

University of Oklahoma College of Law

University of Oklahoma College of Law Digital Commons

American Indian and Alaskan Native Documents in the Congressional Serial Set: 1817-1899

2-15-1894

Grant of public lands to Mississippi

Follow this and additional works at: <https://digitalcommons.law.ou.edu/indianserialset>



Part of the [Indian and Aboriginal Law Commons](#)

Recommended Citation

H.R. Rep. No. 436, 53rd Cong., 2nd Sess. (1894)

This House Report is brought to you for free and open access by University of Oklahoma College of Law Digital Commons. It has been accepted for inclusion in American Indian and Alaskan Native Documents in the Congressional Serial Set: 1817-1899 by an authorized administrator of University of Oklahoma College of Law Digital Commons. For more information, please contact darinfox@ou.edu.

GRANT OF PUBLIC LANDS TO MISSISSIPPI.

~~February~~ 15, 1894.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. McRAE, from the Committee on the Public Lands, submitted the following

REPORT:

[To accompany H. R. 5778.]

The Committee on the Public Lands, to whom was referred the bill (H. R. 5778) to supply a deficiency in the grant of public lands to the State of Mississippi for the use of the State University, have had the same under consideration and report it back with the recommendation that it pass with the following amendment:

Insert after the word "be," in line 3, the words "and he is hereby."

It has been the invariable practice for Congress, on the admission of a new State into the Union, to grant at least 2 townships of land for the use and support of a State university, or seminary of learning. An exception was made in the case of the State of Mississippi, which has had granted to it only 1 township for the purpose mentioned. The 36 sections reserved by the act of March 3, 1803 (2 Stat., 229), for Jefferson College, and finally granted to the said institution by the act of February 20, 1812 (2 Stat., 679), did not inure to the benefit of the State of Mississippi, or to the university of said State, but to a private corporation, not in anyway under the control of the State.

That was not a grant to the State of Mississippi in the sense that grants for university purposes to other States have been made, and in fact the said State has had but one township granted to it for the benefit of its university, viz, that granted by the act approved February 20, 1819. (3 Stat., 485.)

The origin of the grant to Jefferson College is not well understood.

The first reference thereto in the statutes is that found in the twelfth section of the act entitled "An act regulating the grants of land, and providing for the disposal of the lands of the United States south of the State of Tennessee," approved March 3, 1803 (2 Stat., 233, 234), wherein it is provided:

SEC. 12. That all the lands aforesaid, not otherwise disposed of or excepted by virtue of the preceding sections of this act, shall, with the exception of the section numbered sixteen, which shall be reserved in each township for the support of schools within the same, with the exception also of thirty-six sections to be located in one body by the Secretary of the Treasury for the use of Jefferson College, and also with the exception of such town lots not exceeding two in the town of Natchez, and of such an outlet adjoining the same, not exceeding thirty acres, as may be the property of the United States, to be located by the governor of the Mississippi Territory, for the use of said college, be offered for sale to the highest bidder, under the direction of the governor of the Mississippi Territory, of the surveyor of the lands of the United States, above mentioned, and of the register of the land office at the places respectively where the land offices are kept, and on such day or days as shall, by a public proclamation of the President of the United States, be designated for that purpose.

The next reference to the grant to the said college is found in the second section of the act of Congress of February 20, 1812 (2 Stat., 679), entitled "An act authorizing the Secretary of the Treasury to locate the lands reserved for the use of Jefferson College in the Mississippi Territory," which is as follows:

SEC. 2. *And be it further enacted*, That in addition to the township of land granted for the support of Jefferson College there shall be granted in the said State another township, or a quantity of land equal thereto, to be located in tracts of not less than four entire sections each, which shall be vested in the legislature of the said State, in trust for the support of a seminary of learning therein, which lands shall be located by the Secretary of the Treasury of the United States, whenever an extinguishment of Indian title shall be made for lands suitable, in his opinion, for that purpose, in the said State; which grant, hereby provided to be made, shall be considered as made in lieu of a township directed to be reserved by the fifth section of an act entitled "An act to provide for the ascertaining and surveying of the boundary line fixed by the treaty with the Creek Indians, and for other purposes," passed March 3, 1815; and which reserve of one township, provided to be made by the aforesaid fifth section of said act, shall be offered for sale in the same manner as the other public lands in the same district.

