond, similar to the bond entered into by the predecessor treasurer.

C. The amount of the bond required of the treasurer and the treasurer's successor shall at all times be for a sum of at least double the amount received by and deposited in the bank or credit union by the treasurer.

D. In the event that the board of trustees delegates any other of its members to collect money due the land grant-merced, that person shall be bonded in the same manner as is provided in this section for the bonding of the treasurer.

E. Those authorized to collect money shall give receipts for the money collected, which receipts shall be in the form prescribed by the board of trustees in the bylaws as an official receipt.

History: Laws 1907, ch. 42, § 8; Code 1915, § 806; Laws 1921, ch. 146, § 1; C.S. 1929, § 29-108; Laws 1933, ch. 164, § 3; 1941 Comp., § 9-108; 1953 Comp., § 8-1-8; 2004, ch. 124, § 9; 2015, ch. 40, § 1.

ANNOTATIONS

The 2015 amendment, effective July 1, 2015, authorized land grant-merced funds to be deposited in a credit union; in Subsection A, after "money coming", deleted "into his hands as" and added "to the", and after "bank", added "or credit union"; in Subsection B, after "performance of", deleted "his" and added "the", and after "predecessor", added "treasurer"; in Subsection C, after "and", deleted "his" and added "the treasurer's", and after "bank", added "or credit union"; and in Subsection D, after "event", added "that".

The 2004 amendment, effective July 1, 2004, designated the first three sentences of the former section as Subsection A, amended Subsection A to change the first meeting date of the newly elected board from the first Monday following the canvassing to no later than seven days following the canvassing date, designated each of the other sentences of the section as Subsections B, C, D and E and made minor changes to each of the subsections.

49-1-9. Meetings.

Regular meetings of the board of trustees shall be held no less than quarterly and in a public place as the board may determine in accordance with the bylaws. The time and place of regular meetings shall be posted in Spanish and English in a public place within the land grant-merced at least ten days prior to the meeting. Special meetings may be held at any time on call of the president, with five days' notice being given to each member.

History: Laws 1907, ch. 42, § 9; Code 1915, § 807; C.S. 1929, § 29-109; 1941 Comp., § 9-109; 1953 Comp., § 8-1-9; 2004, ch. 124, § 10.

ANNOTATIONS

The 2004 amendment, effective July 1, 2004, amended this section to require quarterly meetings of the board in a public place and to add: "in accordance with the bylaws. The time and place of regular meetings shall be posted in Spanish and English in a public place within the land grant-merced at least ten days prior to the meeting".

49-1-10. Quorum.

A majority of the board of trustees shall constitute a quorum for the transaction of business, and the land grant-merced and its inhabitants shall be bound by the acts of the board done pursuant to the provisions of Sections 49-1-1 through 49-1-18 NMSA 1978 and the land grant-merced bylaws.

History: Laws 1907, ch. 42, § 10; Code 1915, § 808; C.S. 1929, § 29-110; 1941 Comp., § 9-110; 1953 Comp., § 8-1-10; 2004, ch. 124, § 11.

ANNOTATIONS

The 2004 amendment, effective July 1, 2004, amended this section to replace "town, colony or community aforesaid" with "land grant-merced" and to make other clarifying amendments.

49-1-11. Sale or mortgage of common lands; restrictions.

A. A conveyance of a portion or of all of the common lands of a land grant-merced shall be effective only if:

(1) the conveyance is made in accordance with the land grant-merced bylaws and this section;

(2) the conveyance is made for the benefit of the land grant-merced;

(3) the board of trustees of the land grant-merced has approved a resolution to make the conveyance at a regular meeting held in accordance with Sections 49-1-9 and 49-1-12 NMSA 1978;

(4) the board of trustees has petitioned for an order affirming the board's resolution from the district court of the district in which the property is located; and

(5) the district court has issued an order affirming the board of trustees' resolution pursuant to Subsection E of this section.

B. An heir may file a written protest of a conveyance with the board of trustees of the land grant-merced and the district court within thirty days of the date that the resolution approving the conveyance is passed by the board. The board shall address and make a decision on the protest at a special meeting held in accordance with Sections 49-1-9 and 49-1-12 NMSA 1978 within thirty days of receiving the protest.

C. An heir dissatisfied with a decision of the board of trustees may appeal to the district court of the county in which property is located in the following manner:

(1) appeals to the district court shall be taken by serving a notice of appeal upon the board within thirty days of the decision. If an appeal is not timely taken, the action of the board is conclusive;

(2) the notice of appeal may be served in the same manner as a summons in civil actions brought before the district court or by publication in a newspaper printed in the county in which the property is located, once per week for four consecutive weeks. The last publication shall be at least twenty days prior to the date the appeal may be heard. Proof of service of the notice of appeal shall be made in the same manner as in actions brought in the district court and shall be filed in the district court within thirty days after service is complete. At the time of filing the proof of service and upon payment by the appellant of the civil docket fee, the clerk of the district court shall docket the appeal;

(3) costs shall be taxed in the same manner as in cases brought in the district court and bond for costs may be required upon proper application; and

(4) the proceeding upon appeal shall be de novo as cases originally docketed in the district court. Evidence taken in a hearing before the board may be considered as original evidence subject to legal objection, the same as if the evidence was originally offered in the district court. The court shall allow all amendments that may be necessary in furtherance of justice and may submit any question of fact to a jury or to one or more referees at its discretion.

D. If the district court finds that all requirements of this section have been satisfied and that all protests and appeals are concluded, the court shall issue its order affirming the board of trustees' resolution conveying the property.

E. After the district court issues its order, the board of trustees shall execute the necessary documents in the name and under the seal of the land grant-merced, and all heirs shall be bound by the board's conveyance.

History: Laws 1907, ch. 42, § 11; 1913, ch. 58, § 2; Code 1915, § 809; C.S. 1929, § 29-111; 1941 Comp., § 9-111; Laws 1951, ch. 152, § 1; 1953 Comp., § 8-1-11; 2004, ch. 124, § 12.

ANNOTATIONS

Cross references. — For sale of community lands by corporation, *see* 49-2-7 NMSA 1978 et seq.

For disposal of lots in townsites, *see* 19-4-7 NMSA 1978.

For sale or lease of state lands, *see* 19-7-1 NMSA 1978 et seq.

The 2004 amendment, effective July 1, 2004, deleted the former section and replaced it with new Subsections A to E.

I. GENERAL CONSIDERATION.

Section mandatory. — The words of this section suggest that the legislature intended this provision to be mandatory. *Bibo v. Town of Cubero Land Grant*, 1958-NMSC-137, 65 N.M. 103, 332 P.2d 1020.

Persons dealing with quasi-municipal corporations, as well as municipal corporations, are required, at their peril, to ascertain whether statutory requirements relating to the subject of the transaction have been complied with. *Bibo v. Town of Cubero Land Grant*, 1958-NMSC-137, 65 N.M. 103, 332 P.2d 1020.

Grant lands which are subject to taxation cannot be sold without approval of the board except in proceedings to enforce the payment of taxes. *Cebolleta Land Grant ex rel. Bd. of Trustees v. Romero*, 1982-NMSC-043, 98 N.M. 1, 644 P.2d 515.

Noncomplying lease void. — A written lease of a portion of the common lands of the grant for a period of five years with an option to renew for five more years was void in the absence of compliance with the provisions of this section. *Bibo v. Town of Cubero Land Grant*, 1958-NMSC-137, 65 N.M. 103, 332 P.2d 1020.

II. DISTRICT COURT APPROVAL.

Purpose of 1913 amendment. — The history of this section reveals that the 1913 amendment to the original provision substituted the requirement of the approval of the district court for that of the approval of a majority of the qualified voters of such grant, the purpose no doubt being for the protection of the owners of common interests in the land grant against fraud, collusion, mistake or inequities, as well as for the convenience of the board in carrying on business for the grant owners. *Bibo v. Town of Cubero Land Grant*, 1958-NMSC-137, 65 N.M. 103, 332 P.2d 1020.

District court's duties. — This section authorizes the district judge to make certain that a board of trustees complies with the formalities of issuance of a lease it has authorized and to require the board to apply its standards in a uniform and nondiscriminatory manner. *Maestas v. Board of Trustees*, 1985-NMSC-068, 103 N.M. 77, 703 P.2d 174.

Approval of district court is essential to the validity of a transaction coming within this provision just as the approval of a majority of the qualified voters would have been under the old provision. *Bibo v. Town of Cubero Land Grant*, 1958-NMSC-137, 65 N.M. 103, 332 P.2d 1020.

Approval contemplated in section does not extend to anything more than the final act of the trustees, and in no way to the manner in which they arrived there. There is no indication in the statute that the district judge is to do anything more than to see that the formalities of issuance are observed. The requirement for approval does not extend to an approval of the matters and considerations leading up to the execution of the lease by the trustees, nor to standards, nor to rental. The action of the district court is on leases already issued, and not as to the rejection of applications to lease. *Mondragon v. Tenorio*, 554 F.2d 423 (10th Cir.), cert. denied, 434 U.S. 905, 98 S. Ct. 305, 54 L. Ed. 2d 193 (1977).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 63A Am. Jur. 2d Public Lands §§ 113 to 121.

73A C.J.S. Public Lands § 178.

49-1-11.1. Rights of lessees and purchasers; rights to use of common lands.

A. A person who is not an heir and who has purchased or leased property within the limits of a land grant-merced shall only have a right to the lands acquired through the purchase or lease but not to any common lands within the land grant-merced.

B. The provisions of Chapter 49, Article 1 NMSA 1978 shall not diminish, extinguish or otherwise impair any private property interest located within the boundaries of a land grant-merced or be construed to grant the board of trustees of a land grant-merced regulatory authority over such property interests or lands other than the common lands. As used in this subsection, "property interest" includes valid easements and rights of access, but does not include use rights to the common lands of the land grant-merced.

C. The designation of land grants-mercedes as political subdivisions of the state shall not alter the property rights of the heirs in the common lands. The common lands owned or controlled by a land grant-merced shall not be considered to be, designated or treated as state land.

History: 1978 Comp., § 49-1-22, enacted by Laws 2004, ch. 124, § 2; amended and recompiled as 1978 Comp., § 49-1-11.1 by Laws 2005, ch. 75, § 1; 2011, ch. 96, § 2.

ANNOTATIONS

The 2011 amendment, effective April 6, 2011, added Subsection C to provide that the property rights of heirs in common lands is not altered by the designation of land grants-mercedes as a political subdivision and that the common lands of land grants-mercedes are not state land.

The 2005 amendment, effective July 1, 2005, added Subsection B, which limits the affects of the provisions of Chapter 49, Article 1 NMSA 1978 on private property interests.

49-1-11.2. Adverse possession.

A land grant-merced managed, controlled and governed as a political subdivision pursuant to Chapter 49 NMSA 1978 shall not be subject to adverse possession claims to or defenses against the common lands administered by the political subdivision, provided that those claims or defenses have not vested prior to the effective date of this section.

History: Laws 2007, ch. 266, § 1.

ANNOTATIONS

Effective dates. — Laws 2007, ch. 266 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 15, 2007, 90 days after the adjournment of the legislature.

49-1-12. Meetings to be public; annual report.

A. All meetings of the board of trustees shall be held in accordance with the Open Meetings Act [Chapter 10, Article 15 NMSA 1978]. Executive sessions shall not be held

except in accordance with the Open Meetings Act. All heirs of the land grant-merced shall have the right to be present at all times when the board is in session and to be heard on all matters in which they may be interested.

B. The board of trustees shall annually make public a report of all its transactions for that year. The report shall include agendas, minutes, actions taken and all financial transactions. The report shall be maintained in a public place and available for public review; for the purposes of this subsection, filing the report with the land grant council to be kept with the New Mexico community land grant registry shall be considered filing the report in a public place.

C. The secretary of the board shall reduce to writing, in a book kept for that purpose, minutes of the business transacted at each meeting of the board.

History: Laws 1907, ch. 42, § 12; Code 1915, § 810; C.S. 1929, § 29-112; Laws 1933, ch. 164, § 4; 1941 Comp., § 9-112; 1953 Comp., § 8-1-12; 2004, ch. 124, § 13; 2014, ch. 72, § 1.

ANNOTATIONS

The 2014 amendment, effective July 1, 2014, allowed the board of trustees of the land grant-merced to file annual reports with the New Mexico land grant registry; and in Subsection B, in the third sentence, after "public review", added the remainder of the sentence.

The 2004 amendment, effective July 1, 2004, added the requirement that meetings be held in accordance with the Open Meetings Act, added subsection designations, changed "persons residing within the limits of the grant" to "all heirs of the land grant-merced", and added the second sentence of Subsection B, and added Subsection C.

49-1-13. Vacancies.

If a vacancy occurs on the board of trustees, the remaining members shall fill the vacancy by appointment made at a regular meeting. The person appointed shall hold office for the remainder of the unexpired term of the trustee being replaced.

History: Laws 1907, ch. 42, § 13; Code 1915, § 811; C.S. 1929, § 29-113; 1941 Comp., § 9-113; 1953 Comp., § 8-1-13; 2004, ch. 124, § 14; 2019, ch. 248, § 7.

ANNOTATIONS

The 2019 amendment, effective June 14, 2019, provided that a person appointed to the board of trustees of a land grant-merced to fill a vacancy shall serve for the remainder of the unexpired term of the trustee being replaced; after "board", added "of trustees", and after "shall hold office", deleted "until the next regular election" and added "for the remainder of the unexpired term of the trustee being replaced".

The 2004 amendment, effective July 1, 2004, made minor changes.

49-1-14. Salaries of trustees; records; expenditures.

A. The board of trustees may fix in the land grant-merced bylaws and pay to its members a salary not to exceed two hundred dollars (\$200) to any member in one month. The salary as fixed shall be in full as compensation for the duties performed by the board or the individual members within the exterior boundaries of the land grant-merced and for attendance at regularly scheduled meetings. The secretary of the board may be allowed a salary not to exceed two hundred twenty-five dollars (\$225) in one month.

B. Board members may be authorized per diem and mileage pursuant to the Per Diem and Mileage Act [10-8-1 through 10-8-8 NMSA 1978].

C. The board of trustees and the treasurer shall keep permanent and legible records capable of audit, and no money or funds shall be paid by the board of trustees or by any person authorized to expend money unless the expenditure is approved by a majority of the board of trustees and is in the form of a written check or in such a form that the date, amount and payee of the transaction are automatically recorded; and the payment is supported by an invoice or receipt.

History: Laws 1907, ch. 42, § 14; Code 1915, § 812; C.S. 1929, § 29-114; Laws 1933, ch. 164, § 5; 1937, ch. 194, § 2; 1941 Comp., § 9-114; 1953 Comp., § 8-1-14; Laws 1979, ch. 184, § 3; 2004, ch. 124, § 15; 2015, ch. 40, § 2.

ANNOTATIONS

The 2015 amendment, effective July 1, 2015, placed certain requirements on the expenditure of funds by the board of trustees of a land grant-merced; in Subsection C, after "expend money", deleted "except by written check drawn upon vouchers" and added the remainder of the sentence.

The 2004 amendment, effective July 1, 2004, designated the first two sentences of the former section and part of the third sentence as Subsection A and designated the remainder of the former section as Subsection C, added Subsection B and revised the last sentence of the prior section to designate it as Subsection C and to change "secretary" to "treasurer".

The 1979 amendment added the catchline, substituted "two hundred dollars (\$200)" for "fifty dollars (\$50.00)" and "one month" for "one year" near the beginning of the section, substituted "two hundred twenty-five dollars (\$225)" for "seventy-five dollars (\$75.00)" and "one month" for "one year" near the middle of the section and made other minor changes.

Reimbursement for expenses incurred in administration. — This section bars a member of a community land grant board of trustees from recovering reimbursement

authorized by the board for expenses incurred in the administration of the land grant. *Armijo v. Cebolleta Land Grant*, 1987-NMSC-006, 105 N.M. 324, 732 P.2d 426.

49-1-15. Removal from land grant-merced; delinquency; forfeiture.

A. If a person holds in possession or claims in private ownership, within the exterior boundaries of a land grant-merced, any tract, piece or parcel of land to which, in the opinion of the board of trustees, the person has no right or title, the board may institute an action of ejectment in district court against the person. If upon the trial it is determined that such possession is without right, judgment shall be rendered in favor of the board for possession of the tract, piece or parcel of land and for such damages as it may have proved for the wrongful detention.

B. Any delinquent heir shall lose all right that the heir may have had to use the common lands of the land grant-merced unless the heir pays in full all legal assessments or dues due by the heir.

History: Laws 1907, ch. 42, § 15; Code 1915, § 813; C.S. 1929, § 29-115; Laws 1933, ch. 164, § 5[5a]; 1941 Comp., § 9-115; 1953 Comp., § 8-1-15; 2004, ch. 124, § 16; 2005, ch. 75, § 2.

ANNOTATIONS

Compiler's notes. — Laws 1933, ch. 164 contained two sections designated as "Sec. 5." This section was derived from the second, so the bracketed "5a" was inserted in the history by the 1941 compiler to distinguish the two sections.

The 2005 amendment, effective July 1, 2005, provided that actions of ejectment must be filed in district court and if the court determines that the possession is without right, the judgment shall be rendered for the board; and provided that a delinquent heir shall lose all right to use common land unless the heir pays all legal assessment or dues due by the heir.

The 2004 amendment, effective July 1, 2004, made minor revisions throughout this section, added "land grant-merced" for "grant", deleted after "Any delinquent" "person who moves outside the exterior boundaries of such grant and resides outside such exterior boundaries for a period of five years" and replaced it with "heir".

49-1-16. Trespass on common lands or waters; injunctions.

The courts of this state shall entertain bills of complaint filed by the board of trustees of a land grant-merced to enjoin persons from trespassing upon the common lands or using the common waters within the land grant-merced if it appears that the complainant is without a plain, speedy and adequate remedy at law or that the persons committing trespass are insolvent or unable to respond in damages.

History: Laws 1907, ch. 42, § 16; Code 1915, § 814; C.S. 1929, § 29-116; 1941 Comp., § 9-116; 1953 Comp., § 8-1-16; 2004, ch. 124, § 17.

ANNOTATIONS

Cross references. — For community springs, *see* 72-10-1 to 72-10-3 NMSA 1978. For reservoirs, *see* 72-10-4 to 72-10-10 NMSA 1978.

The 2004 amendment, effective July 1, 2004, made minor corrections throughout this section and changed "grant" to "land grant-merced".

Law reviews. — For article, "Water Rights Problems in the Upper Rio Grande Watershed and Adjoining Areas," *see* 11 Nat. Res. J. 48 (1971).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 63A Am. Jur. 2d Public Lands §§ 125 to 128.

49-1-17. Process; how served on board.

Process in all actions or suits against a board of trustees of a land grant-merced shall be served upon the president or, in his absence, upon the secretary.

History: Laws 1907, ch. 42, § 17; Code 1915, § 815; C.S. 1929, § 29-117; 1941 Comp., § 9-117; 1953 Comp., § 8-1-17; 2004, ch. 124, § 18.

ANNOTATIONS

Cross references. — For a similar provision, *see* Rule 1-004 F(6) NMRA.

The 2004 amendment, effective July 1, 2004, made minor corrections throughout this section and changed "grant" to "land grant-merced".

49-1-18. Construction.

Sections 49-1-1 through 49-1-18 NMSA 1978 shall not be construed as applying to any land grant-merced that is managed or controlled in any manner other than that provided in Section 49-1-2 NMSA 1978.

History: Laws 1907, ch. 42, § 19; Code 1915, § 817; C.S. 1929, § 29-119; 1941 Comp., § 9-118; 1953 Comp., § 8-1-18; 2004, ch. 124, § 19.

ANNOTATIONS

Saving clauses. — Laws 1907, ch. 42, § 18, provided that election of a board of trustees should not in any manner affect any actions, suits or proceedings at law or equity pending March 18, 1907, in any way affecting such land grant or the title thereto.

Compiler's notes. — Prior to the 1915 Code compilation, this section read: "All acts and parts of acts in conflict herewith are hereby repealed, and this act shall be in full force and effect from and after its passage, but, as stated in Section 1 (49-1-1 NMSA 1978) hereof, this act shall not be construed as applying to any land grant which is now managed or controlled in any manner other than that hereinbefore provided, by virtue of any general or special act of any legislative assembly of the territory of New Mexico."

The 2004 amendment, effective July 1, 2004, made minor corrections throughout this section and changed "grant" to "land grant-merced".

49-1-19. Failure of trustee to perform duties; penalty.

Any member of the board of trustees who fails or refuses to perform any of the duties required to be performed by the board of trustees of the land grant-merced or any member of the board pursuant to Sections 49-1-1 through 49-1-18 NMSA 1978 or by any other law of New Mexico is guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than twenty-five dollars (\$25.00) nor more than one hundred dollars (\$100) or by imprisonment in the county jail for a period of not less than thirty days nor more than ninety days, or both.

History: 1941 Comp., § 9-119, enacted by Laws 1933, ch. 164, § 6; 1953 Comp., § 8-1-19; 2004, ch. 124, § 20.

ANNOTATIONS

The 2004 amendment, effective July 1, 2004, made minor corrections throughout this section and changed "grant" to "land grant-merced".

49-1-20. [Sevilleta de La Joya grant; provisions applicable.]

The court having held that the trustees elected under the provisions of Sec. 828 of the special act for the management and control of the Sevilleta de La Joya grant are without authority, the provisions of the general law for the management and control of all Mexican and Spanish grants contained in Sections 49-1-1 to 49-1-18 NMSA 1978 are hereby made applicable for the management and control of the Sevilleta de La Joya grant.

History: Laws 1929, ch. 137, § 1; C.S. 1929, § 29-901; 1941 Comp., § 9-120; 1953 Comp., § 8-1-20.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Compiler's notes. — The reference to "Section 828" in this section refers to Section 828 of the 1915 Code, which was repealed by Laws 1929, ch. 137, § 5.

Landowners entitled to one vote. — Under Code 1915, § 828 (now repealed), relative to election of trustees for the Sevilleta de La Joya land grant, the trustees had no power to apportion the vote according to the interest of the voters in the lands, but each owner of an undivided interest was entitled to one vote. *State ex rel. Rivera v. Esquibel*, 1920-NMSC-059, 26 N.M. 283, 191 P. 144.

Trustees' duties. — Under Code 1915, § 828 (now repealed), relative to election of trustees for the Sevilleta de La Joya land grant, it was the duty of the trustees to receive the vote of any voter who filed the required affidavits, and the trustees could not refuse to count such votes because in their judgment the voters were not qualified. *State ex rel. Rivera v. Esquibel*, 1920-NMSC-059, 26 N.M. 283, 191 P. 144.

49-1-21. [Anton Chico grant; rights of lessees and purchasers.]

Any person or persons or corporation who through purchase or lease may come to live within the limits of the Anton Chico land grant shall only have a right to the lands he or they may acquire through said lease or purchase but not to the common lands in said land grant.

History: Laws 1933, ch. 164, § 7; 1941 Comp., § 9-121; 1953 Comp., § 8-1-21.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

49-1-22. Recompiled.

History: 1978 Comp., § 49-1-22, enacted by Laws 2004, ch. 124, § 2; amended and recompiled as 1978 Comp., § 49-1-11.1 by Laws 2005, ch. 75, § 1.

ANNOTATIONS

Recompilations. — Laws 2005, ch. 75, § 1 recompiled former 49-1-22 NMSA 1978 as 49-1-11.1 NMSA 1978, effective July 1, 2005.

49-1-23. Community land grant registry established; reporting requirements.

A. The land grant council shall establish the "New Mexico community land grant registry".

B. A community land grant organized and governed pursuant to Chapter 49, Article 1 or 4 NMSA 1978 and operating as a political subdivision of the state shall register its bylaws and a list of current officers with the land grant council. The board of trustees of that land grant shall notify the land grant council of the names and positions of the land grant's elected or appointed officers upon their election or appointment.

C. Community land grants organized and operating pursuant to special statutes or other general statutes may also register their bylaws and lists of officers with the land grant council.

D. A community land grant that registers in accordance with Subsection B or C of this section may request the land grant council to keep on file the originals or copies of current or historical documents or maps submitted by the board of trustees to the land grant council; provided that the land grant council shall store the originals of historical documents and maps in the state archives and records center.

History: Laws 2005, ch. 205, § 1; 2013, ch. 4, § 1.

ANNOTATIONS

The 2013 amendment, effective March 8, 2013, transferred the New Mexico community land grant registry from the secretary of state to the land grant council; in Subsection A, after "The", deleted "secretary of state" and added "land grant council"; in Subsection B, in the first sentence, after "Article 1", added "or 4" and after "current officers with the", deleted "secretary of state" and added "land grant council" and in the second sentence, after "shall notify the", deleted "secretary of state" and added "land grant council"; in Subsection C, after "list of officers with the", deleted "secretary of state" and added "land grant council"; and in Subsection D, after "may request the", deleted "secretary of state" and added "land grant council", after "to keep on file", added "the originals or", after "board of trustees to the", deleted "secretary of state" and added "land grant council shall", and after "land grant council shall store", deleted "such" and added "the originals of historical".

