



B-55105

COMPTROLLER GENERAL OF THE UNITED STATES

WASHINGTON 25

COMP. GEN.

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FILE COPY

The Honorable,

The Acting Secretary of the Interior.

My dear Mr. Secretary:

Consideration has been given to letter of January 10, 1946,
from the former Secretary of the Interior, as follows:

"Authority to acquire lands for the Geological Survey is now vested in the Secretary of the Interior pursuant to the Act of December 24, 1942 (56 Stat. 1086; 43 U. S. C., Supp. IV, sec. 36b) which provides, in part, as follows:

"That the Secretary of the Interior may, on behalf of the United States and for use by the Geological Survey in gaging streams, acquire lands by donation or when funds have been appropriated by Congress by purchase or condemnation but not in excess of ten acres for any one stream-gaging station. For the same purpose the Secretary may obtain easements, licenses, rights-of-way, and leases limited to run for such a period of time or term of years as may be required for the effective performance of the function of gaging streams; * * *."

"The Geological Survey proposes to acquire permanent easements under authority of the above-quoted act for the construction of stream-gaging stations and, where necessary, rights-of-way for ingress to and egress from such stations. The stations will be used throughout the United States by the Survey in the systematic collection of continuous records of river discharges at various streams and bodies of water. Heretofore, where it has been necessary to utilize privately-owned land for gaging station sites, the Survey has obtained access to such sites by entering into leases, each lease being limited to the fiscal year in which it was entered into but subject to renewal from year to year. This practice was authorized by your Decision A-24745 of October 12, 1938. The costs of such leases are being charged against the appropriation item, 'Gaging streams.'

"The question has now arisen as to the proper charging of costs incurred in connection with the recent purchase of several easements for stream-gaging station sites. The appropriation item 'Gaging streams,' contained in the Interior Department's appropriation act for the fiscal year ending June 30, 1946, Public Law 123--79th Congress, 1st Session, approved July 3, 1945, reads, in part, as follows:

"For gaging streams and determining the water supply of the United States, investigating underground currents and artesian wells and methods of utilizing the water resources, \$1,795,800, of which not to exceed \$10,000 may be expended for acquiring lands at gaging stations, * * *." (Emphasis added.)

"Your decision is requested on the question whether the purchase of easements, licenses, rights-of-way, and leases may properly be charged to the appropriation item 'Gaging streams' without regard to the \$10,000 limitation 'for acquiring lands,' or whether such purchase must be made chargeable to the limitation. In other words, does the limitation of \$10,000 relate only to the purchase or condemnation of fee simple titles or does it, with the exception of lands acquired by donation, include the acquisition of less than fee simple titles as authorized by the Act of December 24, 1942, supra?

"The legislative history of the act does not throw any particular light on the question. The bill, H. R. 6671, passed the House on April 20, 1942, in the form in which it was submitted by the Department. Cong. Rec., Vol. 88, part 3, p. 3550. It passed the Senate on December 15, 1942, with an amendment, which is the proviso in the present act and not pertinent to the question at hand. Cong. Rec., Vol. 88, part 7, pp. 9564-5. On December 16, 1942, the House concurred in the Senate amendment with an amendment that is pertinent to the question here involved. Cong. Rec., Vol. 88, part 7, pp. 9636-7. On the same day the Senate concurred in the House amendment. Cong. Rec., Vol. 88, part 7, p. 9620.

"The House amendment consisted of striking the original language reading 'purchase, condemnation, or donation,' and substituting in lieu thereof the present language of the act reading 'donation or when funds have been appropriated by Congress by purchase or condemnation.' Although it must be conceded that the brief legislative history of H. R. 6671 and the rather meager debates which followed its introduction in Congress are not especially helpful in resolving the question propounded above, the nature and the apparently intended effect of the House amendment are deemed significant.

"The first sentence of the Act of December 24, 1942, supra, deals solely with three types of fee simple title acquisition; i. e., lands acquired outright by donation, purchase, or condemnation. Therefore, it seems clear that Congress, in limiting the acquisition of fee simple titles to 10 acres and limiting such acquisition to the restriction 'when funds have been appropriated by Congress' in a separate sentence of the act, did not intend to place a similar limitation and restriction on the acquisition of titles less than fee simple. Had Congress intended that a similar limitation and

restriction should apply to the acquisition of titles to land less than fee simple in character, it presumably would have so provided in specific terms in the second sentence of the act.

