



COMPTROLLER GENERAL OF THE UNITED STATES

WASHINGTON

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The Honorable,

The Secretary of the Interior.

Sir:

There has been received a letter of August 26, 1940, from the Puerto Rico Reconstruction Administration as follows:

"Out of funds appropriated to the Puerto Rico Reconstruction Administration, Department of the Interior, by Section 3 of the Emergency Relief Appropriation Act, fiscal year 1941, the President approved the allocation of \$1,722,750 for the following project:

"Continuation of the construction of a concrete dam across the Arceibe River, a storage reservoir and a hydro-electric generating plant and distribution lines including services and transformers to serve customers in the rural districts at Dos Bocas, including the construction of necessary replacement and access roads, necessary permanent and temporary structures, supplies, materials, equipment and incidental expenses. Sponsor: Insular Commissioner of the Interior. Not to exceed \$1,099,893 to be expended for non-labor items." (O. P. 105-4-36-100).

"Construction of the above project, which is known as the Dos Bocas hydro-electric plant, was started with funds made available to this Administration under limitation (g) of Section 1 of the ERA Act of 1935. The work was later continued with funds made available to the Administration under subsequent relief acts for the prosecution of non-Federal projects. It is contemplated the plant will be completed with this fiscal year's funds.

"The question has been raised whether part of the newly appropriated funds may be used for the purchase, by the Government of Puerto Rico, of lands for the storage reservoir necessary in continuing the construction of the hydro-electric plant. This question has arisen in view of the fact that neither the Emergency Relief Appropriation Act, fiscal year 1941, nor the project description itself specifically authorizes the purchase of land, although the project description includes the words: 'storage reservoir'.

"Section 3 (b) of the 1941 EIA Act provides among other things that the funds appropriated thereunder shall be available for 'the prosecution of projects approved by the President for the Puerto Rico Reconstruction Administration under the provisions of the Emergency Relief Appropriation Acts of 1935 and 1938'. In other words, the current Relief Act specifically authorizes the prosecution of projects approved by the President under the 1935 Act. Since the Dos Bocas project was originally approved by the President under the 1935 Act, Section 5 of which contained authority to purchase lands, and since in order to continue its prosecution it is necessary to acquire certain lands, it would seem to follow that there is implied authority in this fiscal year's Act to acquire such land. It has been held that an act making an appropriation for the construction of a movable dam contains implied authority for the purchase of land necessary for its construction (15 Ops. Atty. Gen. 212; see also 22 Ops. Atty. Gen. 665). In Burns v. United States, 160 Fed. 631, it was held that an act appropriating funds for continuing the works at Buffalo Harbor contained implied authority for the purchase of a tract of land necessary for the protection of the sea wall.

"Moreover it should be borne in mind that the purchase of land necessary for continuing the construction of the Dos Bocas hydro-electric project is not to be made in the name of the United States. It has been the practice of this Administration ever since the construction of this plant began, as well as in the case of other projects which have previously been completed and turned over to the Government of Puerto Rico, to purchase lands incidentally necessary in the name of the People of Puerto Rico. The procedure is to acquire an option in the name of the People of Puerto Rico for the purchase of a particular tract of land. The Attorney General of Puerto Rico passes upon the title for the Governor of Puerto Rico. The deed of conveyance vests title direct in the People of Puerto Rico. On this Administration's voucher, a check is made payable to the order of the Governor of Puerto Rico, who endorses it in favor of the vendor. The United States never acquires title to the land. Thus the manner in which the lands necessary for the prosecution of this project are acquired does not appear to be covered by the provisions of Section 3736 of the Revised Statutes.

