December 11, 1933

Mr. Frank Fritts, General Counsel
Legal Department
Subsistence Homestead Division
Public Works Administration
Washington, D. C.

Dear Sir:

The Hon. Isabella Greenway and the Hon. Carl Hayden have requested my opinion as to the right of the United States and its agencies to acquire privately owned real estate in the State of Arizona. In accordance with their wishes, I respectfully submit my opinion to you.

You have raised the question of the effect of the provisions of Section 11, Article X of the Constitution of the State of Arizona upon the right of the Federal Government or its agencies to acquire privately owned real property in Arizona. This section is limited to the purchase of state and school lands and in no way applies to the purchase of land from private owners. Section 11 is a part of Article X, which deals exclusively with the manner of disposing of state and school lands. The heading of the article is "State and School Lands". It may no more be argued that Section 11 limits the acreage that can be purchased from private owners than it may be argued that Section 5 of Article X prohibits the sale of any privately owned land in this state for a sum less than $3.00 per acre. All the sections in Article X are limited in their application to state and school lands.

Admitting for argument only that Section 11 applies to the purchase of privately owned land as well as to the purchase of state and school lands, yet the above section would not and could not apply to the United States or its agencies for the reason that the United States and its agencies are not individuals, corporations or associations within the meaning of those terms as used therein.

The Supreme Court of Tennessee in the case of MALONE vs PEAY, 17-S.W.(2d)-901, stated that the United States was not an individual, association or corporation within the meaning of those terms as used in a certain constitutional inhibition against giving the credit of the state to individuals, corporations or associations.

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You have raised a second point involving the construction of Section 660 of the Revised Code of Arizona, 1928, and its application to the United States and its agencies. It is my opinion that the United States and its agencies can purchase land in Arizona without in any way being retarded, impeded or burdened by any act of the state. My reason for so holding is founded upon the opinions given by the Supreme Court of the United States in the cases of ROYAL VAN BROCKLIN and J. F. STACY vs BUTLER P. ANDERSON, COMMISSIONER OF REVENUE, et al, 117-U.S.-151, 29 L. Ed. 845, and CLALLAM COUNTY vs. UNITED STATES, 263-U.S.-341, 68 L. Ed. 328. The opinions are based on the proposition that the states cannot in any manner control the operation of laws enacted by Congress. Further, Section 660 does not apply to the United States or its agencies because of the terminology thereof, which specifies only foreign corporations, and, as I mentioned above, the United States is not a corporation.

Further, according to the authority of the cases of TEXAS & PACIFIC RAILWAY CO. vs WEATHERBY, 92-S.W.-58, and TWIN FALLS NATIONAL BANK vs REED, 258-Pac-526, a corporation created by the government of the United States cannot be called a foreign corporation in any state in the union, the reason being that the Federal Government in its relation to the several states cannot be considered a foreign power within the sphere of its powers. Its authority extends over the states and its laws are the laws of all the states. A corporation created by act of Congress is therefore not a foreign corporation in Arizona but is a corporation created and authorized to do business in Arizona under laws which are supreme in Arizona. It is hardly necessary to state that Section 660 does not apply to corporations organized and existing under and by virtue of the laws of the State of Arizona.

I have also been requested to give my opinion as to whether or not Paragraph 660 is constitutional in that it discriminates between the right of domestic corporations and foreign corporations admitted to do business in Arizona, to acquire and hold real property in this state. In view of the foregoing, however, this question appears immaterial as bearing on the right of the United States or its agencies to acquire real prop- in Arizona as above contemplated. I therefore omit any opinion

thereon. Should such opinion nevertheless be required, I shall be glad to consider the question and advise thereon.

Very truly yours,

Cuthbert Rhodes

Attorney General

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