

O. P. PESMAN*Decided February 4, 1929***TOWN SITE—PLAT—STREETS—RIGHT OF WAY—LAND DEPARTMENT—JURISDICTION.**

Adoption by the Government of a town-site plat and the sale of lots by reference thereto constitutes an actual dedication to public use of the tracts or strips designated thereon as streets and alleys, and the Land Department can not subsequently vacate them.

FINNEY, First Assistant Secretary:

This is an appeal by O. P. Pesman from the decision of the Commissioner of the General Land Office dated November 3, 1928, denying his petition for the vacation of parts of certain streets and alleys in Pompey's Pillar town site on Huntley irrigation project, Montana.

The petition for the vacation of streets and alleys in question was filed October 15, 1928, and was favorably recommended by the superintendent of the Huntley project.

It appears that certain lands in Sec. 23, T. 3 N., R. 30 E., Montana, were reserved for town-site purposes by order of this department dated May 13, 1907. The tract was laid off into blocks, lots, streets, avenues, alleys, public reservations, etc., and the plat thereof approved August 2, 1907. Numerous lots scattered throughout the town site have been sold by reference to said plat. A great many lots remained unsold and they were reappraised and some of them sold at the last public sale held October 8, 1928. At that time as claimed by Mr. Pesman he purchased lots 1 and 2, block 2, lots 1, 5, and 6, block 3, lots 1, 5, and 6, block 6, and lots 1 and 2, block 7. He stated in his petition that the streets and alleys he desired closed are not needed, never have been used and can not be used for public traffic.

The commissioner denied the petition on the ground that the adoption of the plat by the Government and the sale of lots by reference thereto resulted in an actual dedication to public use of the tracts or strips designated thereon as streets and alleys.

The action of the commissioner was correct. Where the owner of real property lays out a town upon it and divides the land into lots and blocks, intersected by streets and alleys, and sells any of the lots with reference to such plan, he thereby dedicates the streets and alleys to the use of the public. 13 Cyc. 455; 3 Dillon on Municipal Corporations (5th Ed.), sections 1083, 1085.

The decision appealed from is accordingly

Affirmed.