"In connection with the Dos Bocas project, your attention is directed to that part of Report No. 2186 submitted to the House of Representatives by the House Committee on Appropriations under date of May 15, 1940, which explains the purposes of the \$3,500,000 appropriation recommended for this Administration. With reference to the project in question, the Committee says: 'The largest

item contained in the \$3,500,000 is for completion of the Dos Bocas hydro-electric plant in the sum of \$1,960,000. This project was started in 1935 and has been carried on since in varying amounts. The total obligations to June 30, 1940, are estimated at \$3,460,000, which sum with the amount herein granted will make the total cost \$5,420,000 from Federal funds. When the plant is completed it will be turned over to the insular government for operation in accordance with an agreement entered into with that government when the project was undertaken'.

"The House voted the recommended appropriation to this Administration. The Senate increased the amount. Following conference reports, the bill was passed appropriating \$4,000,000 to the Puerto Rico Reconstruction Administration, but with no change in language evidencing any departure from the expressed intention that the Dos Bocas project should be completed from the current year's funds available. Acquisition of lands for the storage reservoir is a necessary incident to completion of the project, which Congress apparently desired. There are no other funds available to this Administration from which lands necessary for such completion may be acquired.

"The question submitted herein is most urgent. It will be greatly appreciated if you will advise us at your earliest possible convenience whether there is any objection to the contemplated purchase of lands for the purposes and in the manner above stated."

Section 5 of the Emergency Relief Appropriation Act of 1935, 49 Stat. 118, provides:

"In carrying out the provisions of this joint resolution the President is authorized (within the limits of the appropriation made in section 1) to acquire, by purchase or by the power of eminent domain, any real property or any interest therein, and improve, develop, grant, sell, lease (with or without the privilege of purchasing), or otherwise dispose of any such property or interest therein."

Section 3 of the Emergency Relief Appropriation Act, fiscal year 1941, Public Resolution No. 88, 76th Congress, approved June 26, 1940, expressly makes the funds appropriated therein available for "the prosecution of projects approved by the President for the Puerto Rico Reconstruction Administration under the provisions of

the Emergency Relief Appropriation Acts of 1935 and 1938; * * *

However, it does not appear that the President, in approving the allocation referred to in your letter, expressly authorized (as under the authority given him by the said act of 1935) the acquisition of real property in connection with the project under consideration. Also, there is for noting that the said act of June 26, 1940, does not specifically authorize the acquisition of real property. Therefore, the questions for determination are whether the acquisition of land as proposed by you is prohibited by section 3736, Revised Statutes, and, if not so prohibited, whether the involved appropriation is otherwise available for such acquisition notwithstanding the lack of specific authority for such use of the funds appropriated.

Section 3736, Revised Statutes, provides that—"No land shall be purchased on account of the United States, except under a law authorizing such purchase." In view of the ultimate purpose and the procedure with respect to the acquisition of land as set out in the letter above quoted, it does not appear that the contemplated acquisition properly can be classed as a purchase of land "on account of the United States." Neither technically nor in practical effect is the land to be purchased on account of the United States. See Neilson v. Lagow, 53 U. S. 98; 5 Comp. Gen. 661; 19 id. 175.

Accordingly, I am in agreement with the view expressed in the letter,

supra, to the effect that section 3736, Revised Statutes, has no application to the contemplated purchase of real property.

With respect to the remaining question, it is well settled that where an appropriation is made for a particular object, it, by implication, confers authority to incur expenditures which are necessary to its execution, or appropriate or incident thereto, unless there is another appropriation which makes more specific provision for such expenditures, or unless they are prohibited by law. 7 Comp. Dec. 712 and decisions there cited. On the basis of the facts as stated in the letter, supra, there appearing to be no other appropriation available for the intended purpose and, as above set forth, there being no statutory prohibition of the contemplated expenditures, this office will not be required to object to the use of the funds appropriated by the said act of June 26, 1940, as proposed, if it be administratively determined that the acquisition of land for the storage reservoir is necessary to the accomplishment of the purpose for which the appropriation was made. Compare 2 Comp. Gen. 133.

Respectfully,

(Signed) R. N. Elliott

Acting Comptroller General
of the United States.

MJD
9-6-40

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9/6/40