This act authorized the Secretary of the Treasury to locate in one body the thirty-six sections of land reserved for the use of Jefferson College in the Mississippi Territory. The lands authorized to be located by this act were subsequently located by the Secretary of the Treasury by an order dated October 5, 1812. (*See Public Domain*, p. 212.) Subsequently, it appears, the lands located in pursuance of the above-mentioned acts, having been found to conflict with the rights of settlers, Congress, by an act passed April 20, 1832 (6 Stat., 484), authorized the board of trustees of Jefferson College to relinquish the said lands and locate others in like quantity in lieu thereof, which other locations, it appears, were subsequently made. This in brief is the history of Jefferson College up to and including the dates mentioned, as traced through the statutes.

It appears from the records of the General Land Office that the title to the lands granted by the act referred to for the benefit of Jefferson College were not transferred to the State of Mississippi, but to the trustees of Jefferson College, and the land was situated within the limits of the present boundaries of the State of Alabama. The intention of Congress, it is manifest, was to aid education in the territory then embracing the present States of Mississippi and Alabama, and while the Jefferson College which got the benefit of the grant was situated in the present State of Mississippi, the records of the Land Office do not show whether the University of Mississippi got the benefit of the grant. It was clearly understood by both the legislature of the State of Mississippi and the trustees of Jefferson College that the said college was not a State institution.

The committee makes the following quotation from the memorial of the board of trustees of the University of Mississippi.

It will be observed that they ask for 3 townships. The committee thinks only 1 should be granted.

In 1829 the legislature of the State adopted a resolution authorizing the executive—

"To appoint *three agents* to inquire into all the means and resources in the State applicable to the purposes of general education; to confer with the trustees of Jefferson College, and ascertain the condition and prospects of the institution, and whether it was practicable and on what terms the trustees would surrender the charter to the State.

"The conference accordingly took place on the 27th of October, 1829, and an address, setting forth their views at large, was presented by the agents, accompanied by several interrogatories propounded by them as to the dimensions and arrangements of the college building, the endowments and available funds, the

number and character of the professors, its future prospects, the expediency of surrendering the charter, and, if the surrender was deemed inexpedient, what report the agents should make to the legislature as to the money loaned to the institution."— (Extract from "Historical Sketch of Jefferson College," p. 83.)

From this same "Historical Sketch," published by the trustees of Jefferson College, the following statements are taken (see pp. 83, 84):

"The temper of the board assembled on this occasion was most favorable to the desires of the agents. The investigation, however, given the subject by the committee appointed to prepare a reply on behalf of the trustees, satisfied not only the trustees, but the agents themselves, of the utter inexpediency, if not impracticability, of the measure.

"* * * "As to the proposed surrender of the charter, it was shown that the proposition involved not merely the annihilation of Jefferson College, but the forfeiture of its resources, and, consequently, could confer no benefit to any other institution, though established in its name; that it could not, by the clearest principle of law, transmit its revenues or endowments to an institution erected in its stead; for, as to all purposes to which they were designed, they would necessarily fail with the demise of the corporation in which they were originally vested. * * * The land on the Tombigby, if it did not revert to the original grantor, would escheat to the State of Alabama."

After this failure to secure the surrender of the charter of Jefferson College to the State in 1829, on account of the difficulties indicated, all hope of the State's gaining control of the township of land granted by Congress to Jefferson College was lost, and the legislature turned its attention to the proper administration of the trust connected with the second township mentioned in the act of Congress of February 20, 1819, and received previously to 1825. With this single township as a basis, the State has been able to establish and maintain a university superior in its facilities and in the extent and character of its work to what has been accomplished in most of the States that have received two or more townships of land for this purpose.

