

# CHAPTER 49

## LAND GRANTS

### ARTICLE 1

#### GENERAL PROVISIONS

##### 49-1-1. [Management of Spanish or Mexican grants.]

All grants of land in the state of New Mexico made by the government of Spain or by the government of Mexico, to any community, town or pueblo, or of the class of grants mentioned in Section 800 [49-1-2 NMSA 1978], shall be managed, controlled and governed as herein provided.

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

#### ANNOTATIONS

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

**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*, 65 N.M. 103, 332 P.2d 1020 (1958).

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. 4497.

**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*, 56 N.M. 2, 239 P.2d 535 (1951).

**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).

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

## **49-1-2. [Application of article.]**

This article shall apply to all grants of land made by the government of Spain, or by the government of Mexico, to any community, town, colony or pueblo, or to any individual for the purpose of founding or establishing any community, town, colony or pueblo; to all grants that were prior to March 18, 1907, confirmed by the congress of the United States, or by the court of private land claims, to any community, town, colony or pueblo, and to all grants or private land claims recommended by any surveyor general of New Mexico for confirmation by congress to any town, colony, community or pueblo, or designated as a grant to any town, colony, community or pueblo, in any report or list of land grants prepared by such surveyor general and confirmed by congress in accordance therewith; but shall not apply to any land grant which is now managed or controlled in any manner, other than herein provided, by virtue of any general or special act.

**History:** Laws 1907, ch. 42, § 2; Code 1915, § 800; C.S. 1929, § 29-102; 1941 Comp., § 9-102; 1953 Comp., § 8-1-2.

### **ANNOTATIONS**

**Meaning of "this article".** - The word "article" was substituted for the word "act" by the 1915 Code compilers, which refers to Laws 1907, ch. 42, §§ 1 to 19, the provisions of which are presently compiled as 49-1-1 to 49-1-18 NMSA 1978.

**Generally.** - 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*, 41 N.M. 442, 70 P.2d 896 (1937).

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

The management and control of all the grants and tracts of land to which Sections 49-1-1 through 49-1-18 NMSA 1978 are applicable by virtue of Section 49-1-2 NMSA 1978 is hereby vested in a board of trustees, to be known as the "Board of Trustees of the . . . . .Land Grant" (designating the same by the name of such town, colony, pueblo or community), and the board shall have the following general powers:

A. to control, care for and manage the grant and real estate, and to prescribe the terms and conditions under which the common lands thereof may be used and enjoyed, and to make all necessary and proper rules and regulations for the government thereof;

B. to sue and be sued under the title aforesaid;

C. to sell, convey, lease or mortgage so much of the land grant or real estate under its control as aforesaid as is held in common;

D. to prescribe the price to be paid for the use of the common lands and to prohibit any person failing or refusing to pay such amount from using any portion of the same while he continues in default in such payments; provided, that the amount so fixed shall be in proportion to the number and kinds of livestock pasturing upon such common lands;

E. to adopt and use an official seal;

F. to appoint judges and clerks of election at all elections herein provided for, subsequent to the first, and to canvass the votes cast thereat; and

G. 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.

**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.

## ANNOTATIONS

**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*, 65 N.M. 103, 332 P.2d 1020 (1958).

**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*, 107 N.M. 215, 755 P.2d 59 (1988).

**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. Board of Trustees v. Romero, 98 N.M. 1, 644 P.2d 515 (1982).

**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. Board of Trustees v. Romero, 98 N.M. 1, 644 P.2d 515 (1982).

**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, 65 N.M. 103, 332 P.2d 1020 (1958).

#### **49-1-4. [Board of trustees; members; qualifications.]**

The said board of trustees shall consist of five (5) members, no three (3) of whom shall be a resident [residents] from the same precinct. No person shall be qualified to be a member of said board unless he shall be a qualified voter at a general election in this state and shall have an interest in said grant by inheritance or by purchase of an interest in common lands, and who shall not be in default of any dues, rent or other payment for the use of any of the common lands of said grant.

**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.

#### **49-1-5. Election of members of board of trustees; voters' qualifications; registration.**

A. Elections for the choice of members of such boards shall be held on the first Monday in April, of each alternate year. All persons residing within the limits of such grant, who have an interest in the common lands, by inheritance or by purchase of an interest in the common lands, who have resided for the period of five years prior to the election at which they offer to vote, who are qualified electors at the general elections held in this state and who are registered as herein provided, shall be qualified to vote at such elections. Each of such voters may vote for five trustees, all upon one ballot, but no ballot shall be counted that bears the names of two persons residing in the same precinct, except in cases where there are not five precincts within such grant. The persons receiving the greatest number of votes shall be declared elected as such trustees.