Temporary provisions. — Laws 2013, ch. 4, § 3, effective March 8, 2013, provided that the secretary of state shall transfer to the land grant council the New Mexico community land grant registry, all associated records and all other records and documents submitted to the secretary of state pursuant to Sections 49-1-23 and 49-4-19 NMSA 1978.

Effective dates 2005. — Laws 2005, ch. 205 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 17, 2005, 90 days after adjournment of the legislature.

ARTICLE 2
Corporations for Management of Community Land Grants

Section	
49-2-1	Powers granted to certain community land grant corporations.
49-2-2	Corporate powers enumerated.
49-2-3	Board of trustees; corporate powers; election.
49-2-4	Judges of election; appointment; notice of election; ballots; canvass; certificates of election.
49-2-5	Vacancies in board; filling.
49-2-6	Majority of board constitutes quorum; acts binding.
49-2-7	Regular meetings of board; sale of community lands; handling of moneys.
49-2-8	Special meetings; business to be transacted; calling.
49-2-9	Selection of officers; rules; duties of secretary.
49-2-10	Resolutions for disposition of common lands; effective date; binding effect.
49-2-11	Protests against disposition of common lands; election.
49-2-12	Compensation of trustees.
49-2-13	Lands held in private ownership.
49-2-14	Lands improperly claimed in private ownership; ejectment.
49-2-15	Trespass on common lands or waters; jurisdiction of courts; injunction.
49-2-16	Conveyances; effect.
49-2-17	Definition of terms; right to vote or hold office.
49-2-18	Conversion of corporations organized under Laws 1891, Chapter 86, into general corporations.

49-2-1. [Powers granted to certain community land grant corporations.]

That all corporations organized and incorporated under the provisions of an act of the legislative assembly of the territory of New Mexico, approved February 26, 1891, and published as Chapter 86 of the Session Laws of 1891, or under the provisions of an act of the legislative assembly of the territory of New Mexico, approved March 18, 1897, and published as Chapter 54 of the Session Laws of 1897, shall have the powers granted by this act for the purposes hereinafter mentioned.

History: Laws 1917, ch. 3, § 1; C.S. 1929, § 29-201; 1941 Comp., § 9-201; 1953 Comp., § 8-2-1.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Compiler's notes. — Laws 1891, ch. 86 and Laws 1897, ch. 54, referred to in this section, are repealed by Laws 1917, ch. 3, § 19. *See* "Saving clauses" in notes to 49-2-17 NMSA 1978.

The term "this act" refers to Laws 1917, ch. 3, §§ 1 to 20, compiled as 49-2-1 to 49-2-17 NMSA 1978.

Constitutional violation by distribution plan. — The plan of distribution of community grant land proposed disclosed a pronounced absence of primary and elemental concepts of due process and equal protection of the laws, in violation of constitutional guaranties existing in favor of owners of the beneficial interest in the common lands of the grant, where interests in land were to be determined by drawings in a lottery and where it was uncertain how it was to be determined by the special master, who were the owners of beneficial interests in the common lands eligible for participation in the lottery. *Armijo v. Town of Atrisco*, 1957-NMSC-045, 62 N.M. 440, 312 P.2d 91.

Distribution plan contrary to law. — The means to be employed for making a distribution of the lands of the grant not only amounted to a violation of the statute law of this state prohibiting lotteries, but as well amounted to a dissipation of the assets of the corporation, contrary to law, where interests in land were to be determined by drawings in a lottery and where it was uncertain how it was determined, by the special master, who were the owners of beneficial interests in the common lands, eligible for participation in the lottery. *Armijo v. Town of Atrisco*, 1957-NMSC-045, 62 N.M. 440, 312 P.2d 91.

Constitutional prohibitions against special legislation held inapplicable. — In view of the difference in the nature and origin of the different community land grants; in view of the long legislative history of enactments relating to the control, or management, of the lands of specific grants; in view of the fact that there is some discretion in the legislature to determine in which cases special laws should be passed; and in view of the presumptions indulged in favor of the validity of legislation, supreme court held that the prohibitions against special legislation as contained in the Springer Act, former 48 U.S.C. § 1471, and in N.M. Const., art. IV, § 24, were not applicable to enactments relating to the governing or managing bodies of the Las Vegas grant or any specific community land grants, or to the manner in which these bodies exercise their powers of control, management and disposition over grant lands. *Board of Trustees v. Montano*, 1971-NMSC-025, 82 N.M. 340, 481 P.2d 702.

Community land grant is in the nature of a quasi-municipal corporation and is governed by the rules of law applicable thereto. The power of the board of trustees comes from the statutes providing for its creation. *Apodaca v. Tome Land & Improvement Co.*, 1978-NMSC-018, 91 N.M. 591, 577 P.2d 1237.

Comptroller's jurisdiction. — The San Antonio de las Huertas grant and water commission is a public grant, and the state comptroller, consequently, has jurisdiction over it under this article. 1951-52, Op. Att'y Gen. No. 52-5575.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 73B C.J.S. Public Lands § 205.

49-2-2. Corporate powers enumerated.

They shall be bodies corporate and politic under the respective names designated in the decrees by which they were incorporated, and shall have and possess the following powers:

A. to sue and be sued in their corporate names;

B. to sell, convey, lease, mortgage or otherwise dispose of so much of the land of the grant under their management and control as is held in common by the owners and proprietors.

Provided, however, that no sale of the lands held in common can be made to persons who are nonheirs of the grant unless a majority of such heirs present at a mass meeting to be called fifteen (15) days in advance thereof by the president of the board of trustees vote in favor of any proposed sale to nonheirs, and provided, further, that no lease of the lands held in common can be made to any person whatsoever for a period of time exceeding twenty (20) years; provided, further, nevertheless, that as to any oil and gas lease executed upon lands held in common where oil and gas or either of them in commercial quantities is being, or shall be, produced from lands covered by said lease, then and in such event, this limitation as to the period of time shall not apply as to any such oil and gas lease so long as oil or gas or either of them is being produced in commercial quantities from said land;

C. to make such rules and regulations, not in conflict with the constitution and laws of the United States or the state of New Mexico, as may be necessary for the protection, improvement and management of such common lands and real estate and the use and enjoyment thereof, and of the common waters thereon;

D. to make such assessments against the owners and proprietors as may be necessary to defray the expenses of conducting the business, and to make any other obligations of said corporation and to enforce the payment thereof by such owners and proprietors by suit against any owner and proprietor brought in the name of the corporation before a justice of the peace [magistrate court] or in the district court of the county in which such land grant is situated;

E. to have a corporate seal in such form and device as shall be adopted by the board of trustees of such corporation;

F. to determine the number of animals that may be permitted to graze upon the common lands of the grant, and the price which shall be paid to [by] the owner of such animals for the privilege of grazing thereon, provided, such price shall be uniform to all owners and proprietors;

G. by district court action under rules of civil procedure to determine by name the various persons who are of the class of owners and proprietors having beneficial interest in land of the grant under their management and control, and to determine persons of the class who are eligible to become owners and proprietors by descent from the class who were determined to be the owners thereof at the time of the incorporation of such grant.

History: Laws 1917, ch. 3, § 2; C.S. 1929, § 29-202; Laws 1933, ch. 47, § 1; 1939, ch. 109, § 1; 1941 Comp., § 9-202; 1953 Comp., § 8-2-2; Laws 1961, ch. 158, § 1

ANNOTATIONS

Bracketed material. — The bracketed word "by" in Subsection F was inserted by the secretary of state.

The office of justice of the peace was abolished, and the jurisdiction, powers and duties were transferred to the magistrate court. *See* 35-1-38 NMSA 1978.

Constitutional violation by planned distribution. — The plan of distribution of community grant land proposed disclosed a pronounced absence of primary and elemental concepts of due process and equal protection of the laws, in violation of constitutional guaranties existing in favor of owners of the beneficial interest in the common lands of the grant, where interests in the land were to be determined by drawings in a lottery and where it was uncertain how it was to be determined by the special master, who were the owners of beneficial interests in the common lands eligible for participation in the lottery. *Armijo v. Town of Atrisco*, 1957-NMSC-045, 62 N.M. 440, 312 P.2d 91.

Distribution plan contrary to law. — The means to be employed for making a distribution of the lands of the grant not only amounted to a violation of the statute law of this state prohibiting lotteries, but as well amounted to a dissipation of the assets of the corporation, contrary to law, where interests in land were to be determined by drawings in a lottery and where it was uncertain how it was to be determined by the special master, who were the owners of beneficial interests in the common lands eligible for participation in the lottery. *Armijo v. Town of Atrisco*, 1957-NMSC-045, 62 N.M. 440, 312 P.2d 91.

Grant land held not tax exempt. — The lands within the community grant of the town of Tome, incorporated under Laws 1897, ch. 86 (now repealed) and 2148 through 2184, 1897 Comp., were not exempt from taxation under N.M. Const., art. VIII, § 7. *Board of Trustees v. Sedillo*, 1922-NMSC-027, 28 N.M. 53, 210 P. 102).

Presumption is that public officials perform their duties. *Davis v. Westland Dev. Co.*, 1970-NMSC-039, 81 N.M. 296, 466 P.2d 862.

Lack of standing in quiet title suit. — Where a land grant association's board of trustees had not called an election by its members or the trustees as required by law and had not identified the persons having an interest in the lands claimed by the association who had a right to vote at an election and the treasurer had not furnished a surety bond, the association

lacked standing as a land grant community or board to assert a claim of title to lands at issue in a suit to quiet title. *Cordova v. Broadbent*, 1988-NMSC-042, 107 N.M. 215, 755 P.2d 59.

Irrelevant proof as to deed. — Proof that deeds relied upon by grantees of town property were signed by different people and that grantees were not heirs of land grant was irrelevant on question of forgery and inadequacy of description. *Davis v. Westland Dev. Co.*, 1970-NMSC-039, 81 N.M. 296, 466 P.2d 862.

Valid heirs hold title as tenants in common. — All the valid heirs to a community land grant are considered to hold title as tenants in common. *Apodaca v. Tome Land & Improvement Co.*, 1978-NMSC-018, 91 N.M. 591, 577 P.2d 1237.

If property is common land of a land grant, the parties who are valid heirs of the land grant may hold the property as tenants in common with the board of trustees. *Cebolleta Land Grant ex rel. Bd. of Trustees v. Romero*, 1982-NMSC-043, 98 N.M. 1, 644 P.2d 515.

Distribution of proceeds of sale. — Once a town relinquishes its proprietary interest in the common lands by virtue of a sale, the proceeds must necessarily be divided proportionately among the rightful heirs. *Apodaca v. Tome Land & Improvement Co.*, 1978-NMSC-018, 91 N.M. 591, 577 P.2d 1237.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 63A Am. Jur. 2d Public Lands §§ 58, 113 to 121.

73B C.J.S. Public Lands § 178.

49-2-3. Board of trustees; corporate powers; election.

The corporate powers of such corporation shall be exercised by a board of nine trustees who are owners and proprietors residing upon such land grant and heads of families. The board of trustees shall be elected by the owners and proprietors on the first Saturday in December of the year 1919, and upon the same day in every third year thereafter. The nine persons receiving the highest number of votes at the election shall become the board of trustees and possess the powers provided for in Sections 49-2-1 to 49-2-17 NMSA 1978, and shall hold their office until the election and qualification of their successors. No trustee shall serve more than two consecutive terms.

History: Laws 1917, ch. 3, § 3; C.S. 1929, § 29-203; 1941 Comp., § 9-203; 1953 Comp., § 8-2-3; Laws 1967, ch. 184, § 1.

ANNOTATIONS

Cross references. — For election of trustees in community land grants generally, *see* 49-1-5 NMSA 1978.

49-2-4. [Judges of election; appointment; notice of election; ballots; canvass; certificates of election.]

The election provided for in the preceding section [49-2-3 NMSA 1978] shall be held by three judges who shall be owners and proprietors residing upon said grant, and the heads of families, and shall be designated by votes of two-thirds of the trustees present at the regular meeting of such board of trustees held in October next preceding the date of such election. No more than two of such judges shall reside in the same precinct, if there be more than one precinct in such land grant. It shall be the duty of the outgoing board of trustees to give notice of the time and place of such election by posting not less than three notices in public places in each precinct in which the grant is situated, such notices to be in both the English and Spanish languages, and to be posted not less than twenty days before the date of such election. Said elections shall be by ballot, and each ballot cast shall have the name of the voter casting the same written thereon, and all ballots shall be preserved by the judges of election until the next ensuing meeting of the board of trustees, and so much longer thereafter as said board shall direct. It shall be the duty of such judges of election to canvass the ballots cast at such election and issue certificates of election to each of the nine persons receiving the highest number of votes cast at such election, and such certificates will authorize the persons to whom they are respectively issued to discharge the duties of such trustees for the term for which they were elected and until the election and qualification of their successors.

History: Laws 1917, ch. 3, § 4; C.S. 1929, § 29-204; 1941 Comp., § 9-204; 1953 Comp., § 8-2-4.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Cross references. — For secrecy of the ballot, *see* N.M. Const., art. VII, § 1.

Lack of standing in quiet title suit. — Where a land grant association's board of trustees had not called an election by its members or the trustees as required by law and had not identified the persons having an interest in the lands claimed by the association who had a right to vote at an election and the treasurer had not furnished a surety bond, the association lacked standing as a land grant community or board to assert a claim of title to lands at issue in a suit to quiet title. *Cordova v. Broadbent*, 1988-NMSC-042, 107 N.M. 215, 755 P.2d 59.

49-2-5. [Vacancies in board; filling.]

If a vacancy shall occur in any such board of trustees the remaining members of such board shall fill such vacancy by appointment, to be made at any regular meeting of such board, and the person or persons so appointed shall hold office until there be a general election

for members of such board and until the election and qualification of their successor or successors.

History: Laws 1917, ch. 3, § 5; C.S. 1929, § 29-205; 1941 Comp., § 9-205; 1953 Comp., § 8-2-5.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Appointee's tenure in office. — Under Laws 1891, ch. 86, § 24 (now repealed), where vacancy in office of trustee of community land grant was filled by appointment, the appointee was entitled to hold office until qualification of a successor elected at regular election held on day authorized by statute. 1909-12 Op. Att'y Gen. No. 12-944.

49-2-6. [Majority of board constitutes quorum; acts binding.]

A majority of said board of trustees shall constitute a quorum for the transaction of business, and the corporation shall be in all respects bound by the acts of the majority of its board of trustees done in pursuance of the provisions of this act and within the scope thereof.

History: Laws 1917, ch. 3, § 6; C.S. 1929, § 29-206; 1941 Comp., § 9-206; 1953 Comp., § 8-2-6.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Compiler's notes. — The term "this act" refers to Laws 1917, ch. 3, §§ 1 to 20, compiled as 49-2-1 to 49-2-17 NMSA 1978.

49-2-7. [Regular meetings of board; sale of community lands; handling of moneys.]

The board of trustees of every such corporation shall hold four meetings in each year on the first Saturdays in the months of January, April, July and October for the transaction of all business of the corporation, of which meetings all persons shall be required to take notice. The corporation shall not be bound by any sale, mortgage, conveyance, lease or other disposition of its common property, or any part thereof, unless the same be made and executed in pursuance of a resolution of such board adopted by the affirmative vote of two-thirds of the members present at any of the regular meetings provided for by this section, and duly entered upon the record of such meeting and attested by the president of said board. The board of trustees may determine the method and advisability of disbursing,

investing or handling moneys that come into their hands from the sales and revenues of the grant, and shall fix and determine the nature, amount and costs of improvements they may deem necessary to be made upon the grant by vote of two-thirds of the members present at any meeting. All contracts and vouchers for the payment of money must be signed by the president, and no payment or contract shall be made or effected unless the same be directed by two-thirds majority of the members present at any meeting.

History: Laws 1917, ch. 3, § 7; C.S. 1929, § 29-207; 1941 Comp., § 9-207; 1953 Comp., § 8-2-7.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Cross references. — For sale of common lands of community land grants generally, *see* 49-1-1 NMSA 1978.

Procedure to change character of corporation not included. — Whatever is meant by "sale" and "conveyance" in this section does not include the procedure enacted to change the character of the corporation itself. To hold otherwise would produce the absurd implication that a land grant corporation could have been converted into a domestic stock corporation by this section even before the enactment of 49-2-18 NMSA 1978. It would also produce a rather unexplainable conflict between the two provisions. Therefore, due process is not denied for failure to follow this section, since 49-2-18 NMSA 1978 is the applicable statute. *Westland Dev. Co. v. Saavedra*, 1969-NMSC-123, 80 N.M. 615, 459 P.2d 141.

Burden in quiet title suit. — In defending against quiet title suit, defendants had burden of showing that meeting at which deeds to plaintiffs were authorized was not in fact an adjourned session of a regular quarterly meeting of the board of trustees. *Herrera v. Zia Land Co.*, 1947-NMSC-055, 51 N.M. 390, 185 P.2d 975.

No collateral attack against deed. — Defendants in suit to quiet title to lands in the town of Atrisco grant, claiming under deeds issued after deeds were delivered by the board of trustees to plaintiffs as heirs of the grant, could not collaterally attack the board's determination in this action. *Herrera v. Zia Land Co.*, 1947-NMSC-055, 51 N.M. 390, 185 P.2d 975.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 73B C.J.S. Public Lands § 205.

49-2-8. [Special meetings; business to be transacted; calling.]

Such board of trustees may hold special meetings at such times as the business of the corporation shall require, but at such special meetings the only business transacted shall be such as may be necessary to protect the common lands of said grant from trespassers, the

making of assessments against owners and proprietors, and such other business as shall relate only to general routine of the corporation, and no sale, mortgage, lease, or other disposition of the common lands of the grant shall be authorized at any such special meeting. Such special meetings may be called by the president at such times as he shall consider necessary, and shall be called at any time upon the request in writing of three or more members of the board.

History: Laws 1917, ch. 3, § 8; C.S. 1929, § 29-208; 1941 Comp., § 9-208; 1953 Comp., § 8-2-8.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

49-2-9. [Selection of officers; rules; duties of secretary.]

Each board of trustees elected under the provisions of this act shall at the first meeting held after such election, select one of its members to be president of the board, and another of its members to be secretary and treasurer thereof, and shall adopt rules for the government of such corporation, and for the use of the common lands of the grant and the common waters thereof, and such rules so adopted shall be uniform as to all owners and proprietors. The secretary shall reduce to writing, in a book to be kept for that purpose, minutes of the business transacted at each meeting of the board.

History: Laws 1917, ch. 3, § 9; C.S. 1929, § 29-209; 1941 Comp., § 9-209; 1953 Comp., § 8-2-9.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Compiler's notes. — The term "this act" refers to Laws 1917, ch. 3, §§ 1 to 20, compiled as 49-2-1 to 49-2-17 NMSA 1978.

49-2-10. [Resolutions for disposition of common lands; effective date; binding effect.]

No resolution providing for the sale, mortgage, lease or other disposition of the common lands of such grant shall take effect or become operative until after the expiration of thirty days next following the date of the meeting at which such resolution was adopted, as provided in Section 7 of this act [49-2-7 NMSA 1978]. If no protest shall be filed before such period of thirty days, as provided in the next succeeding section of this act [49-2-11 NMSA 1978], it shall be the duty of the president and secretary of such board of trustees, in the name of and under the seal of such corporation, to execute the necessary deeds and documents to carry such resolution into effect, and such deeds and documents when so

executed shall operate to bind all persons interested in such common lands to the same extent as if each of such persons had separately signed, sealed and executed the same.

History: Laws 1917, ch. 3, § 10; C.S. 1929, § 29-210; 1941 Comp., § 9-210; 1953 Comp., § 8-2-10.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Presumption confirmed land not part of common lands. — Adjudication by grant commissioners that persons were entitled to lands in severalty and granting them paper title gives rise to presumption that it investigated and determined land so confirmed was not part of the common lands. *Board of Trustees v. Garcia*, 1925-NMSC-028, 32 N.M. 124, 252 P. 478.

49-2-11. [Protests against disposition of common lands; election.]

Any person interested in the common lands in such grant who shall be dissatisfied with any sale, mortgage, lease or other disposition of any of such common lands so authorized by any resolution of such board of trustees, may, at any time within thirty days next following the date of the meeting at which such resolution was adopted, file with such board of trustees a protest in writing against the carrying out of such resolution, and, if a majority of the owners and proprietors protest against such action within the time aforesaid, then it shall be the duty of the board of trustees to call an election conducted in the same manner as provided for the election of members of the board of trustees, and if at such election a majority of such owners and proprietors vote against such resolution, then such resolution shall become void and of no effect; otherwise it shall be effective and shall be carried out as provided in Section 10 [49-2-10 NMSA 1978] hereof.

History: Laws 1917, ch. 3, § 11; C.S. 1929, § 29-211; 1941 Comp., § 9-211; 1953 Comp., § 8-2-11.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Cross references. — For election of members of board of trustees, *see* 49-2-3 and 49-2-4 NMSA 1978.

49-2-12. [Compensation of trustees.]

Each member of the board of trustees of the corporation created under the provisions of Chapter 86 of the Laws of 1891, or Chapter 54 of the Laws of 1897, or under the provisions of this act, shall receive for his services as trustee the sum of twenty-four dollars [(\$24.00)] per year, payable quarterly.

History: Laws 1917, ch. 3, § 12; C.S. 1929, § 29-212; 1941 Comp., § 9-212; 1953 Comp., § 8-2-12.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Compiler's notes. — Laws 1891, ch. 86 and Laws 1897, ch. 54, referred to in this section, were repealed by Laws 1917, ch. 3, § 19. *See* "Repealing saving clauses" note to 49-2-17 NMSA 1978.

The term "this act" refers to Laws 1917, ch. 3, §§ 1 to 20, compiled as 49-2-1 to 49-2-17 NMSA 1978.

49-2-13. [Lands held in private ownership.]

The board of trustees of any such corporation shall have no power or control over the lands within the exterior boundaries of any such grant which are held or claimed in private ownership, except as hereinafter provided.

History: Laws 1917, ch. 3, § 13; C.S. 1929, § 29-213; 1941 Comp., § 9-213; 1953 Comp., § 8-2-13.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

49-2-14. [Lands improperly claimed in private ownership; ejectment.]

If any person or persons shall hold in possession or claim in private ownership within the exterior boundaries of any such land grant any tract, piece or parcel of land, when in the opinion of any such board of trustees such person or persons have no right to hold the same, such board of trustees may institute in the name of the corporation an action of ejectment against such person or persons, and if upon the trial of any such cause it shall appear that the possession or claim of any such person or persons is without right, judgment shall be entered in favor of such corporation for the possession of such tract, piece or parcel of land

and for such damages as may be proved to have been sustained by such corporation by the wrongful detention thereof.

History: Laws 1917, ch. 3, § 14; C.S. 1929, § 29-214; 1941 Comp., § 9-214; 1953 Comp., § 8-2-14.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Cross references. — For ejectment, *see* 42-4-1 NMSA 1978.

49-2-15. [Trespass on common lands or waters; jurisdiction of courts; injunction.]

The several courts of this state exercising chancery jurisdiction shall under the practice of courts of chancery entertain bills of complaint filed by any such board of trustees to prevent trespasses upon the common lands and common waters of any such grant, if it shall appear that the complainants are without a plain, speedy and adequate remedy at law, or that the persons committing such trespass are insolvent or unable to respond in damages to such corporation for the injury alleged.

History: Laws 1917, ch. 3, § 15; C.S. 1929, § 29-215; 1941 Comp., § 9-215; 1953 Comp., § 8-2-15.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Cross references. — For trespass on common lands, injunction by community land grants generally, *see* 49-1-16 NMSA 1978.

For community springs, *see* 72-10-1 to 72-10-3 NMSA 1978.

For public reservoirs, *see* 72-10-4 to 72-10-10 NMSA 1978.

Law reviews. — For article, "Water Rights Problems in the Upper Rio Grande Watershed and Adjoining Areas," *see* 11 Nat. Resources J. 48 (1971).

49-2-16. [Conveyances; effect.]

Any conveyance made in pursuance of the provisions of this act shall operate to conclude all persons claiming the land designated therein by, through or under the original title upon

which the owners or proprietors of any such land grant or real estate base their claim thereto.

History: Laws 1917, ch. 3, § 16; C.S. 1929, § 29-216; 1941 Comp., § 9-216; 1953 Comp., § 8-2-16.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

49-2-17. Definition of terms; right to vote or hold office.

Whenever the words "owners and proprietors" are used in this act they shall in all cases be construed to mean the members of the colony, community or town to which said grant was made, being all of the class of persons who were determined by the district court to be the owners thereof at the time of the incorporation of such grant by virtue of the act of February 26, 1891, and their descendants, residing within the exterior boundaries of such grant who have so resided continuously for not less than two years, and who own land in common within such exterior boundaries, and have paid taxes thereon. Providing, however, that only such persons as are defined in this section shall be qualified or permitted to participate in the elections provided in this chapter or to hold office as an officer or trustee of the grant.