The single township received from Congress was well located, the lands were sold at a good price. The proceeds of all lands granted for the support of a seminary of learning were, by the act of the legislature dated February 20, 1840, "appropriated for the use and benefit of the University of the State of Mississippi." The State pays to the university annually the sum of \$32,643, as interest on a seminary fund of \$544,050. The buildings, libraries, cabinets of apparatus, museums, and various improvements made have cost at least \$250,000. Since its opening in 1848 the university has had an average attendance of 240 students. It has graduated more than 1,100 from its academic and law schools. At the present time many of its buildings are old and in need of repairs. Its libraries and cabinets need many additions to meet the requirements of the work done in the university. New departments of instruction need to be added in order to keep the scope and character of its work fully abreast with what is done in similar institutions. In what has been done in the administration of the one township intrusted to the State by Congress for the support of a seminary Mississippi can challenge comparison with any State that has received two townships.

Since the State of Mississippi has, for the reasons previously stated in this paper, and through no fault of the authorities of the State, failed to receive one of the two townships of land which it was evidently the intention of Congress to grant to the State for the support of a seminary of learning, the undersigned, representing the University of Mississippi, to which the legislature of the State has appropriated, by the act of February 20, 1840, all funds that may accrue from the sale or lease of lands granted by Congress for seminary purposes, respectfully, through the Senators and Representatives in Congress from this State, memorialize the Congress to indemnify the State of Mississippi and its university for the failure of title to one of the two townships of land intended to be granted by Congress for seminary purposes, as shown by the act of Congress of the 20th of February, 1819.

The undersigned are encouraged to make this petition for the following reasons:

Equity requires that Mississippi should not be allowed to receive merely one township from Congress when every other public-land State has received at least two.

The will of Congress undoubtedly was, in the act of February 20, 1819, to grant two entire townships in trust to the legislature of the State of Mississippi for the support of a seminary of learning.

The act of Congress of February 20, 1819, may evidently be construed as implying that Congress considered Jefferson College to be an institution under the control of the Territorial legislature in Mississippi.

In fact, Jefferson College was at the first a private corporation, and continues to exist as such to the present time, independent of State control.

But even if it had been, previously to the passage of the act of Congress of February 20, 1819, under the control of the Territorial legislature (which was not the case), it would have been not equitable for Congress to turn over to the State of Mississippi, upon her admission into the Union, the remnant of a grant of land which

had proved utterly unprofitable to the college and which was actually located in another State. The Territorial legislature of Mississippi certainly had nothing whatever to do with the location of the lands granted to Jefferson College, and it is certain that the location was so badly made that the trustees of Jefferson College afterward secured a change of location by the act of Congress of April 20, 1832.

In Minnesota, under Territorial administration, the two original townships named in the act of Congress of February 26, 1857, were almost lost to the State. When the State of Minnesota was admitted into the Union, Congress, by the act of July 8, 1870, gave to the State two townships in addition to the two mentioned in the act of February 26, 1857. The language of the act of July 8, 1870, justifies the statement of the board of regents of the Minnesota University that "certainly it was not the intention of Congress to turn over the debts and prospectively incumbered lands of an old and badly-managed Territorial institution, but to give the State that was to be a grant for a State university free from all connections with Territorial organizations." (P. 296, Bureau of Education Circular of Information No. 1, 1890.)

If the condition and prospects of Jefferson College in 1819, as shown in the authorized historical sketch of the college referred to previously in this paper, had been fully shown to Congress when the act of February 20, 1819, was pending, it is reasonable to assume that, even if Jefferson College had been under Territorial control, Congress would have acted in the case of Mississippi as it did in the case of Minnesota, and granted to the State an unincumbered full portion of land for a seminary of learning.

The intention of Congress to grant two townships failed through no lack of diligence on the part of the legislature of the State.

It can be shown from an examination of the land laws of Congress, as well as from a study of the history of the seminary funds in the several other States and Territories, 21 in number, that Congress has uniformly, *excepting in the case of Mississippi, taken whatever special action was necessary to secure to the State, when admitted into the Union, its full quota of seminary lands.* In the case of the State of Ohio, when there was danger that one of the three townships reserved by Congress for the future State might be lost to the State in the settlement of the affairs of John Cleves Symmes, within whose purchase of land it was located, Congress, in the act of March 3, 1803, instituted process for its recovery, and provided that, if this process should fail, another township should be granted in lieu of the first. In fact, another *was* granted to the State, outside the Symmes purchase. (See p. 30, Circular of Information No. 5, Bureau of Education.)

