
ERECTION OF BUILDINGS IN THE ABSENCE OF SPECIFIC APPROPRIATIONS.

When the estimates for the Army appropriation act contained an item for the construction of a building for storing new pontoon and bridge materials, which total estimate was subsequently reduced without showing which items making up the original totals were to be eliminated, and the appropriation act does not specifically provide for such building, the use of said appropriation for the erection of said building is prohibited by section 3733 of the Revised Statutes.

Assistant Comptroller Mitchell to the Secretary of War, April 30, 1910.

I am in receipt of your letter of the 25th instant, with request for my decision of a question therein presented, as follows:

“I have the honor to transmit herewith a letter from Lieut. Col. W. C. Langfitt, Corps of Engineers, addressed to the

Chief of Engineers, U. S. Army, under date of the 6th instant, concerning the availability of the item contained in the Army appropriation act approved March 23, 1910, of \$90,000, 'for pontoon material, tools, instruments, and supplies required for use in the engineer equipment of troops, including the purchase and preparation of engineer manuals,' toward the construction of pontoon shed for storage and protection of pontoon wagons and materials, etc., at Washington Barracks, D. C.

"Attention is invited to the indorsements upon the letter above referred to, and in accordance with the recommendation of the Chief of Engineers, U. S. Army, as contained in 4th indorsement, the matter is submitted to you with request for decision as to whether, under the circumstances, vouchers to the full amount of the original estimate, \$15,000, for this building, if paid by the disbursing officer charged with the construction of same, will be passed by the Treasury Department."

The letter of Lieutenant-Colonel Langfitt, referred to by you, states that in estimates submitted by the Engineer Depot, Washington Barracks, D. C., for the fiscal year 1911, was included an item of \$15,000 for the erection of a pontoon shed for storage and protection of pontoon wagons, material, etc., and that it is desirable and necessary to construct the storage shed "if legally possible."

The Chief of Engineers, by indorsement of April 13, 1910, on Lieutenant-Colonel Langfitt's letter, states that the estimates as submitted by him to the Secretary of War contained under "Engineer equipment of troops" an item "For construction of shed for new pontoon and bridge material, which has heretofore been stored in the open air, \$15,000;" that the total estimate for "Engineer equipment of troops," including this item, was \$110,250; and that by direction of the Secretary of War this estimate was reduced to \$90,000, but that it is not shown which of the items making up the original totals were to be eliminated.

The appropriations as made by the act of March 23, 1910 (Public, No. 102), is as follows:

"Engineer equipment of troops.—For pontoon material tools, instruments, and supplies required for use in the engineer equipment of troops, including the purchase and preparation of engineer manuals, ninety thousand dollars."

It is now desired to expend on this building, if permissible, the full amount of the estimate for its construction. No

contract has, it appears, been made as yet for the erection of said building.

Section 3733 of the Revised Statutes provides as follows:

"SEC. 3733. No contract shall be entered into for the erection, repair, or furnishing of any public building, or for any public improvement, which shall bind the Government to pay a larger sum of money than the amount in the Treasury appropriated for the specific purpose."

In 10 Comp. Dec., 635, in construing said section it was said:

"The sections of the statutes (R. S., 3663, 3733, and 3734) above quoted have special reference to the erection, repair, and furnishing of new public buildings, and the making of new public improvements, and clearly contemplate that *expenditures for these purposes shall be specifically appropriated for, and the new building or public improvements specifically authorized.*"

(See also 35 MS. Comp. Dec., 961; 19 Op. Atty. Gen., 607; 52 MS. Comp. Dec., Jan. 28, 1910, to the Secretary of the Navy.)

The appropriation made by the act of March 23, 1910, does not specifically appropriate for a building or public improvement of the character which it is desired to erect, but, on the contrary, enumerates certain specific objects, among which such building is not included.

The appropriation as made by the act of March 23, 1910, above quoted, is in the exact language, amounts appropriated excepted, as the appropriations made for many years for "Engineer equipment of troops." (See act of Mar. 3, 1909, 35 Stat., 749; act of May 11, 1908, 35 Stat., 123; act of Mar. 2, 1907, 34 Stat., 1174; act of June 12, 1906, 34 Stat., 256.)

It is understood that the building is not to be of a temporary character, and in view of the fact that the building in question is not specifically appropriated for, as required by section 3733 of the Revised Statutes, I am of the opinion that the appropriation made by the act of March 23, 1910, *supra*, is not applicable to construct said building, whether the same cost \$15,000 or less. I have the honor, therefore, to answer your question in the negative.