History: Laws 1917, ch. 3, § 18; C.S. 1929, § 29-218; Laws 1939, ch. 202, § 1; 1941 Comp., § 9-218; 1953 Comp., § 8-2-18; Laws 1961, ch. 158, § 2.

ANNOTATIONS

Repealing saving clauses. — Laws 1917, ch. 3, § 19, provided that: "All acts or parts of acts in conflict with this act are hereby repealed, and especially said act of the legislative assembly of the territory of New Mexico, approved February 26, 1891, and the said act of said legislative assembly, approved March 18, 1897, but this repeal shall not affect the corporate existence of any corporation organized or incorporated under either of said acts."

The term "this act" and "this chapter" both refer to Laws 1917, ch. 3, §§ 1 to 20, compiled as 49-2-1 to 49-2-17 NMSA 1978.

Rights, etc., acquired by descendants of original owners. — The descendants of the original owners of beneficial interests in the common lands have acquired by descent, or devise, whatever rights, privileges and interests their ancestors possessed. *Armijo v. Town of Atrisco*, 1957-NMSC-045, 62 N.M. 440, 312 P.2d 91.

49-2-18. Conversion of corporations organized under Laws 1891, Chapter 86, into general corporations.

Twenty or more owners and proprietors of record of a corporation organized under Laws 1891, Chapter 86 may prepare proposed articles of incorporation and bylaws and a plan of conversion for the purpose of converting the existing corporation into a corporation organized under the general corporation law of this state. Upon notice, the proposers shall call a meeting of all owners and proprietors of record entitled to vote in the affairs of the existing corporation. The notice shall be published in English in a newspaper of general circulation in a county in which the existing corporation is located, once a week for three consecutive weeks, the last publication to be not more than thirty days prior to the date set for the meeting. Similar publication shall also be made in Spanish if there is a Spanish language newspaper of general circulation in the county. The proposed articles of incorporation and bylaws and the plan of conversion shall be presented at the meeting, and, if approved by a vote of the majority of the owners and proprietors of record present at the meeting, then, upon the filing of the articles of incorporation and bylaws with the secretary of state and the issuance of a certificate of incorporation, the corporation organized under Laws 1891, Chapter 86 is converted into a domestic corporation authorized to do business and entitled to all privileges and immunities of a domestic corporation organized under the general corporation laws of this state.

History: 1953 Comp., § 8-2-19, enacted by Laws 1967, ch. 43, § 1; 2013, ch. 75, § 14.

ANNOTATIONS

Compiler's notes. — Laws 1891, ch. 86, referred to in this section, was repealed by Laws 1917, ch. 3, § 19. *See* "Repealing saving clauses" note to 49-2-17 NMSA 1978.

The 2013 amendment, effective July 1, 2013, required the corporation to file its articles of incorporation and bylaws with the secretary of state; and in the fifth sentence, after "filing of the articles of incorporation and bylaws with the", deleted "state corporation commission" and added "secretary of state".

Section held not to violate due process. — Argument that this section lacked due process because of its failure to require personal service or mailing of written notice of the meeting and failure to provide for absentee voting was without merit since there is no inherent right in a stockholder of a corporation to vote by proxy, and since reasonable notice and a fair opportunity were given to the "owners and proprietors" of the grant to attend the meeting at which the proposed corporation was considered. *Westland Dev. Co. v. Saavedra*, 1969-NMSC-123, 80 N.M. 615, 459 P.2d 141.

Whatever is meant by "sale" and "conveyance" in 49-2-7 NMSA 1978 does not include the procedure enacted to change the character of the corporation itself. To hold otherwise would produce the absurd implication that a land grant corporation could have been converted into a domestic stock corporation by 49-2-7 NMSA 1978 even before the enactment of this section. It would also produce a rather unexplainable conflict between

the two provisions. Therefore, due process was not denied for failure to follow Section 49-2-7 NMSA 1978 since this section was the applicable statute. *Westland Dev. Co. v. Saavedra*, 1969-NMSC-123, 80 N.M. 615, 459 P.2d 141.

Power of state to alter or amend corporate charter. — Argument that a statute which attempted to change character of a legal entity from that of a corporation for the management of a community land grant to that of a domestic stock corporation was in violation of N.M. Const., art. II, § 18, in that it was an attempt by the legislature to divest the town of its vested rights without due process of law, was without merit since a state, through its police power, could make reasonable regulations of corporations, including alteration or amendment of corporate charters if that power had been duly reserved by the state, as was done in New Mexico. *Westland Dev. Co. v. Saavedra*, 1969-NMSC-123, 80 N.M. 615, 459 P.2d 141.

Incorrect finding of incorporation. — Since this section was not enacted until 1967, it is obvious that a trial court's finding, before that time, that a community land grant corporation was lawfully qualified as a domestic corporation is incorrect and cannot remain undisturbed. *Apodaca v. Tome Land & Improvement Co.*, 1978-NMSC-018, 91 N.M. 591, 577 P.2d 1237.

Void private land grant corporation has no right to proceeds from a land sale and no authority to pay such proceeds to its "shareholders." Conversion is present where the "shareholders" claim and erroneously receive proceeds of the sale. The party aggrieved cannot be deemed to have discovered she has a cause of action for conversion until the date of the judicial opinion which declares the company in question to be a void corporation. *Apodaca v. Unknown Heirs of Tome Land Grant*, 1982-NMSC-100, 98 N.M. 620, 651 P.2d 1264.

ARTICLE 3

Chaperito Grant

Section

- 49-3-1 Management vested in board of trustees; number.
- 49-3-2 Board of trustees; corporate powers; name; process; qualifications.
- 49-3-3 First election of trustees.
- 49-3-4 Election of successors; notice; terms of office.
- 49-3-5 Elections; qualifications of electors; canvassing returns; oath.
- 49-3-6 Officers of board; duties; treasurer's bond; secretary only to be compensated.
- 49-3-7 Meetings of trustees; quorum; vacancies; expenditures; per diem for trustees in attendance.
- 49-3-8 Powers of board of trustees enumerated.

49-3-1. [Management vested in board of trustees; number.]

That the management and control of the community lands of the people of Chaperito, within the county of San Miguel, in the state of New Mexico, within the exterior boundaries of the following described tract of land, to wit:

beginning at the northwest corner of the fence of Rafael Lucero; from thence on a straight line to the point or terminus of the Cuchilla Lagia; thence on a straight line northerly to the point or terminus of the Mesa del Velorio; thence southwesterly on a straight line to the source or beginning of the Rincon de los Torres; thence easterly to the junction of the Canada of the Rincon Hondo with the Canada of Laureano; thence on a straight line to the Puertecito del Norte, which goes to the Canada del Indio; thence northwesterly on a straight line to the intersection thereof with the line of the Las Vegas grant; thence southerly, following the Catron fence, which is easterly from the Canada del Indio to the east boundary line of the land of Rafael Lucero; thence northerly, to the northeast corner of the land of said Rafael Lucero; thence westerly, following the fence of said Rafael Lucero to the place of beginning, as the same was decreed in final decree rendered in cause no. 6419, in the district court of the fourth judicial district of the state of New Mexico, sitting within and for the county of San Miguel in said district, in that certain cause entitled in the civil docket of said court, Julius G. Day, et als. versus Sostenes Delgado, et als., defendants, and which said final decree was rendered by said court on December 12, 1913, is hereby vested in a board of trustees composed of three members, each of which shall be elected as this chapter provides.

History: Laws 1921, ch. 160, § 1; C.S. 1929, § 29-401; 1941 Comp., § 9-301; 1953 Comp., § 8-3-1.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Compiler's notes. — The term "this chapter" refers to Laws 1921, ch. 160, §§ 1 to 9, compiled as 49-3-1 to 49-3-8 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 73B C.J.S. Public Lands § 205.

49-3-2. [Board of trustees; corporate powers; name; process; qualifications.]

That such board shall be a body corporate, having full power to sue and be sued; in all suits the said body corporate shall be styled as "The Board of Trustees of the Community Lands of the People of Chaperito," and all process may be served on either member of the board of trustees. That all members of such board of trustees shall be inhabitants of and owners of lands within the limits of the said community lands of the people of Chaperito.

History: Laws 1921, ch. 160, § 2; C.S. 1929, § 29-402; 1941 Comp., § 9-302; 1953 Comp., § 8-3-2.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

49-3-3. [First election of trustees.]

That upon the petition of ten or more inhabitants of and owners of land within the said community lands of the people of Chaperito, it shall be the duty of the board of county commissioners of the county of San Miguel to order an election to be held for the choice of a board of trustees for the said community lands of the people of Chaperito, [and] such board of county commissioners shall appoint three competent and disinterested persons qualified to vote under the provisions of this chapter to serve as judges of such election and shall, by proclamation printed at least once a week for two successive weeks in some newspaper of general circulation published in the said county of San Miguel, give notice of the time and place of such election and the objects thereof.

History: Laws 1921, ch. 160, § 3; C.S. 1929, § 29-403; 1941 Comp., § 9-303; 1953 Comp., § 8-3-3.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Compiler's notes. — For the meaning of "this chapter", *see* compiler's notes to 49-3-1 NMSA 1978.

49-3-4. [Election of successors; notice; terms of office.]

That within thirty days of the expiration of the terms of office of such board of trustees, it shall be the duty of such board of trustees to call an election for the choice of their successors; to fix the time and place for the holding of the same; to appoint qualified persons to act as judges thereof and to give notice of such election by posting not less than five notices in conspicuous places within the exterior limits of the said community lands of the said people of Chaperito for the length of time as specified in the preceding section [49-3-3 NMSA 1978]. That the terms of office of such members of such board of trustees shall be for the period of two years and the elections herein provided for shall be held on the first Monday in September of each alternate year, commencing with the first Monday in September, 1922; provided, however, that the trustees elected at the election called in accordance with Section 3 [49-3-3 NMSA 1978] shall hold office only until their successors are elected at the election to be held on the first day of September, 1922.

History: Laws 1921, ch. 160, § 4; C.S. 1929, § 29-404; 1941 Comp., § 9-304; 1953 Comp., § 8-3-4.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

49-3-5. Elections; qualifications of electors; canvassing returns; oath.

At all the elections held under the provisions of this article, each actual inhabitant of the community lands of the people of Chaperito and the owners of land therein, who have reached the age of majority, shall be entitled to cast one vote in person, and the persons receiving the highest number of votes cast at any such election shall be the trustees of the community lands of the people of Chaperito for the period of two years as hereinbefore provided and until their successors are elected and qualified. At all elections held under the provisions of this article, the votes shall be canvassed and the result ascertained and determined by the outgoing board of trustees. Elections shall be conducted in a manner as near as possible to that of elections conducted under the Election Code [Chapter 1 NMSA 1978]. Each member of the board of trustees shall qualify within ten days after an election by filing with the secretary an oath subscribed by him to the effect that he will faithfully discharge the duties of his office, which oath shall be recorded in the minutes of the proceedings of the board.

History: Laws 1921, ch. 160, § 5; C.S. 1929, § 29-405; 1941 Comp., § 9-305; 1953 Comp., § 8-3-5; Laws 1973, ch. 138, § 10.

ANNOTATIONS

Compiler's notes. — The term "this article" refers to Laws 1921, ch. 160, §§ 1 to 9, compiled as 49-3-1 to 49-3-8 NMSA 1978.

49-3-6. [Officers of board; duties; treasurer's bond; secretary only to be compensated.]

That the board of trustees shall choose from the members thereof, one president, one secretary and one treasurer. The president shall preside at all meetings of the board and act as the executive officer thereof. He shall sign all warrants for the payment of money and other instruments of writing requiring the corporate seal. The treasurer shall give bond to the state of New Mexico, in such sum as the board of trustees shall require, the same to be conditioned for the faithful performance of the duties of his office. The secretary shall keep a record of the proceedings of the board, which record shall be open to public inspection at all reasonable hours, to attest all warrants for the payment of money, and other instruments of writing requiring the signature of the president. No compensation shall be voted at any time to any trustee or to any officer thereof, save the secretary.

History: Laws 1921, ch. 160, § 6; C.S. 1929, § 29-406; 1941 Comp., § 9-306; 1953 Comp., § 8-3-6.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

49-3-7. [Meetings of trustees; quorum; vacancies; expenditures; per diem for trustees in attendance.]

That the regular meetings of the board of trustees shall be held on the second Monday of each alternate month. Special meetings may be held at any time on the call of the president of the board. A majority of the board shall constitute a quorum for the transaction of business. All vacancies of the board shall be filled by the remaining, qualified members thereof, the persons appointed to fill such vacancies, to hold their offices until the election and qualification of their successors. All expenses for holding elections under the provisions of this chapter [and] all expenses necessary and proper, incurred in the exercise of the powers herein conferred, may be paid by the board of trustees out of any funds belonging to the said community lands of the people of Chaperito, and such members of the board of trustees shall be entitled to receive the sum of two dollars [(\$2.00)] per day for attending regular meetings, which amount may be paid by the board of trustees out of the funds belonging to the said community lands.

History: Laws 1921, ch. 160, § 7; C.S. 1929, § 29-407; 1941 Comp., § 9-307; 1953 Comp., § 8-3-7.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Compiler's notes. — For the meaning of "this chapter", *see* compiler's notes to 49-3-1 NMSA 1978.

49-3-8. [Powers of board of trustees enumerated.]

That the said board of trustees shall have the following powers:

- A. to control and manage the said community lands of the people of Chaperito and prescribe rules and regulations for the administration thereof;
- B. to prohibit all trespasses and depredations upon the same, or any part thereof;
- C. to institute action of ejectment to recover the possession of said lands or any part thereof, and any other action or suit that may be necessary and proper in the exercises [exercise] of the powers herein conferred;
- D. to pay all taxes and other expenses due on said community lands of the people of Chaperito;
- E. to have a common seal;
- F. to adopt all necessary rules and regulations for the management and control of the said lands and for the carrying out of the powers conferred in this chapter;
- G. in case the income exceeds the expenses, to expend the balance in such improvements upon the said community lands as will be for the general benefit of the people residing within the said lands.

History: Laws 1921, ch. 160, § 8; C.S. 1929, § 29-408; 1941 Comp., § 9-308; 1953 Comp., § 8-3-8

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Compiler's notes. — For the meaning of "this chapter", *see* compiler's notes to 49-3-1 NMSA 1978.

Cross references. — For ejectment, *see* 42-4-1 NMSA 1978 et seq.

ARTICLE 4 Chililí Grant

Section	
49-4-1	Chililí land grant-merced; ratification of partitions; governance.
49-4-2	Repealed.
49-4-3	Repealed.
49-4-4	Management of grant.
49-4-4.1	Definitions.
49-4-5	Board of trustees; management of grant; powers.
49-4-6	Board of trustees; qualifications.
49-4-7	Election of members of board of trustees; voters' qualifications; registration.
49-4-8	Election; canvassing votes.
49-4-9	Organization of board; bonds; vacancies.
49-4-10	Meetings.
49-4-11	Quorum.
49-4-12	Sale or mortgage of common lands; restrictions.
49-4-13	Meetings to be public; annual report.
49-4-14	Vacancies.
49-4-15	Salaries of trustees; records; expenditures.
49-4-16	Protection of common lands; delinquency; forfeiture.
49-4-17	Process; how served on board.
49-4-19	Registration.
49-4-20	Failure of trustee to perform duties; penalty.
49-4-21	Rights of lessees and purchasers.

49-4-1. Chililí land grant-merced; ratification of partitions; governance.

A. All apportionments or partitions of land on the grant of Chililí made by Inez Armenta as trustee or by his successors as trustees of the grant to the bona fide residents on the grant are hereby confirmed.

B. The government and control of the common lands of the Chililí land grant-merced, also known as la merced del pueblo de Chililí, is vested in five trustees, to be known officially as "the board of trustees of the Chililí land grant-merced", who shall manage and control the land grant-merced in accordance with the provisions of Chapter 49, Article 4 NMSA 1978.

History: Laws 1876, ch. 51, § 1; Code 1915, § 839; C.S. 1929, § 29-501; 1941 Comp., § 9-401; 1953 Comp., § 8-4-1; 2007, ch. 145, § 1.

ANNOTATIONS

Compiler's notes. — This article, identical with Article 4 of Chapter 22 of the 1915 Code, was not reenacted by its inclusion in that codification, but was compiled therein for convenience only.

The 2007 amendment, effective July 1, 2007, added Subsection B.

General community land grant provisions inapplicable. — The general statutes enacted in 1907 for management of community land grants, which provided for the sale of community lands, did not apply to the Chililí land grant, because of prior legislative provisions for management thereof contained in this article. *Merrifield v. Buckner*, 1937-NMSC-045, 41 N.M. 442, 70 P.2d 896.

No property interests in common lands conveyed. — Absolutely no property interests in the common lands were conveyed to the individual residents of the Chililí Land Grant of 1841 by the 1909 patent from the United States. *Moya v. Chilili Coop. Ass'n*, 1974-NMSC-100, 87 N.M. 99, 529 P.2d 1220, cert. denied, 421 U.S. 965, 95 S. Ct. 1954, 44 L. Ed. 2d 452 (1975).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 73B C.J.S. Public Lands § 205.

49-4-2. Repealed.

History: Laws 1876, ch. 51, § 2; Code 1915, § 840; C.S. 1929, § 29-502; 1941 Comp., § 9-402; 1953 Comp., § 8-4-2; repealed by Laws 2007, ch. 145, § 21.

ANNOTATIONS

Repeals. — Laws 2007, ch. 145, § 21 repealed 49-4-2 NMSA 1978, as enacted by Laws 1876, ch. 51, § 2, relating to the issuance of deeds, effective July 1, 2007. For provisions of former section, *see* the 2006 NMSA 1978 on *NMOneSource.com*.

49-4-3. Repealed.

History: Laws 1876, ch. 51, § 3; 1899, ch. 47, § 1; Code 1915, § 841; C.S. 1929, § 29-503; 1941 Comp., § 9-403; Laws 1943, ch. 47, § 1; 1953 Comp., § 8-4-3; 2007, ch. 145, § 21.

ANNOTATIONS

Repeals. — Laws 2007, ch. 145, § 21 repealed 49-4-3 NMSA 1978, as enacted by Laws 1876, ch. 51, § 3, relating to the board of trustees, effective July 1, 2007. For provisions of former section, *see* the 2006 NMSA 1978 on *NMOneSource.com*.

49-4-4. Management of grant.

The Chililí land grant-merced shall be controlled and governed by the Treaty of Guadalupe Hidalgo, by the provisions of Chapter 49, Article 4 NMSA 1978 as a political subdivision of the state and by all provisions of its bylaws not in conflict with the Treaty of Guadalupe Hidalgo or state law.

History: Laws 2007, ch. 145, § 3.

ANNOTATIONS

Cross references. — For the Treaty of Guadalupe Hidalgo, *see* the territorial laws and treaties published after the New Mexico Constitution in the NMSA 1978.

Effective dates. — Laws 2007, ch. 145, § 22 made Laws 2007, ch. 145, § 3 effective July 1, 2007.

49-4-4.1. Definitions.

As used in Chapter 49, Article 4 NMSA 1978:

- A. "board of trustees" means the board of trustees of the Chililí land grant-merced;
- B. "common lands" means lands owned by the Chililí land grant for the benefit of the heirs of the land grant-merced;
- C. "heir" means a person who is a descendant of the original grantees and has an interest in the common land of the land grant-merced through inheritance, gift or purchase;
- D. "land grant-merced" means the grant of land made by the government of Mexico to the town of Chililí in 1841, which was confirmed by congress in 1858 and issued a patent by the United States in 1909; and
- E. "qualified voting member" means an heir who is registered to vote in the land grant-merced as prescribed in the land grant-merced bylaws.

History: Laws 2007, ch. 145, § 2.

ANNOTATIONS

Effective dates. — Laws 2007, ch. 145, § 22 made Laws 2007, ch. 145, § 2 effective July 1, 2007.

49-4-5. Board of trustees; management of grant; powers.

The board of trustees shall have the power to:

- A. control, care for and manage the land grant-merced and real estate owned by the land grant-merced; prescribe the terms and conditions under which the common lands may be used and enjoyed; and make all necessary and proper bylaws, rules and regulations that shall be in substantial compliance with applicable statutes for the government thereof;
- B. sue and be sued and have the standing to sue in law or equity to protect and expand the common lands of the land grant-merced;
- C. convey, lease or mortgage the common lands of the land grant-merced in accordance with the land grant-merced bylaws;
- D. determine the number of animals that may be permitted to graze upon the common lands and determine other uses of the common lands that may be authorized;
- E. prescribe the price to be paid for the use of the common lands and resources of the land grant-merced and prohibit a person failing or refusing to pay that amount from using a portion of the common lands while the person continues in default in those payments; provided that the amount fixed shall be in proportion to the number and kinds of livestock pasturing upon the common lands or to other authorized use of the common lands;
- F. adopt and use an official seal;
- G. appoint judges and clerks of election at all elections provided for in Chapter 49, Article 4 NMSA 1978 and canvass the votes cast in those elections;
- H. make bylaws, rules and regulations, not in conflict with the constitution and laws of the United States or the state of New Mexico, as may be necessary for the protection, improvement and management of the common lands and real estate and for the use and enjoyment of the common lands and of the common waters of the land grant-merced;
- I. determine land use, local infrastructure and economic development of the common lands of the land grant-merced; and
- J. determine zoning of the common lands of the land grant-merced pursuant to a comprehensive plan approved by the local government division of the department of finance and administration that considers the health, safety and general welfare of the residents of the land grant-merced. The department of finance and administration shall select a qualified arbitrator to arbitrate for zoning conflicts between the land grant-merced and neighboring municipalities and counties.

History: Laws 2007, ch. 145, § 4.

ANNOTATIONS

Effective dates. — Laws 2007, ch. 145, § 22 made Laws 2007, ch. 145, § 4 effective July 1, 2007.

Power to sue and be sued. — The Chililí land grant board of trustees has the power to sue and be sued, which is necessarily implied from the express legislative grant of authority to pass ordinances and to sell and convey real property. *Shearton Dev. Co. v. Town of Chilili Land Grant*, 2003-NMCA-120, 134 N.M. 611, 78 P.3d 525, cert. denied, 2003-NMCERT-001, 134 N.M. 611, 81 P.3d 554 (decided under prior law).

Authority to sell and convey common lands. — Board of trustees of Chililí land grant was creature of legislature, and had only such powers as were conferred upon it, and no authority to sell the common land. *Merrifield v. Buckner*, 1937-NMSC-045, 41 N.M. 442, 70 P.2d 896 (decided under prior law).

Deed, executed by board of trustees of Chililí land grant, purporting to convey common land, was void for want of authority in the board to sell the common land, and grantees and their successors, in absence of adverse possession, were without title. *Merrifield v. Buckner*, 1937-NMSC-045, 41 N.M. 442, 70 P.2d 896 (decided under prior law).

Plaintiff's claim that several authorizations and requests purportedly signed by a number of residents of the town, authorizing the board of trustees to convey all grant lands to the defendant association, were fraudulent and granted no authority to the board of trustees is of no significance, since the 1943 amendment to this section empowered the board of trustees to sell and convey common lands of the grant without the approval of the residents of the town and the deed from the board was dated subsequent to the effective date of the 1943 amendment. *Moya v. Chilili Coop. Ass'n*, 1974-NMSC-100, 87 N.M. 99, 529 P.2d 1220, cert. denied, 421 U.S. 965, 95 S. Ct. 1954, 44 L. Ed. 2d 452 (1975) (decided under prior law).

No failure or inadequacy of consideration or constructive fraud. — Where prior to the conveyance of the grant lands to a cooperative association for \$1.00 the whole of the grant lands had been deeded to the state for delinquent taxes, and the farmers home loan administration, as a condition precedent to making a loan with which to redeem the lands, required the formation of the association and the conveyance to it of the grant lands, so that the lands were deeded to the association, the loan was obtained by the association, the delinquent taxes were paid and the lands redeemed by the association, there was no failure or inadequacy of consideration or constructive fraud on the part of the board. *Moya v. Chilili Coop. Ass'n*, 1974-NMSC-100, 87 N.M. 99, 529 P.2d 1220, cert. denied, 421 U.S. 965, 95 S. Ct. 1954, 44 L. Ed. 2d 452 (1975) (decided under prior law).

No reason for board's existence after conveyance. — The governing authority of boards of trustees of land grants is in the nature of that exercised by quasi-municipal corporations whose principal, if not only, function is to hold title to and manage common lands. Since the board had authority to sell and convey any or all of the grant's common lands, when

these lands were conveyed to the association, the right of the "heirs" of the grant to elect a board of trustees was not directly destroyed, but there was no reason for the board's continued existence. The loss of the reason for the existence of the board resulted from the exercise by the board of its legitimate authority and power. *Moya v. Chilili Coop. Ass'n*, 1974-NMSC-100, 87 N.M. 99, 529 P.2d 1220, cert. denied, 421 U.S. 965, 95 S. Ct. 1954, 44 L. Ed. 2d 452 (1975) (decided under prior law).

49-4-6. Board of trustees; qualifications.

