

## DRAPING BUILDINGS USED FOR PUBLIC PURPOSES IN FOREIGN COUNTRIES.

The provision in the act of March 3, 1893, that "no building owned or used for public purposes by the Government" shall be draped in mourning, applies to buildings occupied for diplomatic or consular purposes in foreign countries.

*(Comptroller Tracewell to the Secretary of State, November 18, 1901.)*

I have received your letter of the 14th instant, as follows:

"Referring to section 3 of the act approved March 3, 1893, entitled an act making appropriations for the legislative, executive, etc., for the fiscal year ending June 30, 1894, said section reading as follows:

"That hereafter no building owned or used for public purposes by the Government of the United States shall be draped in mourning, and no part of the public fund shall be used for such purposes." (27 Stat., 715.)

"In view of this section of the act named above, I have to request a decision by your office as to whether the provision of the same applies to the diplomatic and consular service of the United States.

"Upon the occasion of the death of the late President the Department instructed the diplomatic and consular officers abroad to display the usual symbols of mourning for a period of sixty days. In complying with this instruction, expenses for draping the embassies, legations, and consulates in mourning have been incurred by the diplomatic and consular officers, and the cost of the same entered in their regular accounts for contingent expenses. In this connection I desire your opinion as to whether such expenses can be allowed out of the appropriations for the contingent expenses of the diplomatic and consular service.

"The Department is of the opinion that the act in question applies solely to the public buildings in the United States, and was never intended to apply to any building abroad.

"It is customary in foreign countries, on the occasion of the death of the head of a nation, for the diplomatic and consular officers of all nations not only to place the flag at half-mast, but to drape their offices in mourning for a short period, out of respect to the memory of the deceased, and charges for material for such purposes have heretofore been allowed in the accounts of our diplomatic and consular officers until recently. I refer to the account of the late consul at Castellamare di Stabia, Mr. Joseph H. Hayden, in which he charged

the sum of \$2.43 for material for draping the consulate on the occasion of the death of the King of Italy, and disallowed by the Auditor under the act referred to.

"I have to respectfully request that you will please advise me on the subject at your earliest convenience, as the Department desires to dispose of a number of accounts and inquiries in connection with the same, held for the action of your office."

The language of the act to be considered is plain and unambiguous. It forbids draping in mourning any building owned by the United States or used for public purposes by the Government of the United States, and prohibits the use of any part of the public fund for such purposes. No doubt as to its meaning arises from the words employed, and the questions which would most naturally and obviously arise in applying the law to any particular case are (1) whether the building it is proposed to drape in mourning is owned or used for public purposes by the Government of the United States, and (2) whether the money it is proposed to apply to such purpose is a part of the public fund. These being answered in the affirmative, the prohibitions in the statute would appear to be fully operative.

Two things may be positively stated: (1) That the buildings of the various embassies, legations, and consulates abroad, whether owned by the United States or not, are used for public purposes by the Government of the United States; and (2) that money appropriated by Congress for the diplomatic or consular service or received as official fees in that service is a part of the public fund; and in this view it is difficult to escape the conclusion that the law applies fully to the case you present.

You express the opinion that the act "applies solely to the public buildings in the United States, and was never intended to apply to any building abroad." When you speak of "the public buildings in the United States" in connection with this act, it is assumed that you mean not only the buildings owned by the United States, which is the usual meaning attached to the words "public buildings" as used in general legislation, but also any building used in the United States for public purposes by the Government, since Congress has included in the act not only public buildings, i. e., buildings owned by the United States, but buildings used for public purposes by the

United States. Since no building could well be either owned or used by the Government except for public purposes, the prohibition in the act appears to be as broad as language can make it. If the language of the act was "hereafter no *public building* shall be draped in mourning," it might be urged with some force that the well-accepted meaning of the term "public building" as used by Congress in general legislation might be adopted as indicating the intention of Congress to restrict the act to public buildings in the United States. But in view of the plain language of this act, it is doubtful whether it is proper to call in any extraneous aids in arriving at the meaning of the law. In construing a statute the intention of its framers must be sought primarily in the words employed, and if the words are free from ambiguity or doubt, and express plainly, clearly, and distinctly the sense of the framers of the instrument, there is no occasion to resort to other means of interpretation. (Black on Interpretation of Laws, p. 36.)

"Although the spirit of an instrument, especially of the Constitution, is to be respected not less than its letter, yet the spirit is to be collected chiefly from its words. It would be dangerous in the extreme to infer from extrinsic circumstances that a case for which the words of the instrument expressly provided shall be exempted from its operation. Where words conflict with each other, where the different clauses of the instrument bear upon each other, and would be inconsistent unless the natural and common import of words be varied, construction becomes necessary, and a departure from the obvious meaning of words is justifiable. But if, in any case, the plain meaning of a provision, not contradicted by any other provision in the same instrument, is to be disregarded, because we believe the framers of the instrument could not intend what they say, it must be one in which the absurdity and injustice of applying the provision to the case would be so monstrous that all mankind would, without hesitation, unite in rejecting the application." (*Sturges v. Crowninshield*, 4 Wheat., 123, 202.)

It is not understood that in expressing the opinion that the act does not apply to any building *abroad* you intended to suggest that any rule of *exterritoriality* applies, but merely that Congress did not intend it to apply except in the United States. The prohibition in the law is addressed primarily to the public officers of the United States, and it can not be questioned that the United States has the right to bind its own officers by its

own laws in every place. Nor can it be questioned that Congress had the right to forbid the draping in mourning by its own officers of any building used for the purposes of the Government wherever those buildings are situated and in whatever public service used, and if it has not done so in the act under consideration it is difficult to understand the meaning of words. I can see in the act no intention on the part of Congress to make any exceptions to its prohibitions, and I must therefore hold that the expenses incurred in the manner and with the object stated by you are not a proper charge against the United States.

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