



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON 25

December 23, 1953

B-117720

The Honorable

The Secretary of Agriculture

My dear Mr. Secretary:

Reference is made to letter of November 13, 1953, from the Acting Secretary of Agriculture, requesting a decision as to the propriety of utilizing funds appropriated for carrying out provisions of the Forest Pest Control Act of June 25, 1947, 61 Stat. 177, 16 U.S.C. 594-1, to pay otherwise proper claims for damages caused private landowners by aerial spraying activities pursuant to such act.

Uncertainty in the matter apparently arises from the fact that section 5 of the Pest Control Act provides that sums made available for the necessary expenses of that program "shall not be used to pay the cost or value of any property injured or destroyed."

The Acting Secretary comments thereon as follows:

" * * * we think that the restriction against payment out of appropriated funds for the cost or value of any property injured or destroyed relates only to indemnifying or compensating owners of pest infested or exposed property damaged or destroyed by the Forest Service as a pest control measure. The apparent significance of the prohibition is to require the owner of infested property to bear the burden of whatever loss there might be in the pest control treatment of his own property since he is the beneficiary of the activity and, also, such loss is a part of his contribution to the program. However, when the property of persons is not infested nor subject to control activities and such persons are not participating in the program as in the instant claims, it would seem unreasonable to apply the prohibition against payment for injury or destruction resulting from control measures exercised under the Pest Control Act. Treating the claimants as innocent bystanders, it seems to us that the injuries forming the bases of their

claims are outside the scope of the restriction and they may be paid from funds appropriated for the purposes of the Forest Pest Control Act * * *."

Among other things, the act provides that program activities are to be carried on subject to such conditions and measures as you may deem necessary, including such contributions by those whose properties are involved as you may require. Obviously, the spraying of poisonous substances from airplanes as a pest control measure may adversely affect others not involved in the program and result in an unjustified invasion of their rights. It would appear unreasonable, in the absence of anything in the legislative proceedings indicating intent that the statutory directions should be given a contrary meaning, to regard the statutory restriction as extending to such instances.

Section 2 of the act of May 27, 1930, 46 Stat. 387, 16 U.S.C. 574, under which it is proposed to reimburse the owners of private property for damages sustained, authorizes such reimbursement to be made from any funds appropriated "for the protection, administration, and improvement of the national forests." While it is true that the Department of Agriculture Appropriation Act, 1954, 67 Stat. 205, provides general funds, under the heading "Forest Service" and the subheading "National forest protection and management," for "all expenses necessary for the use, maintenance, improvement, protection and general administration of the national forests" (page 212), funds also are provided for carrying out the program of the Forest Pest Control Act under the heading "Control of Forest Pests" and the subheading "Forest Pest Control Act"

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(pages 210 and 211). In the circumstances, and since pest control operations, although treated separately for appropriation purposes, may be classified as measures for the protection of national forests within the meaning of the language employed in the 1930 act, no objection is perceived to the use of such funds.

The question submitted is answered accordingly.

Sincerely yours,

Lindsay C. Warren

Comptroller General
of the United States