The board of trustees shall consist of five members. If there is more than one precinct in the land grant-merced, no more than three members shall be residents of the same precinct; provided, however, that if the precinct boundaries do not coincide with the boundaries of the land grant-merced, the board of trustees may create districts that better reflect the distribution of population within the land grant-merced and that any one of which has no more than three members of the board of trustees as residents. A person shall be qualified to be a member of the board if the person is a qualified voting member and is not in default of any dues, rent or other payment for the use of any of the common lands of the land grant-merced.

History: Laws 2007, ch. 145, § 5.

ANNOTATIONS

Effective dates. — Laws 2007, ch. 145, § 22 made Laws 2007, ch. 145, § 5 effective July 1, 2007.

49-4-7. Election of members of board of trustees; voters' qualifications; registration.

A. Elections for the board of trustees shall be held on the first Monday in April or on a day designated in the bylaws, either every two or every four years as specified in the bylaws of the land grant-merced.

B. All qualified voting members of the land grant-merced are qualified to vote and may vote for trustees as specified in the land grant-merced bylaws.

C. The registration of qualified voting members shall be conducted in the manner prescribed in the land grant-merced bylaws. The secretary of the board of trustees shall maintain the registration books. Registration shall be closed beginning fifteen days before an election and reopened on the Monday following the election.

D. The registration books compiled before each election shall be used at that election. A person shall not vote at the election unless duly registered in the books, and a ballot of any unregistered person shall not be counted or canvassed.

E. A candidate for the board of trustees shall file a declaration of candidacy with the secretary of the board of trustees. The period when declarations of candidacy may be filed shall begin on the day the proclamation calling the election is published and shall remain open for at least ten days.

F. Whenever an election is to be called or is required by law, the board of trustees shall by resolution issue a public proclamation calling the election. The proclamation shall specify:

(1) the date on which the election will be held;

(2) the purpose for which the election is called;

(3) if positions on the board of trustees are to be filled, the date and time by which declarations of candidacy are to be filed;

(4) if a question is to be voted upon, the text of that question;

(5) the location of each polling place in the land grant-merced;

(6) the hours that each polling place will be open; and

(7) the date and time of the closing of the registration books.

G. Not less than thirty days nor more than forty-five days before the date of the election, the board of trustees shall publish in Spanish and English the proclamation in a local newspaper of general circulation available within the boundaries of the land grant-merced and post the proclamation in at least five public places within the land grant-merced.

H. The board of trustees shall appoint one election judge and at least two election clerks for each polling place. The election judge shall also be present for the canvass of the vote. No person shall be qualified for appointment or service as an election clerk or judge who is a spouse, parent, child, brother or sister of any candidate to be voted for at the election.

I. The board of trustees shall provide in the bylaws for the forms and procedures by which the land grant-merced elections are conducted. If the board of trustees chooses to provide for early or absentee voting, it shall specify in its bylaws the procedures by which early or absentee voting shall be conducted.

History: Laws 2007, ch. 145, § 6; 2009, ch. 131, § 2.

ANNOTATIONS

The 2009 amendment, effective June 19, 2009, in Subsection C, after "prescribed in the", deleted the remainder of the sentence which provided for substitution of terms used in the Election Code to make it applicable to the land grant and added the remainder of the first

sentence and the second sentence; deleted former Subsection E, which provided for public notice of the election; deleted former Subsection F, which provided the procedure for conducting elections; and added Subsections E through I.

The 2007 effective date — Laws 2007, ch. 145, § 22 made the section effective July 1, 2007.

49-4-8. Election; canvassing votes.

A. The candidates receiving the most votes cast for the open seats on the board of trustees shall be elected to the board.

B. The election judges and board of trustees shall meet not later than seven days following the election and canvass the votes cast and issue to each candidate duly elected to a seat on the board a certificate of election.

History: Laws 2007, ch. 145, § 7; 2011, ch. 112, § 2.

ANNOTATIONS

The 2011 amendment, effective April 7, 2011, required a plurality of votes to be elected to the board of trustees and required that certificates of election be issued only to those candidates who are elected.

The 2007 effective date — Laws 2007, ch. 145, § 22 made the section effective July 1, 2007.

49-4-9. Organization of board; bonds; vacancies.

A. All members of the newly elected board of trustees shall meet no later than seven days after the votes are canvassed and organize themselves by the election of a president, secretary and treasurer. The treasurer shall perform such duties as may be required by the board and shall furnish to the board a good and sufficient surety bond in a sum as set forth in this section, to be conditioned as are the bonds of other public officials handling public money. It is the duty of the treasurer to deposit all the money of the land grant-merced in a bank or credit union organized and doing business in New Mexico.

B. In the event of the death or resignation of the treasurer, the board shall fill the vacancy by appointing one of the members of the board as treasurer, who shall, before entering into the performance of the duties as treasurer, execute and furnish to the board a good and sufficient surety bond, similar to the bond entered into by the predecessor.

C. The amount of the bond required of the treasurer and the treasurer's successor shall at all times be for a sum of at least double the amount received by and deposited in the bank or credit union by the treasurer.

D. In the event the board of trustees delegates any other of its members to collect money due the land grant-merced, that person shall be bonded in the same manner as is provided in this section for the bonding of the treasurer.

E. Those authorized to collect money shall give receipts for the money collected, which receipts shall be in the form prescribed by the board of trustees in the bylaws as an official receipt.

History: Laws 2007, ch. 145, § 8; 2015, ch. 40, § 3.

ANNOTATIONS

The 2015 amendment, effective July 1, 2015, authorized land grant-merced funds to be deposited in a credit union; and, in Subsections A and C, after "bank", added "or credit union".

2007 Effective date. — Laws 2007, ch. 145, § 22 made the section effective July 1, 2007.

49-4-10. Meetings.

Regular meetings of the board of trustees shall be held no less than quarterly and in a public place as the board may determine in accordance with the bylaws. The time and place of regular meetings shall be posted in Spanish and English in a public place within the land grant-merced at least ten days prior to the meeting. Special meetings may be held at any time on call of the president, with five days' notice being given to each member.

History: Laws 2007, ch. 145, § 9.

ANNOTATIONS

Effective dates. — Laws 2007, ch. 145, § 22 made Laws 2007, ch. 145, § 9 effective July 1, 2007.

49-4-11. Quorum.

A majority of the members of the board of trustees shall constitute a quorum for the transaction of business, and the land grant-merced and its inhabitants shall be bound by the acts of the board pursuant to the provisions of Chapter 49, Article 4 NMSA 1978 and the land grant-merced bylaws.

History: Laws 2007, ch. 145, § 10.

ANNOTATIONS

Effective dates. — Laws 2007, ch. 145, § 22 made Laws 2007, ch. 145, § 10 effective July 1, 2007.

49-4-12. Sale or mortgage of common lands; restrictions.

A. A conveyance of a portion of or all of the common lands of the land grant-merced shall be effective only if:

(1) the conveyance is made in accordance with the land grant-merced bylaws and this section;

(2) the conveyance is made for the benefit of the land grant-merced;

(3) the board of trustees has approved a resolution to make the conveyance at a regular meeting held in accordance with Sections 9 and 12 of this 2007 act;

(4) the board of trustees has petitioned for an order affirming the board's resolution from the district court of the district in which the property is located; and

(5) the district court has issued an order affirming the board of trustees' resolution pursuant to Subsection D of this section.

B. An heir may file a written protest of a conveyance with the board of trustees and the district court within thirty days of the date that the resolution approving the conveyance is passed by the board. The board of trustees shall address and make a decision on the protest at a special meeting held in accordance with Sections 9 and 12 of this 2007 act within thirty days of receiving the protest.

C. An heir dissatisfied with a decision of the board of trustees may appeal to the district court of the county in which the property is located in the following manner:

(1) appeals to the district court shall be taken by serving a notice of appeal upon the board within thirty days of the decision. If an appeal is not timely taken, the action of the board of trustees is conclusive;

(2) the notice of appeal may be served in the same manner as a summons in civil actions brought before the district court or by publication in a newspaper printed in the county in which the property is located, once per week for four consecutive weeks. The last publication shall be at least twenty days prior to the date the appeal may be heard. Proof of service of the notice of appeal shall be made in the same manner as in actions brought in the district court and shall be filed in the district court within thirty days after service is complete. At the time of filing the proof of service and upon payment by the appellant of the civil docket fee, the clerk of the district court shall docket the appeal;

(3) costs shall be taxed in the same manner as in cases brought in the district court, and bond for costs may be required upon proper application; and

(4) the proceeding upon appeal shall be de novo as cases originally docketed in the district court. Evidence taken in a hearing before the board of trustees may be considered as original evidence subject to legal objection, the same as if the evidence was originally offered in the district court. The court shall allow all amendments that may be necessary in furtherance of justice and may submit any question of fact to a jury or to one or more referees at its discretion.

D. If the district court finds that all requirements of this section have been satisfied and that all protests and appeals are concluded, the court shall issue its order affirming the board of trustees' resolution conveying the property.

E. After the district court issues its order, the board of trustees shall execute the necessary documents in the name and under the seal of the land grant-merced, and all heirs shall be bound by the board's conveyance.

History: Laws 2007, ch. 145, § 11.

ANNOTATIONS

Cross references. — For procedure governing appeals to the district court, *see* 1-074 NMRA.

Effective dates. — Laws 2007, ch. 145, § 22 made the section effective July 1, 2007.

49-4-13. Meetings to be public; annual report.

A. All meetings of the board of trustees shall be held in accordance with the Open Meetings Act [Chapter 10, Article 15 NMSA 1978]. Executive sessions shall not be held except in accordance with the Open Meetings Act. All heirs of the land grant-merced shall have the right to be present at all times when the board of trustees is in session and to be heard on all matters in which they may be interested.

B. The board of trustees shall annually make public a report of all its transactions for that year. The report shall include agendas, minutes, any actions taken and all financial transactions. The report shall be maintained in a public place and available for public review.

C. The secretary of the board of trustees shall reduce to writing, in a book kept for that purpose, minutes of the business transacted at each meeting of the board of trustees.

History: Laws 2007, ch. 145, § 12.

ANNOTATIONS

Effective dates. — Laws 2007, ch. 145, § 22 made Laws 2007, ch. 145, § 12 effective July 1, 2007.

49-4-14. Vacancies.

If a vacancy occurs on the board of trustees, the remaining members shall fill the vacancy by appointment made at a regular meeting. The person appointed shall hold office until the next regular election.

History: Laws 2007, ch. 145, § 13.

ANNOTATIONS

Effective dates. — Laws 2007, ch. 145, § 22 made Laws 2007, ch. 145, § 13 effective July 1, 2007.

49-4-15. Salaries of trustees; records; expenditures.

A. The board of trustees may fix in the land grant-merced bylaws and pay to its members a salary not to exceed two hundred dollars (\$200) to any member in one month. The salary as fixed shall be in full as compensation for the duties performed by the board of trustees or the individual members within the exterior boundaries of the land grant-merced and for attendance at regularly scheduled meetings. The secretary of the board of trustees may be allowed a salary not to exceed two hundred twenty-five dollars (\$225) in one month.

B. Board of trustees members may be authorized per diem and mileage pursuant to the Per Diem and Mileage Act [10-8-1 through 10-8-8 NMSA 1978].

C. The board of trustees and the treasurer shall keep permanent and legible records capable of audit, and no money or funds shall be paid by the board of trustees or by any person authorized to expend money unless the expenditure is approved by a majority of the board of trustees and is in the form of a written check or in such a form that the date, amount and payee of the transaction are automatically recorded; and the payment is supported by an invoice or receipt.

History: Laws 2007, ch. 145, § 14; 2015, ch. 40, § 4.

ANNOTATIONS

The 2015 amendment, effective July 1, 2015, placed certain requirements on the expenditure of funds by the board of trustees of a land grant-merced; in Subsection C, after "expend money", deleted "except by written check drawn upon vouchers" and added the remainder of the sentence.

Effective dates. — Laws 2007, ch. 145, § 22 made the section effective July 1, 2007.

49-4-16. Protection of common lands; delinquency; forfeiture.

A. If the board of trustees brings an action in accordance with Subsection B of Section 4 of this 2007 act [49-4-5 NMSA 1978] and judgment is rendered in favor of the board of trustees, the court may award to the board of trustees possession of the tract, piece or parcel of the land and such damages as it may have proved for the wrongful detention and any other remedy provided for by law.

B. A delinquent heir shall lose all right that the heir may have had to use the common lands of the land grant-merced unless the heir pays in full all legal assessments or dues due by the heir.

History: Laws 2007, ch. 145, § 15.

ANNOTATIONS

Effective dates. — Laws 2007, ch. 145, § 22 made Laws 2007, ch. 145, § 15 effective July 1, 2007.

49-4-17. Trespass on common lands or waters; injunctions.

The courts of this state shall entertain bills of complaint filed by the board of trustees of the land grant-merced to enjoin persons from trespassing upon the common lands or using the common waters within the land grant-merced if it appears that the complainant is without a plain, speedy and adequate remedy at law or that the persons committing trespass are insolvent or unable to respond in damages.

History: Laws 2007, ch. 145, § 16.

ANNOTATIONS

Effective dates. — Laws 2007, ch. 145, § 22 made Laws 2007, ch. 145, § 16 effective July 1, 2007.

49-4-18. Process; how served on board.

Process in all actions or suits against the board of trustees of the land grant-merced shall be served upon the president or, in the president's absence, upon the secretary.

History: Laws 2007, ch. 145, § 17.

ANNOTATIONS

Effective dates. — Laws 2007, ch. 145, § 22 made Laws 2007, ch. 145, § 17 effective July 1, 2007.

49-4-19. Registration.

The board of trustees shall register its bylaws and a list of current officers with the land grant council in accordance with the provisions of Section 49-1-23 NMSA 1978. The board of trustees shall notify the land grant council of the names and positions of the land grant-merced's elected or appointed officers upon their election or appointment.

History: Laws 2007, ch. 145, § 18; 2013, ch. 4, § 2.

ANNOTATIONS

The 2013 amendment, effective March 8, 2013, transferred the New Mexico community land grant registry from the secretary of state to the land grant council; and in the first sentence, after "current officers with the", deleted "secretary of state" and added "land grant council", and in the second sentence, after "shall notify the", deleted "secretary of state" and added "land grant council".

Temporary provisions. — Laws 2013, ch. 4, § 3, effective March 8, 2013, provided that the secretary of state shall transfer to the land grant council the New Mexico community land grant registry, all associated records and all other records and documents submitted to the secretary of state pursuant to Sections 49-1-23 and 49-4-19 NMSA 1978.

Effective dates 2007. — Laws 2007, ch. 145, § 22 made the section effective July 1, 2007.

49-4-20. Failure of trustee to perform duties; penalty.

Any member of the board of trustees who fails or refuses to perform any of the duties required to be performed by the board of trustees of the land grant-merced by Chapter 49, Article 4 NMSA 1978 or by any other law of New Mexico is guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than twenty-five dollars (\$25.00) nor more than one hundred dollars (\$100) or by imprisonment in the county jail for a period of not less than thirty days nor more than ninety days, or both.

History: Laws 2007, ch. 145, § 19.

ANNOTATIONS

Effective dates. — Laws 2007, ch. 145, § 22 made Laws 2007, ch. 145, § 19 effective July 1, 2007.

49-4-21. Rights of lessees and purchasers.

A. A person who is not an heir and who purchases or leases property within the limits of the land grant-merced shall only have a right to the lands acquired through the purchase or lease but not to any common lands within the land grant-merced.

B. The provisions of Chapter 49, Article 4 NMSA 1978 shall not diminish, extinguish or otherwise impair any private property interest located within the boundaries of the land grant-merced or be construed to grant the board of trustees regulatory authority over such property interests or lands other than the common lands held by the land grant-merced. As used in this subsection, "property interest" includes valid easements and rights of access, but does not include use rights to the common lands of the land grant-merced.

History: Laws 2007, ch. 145, § 20.

ANNOTATIONS

Effective dates. — Laws 2007, ch. 145, § 22 made Laws 2007, ch. 145, § 20 effective July 1, 2007.

ARTICLE 5
Doña Ana County Grants

Section	
49-5-1	Management vested in boards of trustees; exception.
49-5-2	Corporate powers; name; process.
49-5-3	Qualifications of trustees.
49-5-4	First election of trustees; notice.
49-5-5	Election of successors; notice; judges.
49-5-6	Election; electors; canvassing returns; oath.
49-5-7	Officers; duties; secretary-treasurer's bond; compensation.
49-5-8	General powers of board.
49-5-9	Disposition of lands; authorization.
49-5-10	Meetings of board; quorum; vacancies; expenditures.

49-5-1. [Management vested in boards of trustees; exception.]

That the management and control of the community land grants within the county of Doña Ana, in the state of New Mexico, and the legal and equitable title to all the lands within the exterior boundaries of such grants to which any colony or community is entitled on February 23, 1905, are hereby vested in boards of trustees, each of which shall be elected as in this article provided: provided, however, that nothing in this article shall be construed to in any way affect any land grant now incorporated under the provisions of any general or special act.

History: Laws 1905, ch. 21, § 1; Code 1915, § 818; C.S. 1929, § 29-301; 1941 Comp., § 9-501; 1953 Comp., § 8-5-1.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Compiler's notes. — This article, which is identical with Article 2 of Chapter 22 of the 1915 Code, was not reenacted by its inclusion in that codification, but was compiled therein for convenience only.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 73B C.J.S. Public Lands § 205.

49-5-2. [Corporate powers; name; process.]

That each of such boards shall be a body corporate, having full power to sue and be sued, besides the other powers hereinafter mentioned. In all suits the said body corporate shall be styled, "The Board of Trustees of the Community Grant," and all process

may be served on either the president or the secretary-and-treasurer of the board of trustees.

History: Laws 1905, ch. 21, § 2; Code 1915, § 819; C.S. 1929, § 29-302; 1941 Comp., § 9-502; 1953 Comp., § 8-5-2.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

49-5-3. [Qualifications of trustees.]

That all members of such boards of trustees shall be inhabitants of, and the owners of lands within the limits of the particular grant for which they shall have been elected trustees.

History: Laws 1905, ch. 21, § 3; Code 1915, § 820; C.S. 1929, § 29-303; 1941 Comp., § 9-503; 1953 Comp., § 8-5-3.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

49-5-4. [First election of trustees; notice.]

That upon the petition of twenty or more inhabitants of, and owners of lands within, any one of such land grants, it shall be the duty of the board of county commissioners of the said county of Dona Ana to order an election to be held for the choice of a board of trustees for the grant specified in the petition. Such board of county commissioners shall appoint three competent and disinterested persons, qualified to vote under the provisions of this article, to serve as judges of such election and shall by proclamation printed at least once a week for two successive weeks in some newspaper of general circulation published in the said county of Dona Ana give notice of the time and place of such election and the objects thereof.

History: Laws 1905, ch. 21, § 4; Code 1915, § 821; C.S. 1929, § 29-304; 1941 Comp., § 9-504; 1953 Comp., § 8-5-4.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

49-5-5. [Election of successors; notice; judges.]

That within thirty days of the expiration of the terms of office of any such board of trustees, it shall be the duty of such board to call an election for the choice of their successors, to fix the time and place for the holding of the same, to appoint qualified persons to act as judges thereof, and to give notice of such election in the manner and for the length of time specified in the preceding section [49-5-4 NMSA 1978].

History: Laws 1905, ch. 21, § 5; Code 1915, § 822; C.S. 1929, § 29-305; 1941 Comp., § 9-505; 1953 Comp., § 8-5-5.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

49-5-6. Election; electors; canvassing returns; oath.

At all the elections held under the provisions of this article, each actual inhabitant of the grant and owner of land therein, who has reached the age of majority, shall be entitled to cast one vote in person, and the five persons receiving the highest number of votes cast at any such election shall be the trustees of the grant and hold their offices for the period of two years and until their successors are elected and qualified. At all elections held under the provisions of this article the votes shall be canvassed and the result ascertained and determined by the outgoing board of trustees. Elections shall be conducted in a manner as near as possible to that of elections conducted under the Election Code [Chapter 1 NMSA 1978]. Each member of the board of trustees shall qualify within ten days after his election by filing with the secretary-and-treasurer an oath subscribed by him to the effect that he will faithfully discharge the duties of his office, which oath shall be recorded in the minutes of the proceedings of the board.

History: Laws 1905, ch. 21, § 6; Code 1915, § 823; C.S. 1929, § 29-306; 1941 Comp., § 9-506; 1953 Comp., § 8-5-6; Laws 1973, ch. 138, § 11.

49-5-7. [Officers; duties; secretary-treasurer's bond; compensation.]

That the board of directors shall choose a president and a secretary-and-treasurer. The president shall be chosen from the members of the board, shall preside at all meetings of the board and act as the executive officer thereof. He shall sign all warrants for the payment of money and all deeds and other instruments of writing requiring the corporate seal.

The secretary-and-treasurer shall give bond to the state of New Mexico in such sum as the board of trustees shall require, the same to be conditioned for the faithful performance of the duties of his office. It shall be his duty to keep a record of the proceedings of the board, which record shall be open to public inspection at all reasonable hours, to attest all warrants for the payment of money and all deeds and other instruments of writing requiring the

signature of the president. He shall be the custodian of all funds, moneys and papers belonging to the board of trustees. No compensation shall be voted at any time to any trustee or to any officer thereof, save the secretary-and-treasurer.

History: Laws 1905, ch. 21, § 7; Code 1915, § 824; C.S. 1929, § 29-307; 1941 Comp., § 9-507; 1953 Comp., § 8-5-7.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

49-5-8. [General powers of board.]

That said board of trustees shall have the following powers:

A. to control and manage the land grant and prescribe rules and regulations for the administration thereof; to prohibit all trespasses and depredations upon the unallotted and unappropriated lands within the grant; to institute actions of ejectment to recover the possession of any such unallotted and unappropriated lands and any other action or suit that may be necessary and proper in the exercise of the powers herein conferred;

B. to sell, convey, lease, mortgage or otherwise dispose of, under such rules and regulations as the board shall adopt for the purpose, the unallotted and unappropriated lands within the grant; but no such sale, conveyance or mortgaging of any such lands, or lease thereof for a longer period than five years, shall be made until such lands shall have first been appraised by at least two disinterested inhabitants of the grant, to be appointed by the judge of the district court for the county, nor for a sum less than two-thirds of the appraised value;

C. to recognize and confirm by deed of conveyance all bona fide adverse holdings of real estate within the grant: provided, however, that if any such board shall fail or refuse to make such conveyance upon demand the person aggrieved shall have the right to file a bill of complaint in the district court for the county, praying that such board may be compelled to confirm and convey to him and his heirs and assigns the lands described in the bill of complaint. If, upon the hearing of such cause, it shall appear that such person is entitled, under the laws, usages and customs of Spain, Mexico, the state of New Mexico or the United States, to such land, a decree shall be entered in such cause requiring such board of trustees to confirm and convey to him, and his heirs and assigns, the lands aforesaid: provided, however, that no part of the costs of such suit or proceeding [proceedings] shall be taxed to the board of trustees or paid by such board.

Any conveyance made in pursuance of the provisions of this article shall operate to conclude all persons claiming by, through or under the original title upon which the owners of such grant base their claim thereto the lands described in such conveyance. The words "owner" or "owners," wherever the same occur in this article, shall be construed to mean

the members of the colony or community to which said grant was originally made, or their successors in interest, including all persons residing within the limits of the grant who shall have been in occupancy and adverse possession of any part or portion of such grant for a period of two years or more next preceding February 23, 1905;

D. to have a common seal;

E. to adopt all necessary rules and regulations for the carrying out of the powers conferred in this article.

History: Laws 1905, ch. 21, § 8; Code 1915, § 825; C.S. 1929, § 29-308; 1941 Comp., § 9-508; 1953 Comp., § 8-5-8.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

49-5-9. [Disposition of lands; authorization.]

That no sale, mortgage, lease or other disposition of the unallotted and unappropriated lands within the grant, authorized under the provisions of this article, nor any confirmation or conveyance, as provided in Section 49-5-8 NMSA 1978, shall take effect or become operative until after the regular meeting of the board of trustees held next after the meeting at which the resolution authorizing such sale, mortgage, leasing confirmation, conveyance or other disposition of the lands involved is passed, and the corporation shall not be bound by any such resolution unless the same shall have been passed at a regular meeting of the board and by a majority vote of all the members of the board.

History: Laws 1905, ch. 21, § 9; Code 1915, § 826; C.S. 1929, § 29-309; 1941 Comp., § 9-509; 1953 Comp., § 8-5-9.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

49-5-10. [Meetings of board; quorum; vacancies; expenditures.]

That the regular meetings of the board of trustees shall be held on the first Monday of each alternate month. Special meetings may be held at any time on the call of the president of the board. A majority of the board shall constitute a quorum for the transaction of business, save as hereinbefore provided. All vacancies in the board shall be filled [filled] by the remaining qualified members thereof, the persons appointed to fill such vacancies to hold their offices until the election and qualification of their successors. All expenses for holding elections under the provisions of this article, and all expenses necessary and proper

incurred in the exercise of the powers herein conferred may be paid by the board of trustees out of the funds belonging to the corporation.