B. The registration of all qualified voters shall be conducted in the manner prescribed in the Election Code [Chapter 1 NMSA 1978], substituting, however, the words "board of

trustees" and "secretary" wherever the words "county commission" and "county clerk" are used in that act.

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

D. In each community land grant in which an election is to be held in April of the year 1937, the boards of trustees, immediately after the passage and approval of this act, shall proceed to call registration boards and provide for the registration of all duly qualified electors for the election to be held at such time; provided, that the board of registration shall be required to meet only one day for the purpose of registering the electors, which day shall not be less than twenty days prior to the election.

**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.

## ANNOTATIONS

**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.

**Emergency clauses.** - Laws 1937, ch. 194, § 3, makes the act effective immediately. Approved March 15, 1937.

**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*, 107 N.M. 215, 755 P.2d 59 (1988).

### **49-1-6. [Calling of election; notice; ballots.]**

Whenever, in any of the grants aforesaid, there is any committee, board or body of men assuming and claiming to control or manage such grant, or to represent the same, and actually exercising the powers and rights so claimed, and which committee, board or body of men has been chosen, elected or authorized, or whose claims and actions have been in any manner ratified or approved, by a majority of the qualified voters within said grant, it shall be lawful for such committee, board or body of men to give public notice of the time of said election, and to fix and give notice of the places therefor in each of said

precincts, which notice shall be given by handbills posted in five public places in each of said precincts at least fifteen days prior thereto, and also by publication for said period in some newspaper published within said grant, in case there be one. Said election shall be conducted, as nearly as practicable, in the same manner as provided by law for the holding of general elections in this state, except that no registration shall be required, and it shall not be necessary to have an official ballot, or one of particular size, and the judges and clerks of such election shall be appointed, and the votes canvassed by such committee, board or body. In case there is no such committee, board or body of men, or the same fails or refuses to call said election, then the said election shall be called, notice given, judges and clerks appointed, and the votes canvassed by the board of county commissioners of the county, within which such grant or the greater portion thereof is situated, and such board of county commissioners shall so act upon the petition of any three qualified voters residing within said grant, presented to it in writing thirty days or more prior to the date herein fixed for such election.

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

## ANNOTATIONS

**Compiler's note.** - If this section has any future application, the provision "except that no registration shall be required" is probably superseded by the 1937 amendment to Subsection B of 49-1-5 NMSA 1978, which requires registration of all qualified voters.

### **49-1-7. [Canvass of votes; certificate of election.]**

Said committee, board or body of men, or the board of county commissioners of said county, appointing such judges and calling such election, shall meet on the first Monday following such election and canvass the votes cast thereat, and issue to the persons having a majority of such votes a certificate showing such persons to have been duly elected thereat.

**History:** Laws 1907, ch. 42, § 7; Code 1915, § 805; C.S. 1929, § 29-107; 1941 Comp., § 9-107; 1953 Comp., § 8-1-7.

### **49-1-8. [Organization of board of trustees; treasurer's bond; deposit of funds; vacancy in treasurer's office; appointment and qualification of successor; collectors' bonds.]**

The members of such board, so elected shall meet on the first Monday after the votes are canvassed and organize by the election of a president, secretary and treasurer. The treasurer shall perform such duties as may be required of him by such board; said treasurer shall also furnish to said board a good and sufficient surety bond in a sum as hereinafter fixed, said bond to be conditioned as are the bonds of other public officials handling public moneys, and it is hereby made the duty of said treasurer to deposit all

the moneys coming into his hands as such treasurer in some bank organized and doing business in New Mexico.

Provided, however, that in the event of the death or resignation of said treasurer the said board shall fill the vacancy by appointing one of the members of said board as such treasurer, who shall before entering into the performance of his duties as such treasurer, execute and furnish to said board a good and sufficient surety bond, similar to the bond entered into by his predecessor. Provided, further, that the amount of bond so required of said treasurer and his successor shall at all times be for a sum of at least, double the amount received by and deposited in the said bank by the said treasurer. Provided, further, that in the event said board of trustees delegates any other of its members to collect moneys due the grant such other person shall be bonded in the same manner as is herein provided for the bonding of the treasurer and in any event those authorized to collect moneys shall give receipts for the moneys collected, which receipts shall be in no other form than that prescribed by the board of trustees 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.

