



DEPARTMENT OF THE NAVY
BUREAU OF YARDS AND DOCKS
WASHINGTON 25, D. C.

15

IN REPLY REFER TO

B412.1E/rh
ND6/N1-1
T10-2-KW
T10-28-KW-3

• Trustees Internal Improvement Fund
State of Florida
Tallahassee, Florida

27 SEP 1951

Sirs:

This Bureau has been informed of the proposed sale by the State of Florida of spoil area containing approximately 39 acres located in Frankfort Bank, Key West, Monroe County, Florida.

The land which is proposed for sale was created by deposits of dredged material from the main ship channel at Key West, Florida and was accomplished by the use of Department of the Navy funds in the year 1943.

This proposed action by the State of Florida raises the question as to whether title to the land in question is vested in the state or in the United States.

Under the provisions of paragraph 2 of the treaty concluded February 22, 1819 between the United States and Spain and proclaimed February 22, 1821, there was ceded to the United States in full power and sovereignty all the territories situated to the eastward of the Mississippi known by the name of East and West Florida, including all adjacent islands dependant on said provinces, all public lots and squares, vacant lands, public edifices, fortifications, barracks and other buildings which were not private property.

By the Act of March 30, 1822 the Congress (3 Stat. 654) in establishing the territorial government of Florida, by a provision in Section 5 thereof declared that "The Governor and Legislative Council shall have no power over the primary disposal of the soil nor to tax the lands of the United States nor to interfere with the claims to lands within the said territory". By Section 9 of this Act certain public laws of the United States were extended to and given full force and effect in the territory, among these laws was "An Act to prevent settlements being made on lands ceded to the United States until authorized by law, approved March 3, 1807."

The Act of March 3, 1845 (5 Stat. 742) for the admission of Florida into the Union as a state, provides in Section 5 that the State of Florida shall embrace the territories of East and West Florida which by the treaty of amity, settlement and limits between the United States and Spain on the 22nd day of February 1819 was ceded to the United States, and in Section 7 it is provided that the State of Florida be admitted into the Union upon the express condition that it shall never interfere with the primary disposal of public lands lying within it nor levy any taxes on the same whilst remaining the property of the United States.

By the Act of March 3, 1845 (5 Stat. 789) entitled "An Act supplemental to the Act for the admission of Florida into the Union" it is provided in Section 5 thereof that certain propositions therein offered were on condition that the legislature of the State by virtue of the powers conferred upon it by the convention which framed the constitution of the State, should provide, by an ordinance, irrevocable without the consent of the United States, that the State should never interfere with the primary disposal of the soil within the same by the United States nor with any regulations Congress may find necessary for securing the title in such soil to the bona fide purchasers thereof and that no tax shall be imposed on lands the property of the United States.

The spoil area proposed for sale by the State of Florida is located in Frankfort Bank and is included in the area which by Executive Order, dated September 17, 1845 was reserved from sale or entry of any kind with a view of determining its military relations and properties. The area covered by this Executive Order was embraced approximately within Lat. $24^{\circ} 15'$ north and Lat. $24^{\circ} 58' 5''$ north, Long. $80^{\circ} 58' 5''$ west and Long. $83^{\circ} 29'$ west. While this area was originally placed under the jurisdiction of the War Department control thereof was relinquished by that Department on April 24, 1878 at which time the area involved reverted to the Department of the Interior as a part of the public domain of the United States.

According to the records of this Bureau the Department of the Navy exercised jurisdiction over an area of which Frankfort Bank is a part for more than 30 years prior to the promulgation of Executive Order 4060, dated August 11, 1924.

3809

In view of the foregoing the Trustees Internal Improvement Fund are informed that the Department of the Navy considers Frankfort Bank, the shoals adjacent thereto and the spoil area in question as being the property of the United States.

It is, therefore, requested that no further action be taken by the Trustees, Internal Improvement Fund, to dispose of the spoil area in question by sale or otherwise.

Sincerely yours,



J. F. Jelley
Chief of Bureau

CC10

①