History: Laws 1905, ch. 21, § 10; Code 1915, § 827; C.S. 1929, § 29-310; 1941 Comp., § 9-510; 1953 Comp., § 8-5-10.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

ARTICLE 6

Las Vegas Grant

Section	
49-6-1	Jurisdiction vested in district court.
49-6-2	Appointment of board of trustees.
49-6-3	Board of trustees; number; residence qualification.
49-6-4	Officers; quorum in board meetings.
49-6-5	Control of board by court.
49-6-6	Bonds of trustees.
49-6-7	Compensation of trustees.
49-6-8	Transaction of business by board; authority of district court to make rules.
49-6-9	Lease, sale or mortgage of land.
49-6-10	Vested rights not affected; issuance of deeds; prior deeds validated.
49-6-11	Investment of funds; permanent school fund established.
49-6-12	Bonds and securities; custody by county treasurer; collection of principal and interest.
49-6-13	School district apportionment; improvement, repair and construction of school buildings; advertising for bids; contractor's bond.
49-6-14	Construction of veterans' memorial public school.

49-6-1. [Jurisdiction vested in district court.]

That the district court of San Miguel county, in the state of New Mexico, is vested with jurisdiction to manage, control and administer that land claim known as "The Las Vegas Land Grant," confirmed by the act of congress on the twenty-first day of June, A.D. 1860, to the town of Las Vegas.

History: Laws 1903, ch. 47, § 1; Code 1915, § 842; C.S. 1929, § 29-601; 1941 Comp., § 9-601; 1953 Comp., § 8-6-1.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Compiler's notes. — This article, which is almost identical with Article 5 of Chapter 22 of the 1915 Code, was not reenacted by its inclusion in that codification, but was compiled therein for convenience only.

Act of Congress. — The act of congress referred to in this section is 12 Stat. 71.

Grant not tax exempt under constitution or Springer Act. — The Las Vegas grant, represented by a board of trustees with certain powers, is not a town, city or other municipal corporation, within the meaning of N.M. Const., art. VIII, § 3, exempting such towns, cities

and other municipal corporations from taxation. *Davy v. McNeill*, 1925-NMSC-040, 31 N.M. 7, 240 P. 482; *State v. Board of Trustees*, 1922-NMSC-029, 28 N.M. 237, 210 P. 101.

Where the Las Vegas grant previously had been held for tax purposes not to be a town, city or other municipal corporation within the contemplation of N.M. Const., art. VIII, § 3, such holding was equally applicable within the contemplation of the provisions of the Springer Act, former 48 U.S.C. § 1471, and of N.M. Const., art. IV, § 24. *Board of Trustees v. Montano*, 1971-NMSC-025, 82 N.M. 340, 481 P.2d 702.

Special legislation provisions inapplicable. — In view of the difference in the nature and origin of the different community land grants; in view of the long legislative history of enactments relating to the control, or management, of the lands of specific grants; in view of the fact that there is some discretion in the legislature to determine in which cases special laws should be passed and in view of the presumptions indulged in favor of the validity of legislation, supreme court held that the prohibitions against special legislation as contained in the Springer Act, former 48 U.S.C. § 1471, and in N.M. Const., art. IV, § 24, were not applicable to enactments relating to the governing or managing bodies of the Las Vegas grant or any specific community land grants, or to the manner in which these bodies exercise their powers of control, management and disposition over grant lands. *Board of Trustees v. Montano*, 1971-NMSC-025, 82 N.M. 340, 481 P.2d 702.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 73B C.J.S. Public Lands § 205.

49-6-2. [Appointment of board of trustees.]

On July first in each alternate year after July 1, 1914, the district court of San Miguel county, New Mexico, shall appoint a board of trustees to have the control and management of the tract of land known as the Las Vegas land grant, to be known and designated as the board of trustees of the town of Las Vegas, and said board in and by said name may sue and be sued, and shall hold their office for a term of two years, and until their successors are appointed and qualified. And it shall be the duty of said board when so appointed to immediately organize by selecting from among its members a president, a vice president and a treasurer of said board and to employ a suitable and competent person who shall not be a member of said board as the clerk or secretary thereof whose compensation shall be fixed by said board.

History: Laws 1909, ch. 103, § 1; Code 1915, § 852; C.S. 1929, § 29-611; 1941 Comp., § 9-602; 1953 Comp., § 8-6-2.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Compiler's notes. — Laws 1909, ch. 103, § 1, as enacted, contained the following preliminary provision: "The terms of office of all persons appointed as members of the board of trustees of the town of Las Vegas, and now serving as such in conformity with an act, entitled 'An act to provide for the management of the Las Vegas grant and for other purposes,' being chapter 47 of the Laws of the year 1903, or whose appointment was ratified and confirmed by the said act, shall terminate on the first day of July, 1909; and on said date, each two years thereafter," and then followed as in this section with "the district court" The opening words in this section before "the district court" were added by the compilers of the 1915 Code.

Laws 1909, ch. 103, § 1, as enacted, also contained, just before the present second sentence, "And which said board shall consist of not less than three nor more than five persons, to be appointed from among residents on the land embraced within the exterior boundaries of said Las Vegas grant."

Laws 1909, ch. 103, § 6, read: "The said board of trustees shall have all the power and authority conferred by an act, entitled 'An act to provide for the management of the Las Vegas grant and for other purposes,' being chapter 47 of the Laws of the year 1903, which said act is hereby continued in force, except as to any provisions thereof as are in conflict herewith." By its omission from the 1915 Code, Section 6 was apparently repealed.

See compiler's note to 49-6-8 NMSA 1978, as to name of board.

49-6-3. [Board of trustees; number; residence qualification.]

That said district court shall, in the exercise of the jurisdiction conferred upon it, appoint a board of trustees to consist of not less than three nor more than five persons from among residents upon the land embraced within the exterior boundaries of said Las Vegas land grant.

History: Laws 1903, ch. 47, § 2; Code 1915, § 843; C.S. 1929, § 29-602; 1941 Comp., § 9-603; 1953 Comp., § 8-6-3.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Compiler's notes. — Laws 1903, ch. 47, § 10, ratified and confirmed all appointments of trustees made by the district court of San Miguel County prior to March 12, 1903, for the management of said Las Vegas grant and all acts and things done and performed in assuming jurisdiction in managing, controlling, and administering said grant.

Laws 1909, contained provisions almost identical with this section, which was derived from Laws 1903, ch. 47. *See* compiler's notes to 49-6-2 NMSA 1978.

49-6-4. [Officers; quorum in board meetings.]

That said board of trustees shall organize by selecting one of their number as chairman of said board of trustees who shall preside over the meetings of said board, and another, of said board, as secretary, whose duties it shall be to keep and preserve the records and doings of said board of trustees. A majority of said board shall constitute a quorum for the transaction of any and all business coming before said board.

History: Laws 1903, ch. 47, § 3; Code 1915, § 844; C.S. 1929, § 29-603; 1941 Comp., § 9-604; 1953 Comp., § 8-6-4.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Compiler's notes. — Laws 1903, ch. 47, § 3, contained the following first sentence: "Said board of trustees, when appointed as hereby provided, shall organize by selecting one of their number as chairman of said board of trustees who shall preside over the meetings of said board, and another, of said board, as secretary, whose duties it shall be to keep and preserve the records and doings of said board of trustees." This sentence is deemed superseded by 49-6-2 NMSA 1978.

49-6-5. [Control of board by court.]

That the said district court of San Miguel county shall exercise the same control over the said board of trustees, and over the acts and doings of said board of trustees, that courts of equity exercise over receivers appointed by them and over the acts and doings of their receivers.

History: Laws 1903, ch. 47, § 4; Code 1915, § 845; C.S. 1929, § 29-604; 1941 Comp., § 9-605; 1953 Comp., § 8-6-5.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

49-6-6. [Bonds of trustees.]

That any and all persons appointed by said court as trustees under the provisions of this article, shall give bond to the state of New Mexico conditioned as receiver's bonds are.

History: Laws 1903, ch. 47, § 5; Code 1915, § 846; C.S. 1929, § 29-605; 1941 Comp., § 9-606; 1953 Comp., § 8-6-6.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Meaning of "this article". — The term "this article" refers to Laws 1903, ch. 47, §§ 1 to 9, compiled as 49-6-1 and 49-6-3 to 49-6-10 NMSA 1978.

49-6-7. [Compensation of trustees.]

Said trustees shall be paid such reasonable compensation as the said district court shall order or direct: provided, that it shall in no event exceed three hundred dollars [(\$300)] per year for each member thereof.

History: Laws 1903, ch. 47, § 6; Code 1915, § 847; C.S. 1929, § 29-606; 1941 Comp., § 9-607; 1953 Comp., § 8-6-7.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Compiler's notes. — Laws 1909, ch. 103, § 5, read: "The compensation to be paid to the members of the said board of trustees above provided for, shall in no event exceed the sum of three hundred dollars per year for each member thereof." By its omission from the 1915 Code, it was apparently repealed. *See* compiler's notes to 49-6-2 NMSA 1978.

49-6-8. [Transaction of business by board; authority of district court to make rules.]

That said board of trustees shall be known and designated as the "Board of Trustees of the Town of Las Vegas," and under that name shall contract and transact all business coming before said board, and said district court is hereby authorized to make and promulgate rules and regulations under and pursuant to which said board of trustees shall conduct and transact all business pertaining to the management, control and administration of said land grant.

History: Laws 1903, ch. 47, § 8; Code 1915, § 849; C.S. 1929, § 29-608; 1941 Comp., § 9-608; 1953 Comp., § 8-6-8.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Compiler's notes. — Section 49-6-2 NMSA 1978 gives the board the same name as was established by this section and made it the name in which said board should sue and be sued. That section was derived from Laws 1909, ch. 103.

Service by publication permitted. — Although the confirnee is an unincorporated town, service by publication may be made upon it. *Priest v. Board of Trustees*, 1911-NMSC-072, 16 N.M. 692, 120 P. 894, *aff'd*, 232 U.S. 604, 34 S. Ct. 443, 58 L. Ed. 751 (1914).

Jurisdiction not acquired. — In suit to quiet title against trustees of the grant, where they could be definitely located and served with process, but were not joined by name, the court did not acquire jurisdiction. *Priest v. Board of Trustees*, 1911-NMSC-072, 16 N.M. 692, 120 P. 894, *aff'd*, 232 U.S. 604, 34 S. Ct. 443, 58 L. Ed. 751 (1914).

49-6-9. [Lease, sale or mortgage of land.]

Such board of trustees shall have the power, under the direction of said court, to lease, sell or mortgage any part or parts of said tract of land, for such price and upon such terms or conditions as may by said court and said board be deemed advisable and use the proceeds thereof for such purposes as said board and court may deem to be for the best interests of the community for the benefit of which said grant was made.

History: Laws 1903, ch. 47, § 9; Code 1915, § 850; C.S. 1929, § 29-609; 1941 Comp., § 9-609; 1953 Comp., § 8-6-9.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Compiler's notes. — Laws 1903, provided: "Any and all appointments of trustees made by the district court of San Miguel County prior to March 12, 1903, for the management of said Las Vegas grant, and all acts and things done and performed by said district court of San Miguel County in assuming jurisdiction in managing, controlling and administering said Las Vegas grant, are ratified and confirmed."

49-6-10. [Vested rights not affected; issuance of deeds; prior deeds validated.]

This article shall not interfere with or prejudice any vested rights in and to any of the lands embraced within the boundaries of said Las Vegas grant, or preclude a judicial examination or adjustment thereof, and it is hereby made the duty of said board of trustees to make, execute and deliver deeds of conveyance to any and all persons who hold a title to any such lands, which became or was perfect or entitled them to the possession thereof at the time of the acquisition of New Mexico, under the treaty of Guadalupe Hidalgo, or at any other time subsequent thereto. It is made the further duty of said board of trustees, by and with the approval of the judge of the district court for San Miguel county, to make, execute and

deliver deeds of conveyance, free of cost, except for surveys, platting the same and other necessary expenses, to any and all persons making application therefor, who have held sufficient lands embraced within the boundaries of said Las Vegas grant, in actual possession, for a period of not less than ten years prior to the date of said application, to entitle them to receive one hundred and sixty acres of land under the rules of the board: provided, however, that not more than one hundred and sixty acres shall be so granted or deeded to any one person, and also provided, that where community settlements of titles can be made, only such amounts of land shall be granted as have been under cultivation and a reasonable amount additional as in the opinion of the board shall be just and equitable to all the resident [residents] of said grant. And all such deeds executed by said board of trustees prior to March 18, 1909 and approved by the court are hereby validated and confirmed.

History: Laws 1903, ch. 47, § 7; 1909, ch. 103, § 7; Code 1915, § 848; C.S. 1929, § 29-607; 1941 Comp., § 9-610; 1953 Comp., § 8-6-10.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Compiler's notes. — For the meaning of "this article", *see* compiler's notes to 49-6-6 NMSA 1978.

Confirnee to be named in complaint to quiet title. — Where suit to quiet title seeks to bar known confirnee of grant, the confirnee should be named in the complaint and not described as an unknown claimant. *Priest v. Board of Trustees*, 1911-NMSC-072, 16 N.M. 692, 120 P. 894, *aff'd*, 232 U.S. 604, 34 S. Ct. 443, 58 L. Ed. 751 (1914).

49-6-11. [Investment of funds; permanent school fund established.]

It shall be the duty of the board of trustees of the town of Las Vegas administering the Las Vegas grant to invest any and all moneys in its hands or under its control, or which may be received by said board, except such amount as the district court for San Miguel county, New Mexico, may from time to time deem necessary to be held to pay the current and other expenses of said board, as follows:

A. in interest-bearing bonds of the United States, or of the state of New Mexico, or of any county, municipality or political subdivision thereof authorized by law to issue bonds;

B. in first mortgage bonds of any corporation, organized for the purpose of acquiring, constructing and operating a storage reservoir at the Sanguijuela Arroyo in San Miguel county, New Mexico, and irrigation works in connection therewith to irrigate lands on the Las Vegas grant, secured by first mortgage on such reservoir and irrigation works, and all lands belonging to the Las Vegas grant coming under the said irrigation system and irrigable therefrom and which bonds shall bear interest at the rate of not less than six per

centum per annum; or in a loan or loans to such a corporation or to any person, firm or corporation contracting to acquire, construct or operate such reservoir, water rights pertaining thereto and irrigation works, such loan or loans to be secured by first mortgage on said reservoir and water rights pertaining thereto, and irrigation works, and all lands belonging to the Las Vegas grant coming under the said irrigation system and irrigable therefrom, or by a contract which will assure the repayment of said moneys, with interest at the rate of not less than six per centum per annum. Provided, that all bonds purchased under the provisions of this section shall be first mortgage bonds, and that no bonds or securities shall be purchased or loans made out of such moneys without the approval of said court.

Said moneys when so invested shall constitute a permanent school fund for the purposes hereinafter stated, the principal of which shall under no circumstances be lessened or impaired and shall remain inviolate. Such moneys may be temporarily deposited in some bank or banks, designated by said court and said board of trustees, upon certificates of deposit bearing interest at the rate of not less than four per centum per annum.

History: Laws 1909, ch. 103, § 2; 1912, ch. 64, § 1; 1913, ch. 86, § 1; Code 1915, § 853; C.S. 1929, § 29-612; 1941 Comp., § 9-611; 1953 Comp., § 8-6-11.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Cross references. — For public depositories, *see* 6-10-10 NMSA 1978.

Funds handled by board of control are public funds and within meaning of Public Moneys Act, which was intended to provide system of uniform accounting for all such moneys, unless specially excepted by statute, and such control is now vested in state comptroller (office now abolished), and costs of audit not made at request of such grant are not at its expense. 1931-32 Op. Att'y Gen. Nos. 31-34, 31-40.

49-6-12. [Bonds and securities; custody by county treasurer; collection of principal and interest.]

The bonds and securities in which said funds are from time to time invested shall be forthwith deposited with the treasurer of San Miguel county, New Mexico; and it is made the duty of said treasurer to receive and have the custody of such bonds and securities, to collect and pay the same over to the treasurer of said board of trustees, the principal thereof at maturity, to be reinvested and forthwith to pay the same over to the treasurer of the board of trustees of the town of Las Vegas administering the Las Vegas grant to be by said board reinvested in other bonds or securities chosen and approved by said board and court; and it shall also be the duty of the said treasurer of said county to collect the interest on all such bonds and securities and to place the same or such portion thereof as may be determined by such board and court as hereinafter provided, to the credit of the several school districts

within the Las Vegas grant in proportion to the number of children of school age within said districts respectively.

History: Laws 1909, ch. 103, § 3; 1913, ch. 86, § 2; Code 1915, § 854; C.S. 1929, § 29-613; 1941 Comp., § 9-612; 1953 Comp., § 8-6-12.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

49-6-13. [School district apportionment; improvement, repair and construction of school buildings; advertising for bids; contractor's bond.]

It is the duty of the superintendent of schools of said San Miguel county, on or before the tenth day of January of each year, to certify to said county treasurer the number of children of school age residing in each of the school districts within the Las Vegas grant, and said treasurer shall thereupon place to the credit of each of said school districts the amount to which it may be entitled under said apportionment, to be drawn out and expended as other moneys of said school district.

If at any time said district court and said board of trustees shall deem it necessary, expedient and proper, they may expend such sums of money as they may consider necessary and proper, of the interest derived from said permanent fund and such parts, portions and amounts of said permanent fund, or any other fund under the control of said board of trustees in improving and repairing the public school buildings in the town of Las Vegas, or in constructing such public school building or buildings within the said town of Las Vegas, as in their judgment they may deem necessary and proper; provided, however, that no improvements or repairs to the public school buildings of the town of Las Vegas shall be made, nor shall any public school building or public school buildings be constructed within the said town of Las Vegas, unless the board of education of the town of Las Vegas, New Mexico, agree and consent thereto; and

provided further, that before any improvements or repairs to the school buildings in the town of Las Vegas are made, or any new building or buildings are constructed, that the said board of trustees of the town of Las Vegas administering the Las Vegas grant, if said expenditure exceeds the sum of three hundred dollars [(\$300)], be required to advertise the said work for at least twenty days in some newspaper published in the English language within the said county of San Miguel before the letting of the said work, and let the said work to the lowest responsible bidder, which bidder shall be required to enter into a good and sufficient bond for double the amount of the contract price, for the faithful performance of said contract for said work.

History: Laws 1909, ch. 103, § 4; 1913, ch. 86, § 3; Code 1915, § 855; C.S. 1929, § 29-614; Laws 1933, ch. 182, § 1; 1941 Comp., § 9-613; 1953 Comp., § 8-6-13.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Compiler's notes. — While the title of Laws 1933, ch. 182, purported to amend 29-614, 1929 Comp., which was 855, 1915 Code, the act contained no preliminary clause stating that the section "be and is hereby amended to read as follows."

49-6-14. [Construction of veterans' memorial public school.]

That the board of trustees of the town of Las Vegas (administering the land grant known as "The Las Vegas Land Grant," confirmed by the act of congress on the twenty-first day of June, A.D. 1860 to the town of Las Vegas) be and the same hereby is authorized and empowered to expend the sum of \$30,000.00 towards the cost of constructing a public school building within the exterior boundaries of the town of Las Vegas, the said building to be named "Veterans' Memorial Public School," in honor of all the men and women from San Miguel county, state of New Mexico, who served in the armed forces of the United States of America.

History: 1941 Comp., § 9-614, enacted by Laws 1945, ch. 121, § 1; 1947, ch. 96, § 1; 1953 Comp., § 8-6-14.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Repeals. — Laws 1945, ch. 121, § 4, repealed all acts and parts of acts in conflict therewith.

Laws 1947, ch. 96, § 2, repealed Laws 1945, ch. 121, § 2.

Compiler's notes. — Laws 1945, ch. 121, § 3, provided that the Las Vegas board of trustees were authorized to spend up to \$20,000 for a building known as the old Y.M.C.A. building, and to convey that building and property to a corporation to be organized under the name of United Veterans Organization, Inc. for the use of veterans of all wars. Laws 1947, ch. 96, contained a preamble which read:

"Whereas, by section 1, chapter 121 of the 1945 Session Laws, the board of trustees of the town of Las Vegas (administering the land grant known as the Las Vegas land grant) was authorized and empowered to expend the sum of \$30,000 in constructing a memorial in honor of all of the men and women of San Miguel County, New Mexico, who served in the armed forces of the United States of America; and

"Whereas, by section 2, of said act, it was provided that the said memorial shall be constructed on the site at present occupied by the old courthouse on West National Avenue in the town of Las Vegas; and

"Whereas, said old courthouse site is not available for said purpose, and said funds so authorized are not sufficient to construct a suitable memorial building; and

"Whereas, the town of Las Vegas is named as grantee in the patent from the United States of America for the said land grant, and is the principal beneficiary thereof; and

"Whereas, the schools of the town of Las Vegas are overcrowded, and there is an imperative need for an additional school building; and

"Whereas, the board of trustees of the town of Las Vegas (administering that land grant known as the Las Vegas land grant) and the veterans of San Miguel County, as represented by the various organizations of the veterans of San Miguel County, are of the opinion that the said sum of \$30,000 so intended for the construction of a veterans' memorial, may be better used towards the cost of constructing a suitable public school building within the exterior boundaries of the town of Las Vegas; providing that the said school building shall be named 'Veterans Memorial Public School.'"

Act of Congress. — The act of congress referred to in this section is 12 Stat. 71.

ARTICLE 7 Manzano Grant

Section	
49-7-1	Repealed.
49-7-2	Repealed..
49-7-3	Repealed.
49-7-4	Repealed.
49-7-4.1	Repealed.
49-7-4.2	Repealed.
49-7-4.3	Repealed.
49-7-5	Repealed.
49-7-6	Repealed.

Note (not part of statute): In the 2019 Legislative Session the Manzano Grant Article 7 statutes were repealed in order to place the Manzano Land Grant into the General Provisions under §49-1-2 NMSA, 1978.

49-7-1. Repealed.

History: Laws 1907, ch. 39, § 1; Code 1915, § 856; C.S. 1929, § 29-701; 1941 Comp., § 9-701; 1953 Comp., § 8-7-1; repealed by Laws 2019, ch. 241, § 2.

ANNOTATIONS

Repeals. — Laws 2019, ch. 241, § 2 repealed 49-7-1 NMSA 1978, as enacted by Laws 1907, ch. 39, § 1, relating to body corporate, title, power to sue and be sued, effective June 14, 2019. For provisions of former section, *see* the 2018 NMSA 1978 on *NMOneSource.com*.

Note. — The 2019 repeal was done in order to place the Manzano Land Grant into the General Provisions under §49-1-2 NMSA, 1978.

49-7-2. Repealed.

History: Laws 1907, ch. 39, § 2; Code 1915, § 857; C.S. 1929, § 29-702; 1941 Comp., § 9-702; 1953 Comp., § 8-7-2; repealed by Laws 2019, ch. 241, § 2.

ANNOTATIONS

Repeals. — Laws 2019, ch. 241, § 2 repealed 49-7-2 NMSA 1978, as enacted by Laws 1907, ch. 39, § 2, relating to management of grant, commissioners, election, qualifications, effective June 14, 2019. For provisions of former section, *see* the 2018 NMSA 1978 on *NMOneSource.com*.

Note. — The 2019 repeal was done in order to place the Manzano Land Grant into the General Provisions under §49-1-2 NMSA, 1978.

49-7-3. Repealed.

History: Laws 1907, ch. 39, § 4; Code 1915, § 858; C.S. 1929, § 29-703; 1941 Comp., § 9-703; 1953 Comp., § 8-7-3; repealed by Laws 2019, ch. 241, § 2.

Note. — The 2019 repeal was done in order to place the Manzano Land Grant into the General Provisions under §49-1-2 NMSA, 1978.

ANNOTATIONS

Repeals. — Laws 2019, ch. 241, § 2 repealed 49-7-3 NMSA 1978, as enacted by Laws 1907, ch. 39, § 4, relating to appointment of officers, duties, bond of treasurer, effective June 14, 2019. For provisions of former section, *see* the 2018 NMSA 1978 on *NMOneSource.com*.

Note. — The 2019 repeal was done in order to place the Manzano Land Grant into the General Provisions under §49-1-2 NMSA, 1978.

49-7-4. Repealed.

History: Laws 1907, ch. 39, § 5; Code 1915, § 859; C.S. 1929, § 29-704; 1941 Comp., § 9-704; 1953 Comp., § 8-7-4; repealed by Laws 2019, ch. 241, § 2.

Note. — The 2019 repeal was done in order to place the Manzano Land Grant into the General Provisions under §49-1-2 NMSA, 1978.

ANNOTATIONS

Repeals. — Laws 2019, ch. 241, § 2 repealed 49-7-4 NMSA 1978, as enacted by Laws 1907, ch. 39, § 5, relating to deeds for agricultural purposes, limitation, effective June 14, 2019. For provisions of former section, *see* the 2018 NMSA 1978 on *NMOneSource.com*.

Note. — The 2019 repeal was done in order to place the Manzano Land Grant into the General Provisions under §49-1-2 NMSA, 1978.

