

COMPTROLLER GENERAL OF THE UNITED STATES

WASHINGTON

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JUN 28 1927

4-17267

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The Honorable

The Secretary of Agriculture,

Sir:

There has been received your letter of May 9, 1927, making reference to letters from this office of March 2 and March 11, 1927, to the disbursing clerk of your department in which that official was advised that credit for certain payments made by him for options on lands selected by the department for purchase under statutes authorizing the acquisition of lands for the protection of water sheds of navigable streams and for the Upper Mississippi Wild Life Refuge, and appropriations made for carrying out said purposes, would be disallowed in the next settlement of his accounts. You request that the matter be reconsidered or, in the event expenditures for options are still held to be unauthorized, that, in view of the long standing practice and the necessity for continuing it, authority be given to continue paying for options until the matter can be submitted to the Congress for legislative authorization.

The arguments advanced by you in support of the procedure that has heretofore been adopted and followed by your department in purchasing options in connection with the acquirement of lands in fur-

A-17267

- 2 -

therance of the objects contemplated by the provisions of the laws conferring on you the authority to purchase lands for the purposes indicated, are, in substance, that from the acts conferring authority to purchase lands when considered as a whole, it has been the understanding of your department that the Congress intended that customary methods be followed in arranging for the purchase of lands and authorized such expenditures as are reasonably necessary to accomplish that end; that it is not apparent why minor expenditures for options should be considered prohibited because not specifically mentioned in the laws when other greater expenditures that are not provided for in the acts are not questioned; that the advisability from an administrative standpoint of obtaining options is not a mere preference but is deemed essential to the redemption of the department's responsibility in connection with the acquisition of lands; and that it is felt that in making appropriations in general terms for the acquisition of lands it was the intention of the Congress to permit the use of options or the adoption of any other sound methods found to be in the Government's interests in the acquisition of lands selected for the purposes of the laws authorizing their purchase.

You also state that the option payments are usually in consideration of the right to purchase at a specified amount within a limited time granted by the owner and unless specifically agreed to do not become a part of the purchase price if the option is exercised; that the

A-17267

- 3 -

stating of a purchase price in an option does not constitute the fixing of a purchase price by the department nor does it in any way interfere with the exercise of that function by the commission; and that since the option procedure has been followed for about sixteen years without being questioned and having been published in department circulars, it may be said to be a matter of common knowledge, and the fact that the personnel of the commission includes two members of the Senate and two of the House of Representatives would seem to negative the assumption that the Congress is without knowledge of the procedure.

The purchase of options on lands that may or may not ultimately be acquired for the purposes of the laws mentioned in your letter does not appear to be warranted by the provisions of the laws authorizing the purchase of lands nor by appropriations made for the purpose of carrying out those laws. The Secretary of Agriculture is authorized by said laws to do all things necessary to secure titles to the lands to be acquired but the securing of titles does not necessarily involve payments for options to secure rights to purchase lands, the titles to which may or may not be secured to the United States, dependent upon whether the options to purchase are or are not exercised. The expenditures authorized to be made in securing titles are such as are necessary to cover the cost of searching titles to the property to be acquired, for surveying, for recording fees, etc., as well as for paying the purchase price of such lands when finally acquired, of which

A-17267

- 4 -

option payments cannot be said to form a part.

The application of appropriated moneys is restricted by section 3678, Revised Statutes, to the objects for which they are made and for no other and the usually followed rule in respect to the expenditure of public funds when appropriated is that such moneys are available only for the specific objects mentioned in the acts making the appropriations or objects which by implication can reasonably be determined as being of a nature of the objects specifically mentioned or such as are essential to the purposes for which the appropriations are made.

The laws and appropriations here in question contemplate the purchase of lands but the purchase of a right to subsequently purchase lands, however desirable from an administrative point of view it may be, cannot be said to be so closely connected with the purchase of lands as to be a necessary part of the purchase price for the lands to be acquired and this would clearly be so in those cases where the option to purchase is not exercised and in those cases where the amount of the option is not included in the purchase price of the lands when the option is exercised, resulting in the payment of money from which the United States receives no ultimate benefit whatever.

Payments for options on such lands as might be desired to be subsequently purchased, not being (for) necessary expenditures in connection with the purchase of the lands and not being specifically authorized in either the basic laws authorizing their purchase or the

A-17267

- 5 -

appropriation acts making available funds for the purposes of the basic laws, the decision heretofore reached by this office in the audit of the disbursing clerk's accounts as respects payments for options on lands to be acquired appears to have been on a proper basis and is sustained. However, in view of the long standing practice that has maintained in the matter without any questions in regard thereto being raised, credit for payments that have heretofore been made on account of options on lands to be acquired will be allowed in the disbursing clerk's accounts and such payments may continue to be made until the department has had an opportunity to request of the Congress specific authority to expend the funds provided for the purchase of lands for the payment of options on such lands, this privilege not to extend beyond the end of the next session of that body, and in the event such authority is not granted, credit for option payments on lands to be acquired whenever thereafter made will be for disallowance in the accounts of disbursing officers of the department.

Respectfully,

Comptroller General
of the United States.