#### **49-1-9. [Meetings of board.]**

Regular meetings of said board shall be held at such times as such board may by its rules determine, and special meetings may be held at any time on call of the president, five days' notice thereof 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.

#### **49-1-10. [Quorum in board meetings; binding effect of lawful acts.]**

A majority of such board of trustees shall constitute a quorum for the transaction of business, and the town, colony or community aforesaid, and the inhabitants thereof, shall be bound by the acts of such board done in pursuance of the provisions hereof.

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

#### **49-1-11. [Sale, mortgage or alienation of common lands; restrictions.]**

No sale, mortgage or other alienation of the common lands within such grant shall take effect unless authorized by a resolution duly adopted by the said board of trustees, and until after approval of such resolution by the district judge of the district within which said grant or a portion thereof is situate.

**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.

## ANNOTATIONS

- I. General Consideration.
- II. District Court Approval.

### I. GENERAL CONSIDERATION.

**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.

**Section Mandatory.** - The words of this section that "No sale . . . shall take effect unless . . . and until . . ." suggest that the legislature intended this provision to be mandatory. *Bibo v. Town of Cubero Land Grant*, 65 N.M. 103, 332 P.2d 1020 (1958).

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*, 65 N.M. 103, 332 P.2d 1020 (1958).

**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. Board of Trustees v. Romero*, 98 N.M. 1, 644 P.2d 515 (1982).

**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*, 65 N.M. 103, 332 P.2d 1020 (1958).

**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.

### 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*, 65 N.M. 103, 332 P.2d 1020 (1958).

**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*, 103 N.M. 77, 703 P.2d 174 (1985).

**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*, 65 N.M. 103, 332 P.2d 1020 (1958).

**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).

#### **49-1-12. [Board meetings to be public; resident's right to be heard; annual report.]**

All meetings of said board of trustees shall be public and no executive sessions shall be held; all persons residing within the limits of such grant shall have the right to be present at all times when such board is in session, and to be heard on all matters in which they may be interested. The board of trustees shall annually make public a report of all the transactions of said board for said year.

**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.

#### **49-1-13. [Vacancies in board; filling.]**

If a vacancy shall occur in any such board, the remaining members thereof shall fill such vacancy by appointment, to be made at a regular meeting, and the person so appointed shall hold his office until the next regular election.

**History:** Laws 1907, ch. 42, § 13; Code 1915, § 811; C.S. 1929, § 29-113; 1941 Comp., § 9-113; 1953 Comp., § 8-1-13.

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

Such board may fix and pay to its members a salary not to exceed two hundred dollars (\$200) to any member in any one month, which salary as fixed shall be in full as compensation for the duties performed by such board or the individual members thereof within the exterior boundaries of the grant; provided, however, that the secretary of the board may be allowed a salary not to exceed two hundred twenty-five dollars (\$225) in any one month; provided, further that the board of trustees and the secretary shall keep permanent and legible records capable of audit and that no money or funds shall be paid by the board of trustees or by any person authorized to expend money except by written check drawn upon vouchers.

**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.

#### **ANNOTATIONS**

**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.

**Emergency clauses.** - Laws 1979, ch. 184, § 4, makes the act effective immediately. Approved April 2, 1979.

**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*, 105 N.M. 324, 732 P.2d 426 (1987).

#### **49-1-15. [Ejectment; removal from grant; delinquency; forfeiture of interest.]**

If any person or persons shall hold in possession, or claim in private ownership, within the exterior boundaries of such land grant, any tract, piece or parcel of land, to which in the opinion of such board he has no right or title, such board may institute an action of ejectment against him, and if upon the trial it shall appear that such possession is without right, judgment shall be rendered in favor of such board for the possession thereof and for such damages as it may have proved for the wrongful detention thereof. Provided further that any delinquent person who moves outside the exterior boundaries of such grant and resides outside such exterior boundaries for a period of five years, such person shall lose all right or interest that he may have had in the common lands of said grant unless he pays in full all legal assessments or dues due [sic] by him.

**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.

#### **ANNOTATIONS**

**Compiler's note.** - 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.

#### **49-1-16. [Trespass on common lands or waters; injunction.]**

The several courts of this state shall entertain bills of complaint filed by any such board to enjoin persons from trespassing upon the common lands or using the common waters within such grant, if it shall appear that the complainant is without a plain, speedy and adequate remedy at law, or that the persons committing such trespasses are insolvents 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.

