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RIGHT OF WAY TO VILLAGE OF FLANDREAU, S. DAK.

MAY 19, 1898.—Ordered to be printed.

Mr. PETTIGREW, from the Committee on Indian Affairs, submitted the following

REPORT.

[To accompany H. R. 9604.]

The Committee on Indian Affairs, having had under consideration the bill (H. R. 9604) to grant a right of way to the village of Flandreau, S. Dak., reports the same back with a recommendation that it pass.

The Government of the United States owns 1 acre of land situated in the village of Flandreau, S. Dak., through which said village desires to extend a public highway, known as Prospect street, and described as follows:

A 1-acre lot fronting the south line of the southeast quarter of section 21, township 107, range 48, in Moody County, S. Dak., said lot running 120 feet on the south line of said described land by 363 feet deep, and the southeast corner thereof being 1,016 feet east of the southwest corner of the above-mentioned quarter section.

The citizens of Flandreau petitioned the Commissioner of Indian Affairs to open said land, who submitted the question to the Secretary of the Interior, with the request that the petition be granted.

In his consideration of the question the Secretary of the Interior submitted the annexed letter, which is herewith made a part of this report.

DEPARTMENT OF THE INTERIOR,
Washington, March 17, 1898.

SIR: I am in receipt of your communication of the 10th instant, and accompanying petition of citizens of the village of Flandreau, S. Dak., requesting that said village be granted the right of way to extend Prospect street through the 1-acre tract, the title of which is in the United States.

Your letter shows that this property was (it is presumed) purchased under the authority of the act of June 22, 1874, (18 Stat., 167), and the act of March 3, 1875 (18 Stat., 441), making appropriations for the Sioux Indians, and that it was conveyed to the United States in fee by the trustees of the Flandreau Presbyterian Church by deed dated July 5, 1876.

You recommend that this right of way be granted by the Department, with a proviso that the fee of the land occupied by the street shall remain in the United States,

with reversion of the use and occupancy in event of the closing or abandonment of that portion of the street by the town of Flandreau.

In response you are advised that upon the facts stated there does not appear to be any authority vested in the Department to grant the right of way prayed for by the petitioners.

Section 2477 of the Revised Statutes provides that "the right of way for the construction of highways over public lands not reserved for public uses is hereby granted."

It is not believed that this provision is applicable to the land in question; in fact, in the case of land of like status it was held by the Assistant Attorney-General of this Department, in an opinion dated September 21, 1896, in the matter of an application for the right of way for a street or road across a tract of land at Albuquerque, N. Mex., that it was not public land as defined by the Supreme Court of the United States, and that even if it were it would be excluded by the section referred to because of the use to which it was dedicated. In that case it was decided that recourse to Congress would be necessary to obtain the requisite authority.

I am therefore unable to concur in your recommendation, and the papers accompanying your communication are herewith returned.

Very respectfully,

C. N. BLISS, *Secretary.*

The COMMISSIONER OF INDIAN AFFAIRS.

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