"Furthermore, I do not believe that this is a case where the whole act must or can be read together in order to spell out an appropriation limitation on the acquisition of land titles less than fee simple in nature because (1) the first and second sentences of the act are not interdependent in any sense of the word but are, on the contrary, entirely independent of each other; (2) they deal respectively with two wholly different types of real property; and (3) the limitation in the act is directed solely to purchased or condemned fee simple land titles.

"The foregoing rationale is strengthened, I believe, when analyzed in the light of the testimony given by Mr. Glenn L. Parker, Chief Hydraulic Engineer of the Geological Survey, as set out on pages 634 and 635 of the Hearings before the Subcommittee of the Committee on Appropriations, House of Representatives, Seventy-Ninth Congress, First Session, on the Interior Department Appropriation Bill for 1946.

"Your early decision in the matter will be appreciated."

While it is fundamental that an easement or right-of-way is a right, distinct from the ownership thereof, to use the land of another, it has been held to be an interest in land (17 Am. Jur., Easements, section 3), and has been categorized as land the taking of which for public use entitles the owner to compensation. United States v. Welch, 217 U. S. 333; Panhandle Eastern Pipe Line Co. v. State Highway Commission, 294 U. S. 613. Further, this office consistently has held that the purchase of a permanent right-of-way or easement over land constitutes a purchase of land or interest therein within the meaning of section 3736, Revised Statutes, which prohibits the purchase of land by the United States unless specifically authorized by law. See 17 Comp. Gen. 204, and the cases cited therein. Hence,

if it were necessary to determine the meaning of the term "lands" as it appears in the appropriation item quoted in your letter-- standing alone and without recourse to other aids to construction-- there would be warranted the view that permanent easements, rights-of-way, etc., fall within the purview of said term.

However, in the present instance, the precise scope and purpose of the limitation language contained in the appropriation item in question is proper for determination in the light of the specific provisions of the basic statutory authority (act of December 24, 1942, 56 Stat. 1086) for the acquisition of real property for stream-gaging stations. As is pointed out in your letter, by its plain terms the latter statute makes a division of the property acquisitions within its contemplation into two separate and distinct classifications. In the first sentence thereof, reference is made to the acquisition of lands by purchase or condemnation, the normal concomitant of which is the obtaining of a fee simple title; whereas, the second sentence of said statute deals solely with the acquisition of certain interests in land which involve less than fee simple titles. Consequently, it seems apparent that, under the basic statute, the limitation upon the authority to acquire lands, to wit, "when funds have been appropriated by Congress," is referable only to the fee simple title acquisitions covered by the first sentence.

It appears that the specific authorization to expend funds, not to exceed \$10,000, for the acquisition of lands, contained in

the appropriation item "Gaging streams" for the current fiscal year, is the first time that such authority has been granted since the enactment of the act of December 24, 1942. In connection therewith, there has been noted the testimony during the Hearings before the Subcommittee on the Committee on Appropriations, House of Representatives, on the measure, referred to in the penultimate paragraph of the above letter, as follows:

"Mr. Johnson. I note you are requesting new language on page 220 proposed to give you authority to use \$10,000 to acquire lands. Will you please explain the necessity for this new language.

"Mr. Parker. The Geological Survey has gaging stations for measuring the daily flow of streams, at something like 5,000 places. Many gaging-station structures cost up to \$10,000—all the way from a few hundreds up to thousands of dollars. Many are located on land which the Government has no title to; some on State land; some on right-of-way for roads; and some on private property with written permission of the property owners. The investment in those structures was becoming so great that it seemed desirable to have authority to acquire lands if necessary.

"Several years ago Congress granted authority to buy tracts of land up to 10 acres in area if necessary. We do not expect to use that authority very often. We would rather have long-time leases, or easements, or something of that kind, \$10,000 annually should be enough to cover all Federal needs. Sometimes States provide rights-of-way for these structures for cooperative gaging stations.

"The act, as interpreted in the light of discussion in the Senate and in the House prior to passage, makes it seem necessary to have language in the appropriation item to authorize expenditures for acquiring land. For the first time we have made this request, under the authority of Congress, to purchase land in small quantities."

It seems evident from the foregoing that the purpose of the authorizing language contained in the current appropriation was to conform to the limitation in the basic statute that lands may be

acquired by purchase or condemnation only "when funds have been appropriated by Congress," and since, as hereinbefore indicated, that restriction appears to be applicable only to land acquisitions involving fee simple titles, it reasonably may be concluded that the \$10,000 appropriation limitation relates to acquisitions of that nature, and that the purchase of easements, licenses, rights-of-way and leases are not required to be charged to said limitation.

Respectfully,

(Signed) Lindsay C. Warren

Comptroller General
of the United States.

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