#### **ANNOTATIONS**

**Cross-references.** - As to community springs, see 72-10-1 to 72-10-3 NMSA 1978.

As to 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).

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

#### **49-1-17. [Suits against board; process.]**

Process in all actions or suits against such board 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.

#### **ANNOTATIONS**

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

#### **49-1-18. [When article inapplicable.]**

This article shall not be construed as applying to any land grant which is managed or controlled in any manner other than that hereinbefore provided.

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

## ANNOTATIONS

**Saving clauses.** - Laws 1907, ch. 42, § 18, provides 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 note.** - 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."

### **49-1-19. [Failure of trustee to perform duties; penalty.]**

That any member of the board of trustees who shall fail or refuse to perform any of the duties required to be performed by the board of trustees of such land grant or any member thereof, under Sections 49-1-1 to 49-1-18 NMSA 1978, as amended, or by any other law of the state of New Mexico, shall be guilty [guilty] of a misdemeanor and upon conviction therefor 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 such fine and imprisonment in the discretion of the court.

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

### **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

**Compiler's note.** - 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, 26 N.M. 283, 191 P. 144 (1920).

**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, 26 N.M. 283, 191 P. 144 (1920).

#### **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.

## **ARTICLE 2 CORPORATIONS FOR MANAGEMENT OF COMMUNITY LAND GRANTS**

#### **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**

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

**Meaning of "this act".** - 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*, 62 N.M. 440, 312 P.2d 91 (1957).

**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*, 62 N.M. 440, 312 P.2d 91 (1957).

**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*, 82 N.M. 340, 481 P.2d 702 (1971).

**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 & Imp. Co.*, 91 N.M. 591, 577 P.2d 1237 (1978).

**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. 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

**Compiler's note.** - The bracketed word "by" in Subsection F was inserted by the secretary of state.

**Jurisdiction, etc., of justices of the peace transferred.** - The office of justice of the peace has been abolished, and the jurisdiction, powers and duties have been 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*, 62 N.M. 440, 312 P.2d 91 (1957).

**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*, 62 N.M. 440, 312 P.2d 91 (1957).

**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*, 28 N.M. 53, 210 P. 102 (1922).

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



**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*, 107 N.M. 215, 755 P.2d 59 (1988).

**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.*, 81 N.M. 296, 466 P.2d 862 (1970).

**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 & Imp. Co.*, 91 N.M. 591, 577 P.2d 1237 (1978).

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. Board of Trustees v. Romero*, 98 N.M. 1, 644 P.2d 515 (1982).

**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 & Imp. Co.*, 91 N.M. 591, 577 P.2d 1237 (1978).

**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**

**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*, 107 N.M. 215, 755 P.2d 59 (1988).

#### **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**

**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. 101.

#### **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**

**Meaning of "this act".** - 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

**Cross-references.** - As to 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*, 80 N.M. 615, 459 P.2d 141 (1969).

**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.*, 51 N.M. 390, 185 P.2d 975 (1947).

**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.*, 51 N.M. 390, 185 P.2d 975 (1947).

**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.

### **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**

**Meaning of "this act".** - 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**

**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, 32 N.M. 124, 252 P. 478 (1925).

## **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**

**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**

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

**Meaning of "this act".** - 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.

#### **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**

**Cross-references.** - As to 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**

**Cross-references.** - As to 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.

#### **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**

**Emergency clauses.** - Laws 1961, ch. 158, § 3, makes the act effective immediately. Approved March 29, 1961.

**Saving clauses.** - Laws 1917, ch. 3, § 19, provides 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."



**Meaning of "this act" and "this chapter".** - 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*, 62 N.M. 440, 312 P.2d 91 (1957).

### **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 state corporation commission 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.

#### **ANNOTATIONS**

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

**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*, 80 N.M. 615, 459 P.2d 141 (1969).

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 49-2-7 NMSA 1978 since this section was the applicable statute. *Westland Dev. Co. v. Saavedra*, 80 N.M. 615, 459 P.2d 141 (1969).