49-7-4.1. Repealed.

History: Laws 1987, ch. 163, § 1; repealed by Laws 2019, ch. 241, § 2.

ANNOTATIONS

Repeals. — Laws 2019, ch. 241, § 2 repealed 49-7-4.1 NMSA 1978, as enacted by Laws 1987, ch. 163, § 1, relating to sale of lands held in private ownership to heirs of original owners, effective June 14, 2019. For provisions of former section, *see* the 2018 NMSA 1978 on *NMOneSource.com*.

Note. — The 2019 repeal was done in order to place the Manzano Land Grant into the General Provisions under §49-1-2 NMSA, 1978.

49-7-4.2. Repealed.

History: Laws 1987, ch. 163, § 2; repealed by Laws 2019, ch. 241, § 2.

ANNOTATIONS

Repeals. — Laws 2019, ch. 241, § 2 repealed 49-7-4.2 NMSA 1978, as enacted by Laws 1987, ch. 163, § 2, relating to voter qualifications, effective June 14, 2019. For provisions of former section, *see* the 2018 NMSA 1978 on *NMOneSource.com*.

Note. — The 2019 repeal was done in order to place the Manzano Land Grant into the General Provisions under §49-1-2 NMSA, 1978.

49-7-4.3. Repealed.

History: Laws 1993, ch. 290, § 1; repealed by Laws 2019, ch. 241, § 2.

ANNOTATIONS

Repeals. — Laws 2019, ch. 241, § 2 repealed 49-7-4.3 NMSA 1978, as enacted by Laws 1993, ch. 290, § 1, relating to commissioners, limitations with respect to certain lands, effective June 14, 2019. For provisions of former section, *see* the 2018 NMSA 1978 on *NMOneSource.com*.

Note. — The 2019 repeal was done in order to place the Manzano Land Grant into the General Provisions under §49-1-2 NMSA, 1978.

49-7-5. Repealed.

History: Laws 1907, ch. 39, § 7; Code 1915, § 861; C.S. 1929, § 29-706; 1941 Comp., § 9-706; 1953 Comp., § 8-7-6; repealed by Laws 2019, ch. 241, § 2.

ANNOTATIONS

Repeals. — Laws 1988, ch. 25, § 1 repealed 49-7-5 NMSA 1978, as enacted by Laws 1907, ch. 39, § 6, relating to taxation by the commissioners of persons interested in the grant, effective May 18, 1988.

Note. — The 2019 repeal was done in order to place the Manzano Land Grant into the General Provisions under §49-1-2 NMSA, 1978.

49-7-6. Repealed.

History: Laws 1907, ch. 39, § 7; Code 1915, § 861; C.S. 1929, § 29-706; 1941 Comp., § 9-706; 1953 Comp., § 8-7-6; repealed by Laws 2019, ch. 241, § 2.

ANNOTATIONS

Repeals. — Laws 2019, ch. 241, § 2 repealed 49-7-6 NMSA 1978, as enacted by Laws 1907, ch. 39, § 7, relating to compensation of commissioners, expenses, effective June 14, 2019. For provisions of former section, *see* the 2018 NMSA 1978 on *NMOneSource.com*.

Note. — The 2019 repeal was done in order to place the Manzano Land Grant into the General Provisions under §49-1-2 NMSA, 1978.

ARTICLE 8

Nuestra Señora del Rosario, San Fernando y Santiago Grant

Section

49-8-1 Nuestra Senora del Rosario, San Fernando y Santiago Grant; trustees; election.

49-8-2 Elections; right to vote.

49-8-3 Officers; meeting; vacancies.

49-8-4 Board of trustees; powers.

49-8-1. Nuestra Señora del Rosario, San Fernando y Santiago Grant; trustees; election.

The government and control of the common lands of the land grant known as the "Nuestra Señora del Rosario, San Fernando y Santiago land grant" is vested in five trustees, to be known officially as "the board of trustees of the Nuestra Señora del Rosario, San Fernando y Santiago land grant", who shall be elected biennially by the owners of interests in the grant either by inheritance from the original grantees or by purchase from an heir.

History: Laws 1909, ch. 52, § 1; Code 1915, § 862; C.S. 1929, § 29-801; 1941 Comp., § 9-801; 1953 Comp., § 8-8-1; Laws 1997, ch. 16, § 1.

ANNOTATIONS

Compiler's notes. — This article, which was identical with Article 7 of Chapter 22 of the 1915 Code, was not reenacted by its inclusion in that codification, but was compiled for convenience only.

The 1997 amendment, effective June 20, 1997, added the section heading, substituted "five trustees" for "three trustees" and "elected biennially" for "elected annually", and made minor stylistic changes.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 73B C.J.S. Public Lands § 205.

49-8-2. Elections; right to vote.

A. On the first Monday of April of each alternate year, an election shall be held after the trustees have given at least seven days notice thereof by posting not less than five notices in conspicuous places within the grant, which shall include the post offices at Truchas, Cordova, formerly known as Quemado, and Chimayo. Except as provided in Chapter 49, Article 8 NMSA 1978, the election shall be conducted as nearly as practical in the same manner as provided in the Election Code [Chapter 1 NMSA 1978] for the conduct of general elections, provided that the board of trustees of the Nuestra Señora del Rosario, San Fernando y Santiago land grant and the secretary of the board shall perform the functions designated in that code for the county commission and the county clerk, respectively, and provided further that no registration shall be required. Official ballots for

voting shall contain the names of not less than five owners of interests in the grant. The five persons receiving the highest number of votes shall be elected as trustees for the ensuing two years.

B. At all elections, every owner of an undivided interest in the grant shall be entitled to one vote. The trustees in charge of the election shall prepare from the best information obtainable a list of all owners of interest in the grant and shall deliver the list to their successors. Any person claiming to be the owner of an interest whose claim is not admitted by the trustees may file with them an oath in writing, stating that he is an owner and giving as fully as he can the chain of title to his interest. If his claim is substantiated by the oaths in writing of two owners of such interests, he shall be permitted to vote at the election.

History: Laws 1909, ch. 52, § 2; Code 1915, § 863; C.S. 1929, § 29-802; 1941 Comp., § 9-802; 1953 Comp., § 8-8-2; Laws 1997, ch. 16, § 2.

ANNOTATIONS

Compiler's notes. — This section first appeared in its present form in the 1915 Code. As originally enacted in 1909, it appointed three named individuals as commissioners to hold the first election of trustees and provided that a similar election be held in each succeeding year, on like notice and in like manner, at which the existing trustees should act as inspectors. The 1915 Code compilers deleted the temporary provisions and rephrased the portions thereof governing the manner of subsequent elections.

The 1997 amendment, effective June 20, 1997, added the section heading and rewrote this section.

49-8-3. Officers; meeting; vacancies.

The members of the board of trustees so elected shall meet within one week after the election and organize by the election of a president, secretary and treasurer who shall perform such duties as may be required of them by the board. A majority of the board shall constitute a quorum for the transaction of business. All meetings of the board shall be open to all owners of interests in the grant, who shall have the right to be present and to be heard on all matters on which they may be interested. If a vacancy occurs in the board, the remaining members shall fill the vacancy by appointment until the next election. The board may make such rules as to its meetings and order of business as it deems proper.

History: Laws 1909, ch. 52, § 3; Code 1915, § 864; C.S. 1929, § 29-803; 1941 Comp., § 9-803; 1953 Comp., § 8-8-3; Laws 1997, ch. 16, § 3.

ANNOTATIONS

The 1997 amendment, effective June 20, 1997, added the section heading, inserted "trustees" following "board" at the beginning of the first sentence, substituted "deems

proper" for "shall think proper" at the end of the last sentence and made minor stylistic changes throughout the section.

49-8-4. Board of trustees; powers.

The board of trustees shall have the following general powers:

- A. to control, care for and manage the common lands of the grant and all the property pertaining thereto, to prescribe the terms on which they may be used and to make all necessary and proper regulations for the government thereof;
- B. to sue and be sued under the title set forth in Section 49-8-1 NMSA 1978;
- C. to lease any portions of the common land or the pasturage thereon and to sell any timber, wood, stone, grass or other product or personal property of the grant;
- D. to pay all taxes and other expenses due on the common land; and
- E. in case the income exceeds the expenses, to expend the balance to benefit all the owners equitably or for improvements upon the common land that will be for the general benefit of the owners.

The board of trustees shall make a report in writing of its transactions during the preceding year, including an account of all money received and expended, at the opening of the annual meeting of the owners.

History: Laws 1909, ch. 52, § 4; Code 1915, § 865; C.S. 1929, § 29-804; 1941 Comp., § 9-804; 1953 Comp., § 8-8-4; Laws 1997, ch. 16, § 4.

ANNOTATIONS

The 1997 amendment, effective June 20, 1997, added the section heading, substituted "board of trustees" for "board" in the introductory paragraph, substituted "set forth in Section 49-8-1 NMSA 1978" for "aforesaid" at the end of Subsection B, substituted "to benefit all the owners equitably or for" for "in such" in Subsection E, substituted "board of trustees" for "board" at the beginning of the last paragraph, and deleted "of interests at the time of each annual election" at the end of that paragraph; and made minor stylistic changes throughout the section.

ARTICLE 9
Socorro Grant

Section	
49-9-1	Trustees of grant; applicants for deeds; city of Socorro.
49-9-2	Persons entitled to deed; refusal to grant; appeal to district court.
49-9-3	Application for deed; fee; survey of land; investigation; execution of deed.
49-9-4	Notice of application; publication; protest; time limit on application.
49-9-5	Protests; institution of suit; adjustment of controversy.
49-9-6	Issuance or refusal to issue deeds; contesting right of possession.
49-9-7	Distribution of fees.
49-9-8	Disposition of lands; ground rent; deeds; appraisal.
49-9-9	Disposition of proceeds of land sales.
49-9-10	Ordinances for enforcement of act.
49-9-11	Attorney's fees; method of payment.
49-9-12	Application of article.

49-9-1. [Trustees of grant; applicants for deeds; city of Socorro.]

Whereas, the court of private land claims, at a session of said court held in the city of Santa Fe, in the month of August, in the year 1892, did make and enter of record its decree granting and confirming to the city of Socorro and Candelario Garcia, in trust, for the benefit [benefit] of said city and the inhabitants thereof, four square Spanish leagues of land, having for their center the center of the Roman Catholic church of the city of Socorro, and have [having] for their boundaries one Spanish league distant from the center of said Roman Catholic church to each cardinal point of the compass; and

Whereas, said decree confirmed said land to the city of Socorro and to Candelario Garcia, in trust, for the use and benefit of the holders thereon and those holding any portion of said land from or under any lawful authority, and as to those lands not held by private ownership under any lawful deed or grant, were decreed to be held by said city and said Candelario Garcia, in trust, for the whole people of said grant; and

Whereas, there is a large quantity of said lands so confirmed as aforesaid held in severalty by persons claiming ownership thereof or interest therein, and such persons are entitled to deeds to the same from said trustees and are entitled to have their titles perfected to said lands so held in severalty, and there is also a large portion of the said lands within the limits of said grant not claimed or held in severalty, and the title to which is held by said trustees, in trust, as aforesaid; and

Whereas, there is no power or authority given to said city or said Candelario Garcia by said decree or by law to carry out said trust, or to make deeds to the persons owning portions of said grant in severalty, or to sell or to dispose of the portion of such grant the title to which is held by said trustees as aforesaid, and it is necessary that such power and authority should be given to the said trustees; wherefore,

Be it enacted by the authority aforesaid that said Candelario Garcia, who is the cotrustee with said city, shall have the right and power, if he so desires, to surrender and convey his trust in said lands to said city of Socorro, and in case he, the said cotrustee with said city, shall decline, neglect, refuse or be unable because of death or otherwise, or unwilling to act in conjunction with said city to carry out said trust in the manner and under authority herein given, then in such case said city of Socorro shall be and is hereby made the sole trustee herein to carry out said trust; and that said city, in the event of said cotrustee failing, neglecting or being unable to act as aforesaid, be and it is hereby vested with the sole and full power to carry out and execute said trust.

And the said city council of said city, in the event it becomes the sole trustee, shall by its mayor and city clerk make, execute and deliver a deed or deeds conveying to any individual, company or corporation applying for the same a full and complete title to all of the property so conveyed, the said individual or corporation or company first satisfying said city council that he or it is entitled to such deed or deeds for which the land or lands or some portion thereof or interest therein for which application for deed or deeds have been so made: provided, that if the said cotrustee acts with said city in the execution of this trust he shall sign and execute said deed or deeds in conjunction with said city.

History: Laws 1893, ch. 77, § 1; 1909, ch. 143, § 1; Code 1915, § 866; C.S. 1929, § 29-1001; 1941 Comp., § 9-901; 1953 Comp., § 8-9-1.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Compiler's notes. — This article was derived from Article 8 of Chapter 22 of the 1915 Code and was not reenacted by its inclusion in that compilation, but was compiled for convenience only.

Legislative purpose. — It was the purpose of the legislature hereby to authorize and define a procedure whereby the various claimants to lots in the Socorro grant might acquire deeds to the same upon establishing their rights thereto. *City of Socorro v. Cook*, 1918-NMSC-072, 24 N.M. 202, 173 P. 682.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 73B C.J.S. Public Lands § 205.

49-9-2. [Persons entitled to deed; refusal to grant; appeal to district court.]

Any person, company or corporation who shall, by themselves or by or through their grantors, have been in the actual continuous and undisputed possession of any portion of any of said lands within the limits of said grant for a period of ten years next immediately preceding the date of the entering of the said decree of said land court confirming said grant to said trustees, or who shall be the owner of any portion of the said lands under any deed

or conveyance from the original town of Socorro, or from or by or through any conveyance from any of the original settlers or lotholders within the limits of said grant, or from any deed or conveyance from any other lawful authority, shall be entitled to a deed as against said trustees to that portion of said land of which he, it or they shall have been so in possession, or to which he, it or they shall have title thereto as aforesaid: provided, however, that the action of said city council or trustees in refusing said deed to any person, company or corporation shall not be final, but all question as to the right of said person, company or corporation to said deed or deeds shall be left to the determination of the district court in the county where said grant is situated, in a proper proceeding instituted therefor by said individual, company or corporation within thirty days after the refusal of said city council or trustees to execute said deed, and the court in determining the right of said person, company or corporation to said deed or deeds for said lands as against said city and trustees shall be governed by the same rules of law and equity as now govern the courts of this state in determining the rights and titles to lands as between individuals, subject to the provisions of this article.

History: Laws 1893, ch. 77, § 2; 1909, ch. 143, § 2; Code 1915, § 867; C.S. 1929, § 29-1002; 1941 Comp., § 9-902; 1953 Comp., § 8-9-2.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Compiler's notes. — The word "section" was substituted for "act" at the end of the section by Laws 1909, ch. 143, § 2, and the 1915 Code compilers changed it to "article."

Cross references. — For procedures governing administrative appeals to the district court, *see* Rule 1-074 NMRA.

For scope of review of the district court, *see* *Zamora v. Village of Ruidoso Downs*, 120 N.M. 778, 907 P.2d 182 (1995).

Deed not subject to collateral attack. — Where the city council of Socorro, which was created a special tribunal by the legislature for the purpose of investigating and determining who were entitled to deeds to lands within the limits of the grant, after due notice and investigation, had adjudged that applicant's predecessor in title was entitled to a deed for land claimed, and deed was executed and delivered pursuant to such finding, and no direct proceeding was instituted by anyone to test right of such claimant or his title to such lands within 12 months after the passage of the Laws of 1893, ch. 77, or the assertion of said claim, as authorized and limited by Section 6 of the act (49-9-6 NMSA 1978), question of applicant's predecessor's right and title to the land in dispute became *res judicata* and not subject to collateral attack. *City of Socorro v. Cook*, 1918-NMSC-072, 24 N.M. 202, 173 P. 682; *distinguished in Petroleum Club Inn Co. v. Franklin*, 1963-NMSC-133, 72 N.M. 347, 383 P.2d 824.

49-9-3. [Application for deed; fee; survey of land; investigation; execution of deed.]

Any person, company or corporation desiring a deed or deeds from said city or trustees to any portion of said lands as aforesaid, shall make application to said city council in writing therefor by filing his or its application with the city clerk of said city, setting forth a description of the lands claimed by him or it, by lots, blocks, dimensions, boundaries and quantities, so that the same can be readily identified, and shall briefly set forth the nature of his or its title thereto, and the manner in which the same has been obtained, which application shall be signed and sworn to by the party or parties applying therefor; said application shall be accompanied by a fee of fifteen dollars (\$15.00), which fee shall be all the fee required or collected from any such applicant: provided, that an applicant must, if required by the council of said city, cause the land claimed to be surveyed and the costs of making such survey shall be paid by the applicant. Said application when so made shall be by the mayor of said city referred to the city attorney, or some other attorney whom he may designate who shall investigate said application and if upon investigation such applicant appears to be entitled to a deed and no protest has been filed by the said city, or by any other person, for himself or on behalf of said city, against the granting of said deed as hereinafter provided, then the said attorney or attorneys shall, within thirty (30) days after the filing of said application and reference of the same to him, or them, prepare a deed in proper form covering the said land to the person, company or corporation entitled thereto, and shall make his report upon said application and deliver the said deed to the said city council, which may order the mayor and city clerk of said city to sign and execute said deed on behalf of said city and said cotrustee may also sign the same.

History: Laws 1893, ch. 77, § 3; 1909, ch. 143, § 3; Code 1915, § 868; C.S. 1929, § 29-1003; 1941 Comp., § 9-903; 1953 Comp., § 8-9-3.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

49-9-4. [Notice of application; publication; protest; time limit on application.]

When application shall be made, as herein provided, for a deed to any portion of the lands within the limits of such grant, the clerk of said city is hereby required, within ten (10) days after the receipt of such application, to publish a notice of the same in a newspaper published and of general circulation in said city in one issue of said newspaper, giving in said notice the name of the applicant and a description of the lands for which a deed is asked. Any person, or persons, either on behalf of themselves or on behalf of said city who claims an adverse interest in any part or portion of land or lands for which application for a deed, or deeds, is so made, shall have the right to file, at any time within thirty (30) days after the publication of such notice, a protest against the execution of a deed, or deeds, to

the applicant or applicants for the land applied for, or such portion thereof in which he or they may claim an interest, which protest shall be in writing, setting forth the ground of his, or their, objection and a description of that portion of the land in which he, or they, for themselves, or for said city, claim an adverse interest, and shall be sworn to by at least one protestant and filed with the city clerk of said city: provided, that if said protest is filed on behalf of said city the same shall be signed and sworn to by at least ten (10) citizens of the said city who are the owners of real estate within said grant. And provided, further, that no deed shall be executed by either said city or said cotrustee under any such application, unless said application is filed with the said city clerk within five years from the 18th day of March, A.D. 1909, and all lands within the limits of said grant for which a deed has not been executed by said city, or for which application has not been made within said five years, shall be the property of said city of Socorro.

History: Laws 1893, ch. 77, § 4; 1909, ch. 143, § 4; 1912, ch. 60, § 1; Code 1915, § 869; C.S. 1929, § 29-1004; 1941 Comp., § 9-904; 1953 Comp., § 8-9-4.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

49-9-5. [Protests; institution of suit; adjustment of controversy.]

The individual, company or corporation filing said protest shall be required to follow the same with a proper proceeding in law or in equity, instituted in the proper district court of said county in which said city is located, against the said party or parties applying for said deed or deeds to said land to test the question as to who is the owner of said land and entitled to the deed therefore from said trustees: provided, that if said protest shall be filed by said citizens on behalf of said city as aforesaid, then said city and trustees shall institute and prosecute said suit in the name and on behalf of and at the expense of said city. Said suit or proceeding shall be instituted by the party filing said protest within twenty days of the filing of said protest: provided, that if the party filing said protest is in possession of said land then the adverse party shall institute said suit within said time, and the city council and trustees of said city shall withhold the execution and delivery of any deed to either of said parties for any portion of said land so in controversy until such controversy shall be settled and the court shall determine as to who is rightfully entitled to the deed therefor from said city or town: provided, that parties to such controversy shall have the right to amicably adjust said controversy as to such land and upon such adjustment shall file a statement thereof with the city clerk, and upon such statement being filed the city council and trustees shall cause to be executed deed or deeds to the parties as may be agreed upon between them and shown in such adjustment so filed.

History: Laws 1893, ch. 77, § 5; Code 1915, § 870; C.S. 1929, § 29-1005; 1941 Comp., § 9-905; 1953 Comp., § 8-9-5.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

49-9-6. [Issuance or refusal to issue deeds; contesting right of possession.]

If no protest should be filed with the city clerk against the granting of said deed to any applicant, within the time and manner as above provided, or if the said protest should be filed and the party whose duty it is fails or neglects to institute his proceeding in the district court contesting the right of said applicant to said deed within the time as above provided, the said city council shall be authorized to make, execute and deliver a deed for the said land to the person who shall have first applied for said deed: and provided, further, that should any person make application for a deed to any portion of said land within the limits of said grant, and should said city council, upon investigation thereof, be not satisfied that the land for which such deed is applied for is in fact owned by said applicant, then said city council shall refuse to execute or cause to be executed a deed to said applicant for said land until the court shall determine, in a proceeding properly instituted therefor, that the city should execute said deed to said applicant; or in case any individual, company or corporation shall be in possession of or shall claim any part or portion of the land within the limits of said grant to which they or it may be not entitled as against said city holding said lands in trust as aforesaid, then the city council of said city shall direct the city attorney, or other attorney or attorneys, to institute on behalf of said city and said trustees a proper proceeding in the district court in which the said grant is situated to contest the right and title of said individual, company or corporation to any of said lands so held or claimed, which suit shall be instituted by said city against said parties within twelve months after February 23, 1893, or within twelve months after the said claim is so set up to said lands by said individual, company or corporation.

History: Laws 1893, ch. 77, § 6; 1909, ch. 143, § 5; Code 1915, § 871; C.S. 1929, § 29-1006; 1941 Comp., § 9-906; 1953 Comp., § 8-9-6.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Deed not subject to collateral attack. — Where the city council of Socorro, which was created a special tribunal by the legislature for the purpose of investigating and determining who were entitled to deeds to lands within the limits of the grant, after due notice and investigation, had adjudged that applicant's predecessor in title was entitled to a deed for lands claimed, and deed was executed and delivered pursuant to such finding, and no direct proceeding was instituted by anyone to test the right of such claimant or his title to such lands within twelve months after the passage of Laws 1893, ch. 77, or the assertion of said claim as authorized and limited by this section and Section 2 of the act (49-9-2 NMSA

1978), question of applicant's predecessor's right and title to the land in dispute became res judicata and not subject to collateral attack. *City of Socorro v. Cook*, 1918-NMSC-072, 24 N.M. 202, 173 P. 682; *distinguished in Petroleum Club Inn Co. v. Franklin*, 1963-NMSC-133, 72 N.M. 347, 383 P.2d 824.

49-9-7. [Distribution of fees.]

Out of the fifteen dollars (\$15.00) which shall be paid by any applicant for a deed as hereinbefore provided, to the city clerk, the said city clerk shall receive on [one] dollar (\$1.00) for his services. The attorney, or attorneys, to which such application is referred shall receive ten dollars (\$10.00) and the publisher of the newspaper, in which the notice herein provided for is published, shall receive four dollars (\$4.00).

History: Laws 1909, ch. 143, § 6; Code 1915, § 872; C.S. 1929, § 29-1007; 1941 Comp., § 9-907; 1953 Comp., § 8-9-7.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

49-9-8. [Disposition of lands; ground rent; deeds; appraisal.]

As to all of said lands within the limits of said grant which are not owned in severalty by individuals, companies or corporations and which are in and by said decree of said court of private land claims decreed to belong to said city and cotrustee, in trust, for the benefit of the inhabitants of said grant, said city council and trustees shall have the power and authority to sell and dispose of said lands at public or private sale for the best possible price they can obtain for the same, which said sales of said lands shall be duly advertised before said sales are made. Such city council and trustee shall have the right to sell and dispose of said lands or lease or rent the same or any part thereof in such parcels and in such portions and in such manner and upon such terms as the city council of such city may deem best, and shall have the right to sell and dispose of the same for cash or on credit and may provide for perpetual ground rent in the way of interest for any unpaid purchase money and may make titles forfeitable for nonpayment of such ground rents in such manner and upon such terms as it may think most conducive to the benefit and advantage of the inhabitants of said grant, and shall make and execute and deliver all necessary deeds in the premises: provided, that the said land and no portion thereof shall be sold as above provided until said lands so offered for sale shall first be appraised by three disinterested property owners resident on said grant, appointed by said city council, at its full cash value: and provided, that no sale shall be made unless the said land so sold shall bring at such sale at least two-thirds of such appraised value.

History: Laws 1893, ch. 77, § 8; Code 1915, § 873; C.S. 1929, § 29-1008; 1941 Comp., § 9-908; 1953 Comp., § 8-9-8.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

49-9-9. [Disposition of proceeds of land sales.]

