COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON

A-59458.

COMP. GEN.
FILE COPY

JAN 15 1935

The Honorable,

The Secretary of Agriculture.

Sir:

Consideration has been given your letter of December 22, 1934, as follows:

"Extensive purchases of land involving a large number of separate vendors are in process of execution by the Forest Service of this Department. The funds used are 3-8-03/5815, Emergency Conservation Fund (Transfer from War to Agriculture, Act March 31, 1933) 1933 - March 31, 1935, and 3-8-04/5815, Emergency Conservation Fund (Transfer from War to Agriculture, Act June 19, 1934) 1934 - March 31, 1935, derived from the appropriations of $3,300,000,000 for 'National Industrial Recovery and Tennessee Valley Authority' Act of June 16, 1933 (Public 77) and $899,675,000, under Title II--Emergency Appropriations--Executive, of the Deficiency Act of June 19, 1934 (Public 412). Since the funds provided by the Acts of June 16, 1933, and June 19, 1934, are by specific provision therein available for obligation within a limited period, it is the Department's wish to definitely obligate the funds before the expiration of this statutory time limit, as the submission of satisfactory evidence of title and other matters frequently delay considerably the consummation of a land purchase transaction.

"The first contractual step in acquisition is the securing of options. Ordinarily in the past written acceptance of the option has been followed by a formal agreement of purchase, which served to obligate the appropriation. There are at present outstanding a very large number of options. Their volume is such that coverage by purchase agreements of all or even a substantial part thereof would be an expensive and time-consuming undertaking. To the heavy clerical task of preparing and typing the contracts must be added the work and often material delay of obtaining vendors' signatures, sometimes augmented by joint ownerships and multiplicity of heirs. All of these essential signatures already have been obtained on the options.

"Your decision is therefore requested whether duly executed and signed options (form attached) together with copies of the Department's acceptance thereof (copy attached) will constitute an obligation of the appropriations cited within their statutory period of availability. The accepted option seems to be a binding agreement under which conveyance could presumably be enforced by legal process upon a recalcitrant grantor. It seems to be of greater compulsory effect than, for instance, an ordinary purchase order issued independently of contract, and we assume there would be no question that such purchase order issued prior to the expiration date of an appropriation to meet an existing need would constitute an obligation.

"We shall greatly appreciate an early ruling in view of the time required for procurement of purchase agreements in the event of adverse ruling."

Ordinarily, a contract for the purchase of real property to supply an existing need executed in good faith prior to the expiration date of an appropriation is considered sufficient to obligate the appropriation and the question submitted, therefore, is dependent upon whether acceptance of an option to purchase creates a contract of sale.

The options are given apparently without money consideration. They describe the property and offer for a stated purchase price per acre to convey to the United States at any time within twelve months the property so described. The details as to title, ascertaining acreage, and proper deed of conveyance are provided for in the options.

The notice of acceptance advises the optioner that the Department of Agriculture has elected to purchase the land in accordance with and under the provisions of the option granted, payment of the purchase price being conditioned upon approval of title by the Attorney

General of the United States, in accordance with the requirements of the Weeks Law, act of March 1, 1911, 36 Stat. 961.

The options as submitted appear to be in the nature of continuing offers to sell to the United States the property described therein upon certain terms and conditions within a specified period of time. When accepted by the United States according to their terms within the time stated, and before being revoked, by notice duly delivered to optioners, contracts between the parties will have been completed. 13 Corpus Juris 336, Page on Contracts, section 571, and Hillard v. Tayloe, 75 U. S. 557.

While in law contracts resulting from acceptance of options are not looked upon with favor, under the circumstances in the instant matter such contracts when clearly established as entered into during the period of availability of the appropriation for obligating, will be considered by this office, in the absence of other objections, as obligations under the appropriations involved.

Respectfully,

(Signed) J. R. McCarl

Comptroller General
of the United States.

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