**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*, 80 N.M. 615, 459 P.2d 141 (1969).

**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 & Imp. Co.*, 91 N.M. 591, 577 P.2d 1237 (1978).

**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*, 98 N.M. 620, 651 P.2d 1264 (1982).

## **ARTICLE 3**

### **CHAPERITO GRANT**

#### **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 of 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

**Meaning of "this chapter".** - 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.

### **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

**Meaning of "this chapter".** - See same catchline in 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.

### **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 [1-1-1 to 1-21-14 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

**Meaning of "this article".** - 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.

### **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

**Meaning of "this chapter".** - See same catchline in 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 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

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

**Meaning of "this chapter".** - See same catchline in notes to 49-3-1 NMSA 1978.

## **ARTICLE 4 CHILILI GRANT**

### **49-4-1. [Confirmation of grant.]**

That all apportionments or partitions of land on the grant of Chilili, in precinct number ten, of the county of Bernalillo and state of New Mexico, made by Inez Armenta as

trustee, or by his successor or successors as trustees of said grant, to the bona fide residents thereon, be and the same are hereby confirmed.

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

## ANNOTATIONS

**Compiler's note.** - 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.

**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 Chilili land grant, because of prior legislative provisions for management thereof contained in this article. *Merrifield v. Buckner*, 41 N.M. 442, 70 P.2d 896 (1937).

**No property interests in common lands conveyed.** - Absolutely no property interests in the common lands were conveyed to the individual residents of the Chilili Land Grant of 1841 by the 1909 patent from the United States. *Moya v. Chilili Coop. Ass'n*, 87 N.M. 99, 529 P.2d 1220 (1974), 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. [Issuance of deeds; costs.]

It shall be the duty of said Armenta, or his successors in office, to extend title deeds to such persons as have held bona fide possession of the land to them apportioned, for the term of ten years, and still hold the same under the authority of the said trustees; said deeds to be signed by the president of the board of trustees; the person interested paying costs of said deed, not exceeding two dollars [(\$2.00)].

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

### 49-4-3. Board of trustees; election; officers; powers.

That every two years after January 14, 1876, a board of five trustees shall be elected for the government of said grant, at the time of holding the general election in the state, and said trustees shall hold office until their successors have been duly elected and qualified. The board of trustees shall organize by electing from its members, a president, secretary and treasurer, or secretary-treasurer. The board of trustees shall have authority to pass such ordinances as it deems necessary for the administration and protection of the common property of the grant, and to sell and convey such real

and personal property upon such terms and conditions and for such consideration as it deems advisable and for the best interests of the residents of the grant. Any such conveyances shall be executed by the president and attested by the secretary of the board of trustees. Provided, that the treasurer elected by said trustees shall give bond in the name of the state in the sum of fifteen hundred dollars [(\$1,500)] with two sureties conditioned that the said treasurer will faithfully discharge all his official duties, account for all moneys which shall come into his possession by virtue of the said office, and pay the same over to the persons justly and legally entitled to receive the same, which said bond shall be approved by the county commissioners of Bernalillo county, New Mexico.

**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.

### **ANNOTATIONS**

**Authority to sell and convey common lands.** - Board of trustees of Chilili 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*, 41 N.M. 442, 70 P.2d 896 (1937)(decided under former law).

Deed, executed by board of trustees of Chilili 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*, 41 N.M. 442, 70 P.2d 896 (1937)(decided under former law).

Plaintiffs' 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*, 87 N.M. 99, 529 P.2d 1220 (1974), cert. denied, 421 U.S. 965, 95 S. Ct. 1954, 44 L. Ed. 2d 452 (1975).

**No failure or inadequacy of consideration or construction 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*, 87 N.M. 99, 529 P.2d 1220 (1974), cert. denied, 421 U.S. 965, 95 S. Ct. 1954, 44 L. Ed. 2d 452 (1975).



**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*, 87 N.M. 99, 529 P.2d 1220 (1974), cert. denied, 421 U.S. 965, 95 S. Ct. 1954, 44 L. Ed. 2d 452 (1975).

## **ARTICLE 5**

### **DONA ANA COUNTY GRANTS**

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

That the management and control of the community land grants within the county of Dona 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**

**Compiler's note.** - 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.

### **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.

### **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.

### **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.

### **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 [1-1-1 to 1-21-14 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.

#### **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 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.

#### **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.

#### **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 filed [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.

## **ARTICLE 6 LAS VEGAS GRANT**

#### **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**

**Compiler's note.** - 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*, 31 N.M. 7, 240 P. 482 (1925); *State v. Board of Trustees*, 28 N.M. 237, 210 P. 101 (1922).

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, 82 N.M. 340, 481 P.2d 702 (1971).