The action of Congress in reference to the seminary lands of the State of Indiana furnishes a most striking precedent for such action as is asked for in this memorial. By the act of March 26, 1804, one township was reserved from sale for the support of a seminary in the district which afterwards became the State of Indiana. The Territorial legislature, on the 29th of November, 1806, granted a charter to the "*Vincennes University*" in terms almost identical with those of the charter of Jefferson College in Mississippi. In the same year the legislature of Indiana Territory gave to the Vincennes University the seminary township reserved from sale by the act of Congress of March 26, 1804. "In 1822 an act was passed by the general assembly for the practical confiscation of its lands for the support of the new 'State seminary' at Bloomington, and in 1824 the State formally declared the Vincennes institution extinct." It was charged that the "trustees had negligently permitted the corporation to die."

In 1845 the corporation of Vincennes University was revived by action of the legislature, and the trustees laid claim to the lands of the first seminary township, which the legislature had transferred to the State Seminary from the Vincennes University. In accordance with an act of the legislature of the State dated January 17, 1846, suit was brought by the trustees of the Vincennes University against the State of Indiana to test the question of title to this land, which was then being used by the Indiana University, into which the "State Seminary" had been changed. The final settlement of this suit was by the Supreme Court of the United States, at the December term, 1852, and in favor of the Vincennes University.

By this decision, and from the sales made by the trustees of Vincennes University before its lands were transferred from it, the State University of Indiana lost control of one of the two townships intended by Congress for seminary purposes in the State of Indiana. *The loss was due to the fact that the Territorial legislature had given this township to Vincennes University, "a private corporation."* But Congress, by the act of July 12, 1852, granted to the State of Indiana, for the use of the State University, a tract of land equal to that part of the first township which had been disposed of by the trustees of Vincennes University before the transfer, and on the twenty-third of February, 1854, made full restitution to the University of Indiana for the land which it had lost through the act of the Territorial legislature, thus securing in trust to the legislature of the State of Indiana its full quota of two entire townships. The statements regarding this case are based upon the acts of Congress cited, the

records of the Supreme Court of the United States, and the publications of the U. S. Bureau of Education, circulars of information Nos. 1, 1890, and 1, 1891.

If the State of Indiana is indemnified for the failure of title to a township of land for seminary purposes due to the act of the Territorial legislature, should not Mississippi be indemnified for a similar failure of title caused by defect in the act of Congress?

The land actually received by the State of Mississippi under the act of February 20, 1819, consisting of *one township*, was located when there were valuable public lands subject to entry in the State, and was sold at an average price of more than \$5.00 per acre. The public lands now remaining in the State are much less valuable, and are subject to entry at not over \$1.25 per acre. Moreover, the State of Mississippi and the University of the State have been deprived of the use of one township for more than fifty years. Therefore, in order that the State and the State University may be fully indemnified for the failure to make title to good and valuable lands while such were open to entry in the State, Congress is urged to grant, for the reasons stated, three townships of land in lieu of the one to which title failed. Such action would give to the State of Mississippi a full quota of four townships, the number actually granted up to the present time to each of the following named States: Florida (act of March 3, 1845); Wisconsin (acts of August 6, 1846, December 15, 1854); Alabama (acts of March 2, 1819, and of the Forty-eighth Congress, 1884).

The grant has the approval of the honorable Secretary of the Interior as will appear from the following letter from him:

DEPARTMENT OF THE INTERIOR,
Washington, February 12, 1894.

SIR: I have the honor to acknowledge the receipt of your letter of the 29th ultimo, transmitting a memorial from the board of trustees of the University of Mississippi, for my consideration and recommendation.

Your letter, with inclosure, was referred to the Commissioner of the General Land Office, who makes a full report in the premises.

I concur with the Commissioner that there seems no objection to the proposed grant of land to the University of Mississippi if Congress so wills. Attention is called to the amendment proposed by the Commissioner.

Very respectfully,

HOKE SMITH,
Secretary.

HON. THOMAS C. McRAE,
Chairman Committee on the Public Lands, House of Representatives.