All proceeds realized on the sale of said lands so made as aforesaid shall be appropriated to pay off the bonded indebtedness of the city of Socorro or for public improvements within the limits of said grant as may be determined by the city council of said city.

History: Laws 1893, ch. 77, § 9; Code 1915, § 874; Laws 1921, ch. 130, § 1; C.S. 1929, § 29-1009; 1941 Comp., § 9-909; 1953 Comp., § 8-9-9.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

49-9-10. [Ordinances for enforcement of act.]

The city council of said city is hereby authorized and empowered to enact and pass all ordinances, rules and regulations necessary to enable said city, with the aid of its cotrustee, to carry out and fully perform all the duties and powers herein by this act granted to said city.

History: Laws 1893, ch. 77, § 10; Code 1915, § 875; C.S. 1929, § 29-1010; 1941 Comp., § 9-910; 1953 Comp., § 8-9-10.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Compiler's notes. — The term "this act" referred to Laws 1893, ch. 77, §§ 1 to 11, compiled as 49-9-1 to 49-9-6, 49-9-8 to 49-9-10, 49-9-12 NMSA 1978.

49-9-11. [Attorney's fees; method of payment.]

It is hereby made the duty of the mayor and city clerk to ascertain the amount of indebtedness outstanding on account of attorney's fees for services rendered in behalf of securing title to the land grant of such city and certify such indebtedness to the city treasurer, who shall register the same in his books, giving the description and form of such indebtedness; if in bonds, the number, the amount, rate of interest, when due and date of issue. The mayor and city clerk shall endorse on such evidences of indebtedness issued in payment of attorney's fees, hereinbefore mentioned, the following:

"The within evidence of indebtedness has been issued in payment of attorney's fees for services rendered in behalf of securing title for land grants for the city of Socorro."

Such evidence of indebtedness shall constitute a preference claim against the said city and a lien upon its lands and the city treasurer is hereby required upon presentation of such evidence of indebtedness so certified in whatever form the same may be, to pay the interest or principal when due out of any moneys on hand, except the water interest funds, and said city is hereby authorized to sell any portion of its lands and apply the proceeds thereof to the payment of the indebtedness hereinbefore mentioned.

History: Laws 1909, ch. 143, § 8; Code 1915, § 876; C.S. 1929, § 29-1011; 1941 Comp., § 9-911; 1953 Comp., § 8-9-11.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

49-9-12. [Application of article.]

This article is intended to apply to the grant of land heretofore made and confirmed to the city of Socorro and Candelario Garcia, trustee, and to none other.

History: Laws 1893, ch. 77, § 11; Code 1915, § 877; C.S. 1929, § 29-1012; 1941 Comp., § 9-912; 1953 Comp., § 8-9-12.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Compiler's notes. — For meaning of "this article," *see* the compiler's notes to 49-9-1 NMSA 1978.

ARTICLE 10 Tecolote Grant

Section	
49-10-1	Repealed.
49-10-2	Repealed.
49-10-3	Repealed.
49-10-4	Repealed.
49-10-5	Repealed.
49-10-6	Repealed.

Note (not part of statute): In the 2013 Legislative Session the Tecolote Grant Article 10 statutes were repealed in order to place the Tecolote Land Grant into the General Provisions under §49-1-2 NMSA, 1978.

49-10-1. Repealed.

History: Laws 1903, ch. 77, § 1; Code 1915, § 878; C.S. 1929, § 29-1101; 1941 Comp., § 9-1001; 1953 Comp., § 8-10-1; 2013, Ch. 83.

ANNOTATIONS

Repeals. — Laws 2013, ch. 83, § 2 repealed 49-10-1 NMSA, as enacted by 1903, ch. 77, § 1, relating to management by board of trustees and corporate powers, effective June 14, 2013. For provisions of former section, *see* the 2012 NMSA 1978 on *NMOneSource.com*.

Note. — The 2013 repeal was done in order to place the Tecolote Land Grant into the General Provisions under §49-1-2 NMSA, 1978.

Landowners deemed qualified plaintiffs. — Owners of land within Tecolote land grant are qualified plaintiffs in suit to cancel, for fraud, deed made by board of trustees who in collusion with purchaser sold land for grossly inadequate consideration. *Kavanaugh v. Delgado*, 35 N.M. 141, 290 P. 798 (1930).

Quo warranto is proper proceeding to test right to offices of the trustees of the Tecolote land grant. *State ex rel. Valdez v. Moise*, 42 N.M. 280, 76 P.2d 1155 (1938); *Montoya v. Gurule*, 39 N.M. 42, 38 P.2d 1118 (1934).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 73B C.J.S. Public Lands § 205.

49-10-2. Repealed.

History: Laws 1903, ch. 77, § 2; Code 1915, § 879; C.S. 1929, § 29-1102; 1941 Comp., § 9-1002; 1953 Comp., § 8-10-2; repealed by Laws 2013, ch. 83, § 2.

ANNOTATIONS

Repeals. — Laws 2013, ch. 83, § 2 repealed 49-10-2 NMSA, as enacted by Laws 1903, ch. 77, § 2, relating to qualifications of trustees, effective June 14, 2013. For provisions of former section, *see* the 2012 NMSA 1978 on *NMOneSource.com*.

Note. — The 2013 repeal was done in order to place the Tecolote Land Grant into the General Provisions under §49-1-2 NMSA, 1978.

49-10-3. Repealed

History: Laws 1903, ch. 77, § 3; Code 1915, § 880; C.S. 1929, § 29-1103; 1941 Comp., § 9-1003; 1953 Comp., § 8-10-3; repealed by Laws 2013, ch. 83, § 2.

ANNOTATIONS

Repeals. — Laws 2013, ch. 83, § 2 repealed 49-10-3 NMSA, as enacted by Laws 1903, ch. 77, § 3, relating to election of trustees, qualifications of electors, canvass and notice of election, effective June 14, 2013. For provisions of former section, *see* the 2012 NMSA 1978 on *NMOneSource.com*.

Note. — The 2013 repeal was done in order to place the Tecolote Land Grant into the General Provisions under §49-1-2 NMSA, 1978.

No right to contest election. — The right to contest an election of trustees of a land grant must depend upon statute, and since the general statute does not apply to such an election, and there is nothing in this section authorizing a contest, the remedy is not available. *Montoya v. Gurule*, 39 N.M. 42, 38 P.2d 1118 (1934).

49-10-4. Repealed.

History: Laws 1903, ch. 77, § 4; Code 1915, § 881; C.S. 1929, § 29-1104; 1941 Comp., § 9-1004; 1953 Comp., § 8-10-4; repealed by Laws 2013, ch. 83, § 2.

ANNOTATIONS

Repeals. — Laws 2013, ch. 83, § 2 repealed 49-10-4 NMSA, as enacted by Laws 1903, ch. 77, § 4, relating to selection of officers, bond of secretary-treasurer and duties, effective June 14, 2013. For provisions of former section, *see* the 2012 NMSA 1978 on *NMOneSource.com*.

Note. — The 2013 repeal was done in order to place the Tecolote Land Grant into the General Provisions under §49-1-2 NMSA, 1978.

49-10-5. Repealed.

History: Laws 1903, ch. 77, § 5; Code 1915, § 882; Laws 1927, ch. 107, § 1; C.S. 1929, § 29-1105; 1941 Comp., § 9-1005; 1953 Comp., § 8-10-5; Laws 1971, ch. 300, § 1; repealed by Laws 2013, ch. 83, § 2.

ANNOTATIONS

Repeals. — Laws 2013, ch. 83, § 2 repealed 49-10-5 NMSA, as enacted by Laws 1903, ch. 77, § 5, relating to powers of trustees and limitations on real property transfer, effective June 14, 2013. For provisions of former section, *see* the 2012 NMSA 1978 on *NMOneSource.com*.

Note. — The 2013 repeal was done in order to place the Tecolote Land Grant into the General Provisions under §49-1-2 NMSA, 1978.

Landowners deemed qualified plaintiffs. — Owners of land within Tecolote land grant are qualified plaintiffs in suit to cancel, for fraud, deed made by board of trustees who in collusion with purchaser sold the land for grossly inadequate consideration. *Kavanaugh v. Delgado*, 35 N.M. 141, 290 P. 798 (1930).

Actionable fraud against board. — An amended complaint to cancel deed made by board of trustees of Tecolote land grant charged actionable fraud where it alleged that, through collusion with the board of trustees, acting in disregard of its duty and betrayal of its trust, defendant purchaser had acquired property of the corporation of the value of \$35,000 for the shockingly inadequate consideration of not more than \$5,000. *Kavanaugh v. Delgado*, 35 N.M. 141, 290 P. 798 (1930).

49-10-6. Repealed.

History: Laws 1903, ch. 77, § 6; Code 1915, § 883; C.S. 1929, § 29-1106; 1941 Comp., § 9-1006; 1953 Comp., § 8-10-6; repealed by Laws 2013, ch. 83, § 2.

ANNOTATIONS

Repeals. — Laws 2013, ch. 83, § 2 repealed 49-10-6 NMSA, as enacted by Laws 1903, ch. 77, § 6, relating to meetings of trustees, compensation and expenses, effective June 14, 2013. For provisions of former section, *see* the 2012 NMSA 1978 on *NMOneSource.com*.

Note. — The 2013 repeal was done in order to place the Tecolote Land Grant into the General Provisions under §49-1-2 NMSA, 1978.

ARTICLE 11
Land Grant Support

Section	
49-11-1	Short title.
49-11-2	Definitions.
49-11-3	Land grant council; purpose.
49-11-4	Land grant support program; council director powers and duties.
49-11-5	Report to governor and legislature.

49-11-1. Short title.

This act [49-11-1 through 49-11-5 NMSA 1978] may be cited as the "Land Grant Support Act".

History: Laws 2009, ch. 94, § 1.

ANNOTATIONS

Effective dates. — Laws 2009, ch. 94 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 19, 2009, 90 days after the adjournment of the legislature.

49-11-2. Definitions.

As used in the Land Grant Support Act:

- A. "council" means the land grant council; and
- B. "land grant" means a patented community land grant-merced organized and operating as a political subdivision of the state.

History: Laws 2009, ch. 94, § 2.

ANNOTATIONS

Effective dates. — Laws 2009, ch. 94 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 19, 2009, 90 days after the adjournment of the legislature.

49-11-3. Land grant council; purpose.

- A. The "land grant council" is created and is administratively attached to the department of finance and administration. The general purposes of the council are to establish a land

grant support program to provide advice and assistance to land grants and to serve as a liaison between land grants and the federal, state and local governments.

B. The council shall consist of five members appointed by the governor from the boards of directors of land grants for staggered terms of four years, with two members of the initial council selected by lot to serve an initial term of two years.

C. The council may hire staff and contract for services to carry out the purposes of the Land Grant Support Act.

D. The council shall appoint a chairperson and may appoint such other officers as it deems necessary.

E. The council shall meet at least quarterly. Meetings of the council shall be called by the chairperson of the council or at the request of at least three members of the council.

F. Members of the council are entitled to receive per diem and mileage in accordance with the provisions of the Per Diem and Mileage Act [10-8-1 through 10-8-8 NMSA 1978].

History: Laws 2009, ch. 94, § 3.

ANNOTATIONS

Effective dates. — Laws 2009, ch. 94 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 19, 2009, 90 days after the adjournment of the legislature.

49-11-4. Land grant support program; council director powers and duties.

A. The council, through its staff or contract agents, may apply for and accept any public or private grants, gifts or donations for the benefit of the land grant support program, the council or land grants in general or particular.

B. The council, through its staff or contract agents, may:

(1) assist land grants in all areas of land grant fiscal and programmatic management, including planning, economic development and infrastructure development;

(2) establish cooperative purchasing capabilities for land grants;

(3) perform special studies and undertake surveys of interest to land grants and report the findings;

(4) serve as fiscal agent and administrator for federal and state grants-in-aid and other funding for a land grant when necessary;

(5) facilitate or enter into agreements with state and federal agencies on behalf of land grants;

(6) enter into contracts to carry out the purposes of the Land Grant Support Act; and

(7) provide other assistance to land grants.

C. The council, through its staff or contract agents, shall:

(1) facilitate the exchange of experience and advice among land grants;

(2) serve as a liaison between land grants and federal, state and local agencies;

(3) promote cooperation between land grants and, by consultation and advice, assist in the coordination of land grant programs;

(4) provide board development opportunities and technical assistance to the governing boards of land grants;

(5) provide short- and long-range planning assistance to land grants;

(6) conduct training sessions for land grants on topics of interest, such as:

(a) local, state and national zoning trends and concerns and other land-use issues;

(b) state requirements for political subdivisions on such topics as open meetings, public records, procurement, risk management, tort claims and financial accountability;

(c) techniques of historical research;

(d) grant writing;

(e) economic development strategies; and

(f) rangeland management and water conservation;

(7) disseminate information to relevant federal, state and local agencies on land grant issues and activities and, when requested, on the status of individual land grants;

(8) develop and promote federal legislation for an appropriate congressional response to longstanding community land grant claims in New Mexico; and

(9) review state and federal policies, plans and legislation affecting land grants in New Mexico.

History: Laws 2009, ch. 94, § 4.

ANNOTATIONS

Effective dates. — Laws 2009, ch. 94 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 19, 2009, 90 days after the adjournment of the legislature.

49-11-5. Report to governor and legislature.

The council shall report to the governor and the legislature by December 1 of each year on the state of land grants in New Mexico and the activities of the council for that year.

History: Laws 2009, ch. 94, § 5.

ANNOTATIONS

Effective dates. — Laws 2009, ch. 94 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 19, 2009, 90 days after the adjournment of the legislature.

Compiler's notes. — Laws 2009, ch. 94, § 6, effective June 19, 2009, provided that the unexpended balance of the general fund appropriation to the department of finance and administration in Subsection 8 of Section 50 of Chapter 92 of Laws 2008 for land grant facilities and infrastructure projects related to water, wastewater, communications and roads statewide shall not be expended for the original purpose but is appropriated to the following agencies in the following amounts for expenditure in fiscal years 2009 through 2011 for the following purposes:

- A. to the department of finance and administration, fifty thousand dollars (\$50,000) to provide technical assistance to land grants; and
- B. to the land grant council, one hundred fifty thousand dollars (\$150,000) to carry out the duties imposed by and the purposes of the Land Grant Support Act.

49-11-6. Land grant-merced assistance fund created; distribution.

A. The "land grant-merced assistance fund" is created in the state treasury and shall be administered by the department of finance and administration. The fund consists of gifts, grants, donations, appropriations to the fund and distributions to the fund made pursuant to the Tax Administration Act [Chapter 7, Article 1 NMSA 1978].

B. On or before September 1, 2023 and on or before September 1 of each subsequent year, the state auditor shall provide a list to the land grant council of the land grants-mercedes that are in compliance with the Audit Act [12-6-1 to 12-6-15 NMSA 1978] and the category of compliance required for each land grant-merced pursuant to Subsection B of Section 12-6-3 NMSA 1978.

C. Within thirty days of the receipt of the list of Audit-Act-compliant land grants-mercedes and their Audit Act compliance levels provided by the state auditor pursuant to Subsection B of this section, the land grant council shall determine the land grants-mercedes on the list that are assistance-qualified pursuant to Paragraph (1) of Subsection F of this section and their distribution categories pursuant to Subsection D of this section and provide a list of those determinations to the department of finance and administration and the state treasurer.

D. An assistance-qualified land grant-merced with an annual revenue, calculated on a cash basis of accounting, exclusive of capital outlay funds or federal or private grants disbursed directly by an administrating agency or previous year distributions from the land grant-merced assistance fund, shall receive an annual distribution amount starting in fiscal year 2024 and continuing in each subsequent fiscal year in accordance with the following:

(1) less than fifty thousand dollars (\$50,000), the assistance-qualified land grant-merced shall receive a full distribution;

(2) at least fifty thousand dollars (\$50,000) but not more than two hundred fifty thousand dollars (\$250,000), the assistance-qualified land grant-merced shall receive seventy-five percent of a full distribution;

(3) at least two hundred fifty thousand dollars (\$250,000) but not more than five hundred thousand dollars (\$500,000), the assistance-qualified land grant-merced shall receive fifty percent of a full distribution; and

(4) five hundred thousand dollars (\$500,000) or more, the assistance-qualified land grant-merced shall receive twenty-five percent of a full distribution.

E. Within thirty days of receiving the list of assistance-qualified land grants-mercedes pursuant to Subsection C of this section, the state treasurer shall distribute to each assistance-qualified land grant-merced the amount determined pursuant to Subsections C and D of this section. If the balance in the fund as of the preceding June 30 exceeds the sum of certified amounts distributed, the difference shall revert to the general fund.

F. As used in this section:

(1) "assistance-qualified land grant-merced" means a land grant-merced that has supplied an account of its previous fiscal year revenue calculated in the same manner used for an annual calculation pursuant to Subsection D of this section to the land grant council, is in compliance with Chapter 49, Article 1 or 4 NMSA 1978, including having an elected board of trustees, and is in compliance with the Audit Act; and

(2) "full distribution" means an amount equal to the annual amount of money in the land grant-merced assistance fund at the start of a fiscal year divided by the total

number of assistance-qualified land grants-mercedes as determined by the land grant council pursuant to Subsection C of this section for that fiscal year.

History: Laws 2022, ch. 32, § 2.

ANNOTATIONS

Effective dates. — Laws 2022, ch. 32, § 3 made Laws 2022, ch. 32, § 2 effective July 1, 2022.

Compiler's notes. — Laws 2022, ch. 32, § 2 was not enacted as part of the Land Grant Support Act, but was compiled there for the convenience of the user.

Other New Mexico Statutes Pertaining to Community Land Grants-Mercedes

7-1-6.70. Distribution; land grant-merced assistance fund.

A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the land grant-merced assistance fund in an amount equal to five-hundredths percent of the net receipts attributable to the gross receipts tax after distributions have been made pursuant to Sections 7-1-6.46 and 7-1-6.47 NMSA 1978.

History: Laws 2022, ch. 32, § 1.

7-38-67. Real property sale requirements

A. Real property shall not be sold for delinquent taxes before the expiration of three years from the first date shown on the tax delinquency list on which the taxes on the real property became delinquent.

B. Notice of the sale shall be published in a local newspaper within the county where the real property is located or, if there is no local county or municipal newspaper, then a newspaper published in a county contiguous to or near the county in which the real property is located, at least once a week for the three weeks immediately preceding the week of the sale. For more generalized notice, the department may choose to publish notice of the sale also in a newspaper not published within the county and of more general circulation. The notice shall state the time and place of the sale and shall include a description of the real property sufficient to permit its identification and location by potential purchasers.

C. Real property shall be sold at public auction either by the department or an auctioneer hired by the department. The auction shall be held in the county where the real property is located at a time and place designated by the department.

D. If the real property can be divided so as to enable the department to sell only part of it and pay all delinquent taxes, penalties, interest and costs, the department may, with the consent of the owner, sell only a part of the real property.

E. Before the sale, the department shall determine a minimum sale price for the real property. In determining the minimum price, the department shall consider the value of the property owner's interest in the real property, the amount of all delinquent taxes, penalties and interest for which it is being sold and the costs. The minimum price shall not be less than the total of all delinquent taxes, penalties, interest and costs. Real property shall not be sold for less than the minimum price unless no offer met the minimum price when it was offered at an earlier public auction or the property is sold in accordance with the provisions of Subsection H of this section. A sale properly made under the authority of and in accordance with the requirements of this section constitutes full payment of all delinquent taxes, penalties and interest that are a lien against the property at the time of sale, and the sale extinguishes the lien.

F. Payment shall be made in full by the close of the public auction before an offer may be deemed accepted by the department.

G. Real property not offered for sale may be offered for sale at a later sale, but the requirements of this section and Section 7-38-66 NMSA 1978 shall be met in connection with each sale.

H. The board of trustees of a community land grant-merced governed pursuant to the provisions of Chapter 49, Article 1 NMSA 1978 or by statutes specific to the named land grant-merced shall be allowed to match the highest bid at a public auction, which shall entitle the board of trustees to purchase the property for the amount bid if:

- (1) the property is situated within the boundaries of that land grant-merced as shown in the United States patent to the grant;
- (2) the bid covers all past taxes, penalties, interest and costs due on the property; and
- (3) the land becomes part of the common lands of the land grant-merced.

History: 1953 Comp., § 72-31-67, enacted by Laws 1973, ch. 258, § 107; 1974, ch. 92, § 24; 1982, ch. 28, § 24; 1983, ch. 215, § 5; 1995, ch. 12, § 12; 2001, ch. 253, § 3; 2001, ch. 254, § 3; 2005, ch. 211, § 1.

ANNOTATIONS

Cross references. — For laws relating to land grant-merced, *see* 49-1-1 to 49-1-22 NMSA 1978.

The 2005 amendment, effective July 1, 2005, in Subsection E, provided that real property shall not be sold for less than the minimum price unless no offer met the minimum price when the property is sold in accordance with Subsection H and added Subsection H to provide that the board of trustees shall be allowed to match the highest bid at a public auction and purchase the property for the amount bid if the property is within a land grant-merced, the bid covers all past taxes, penalties, interest and costs and the land becomes part of the common lands of the land grant-merced.

The 2001 amendment, effective June 15, 2001, in Subsection B, substituted "local newspaper" for "newspaper of general circulation", added "or, if there is no local county or municipal newspaper, then a newspaper published in a county contiguous to or near the county in which the real property is located", and added the second sentence.

The 1995 amendment, effective June 16, 1995, substituted "department" for "division" throughout the section and substituted "costs" for "expenses of the sale" in Subsection D and in two places in Subsection E.

Notice by publication inadequate for mortgagee. — Notice by publication, in compliance with this section, does not provide a mortgagee of real property with constitutionally adequate notice of a proceeding to sell the mortgaged property for nonpayment of taxes. *Macaron v. Assocs. Capital Servs. Corp.*, 1987-NMCA-005, 105 N.M. 380, 733 P.2d 11.

Owner's interest. — Subsection E of this section requires the department to "consider" both the owner's interest and the amount of delinquent taxes, penalties, and costs, but then the department is directed to set the minimum price as not less than the total of the delinquent taxes, penalties, and costs. Thus, the legislature does not appear to have required any definite amount representing the owner's interest as part of the minimum sale price. *Cochrell v. Mitchell*, 2003-NMCA-094, 134 N.M. 180, 75 P.3d 396.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 72 Am. Jur. 2d State and Local Taxation §§ 931 to 939.

85 C.J.S. Taxation §§ 798 to 808.

7-38-67.1. Sale of abandoned real property; notice of sale; requirements.

A. Abandoned real property may be sold by special sale.

B. Notice of the sale shall be published in a local newspaper within the county where the abandoned real property is located, or in a newspaper published in a county contiguous to or near the county in which the abandoned real property is located, the week immediately preceding the week of the sale. In cases where abandoned real property is offered for sale via an online platform pursuant to Subsection D of this section, the notice of the sale shall be published in a local newspaper within the county where the abandoned real property is located, or in a newspaper published in a county contiguous to or near the county in which the abandoned real property is located, the week immediately preceding the week of the beginning of the continuous online sale. Online sales notices pursuant to this section shall also be published on the property tax division's website. The notice shall:

(1) state the time and place of the sale;

(2) if the sale is made via an online sale pursuant to Subsection D of this section, state the date and time the sale will begin and expire and the property tax division's website where the property being sold will be listed;

(3) include the name of the subdivision in which the abandoned real property is located;

(4) state the total minimum bid; and

(5) provide the phone number of the property tax division and the web address where interested buyers may obtain copies of the list of properties to be sold.

C. Abandoned real property may be sold at public auction either by the department or an auctioneer hired by the department. The auction shall be held in the county where the abandoned real property is located at a time and place designated by the department.

D. Abandoned real property may be offered for sale via an online platform on the property tax division's website, and notice shall be given pursuant to Subsection B of this section. The sales of abandoned real property listed on the property tax division's website may be continuous until December 31 of the tax year in which the abandoned real property is offered for sale. For subsequent tax years, notice shall be given pursuant to Subsection B of this section before the abandoned real property listed on the property tax division's website can be reoffered for sale.

E. Before the sale, the department shall determine a minimum sale price for the abandoned real property. In determining the minimum price, the department shall consider the amount of all delinquent taxes, penalties, interest and costs for which the abandoned real property is being sold. If the department determines the total amount due is in excess of the sale price that could reasonably be made through public auction, the property tax division may offer the abandoned real property for less than the total amount of delinquent taxes, penalties, interest and costs due.

F. A sale properly made under the authority of and in accordance with the requirements of this section constitutes full payment of all delinquent taxes, penalties and interest that are a lien pursuant to Section 7-38-48 NMSA 1978 against the abandoned real property at the time of sale, and the sale extinguishes the lien.