**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, 82 N.M. 340, 481 P.2d 702 (1971).

**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**

**Compiler's note.** - 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 also 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**

**Compiler's note.** - 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 also 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

**Compiler's note.** - 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.

### **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

**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



**Compiler's note.** - 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 also 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**

**Compiler's note.** - 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*, 16 N.M. 692, 120 P. 894 (1911), *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*, 16 N.M. 692, 120 P. 894 (1911), *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**

**Validating clauses.** - Laws 1903, provides: "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**

**Meaning of "this article".** - See same catchline in 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*, 16 N.M. 692, 120 P. 894 (1911), *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

**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. 34, 39.

#### **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.

#### **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

**Compiler's note.** - 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

**Compiler's note.** - 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**

#### **49-7-1. [Body corporate; title; power to sue and be sued.]**

That certain land grant situate in the county of Torrance in the state of New Mexico is hereby incorporated and formed into a body corporate and politic under the name and title of "La Merced del Manzano"; and as such corporate body and in its name shall have the right and power to sue and be sued.

**History:** Laws 1907, ch. 39, § 1; Code 1915, § 856; C.S. 1929, § 29-701; 1941 Comp., § 9-701; 1953 Comp., § 8-7-1.

#### **ANNOTATIONS**

**Compiler's note.** - This article, which is identical with Article 6 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.

## **49-7-2. [Management of grant; commissioners; election; qualifications.]**

For the purpose of managing the said grant there shall be elected five members as commissioners of said grant, who shall be legal voters according to the qualifications provided for voters in the general elections in the state of New Mexico, and furthermore they shall be residents of, and interested in said grant, and that they shall not have committed any offense against the laws of the state of New Mexico: which commissioners shall be voted for by the persons who shall have the same qualifications which such commissioners shall have as herein provided; which election for said commissioners shall be held within said grant at the place designated and under the rules established by the acting commissioners, on the first Tuesday of September, A.D. 1907, and every two years thereafter.

**History:** Laws 1907, ch. 39, § 2; Code 1915, § 857; C.S. 1929, § 29-702; 1941 Comp., § 9-702; 1953 Comp., § 8-7-2.

### **ANNOTATIONS**

**Local option election could not be held** within two months preceding election of land grant commissioners authorized by this section. 1915-16 Op. Att'y Gen. 106.

## **49-7-3. [Appointment of officers; duties; bond of treasurer.]**

The said commissioners after they shall have been duly qualified as such shall appoint a president, a secretary and a treasurer from among their members. Which secretary shall keep a correct record of the proceedings of said commissioners, and said treasurer shall receive and keep the funds and personal property belonging to said grant, and as such treasurer he shall give a bond in favor of said grant in the sum that may be fixed by said commissioners, not exceeding double the sum that may come into their hands during the term for which he may be elected, which bond shall be approved by said commissioners.

**History:** Laws 1907, ch. 39, § 4; Code 1915, § 858; C.S. 1929, § 29-703; 1941 Comp., § 9-703; 1953 Comp., § 8-7-3.

## **49-7-4. [Deeds for agricultural purposes; limitation.]**

Said commissioners have the right and authority to make, give and execute deeds and titles for lands within said grant in favor of the persons interested in said grant, for the purpose of agriculture; provided, that no title may be given to any person for more than eighty acres of land.

**History:** Laws 1907, ch. 39, § 5; Code 1915, § 859; C.S. 1929, § 29-704; 1941 Comp., § 9-704; 1953 Comp., § 8-7-4.

#### **49-7-4.1. Sale of lands held in private ownership to heirs of original owners.**

A. The commissioners of the land grant shall adopt no rule or regulation or otherwise take any action to prohibit the sale of any land situated within the exterior boundaries of the grant and held in private ownership, to any person, whether that person resides within the boundaries of the grant or otherwise.

B. Any rule or regulation adopted or any action taken on behalf of the corporation in violation of the provisions of Subsection A of this section, is void and unenforceable.

**History:** 1978 Comp., § 49-7-4.1, enacted by Laws 1987, ch. 163, § 1.

#### **ANNOTATIONS**

**Effective dates.** - Laws 1987, ch. 163 contains no effective date provision, but pursuant to N.M. Const., art. IV, § 23, is effective on June 19, 1987.

#### **49-7-4.2. Voter qualifications.**

A qualified voter of the land grant corporation shall be of legal voting age, own property in the grant and be a blood-line heir of the grant and entitled to vote in all elections held by the grant, notwithstanding his domicile is not within the boundaries of the grant.

