

Inclosure 25619.

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The Honorable

The Secretary of the Interior.

Sir:

There are inclosed herewith two copies of letter dated September 20, 1922, with inclosures received from the Superintendent of the Umatilla Indian School, Pendleton, Oregon, relative to the proceedings had before the Umatilla County (Oregon) court, concerning the opening of a public highway across certain Umatilla Indian allotments as follows:

		T. 1 N., R. 34 E.
509 Rachel E. Van Pelt	NW $\frac{1}{4}$ - NE $\frac{1}{4}$	Sec. 8
586 James Crans	SW $\frac{1}{4}$ - NE $\frac{1}{4}$	"
561 Pentulteamen	NW $\frac{1}{4}$ - SE $\frac{1}{4}$	"
525 Moses Lloyd	NE $\frac{1}{4}$ - SW $\frac{1}{4}$	"
524 Peter Lloyd	SE $\frac{1}{4}$ - SW $\frac{1}{4}$	"

Said allotments were made under the act of March 2, 1917 (39 Stat. L., 969-998), and trust patents were issued therefor under the act of February 8, 1887 (24 Stat. L., 388) as amended, providing for a twenty-five year trust period which has not yet expired.

The record shows that the county court was unwilling to allow the allottees the amount of damages which they demand, and the Superintendent says that although he considers the amounts asked for by the allottees are excessive the damages offered by the county court are not sufficient compensation for the desired right of way.

He says that the county court is now reported to be taking steps under the Oregon State laws of eminent domain to acquire the right of way in question and recommends that the matter be referred to the Department of Justice for appropriate action.

In this connection the act of March 3, 1901 (31 Stat. L., 1058) contains the following provisions:

Sec. 3.

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That lands allotted in severalty to Indians may be condemned for any public purpose under the laws of the State or Territory where located in the same manner as land owned in fee may be condemned, and the money awarded as damages shall be paid to the allottee.

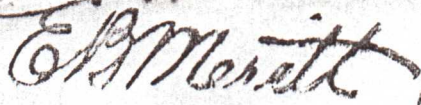
Sec. 4. That the Secretary of the Interior is hereby authorized to grant permission, upon compliance with such requirements as he may deem necessary, to the proper State or local authorities for the opening and establishment of public highways, in accordance with the laws of the State or Territory in which the lands are situated, through any Indian reservation or through any lands which have been allotted in severalty to any individual Indians under any laws or treaties but which have not been conveyed to the allottees with full power of alienation.

* * * * *

The Office is of opinion that the first section of law above quoted is not applicable to the present case, and that the only way the Umatilla County court can proceed is to comply with said Section 4 of the act of March 3, 1901, and the regulations thereunder.

It is recommended that the Department of Justice be requested to instruct the United States Attorney to enter his appearance in the case for the purpose of contesting the jurisdiction of the court and taking such other action as may be warranted by the laws and the facts.

Respectfully,



Assistant Commissioner.