G. Payment shall be made in full by the close of the public auction before an offer may be deemed accepted by the department. For abandoned real property sold via an online platform pursuant to Subsection D of this section, payment shall be made in full within one business day of the bid being accepted by the department before an offer may be deemed accepted by the department. Receipt of a bid from a buyer by the department is not acceptance of the bid by the department. The department shall notify the buyer whose bid is accepted by the department, and the one business day payment requirement begins at the time the buyer received notice of acceptance to the buyer whose bid was accepted by the department. Notice of acceptance of a bid sent to a buyer by the department may be sent via email. Failure of a buyer whose bid was accepted by the department and to whom notice was sent by the department to pay the full sales price within one business day invalidates the sale and the property can be reoffered for sale unless the buyer receives an extension to make payment from the department. Requests for time extensions and approvals of time extensions can be made via email.

H. The board of trustees of a community land grant-merced governed pursuant to the provisions of Chapter 49, Article 1 NMSA 1978, or by statutes specific to the named land grant-merced, shall be allowed to exercise the right of first offer to purchase the abandoned real property if:

(1) the abandoned real property offered for sale is situated within the boundaries of that land grant-merced as shown in the United States patent to the grant;

(2) the offer covers all taxes, penalties, interest and costs due on the abandoned real property unless the minimum sales price is reduced below total amounts owed pursuant to Subsection E of this section; and

(3) the land becomes part of the common lands of the land grant-merced.

I. In the event that there is a competing interest in the abandoned real property by prior landholders, such as land grant owners, pueblos or nontaxable entities, the secretary shall determine who has the prevailing right of first offer.

J. The time requirements of this section are subject to the provisions of Section 7-38-83 NMSA 1978.

K. As used in this section, "right of first offer" means the department is obliged to undergo exclusive good faith negotiations with the rights holder before offering abandoned real property for sale to the public.

History: 1978 Comp., § 7-38-67.1, enacted by Laws 2018, ch. 50, § 3.

ANNOTATIONS

Effective dates. — Laws 2018, ch. 50 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 16, 2018, 90 days after the adjournment of the legislature.

Abandon real property definition. — defined in § 7-35-2 NMSA 1978, "abandoned real property" means real property:

(1) that is part of a subdivision where the subdivision has a minimum of five thousand lots in delinquency on the department's delinquent property tax list as prepared by the appropriate county treasurer pursuant to Section 7-38-61 NMSA 1978 as of January 1, 2019;

(2) of which the subdivided lots are vacant;

(3) that is part of a subdivision plotted on or before 1980;

(4) the property taxes, penalties and interest of which are delinquent for at least ten years; and

(5) that does not include property with existing homes, businesses or other habitable structures.

8-5-18. Guadalupe Hidalgo treaty division

A. The "Guadalupe Hidalgo treaty division" is created within the office of the attorney general. The division shall review, oversee and address concerns relating to the provisions of the Treaty of Guadalupe Hidalgo that have not been implemented or observed in the spirit of Article 2, Section 5 of the constitution of New Mexico and Section 47-1-25 NMSA 1978.

B. The division shall consist of such personnel and have such duties as the attorney general shall designate.

C. The attorney general shall report the findings and recommendations of the division to the legislature annually.

History: Laws 2003, ch. 101, § 1; 2006, ch. 49, § 1.

ANNOTATIONS

Cross references. — For the Treaty of Guadalupe Hidalgo, *see* the treaty of peace between the United States and Mexico published in Volume 1 of the NMSA 1978 and on *NMOneSource.com*.

The 2006 amendment, effective May 17, 2006, changed the requirement in Subsection C that the division report to the second session of the forth-sixth legislature to a requirement that the division report annually to the legislature.

12-5-10. [Guadalupe Hidalgo treaty day.]

February 2 of each year shall be set apart and known as "Guadalupe Hidalgo treaty day" in recognition and commemoration of the day in 1848 on which the Treaty of Peace, Friendship, Limits and Settlement, commonly known as the Treaty of Guadalupe Hidalgo, was executed between the United States and the Mexican Republic.

History: Laws 1997, ch. 77, § 1.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Effective dates. — Laws 1997, ch. 77 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 20, 1997, 90 days after adjournment of the legislature.

Cross references. — For the Treaty of Guadalupe Hidalgo, *see* Treaty of Peace Between United States and Mexico in Pamphlet 3 NMSA 1978.

13-6-5. Sale of real property by state agencies; land grant right of first refusal

A. Notwithstanding the provisions of Section 13-6-2 or 67-3-8.2 NMSA 1978, a state agency shall give the board of trustees of a community land grant governed pursuant to the provisions of Chapter 49, Article 1 NMSA 1978 or by statutes specific to the named land grant the right of first refusal when selling real property belonging to the state agency if the property is land that is located within the boundaries of that community land grant as shown in the United States patent to the grant.

B. If the board of trustees of the community land grant elects not to purchase the land offered for sale or does not respond to the notice of sale within forty-five days of receipt of the notice, the state agency may otherwise dispose of the property in accordance with applicable law.

C. The provisions of this section do not apply to lands held in trust pursuant to the Enabling Act and for which that act prescribes how that land may be disposed of.

D. The provisions of this section do not apply to the conveyance or transfer of state highways to local government entities.

History: Laws 2005, ch. 251, § 1.

ANNOTATIONS

Effective dates. — Laws 2005, ch. 251 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 17, 2005, 90 days after adjournment of the legislature.

41-4-30. Liability coverage; certain community land grants.

Notwithstanding the provisions of Paragraph (1) of Subsection A of Section 41-4-25 NMSA 1978 to the contrary, a community land grant governed as a political subdivision of the state upon application to the risk management division of the general services department shall be authorized to purchase coverage for any risk for which immunity has been waived under the Tort Claims Act through the public liability fund, exclusive of coverage of an activity conducted by the community land grant that is determined by the director of the risk management division pursuant to division rules to be a business enterprise.

History: Laws 2010, ch. 22, § 1.

ANNOTATIONS

Effective dates. — Laws 2010, ch. 22 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 19, 2010, 90 days after the adjournment of the legislature.

41-4A-2. New Mexico Civil Rights Act Definition.

As used in the New Mexico Civil Rights Act, "public body" means a state or local government, an advisory board, a commission, an agency or an entity created by the constitution of New Mexico or any branch of government that receives public funding, including political subdivisions, special tax districts, school districts and institutions of higher education, but not including an acequia or community ditch, a soil and water conservation district, a land grant-merced, a mutual domestic water consumers association or other association organized pursuant to the Sanitary Projects Act [Chapter 3, Article 29 NMSA 1978] or a water users' association.

History: Laws 2021, ch. 119, § 2.

42-6-12. [Consent of state in quiet title and foreclosure suits.]

Upon the conditions herein prescribed for the protection of the state of New Mexico, the consent of the state is given to be named a party in any suit which is now pending or which may hereafter be brought in any court of competent jurisdiction of the state to quiet title to or for the foreclosure of a mortgage or other lien upon real estate or personal property, for the purpose of securing an adjudication touching any mortgage or other lien the state may have or claim on the premises or personal property involved.

History: 1941 Comp., § 25-1312, enacted by Laws 1947, ch. 150, § 1; 1953 Comp., § 22-14-12.

ANNOTATIONS

Purpose of section. — This section was enacted for the limited purpose of aiding a mortgagee who discovers that the state has acquired an interest in the mortgaged property and is unable to pass a marketable title to the purchaser at a foreclosure sale unless the state can be joined in the foreclosure suit. *Maes v. Old Lincoln Cnty. Mem. Comm'n*, 1958-NMSC-115, 64 N.M. 475, 330 P.2d 556.

No omnibus legislative consent to sue state. — The supreme court finds no omnibus legislative consent to bring suit against the state to quiet title. *Maes v. Old Lincoln Cnty. Mem. Comm'n*, 1958-NMSC-115, 64 N.M. 475, 330 P.2d 556.

Limited waiver of immunity does not include actions to quiet title. — In consolidated cases where plaintiffs filed complaints to quiet title to real property, and named defendants, each a political subdivision of the state, as parties who may claim an adverse interest in the respective properties, and where defendants filed motions to dismiss, claiming that 42-11-1 NMSA 1978 prohibited naming defendants as parties in an action to quiet title because they were political subdivisions of the state, the court of appeals properly ordered dismissal of the actions, because in enacting 42-11-1 NMSA 1978, the legislature intended to grant broad immunity to the state and its political subdivisions, and although this section provides a limited waiver of sovereign immunity, it does not include actions to quiet title. *Nash v. Board of Cnty. Comm'rs of Catron Cnty.*, 2021-NMSC-005, *aff'g* 2019-NMCA-044.

Waiver of immunity does not authorize quiet title suits under the circumstances of this case. — Where, in two separate quiet title lawsuits, plaintiffs named the county of Valencia and the board of county commissioners of Catron county as parties who claimed or may claim an interest in the subject properties, and where the counties responded by filing motions to dismiss on the ground that 42-11-1 NMSA 1978 provided them with immunity and barred the lawsuits, the New Mexico court of appeals held that 42-11-1 NMSA 1978 controls and acts as a bar to quiet title suits against the state and its political subdivisions unless specifically authorized by law, and that this section's limited purpose of aiding a mortgagee where the state has acquired an interest in the mortgaged property and the mortgagee is unable to pass marketable title to the purchaser at a

foreclosure sale unless the state can be joined in the foreclosure suit does not provide a statutory exception to the counties' immunity. *Belen Consol. Sch. Dist. v. Valencia Cty. and Nash v. Bd. of Cty. Comm'rs*, 2019-NMCA-044, cert. granted.

Section does not statutorily create sovereign immunity in quiet title actions against the state, as there are presently in New Mexico no conditions or circumstances that could rationally support the doctrine of sovereign immunity. *Brosseau v. N.M. State Hwy. Dep't*, 1978-NMSC-098, 92 N.M. 328, 587 P.2d 1339 (decided before enactment of Section 42-11-1 NMSA 1978).

State armory board, as agency of state, is immune from suit to quiet title to property city had leased to board before city filed certificate of abandonment of property for purpose for which it had been condemned. *Nevaras v. State Armory Bd.*, 1969-NMSC-144, 81 N.M. 268, 466 P.2d 114.

42-11-1. Granting immunity; providing for exceptions.

The state of New Mexico and its political subdivisions or any of their branches, agencies, departments, boards, commissions, instrumentalities or institutions are granted immunity from and may not be named a defendant in any suit, action, case or legal proceeding involving a claim of title to or interest in real property except as specifically authorized by law.

History: Laws 1979, ch. 110, § 1.

ANNOTATIONS

Action against the state was not barred by the eleventh amendment sovereign immunity. — Where the public education department reduced the amount of state revenues paid each month to the school district as an offset for funds received by the school district under the federal impact aid statute, 20 U.S.C. § 7709; the federal statute permitted the state to offset federal revenue as long as the state had been granted certification to do so by the federal department of education; the public education department implemented the offset before it had received federal certification; and the school district sued for reimbursement of state funds that had been offset before federal certification had been issued, the action did not violate sovereign immunity under the eleventh amendment because the basis of the action was to compel the public education department to give the school district its full share of state funds in accordance with Section 22-8-25 NMSA 1978 without reduction for federal aid. *Zuni Pub. School Dist. #89 v. N.M. Pub. Educ. Dep't*, 2012-NMCA-048, 277 P.3d 1252, cert. denied, 2012-NMCERT-004.

Action against the state for money damages was not barred by sovereign immunity under New Mexico law. — Where the public education department reduced the amount of state revenues paid each month to the school district as an offset for funds received by the school district under the federal impact aid statute, 20 U.S.C. § 7709; the federal statute permitted the state to offset federal revenue as long as the state had been granted certification to do so by the federal department of education; and the public education department implemented the offset before it had received federal certification, the school district's action against the public education department for monetary damages in the amount of state revenues that had been deducted before federal certification had been issued was not barred by sovereign immunity under New Mexico law. *Zuni Pub. School Dist. #89 v. N.M. Pub. Educ. Dep't*, 2012-NMCA-048, 277 P.3d 1252, cert. denied, 2012-NMCERT-004.

Broad grant of immunity bars actions to quiet title against political subdivisions of the state. — In consolidated cases where plaintiffs filed complaints to quiet title to real property, and named defendants, each a political subdivision of the state, as parties who may claim an adverse interest in the respective properties, and where defendants filed motions to dismiss, claiming that this section prohibited naming defendants as parties in an action to quiet title because they were political subdivisions of the state, the court of

appeals properly ordered dismissal of the actions, because in enacting this section, the legislature intended to grant broad immunity to the state and its political subdivisions, and although 42-6-12 NMSA 1978 provides a limited waiver of sovereign immunity, it does not include actions to quiet title. *Nash v. Board of Cnty. Comm'rs of Catron Cnty.*, 2021-NMSC-005, *aff'g* 2019-NMCA-044.

Quiet title actions against political subdivisions of the state are barred. — Where, in two separate quiet title lawsuits, plaintiffs named the county of Valencia and the board of county commissioners of Catron county as parties who claimed or may claim an interest in the subject properties, and where the counties responded by filing motions to dismiss on the ground that 42-11-1 NMSA 1978 provided them with immunity and barred the lawsuits, the New Mexico court of appeals held that this section controls and acts as a bar to quiet title suits against the state and its political subdivisions unless specifically authorized by law, and that there is no statutory exception to the counties' immunity in these cases. *Belen Consol. Sch. Dist. v. Valencia Cty. and Nash v. Bd. of Cty. Comm'rs*, 2019-NMCA-044, cert. granted.

Am. Jur. 2d, A.L.R. and C.J.S. references. — **Applicability of judicial immunity to acts of clerk of court under state law, 34 A.L.R.4th 1186.**

61-23-33. Notice of boundary survey; certain land grants

A. If a boundary survey of property is conducted within or bordering the common lands of a community land grant governed and operating pursuant to Chapter 49, Article 6, 7, 8 or 10 NMSA 1978, the surveyor shall give written notice by certified mail to the board of trustees or commissioners of the affected land grant prior to recording the boundary survey or plat with the county clerk. The notice shall indicate where and when the boundary survey will be or was conducted.

B. The board of trustees or commissioners of a community land grant governed and operating pursuant to Chapter 49, Article 6, 7, 8 or 10 NMSA 1978 shall record with the county clerk of the county within which the land grant is located the address and contact information of the appropriate officer of the board or commission to which notice shall be given pursuant to Subsection A of this section. Any change in address or contact information shall be updated and recorded as soon as practicable to ensure that timely notice may be accomplished by certified mail.

C. A surveyor shall give proof of the notice required by Subsection A of this section by having the tracking number of the certified mailing and the address of the land grant as recorded with the county clerk acknowledged and recorded on the boundary survey or plat. A boundary survey or plat recorded pursuant to Section 61-23-28.2 NMSA 1978 without proof of the notice required by Subsection A of this section shall not be considered a valid filing or recording of the boundary survey or plat.

History: Laws 2010, ch. 6, § 1.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-23-32 NMSA 1978.

Effective dates. — Laws 2010, ch. 6 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 19, 2010, 90 days after the adjournment of the legislature.

List of Select New Mexico General Governance Statutes Applicable to Political Subdivisions of the State of New Mexico*

§6-6-1 et seq. NMSA 1978. — Local Government Finances

§6-10-1 et seq. NMSA 1978. — Public Money

§10-1-1 et seq. NMSA 1978 — Public Office Qualifications

§10-2-1 et seq. NMSA 1978 — Bonds for Public Office

§10-3-1 et seq. NMSA 1978. — Vacancies in Local Offices

§10-4-1 et seq. NMSA 1978. — Removal of Local Officers

§10-5-1 et seq. NMSA 1978. — Suspension of Certain Officers

§10-5-1 et seq. NMSA 1978 — Abandonment of Public Office

§10-8-1 et seq. NMSA 1978 — Per Diem and Mileage Act

§10-15-1 et seq. NMSA 1978. — Open Meetings Act

§10-16-1 et seq. NMSA 1978. — Governmental Conduct Act

§10-17-5. — [Delivery of lawbooks, records and documents to successors]

§10-17-12. — [Willful neglect of duty; penalty]

§12-6-1 et seq. NMSA 1978. — Audit Act

§13-1-1 et seq. NMSA 1978. — Procurement Code

§13-6-2.1 et seq. NMSA 1978. — Sales, Trades or Leases; Board of Finance
Approval

§13-8-1 et seq. NMSA 1978 — Public Building Plaques

§14-2-1 et seq. NMSA 1978. — Inspection of Public Records Act

§41-4-1 et seq. NMSA 1978. — Tort Claims Act

*See Land Grant Council 2020 General Governance Statutes Appendix for text of statutes

Other Federal Laws Pertaining to Community Land Grants-Mercedes

Public Law 115-334 115th Congress, Session II.

AGRICULTURE IMPROVEMENT ACT OF 2018

AN ACT

To provide for the reform and continuation of agricultural and other programs of the Department of Agriculture through fiscal year 2023, and for other purposes.

SEC. 2304. ESTABLISHMENT AND ADMINISTRATION OF ENVIRONMENTAL QUALITY INCENTIVES PROGRAM.

(e) WATER CONSERVATION OR IRRIGATION EFFICIENCY PRACTICE.— Section 1240B(h) of the Food Security Act of 1985 (16 U.S.C.3839aa–2(h)) is amended—

(1) by striking paragraph (1) and inserting the following:

“(1) AVAILABILITY OF PAYMENTS.—The Secretary may provide water conservation and system efficiency payments under this subsection to an entity described in paragraph (2) or a producer for—

“(A) water conservation scheduling, water distribution efficiency, soil moisture monitoring, or an appropriate combination thereof;

“(B) irrigation-related structural or other measures that conserve surface water or groundwater, including managed aquifer recovery practices; or

“(C) a transition to water-conserving crops, water-conserving crop rotations, or deficit irrigation.”;

(2) by redesignating paragraph (2) as paragraph (3);

(3) by inserting after paragraph (1) the following:

“(2) ELIGIBILITY OF CERTAIN ENTITIES.—

“(A) IN GENERAL.—Notwithstanding section 1001(f)(6), the Secretary may enter into a contract under this subsection with a State, irrigation district, groundwater management district, acequia, land-grant mercedes, or similar entity under a streamlined contracting process to implement water conservation or irrigation practices under a watershed-wide project that will effectively conserve water, provide fish and

wildlife habitat, or provide for drought-related environmental mitigation, as determined by the Secretary.

“(B) IMPLEMENTATION.—Water conservation or irrigation practices that are the subject of a contract entered into under subparagraph (A) shall be implemented on—

“(i) eligible land of a producer; or

“(ii) land that is—

“(I) under the control of an irrigation district, groundwater management district, acequia, land grant mercedes, or similar entity; and “(II) adjacent to eligible land described in clause (i), as determined by the Secretary.

“(C) WAIVER AUTHORITY.—The Secretary may waive the applicability of the limitations in section 1001D(b) or section 1240G for a payment made under a contract entered into under this paragraph if the Secretary determines that the waiver is necessary to fulfill the objectives of the project.

“(D) CONTRACT LIMITATIONS.—If the Secretary grants a waiver under subparagraph (C), the Secretary may impose a separate payment limitation for the contract with respect to which the waiver applies.”; (4) in paragraph (3) (as so redesignated)—

(A) in the matter preceding subparagraph (A), by striking “to a producer” and inserting “under this subsection”;

(B) in subparagraph (A), by striking “the eligible land of the producer is located there is a reduction in water use in the operation of the producer” and inserting “the land on which the practices will be implemented is located, there is a reduction in water use in the operation on that land”; and

(C) in subparagraph (B), by inserting “except in the case of an application under paragraph (2),” before “the producer agrees”; and (5) by adding at the end the following:

“(4) EFFECT.—Nothing in this subsection authorizes the Secretary to modify the process for determining the annual allocation of funding to States under the program.”

Public Law No. 39 [CHAPTER 52.] 72nd Congress, Session I.

AN ACT

To authorize the Secretary of the Interior to issue patents for lands held under color of title.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that whenever it shall be shown to the satisfaction of the Secretary of the Interior that a tract or tracts of public land, contiguous to a Spanish or Mexican land grant, in the State of New Mexico, not exceeding in the aggregate one hundred and sixty acres, has or have been held in good faith and in peaceful, adverse possession by a citizen of the United States, his ancestors or grantors, for more than twenty years under claim or color of title, and that valuable improvements have been placed on such land, or some part thereof has been reduced to cultivation, the Secretary may, in his discretion, upon the payment of \$1.25 per acre, cause a patent or patents to issue for such land to any such citizen: Provided, That where the area or areas so held by any such citizen is in excess of one hundred and sixty acres the Secretary may determine what particular subdivisions, not exceeding one hundred and sixty acres in the aggregate, to any such citizen may be patented hereunder: Provided further, That coal and all other minerals contained therein are hereby reserved to the United States ; that said coal and other minerals shall be subject to sale or disposal by the United States under applicable leasing and mineral land laws, and permittees, lessees, or grantees of the United States shall have the right to enter upon said lands for the purpose of prospecting for and mining such deposits: Provided further, That the term " citizen," as used herein, shall be held to include a corporation organized under the laws of the United States or any State or Territory thereof .

Approved, February 23, 1932

Public Law No. 419 [CHAPTER 482] 82nd Congress, Session II

AN ACT

To stabilize the economy of dependent residents of New Mexico using certain lands of the United States known as the North Lobato and El Pueblo tracts, originally purchased from relief program funds, and now administered under agreement by the Carson and Santa Fe National Forests, to effect permanent transfer of these lands, and for other purposes.

SEC. 1. Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that, notwithstanding the provisions of Public Law 49!), Eighty-first Congress, approved May 3, 1950, the Secretary of Agriculture, with the consent of the New Mexico Rural Rehabilitation Corporation so to do, evidenced by an appropriate resolution of its board of directors, is hereby authorized and directed to convey, grant, transfer, and quitclaim, not later than May 3, 1953, to the United States for subsequent administration subject to the laws, rules, and regulations applicable to national forest lands acquired under the Act of March 1, 1911 (36 Stat. 961), as amended, all right, title, claim, interest, equity, and estate in and to the following-described lands administered by the Secretary as trustee, under an agreement of transfer dated May 16, 1937, as amended January 20, 1939, with the New Mexico Rural Rehabilitation Corporation, and situated in the counties of Rio Arriba and San Miguel, respectively, State of New Mexico, together with the improvements thereon and the rights and the appurtenances thereto belonging or appertaining, to wit:

That part of the Juan Jose Lobato Grant Numbered 164, as shown on plat approved by decree of court of October 13, 1895, and filed in volume 4, page 12, New Mexico Private Land Claims Records of the Bureau of Land Management, which lies northerly of the Chama River, as conveyed to the United States by William S. Jackson on the 30th day of December 1942, and as more specifically described in the deed of conveyance recorded in volume 25-A of deeds, at pages 463-472 of the records of Rio Arriba County, New Mexico.

That part of the Anton Chica (*sic*) Grant Numbered 29, as described on plat of survey approved February 15, 1882, and filed in volume 1, page 18, of New Mexico Private Land Claims Records of the Bureau of Land Management, which has been acquired by the United States as part of the El Pueblo project, from Gross, Kelly and Company, of Las Vegas, New Mexico, by deed dated October 23, 1939, and recorded in book 128 of deeds at pages 534-537, records of San Miguel County, New Mexico, on February 27, 1940, and north half section 3; lot 1, southeast quarter northeast quarter section 4, township 12 north, range 15 east; south half of fractional section 14; east half southeast quarter section 22; fractional section 23; fractional section 26; east half northeast quarter, northeast quarter southeast quarter, south half southeast quarter, southeast quarter southwest quarter, section '27; north half, east half west half southwest quarter, east half southwest quarter, southeast quarter section 34; section 35, township 13 north, range 15 east; south half southwest quarter section 17; lots 1, 2, northwest quarter northeast quarter section 20; southwest quarter section 26; lot 5, northeast quarter

southeast quarter section 27; lots 1, 2 of section 35, township 13 north, range 16 east, New Mexico principal meridian, containing twenty-six thousand four hundred sixty-four and forty-six one-hundredths acres, more or less.

SEC. 2. The lands conveyed to the United States under this Act shall, subject to adequate protection and conservation of soil and vegetative resources and the forests therein, be administered with due regard to the purposes for which the lands were originally acquired by the United States in its program of rural rehabilitation.

SEC. 3. That pending said transfer of the above land to the Forest Service and thereafter, mineral deposits within said tracts of land, whether acquired by purchase with said land or reserved to the Government in the original patent, shall be administered under the Mineral Leasing Act of August 7, 1947 (61 Stat. 913; 30 U. S. C. 351), as to the minerals specified therein, and as to any other minerals in the manner prescribed by section 402 of the President's Reorganization Plan Numbered 3 of 1946 {60 Stat. 1099}. Applications for mineral leases at any time heretofore or hereafter filed with respect to said mineral deposits shall be considered and acted upon in the manner prescribed, notwithstanding the provisions of Public Law 499 of the Eighty-first Congress, approved May 3, 1950.

SEC. 4. The following public domain lands are hereby reserved for administration under the Act of June 4, 1897 (30 Stat. 35, 16 U. S. C, 1946 edition, sec. 475), as amended or supplemented: Lot 1, section 25 and lots 1, 2, 3, and 4, section 36, all in township 13 north, range 15 east, New Mexico principal meridian, containing one hundred sixteen and three one-hundredths acres, more or less.

Approved June 28, 1952.