**History:** 1978 Comp., § 49-7-4.2, enacted by Laws 1987, ch. 163, § 2.

#### **ANNOTATIONS**

**Effective dates.** - Laws 1987, ch. 163 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 19, 1987.

#### **49-7-4.3. Commissioners; limitations with respect to certain lands.**

A. The authority of the commissioners of the Manzano land grant shall be restricted to the common lands of the grant.

B. The commissioners shall not levy assessments of any kind against any land situated within the exterior boundaries of the Manzano land grant and held in private ownership, whether for common purposes of the grant or otherwise.

**History:** 1978 Comp., § 49-7-4.3, enacted by Laws 1993, ch. 290, § 1.

#### **ANNOTATIONS**



**Effective dates.** - Laws 1993, ch. 290 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 18, 1993, 90 days after adjournment of the legislature. See Volume 14 of the NMSA 1978 for "Adjournment Dates of Sessions of Legislature."

### **49-7-5. Repealed.**

#### **ANNOTATIONS**

**Repeals.** - Laws 1988, ch. 25, § 1 repeals 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. For provisions of former section, see the 1978 original pamphlet.

### **49-7-6. [Compensation of commissioners; expenses.]**

Said commissioners shall receive for their services ten percent of all the rents collected; which sum shall be divided equally among the five commissioners; and furthermore they shall be paid for other necessary expenses that they may incur in connection with the grant.

**History:** Laws 1907, ch. 39, § 7; Code 1915, § 861; C.S. 1929, § 29-706; 1941 Comp., § 9-706; 1953 Comp., § 8-7-6.

## **ARTICLE 8**

# **NUESTRA SENORA DEL ROSARIO, SAN FERNANDO Y SANTIAGO GRANT**

### **49-8-1. Nuestra Senora 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 Senora 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 Senora 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**

**The 1997 amendment** added the section heading, substituted "five trustees" for "three trustees" and "elected biennially" for "elected annually", and made minor stylistic changes. Laws 1997, ch. 16 contains no effective date provision, but, pursuant to N.M. Const. art. IV, § 23, is effective June 20, 1997, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

**Compiler's note.** - This article, which is 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.

**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 Senora 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**

**The 1997 amendment** added the section heading and rewrote this section to the extent that a detailed comparison is impracticable. Laws 1997, ch. 16 contains no effective date provision, but, pursuant to N.M. Const. art. IV, § 23, is effective June 20, 1997, 90

days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

**Compiler's note.** - 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.

### **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** 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. Laws 1997, ch. 16 contains no effective date provision, but, pursuant to N.M. Const. art. IV, § 23, is effective June 20, 1997, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

### **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** 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. Laws 1997, ch. 16 contains no effective date provision, but, pursuant to N.M. Const. art. IV, § 23, is effective June 20, 1997, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

## ARTICLE 9 SOCORRO GRANT

### **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**

**Compiler's note.** - 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 intent.** - 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*, 24 N.M. 202, 173 P. 682 (1918).

**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**

**Cross-references.** - For procedures governing administrative appeals to the district court, see Rule 1-074 NMRA.

**Compiler's note.** - 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."

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 held 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*, 24 N.M. 202, 173 P. 682 (1918); distinguished in *Petroleum Club Inn Co. v. Franklin*, 72 N.M. 347, 383 P.2d 824 (1963).

### **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.

### **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.

#### **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 therefor 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.

#### **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

**Deed held 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*, 24 N.M. 202, 173 P. 682 (1918); distinguished in *Petroleum Club Inn Co. v. Franklin*, 72 N.M. 347, 383 P.2d 824 (1963).

### **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.

#### **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.

#### **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.

#### **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**

**Meaning of "this act".** - The term "this act" refers 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.

#### **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**

**Meaning of "this article".** - For meaning of the words "this article," see the compiler's note to 49-9-1 NMSA 1978.

## **ARTICLE 10**

### **TECOLOTE GRANT**

#### **49-10-1. [Management by board of trustees; name; corporate powers.]**

That the management and control of that certain tract of land, known as the Tecolote land grant, situated in the county of San Miguel in the state of New Mexico and patented by the United States to the town of Tecolote [Tecolote], is hereby vested in a board of trustees, to be elected as hereinafter provided, which said board of trustees shall be a body corporate under the name of the board of trustees of the Tecolote land grant, and with full power under such name to sue and be sued and with the further powers hereinafter enumerated.

**History:** Laws 1903, ch. 77, § 1; Code 1915, § 878; C.S. 1929, § 29-1101; 1941 Comp., § 9-1001; 1953 Comp., § 8-10-1.

#### **ANNOTATIONS**

**Compiler's note.** - This article was derived from Article 9 of Chapter 22 of the 1915 Code and was not reenacted by its inclusion in that codification, but was compiled therein for convenience only.

**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. [Qualifications of trustees.]**

Members of such board of trustees shall be residents and owners of real estate within the limits of said Tecolote land grant.

**History:** Laws 1903, ch. 77, § 2; Code 1915, § 879; C.S. 1929, § 29-1102; 1941 Comp., § 9-1002; 1953 Comp., § 8-10-2.

### **49-10-3. [Election of trustees; qualifications of electors; canvass; notice of election.]**

At such election all actual residents within the limits of said Tecolote land grant, who are owners of real estate within the same and qualified electors at the general election held in this state shall be qualified electors, and the five persons receiving the highest number of votes at such election, shall be by said board of trustees declared trustees of said grant and shall hold their offices for the term of two years and until their successors are elected and qualified. The vote at said election shall be canvassed by said board of trustees, and said election shall be conducted in all respects as now provided by law for general elections in this state, except that no registration shall be necessary. It shall be the duty of said trustees to call an election for the choice of their successors by giving ten days' notice of the time and place thereof by publication in a newspaper of general circulation in said county.

**History:** Laws 1903, ch. 77, § 3; Code 1915, § 880; C.S. 1929, § 29-1103; 1941 Comp., § 9-1003; 1953 Comp., § 8-10-3.

### **ANNOTATIONS**

**Cross-references.** - For Election Code, see 1-1-1 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. [Selection of officers; bond of secretary-treasurer; duties.]**

Said board of trustees shall choose one of their number as president, and one as secretary-and-treasurer, who shall hold their offices for the period of two years and shall give bond for the faithful performance of their duties, in such sum as may be determined by said board. It shall be the duty of the president to preside at the meeting of said board and to act as the executive officer thereof, and to take such action as may be necessary for the carrying out of the rules and orders of such board. It shall be the duty of the secretary-and-treasurer to keep a record of the proceedings of such board, to sign, with the president, all warrants for the payment of money and to have the custody of all funds, moneys and papers belonging to said board.

**History:** Laws 1903, ch. 77, § 4; Code 1915, § 881; C.S. 1929, § 29-1104; 1941 Comp., § 9-1004; 1953 Comp., § 8-10-4.

### **49-10-5. Powers of trustees; limitations on real property transfer.**

A. The board of trustees has the following powers:

(1) to control and manage the Tecolote land grant and to prohibit and regulate the cutting of timber and grazing of stock upon the grant;

(2) to recognize and confirm by deed of conveyance all bona fide adverse holdings of real estate on the Tecolote land grant;

(3) to sell, convey, lease or mortgage so much of the Tecolote land grant that is under its control and held in common, but no lease, sale, conveyance, mortgage or other alienation of these common lands shall be effective unless authorized by a resolution duly adopted by the board of trustees and unless the resolution is approved by the district judge of the judicial district within which the grant is situated;

(4) to adopt a corporate seal, which shall be used in the attesting of all its official acts; and

(5) to adopt rules of procedure, to make any rules and regulations necessary for the proper carrying out of the powers granted in this section and to have and exercise all rights and powers incidental to those powers.

B. Any lease, sale, conveyance, mortgage or other alienation of the common lands of the grant made without fulfilling the requirements of Subsection A is voidable, and an action to set aside and nullify the alienation of the land hereafter may be brought at any time in the district court for the county in which the grant is situated. The action authorized by this subsection may be brought by the board of trustees or any person owning land within the grant. If the court finds that the transaction in question was made in violation of the requirements of Subsection A, it shall nullify it and shall provide any other relief that is equitable and appropriate under the circumstances.

**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.

## ANNOTATIONS

**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. [Meetings of trustees; compensation and expenses.]**

The regular meetings of said 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, members shall be entitled to receive the sum of two dollars (\$2.00) per day for attending regular meetings to be paid by such board of trustees, and all costs and expenses of the election hereinbefore provided for shall likewise be paid by said board of trustees.

**History:** Laws 1903, ch. 77, § 6; Code 1915, § 883; C.S. 1929, § 29-1106; 1941 Comp., § 9-1006; 1953 Comp., § 8-10-6.