



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON 25

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1948

The Honorable,

The Secretary of the Interior.

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My dear Mr. Secretary:

I have your letter of September 3, 1948, as follows:

"I enclose letters dated June 17 and August 10 from Assistant Attorney General Vanech addressed to Mr. Clifford E. Fix, Chief Counsel of the Bureau of Reclamation of this Department. These letters relate to the handling of title matters in connection with the acquisition by the Bureau of Reclamation of lands and interests in lands acquired under the Federal Reclamation Laws (Act of June 17, 1902, 32 Stat. 388, and acts amendatory thereof or supplemental thereto) and the Act of October 14, 1940 (54 Stat. 1119), as amended.

"You will recall that in an opinion dated September 26, 1946, the Attorney General concluded that R. S. 355, as amended (40 U.S.C. 255), requires him to pass on the sufficiency of titles to lands acquired for the construction and operation of works authorized under the Federal Reclamation Laws. A copy of that opinion and of an earlier opinion, to the contrary, of the Acting Solicitor of this Department are enclosed for your convenience. While this Department believes that a different legal conclusion could and should have been reached by the Attorney General, numerous conferences have been held by representatives of this Department with those of the Department of Justice in an effort to formulate a method of procedure harmonizing, as far as possible, the requirements of the Attorney General with those arising from the practical aspects of the Bureau's land acquisition program.

"The letter of June 17 from Assistant Attorney General Vanech, to which I have referred, contains a statement of the conclusions of the Department of Justice as to the procedure required to be followed in title matters by the Bureau of Reclamation. Of particular interest to us is the provision that

"... if the abstracts of title disclose that the vendors' titles are free from doubt of consequence or when the certificates of title or title insurance policies, obtained from title companies approved by this Department, report the titles to be free from objections except those which may be satisfied by the payment of

funds out of the purchase price, your Bureau may consummate the purchases and effect the requisite payment to the vendors prior to obtaining the preliminary opinions of the Attorney General ...'

I send Assistant Attorney General Vanech's letter to you in order that I may be assured by you that you will not be required to object to the expenditure of funds for the Bureau of Reclamation's land acquisitions for project works when those acquisitions are effected in accordance with the procedure outlined in that letter and are otherwise proper.

"Inasmuch as R. S. 355, as amended, relates only to lands 'purchased ... for the purposes of erecting thereon any armory, arsenal, fort, fortification, navy yard, customhouse, lighthouse, or other public building of any kind whatever,' I assume that it is not applicable to lands acquired under Section 4 of the Columbia Basin Project Act (57 Stat. 14). These lands are acquired, in the words of the Act 'for the purposes of assisting in the permanent settlement of farm families, protecting project land, facilitating project development, and preventing speculation in project lands,' rather than for the purpose of erecting structures thereon.

"In view of the importance to the administration of the Reclamation Laws of the questions raised in this letter and of the fact that the new procedure is scheduled to become effective on October 1, I shall appreciate a reply at your early convenience."

With respect to the procedures to be followed in the handling of title matters in connection with the acquisition by the Bureau of Reclamation of lands and interest in lands acquired under the Federal Reclamation Laws, you are advised that this Office will not be required to object to otherwise proper payments for such lands, acquired under deeds to the United States filed for record on and after October 1, 1948, if there be compliance with the procedure outlined in the letter of June 17, 1948, from the Assistant Attorney General, provided title evidence, together with copies of the

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preliminary and final opinions of the Attorney General in favor of the validity of title (or the transcript of record where acquisitions are by condemnation), be made available to this Office for audit purposes in accordance with the usual procedure in such cases.

As to the applicability of section 355, Revised Statutes, as amended (40 U.S.C. 255), to lands acquired under section 4 of the Columbia Basin Project (57 Stat. 14), it appears to be the view of your Department that the Attorney General's approval of title to lands purchased under the Columbia Basin Project Act is not required, since, in the words of said act, such lands are to be acquired "For the purposes of assisting in the permanent settlement of farm families, protecting project land, facilitating project development, and preventing speculation in project lands."

The said section 355, Revised Statutes, as amended, provides in pertinent part as follows:

"No public money shall be expended upon any site or land purchased by the United States for the purposes of erecting thereon any armory, arsenal, fort, fortification, navy yard, customhouse, lighthouse, or other public building of any kind whatever, until the written opinion of the Attorney General shall be had in favor of the validity of the title."

Subsection (a) of section 4, of the Columbia Basin Project Act authorizes the Secretary of the Interior "to acquire in the name of the United States, at prices satisfactory to him, such lands or interest in lands, within or adjacent to the project area, as he

deems appropriate for the protection, development, or improvement of the project," which language is sufficiently broad to include the erection of buildings on land purchased thereunder. Flyge v. Flynn, 166 P. 2d 539, 551; 27 Am. Jur. Improvements, section 1.

The term "public building" as used in said section 355, Revised Statutes, has been broadly construed to "include public works of all kinds." 3 Comp. Dec. 530. See also, 39 Op. Atty. Gen. 73, and 18 Comp. Gen. 727. While there may be no present intention for the erection of structures on land purchased or to be purchased under authority of the acts authorizing the development of the project in question, the sum of \$15,312,000 was appropriated in the "Interior Department Appropriation Act, 1949," Public Law 841, approved June 29, 1948, "For continuation of construction and for other purposes authorized by the Columbia Basin Project Act of March 10, 1943 (57 Stat. 14)." Consequently, once purchased, the land will continue to be available under the statute for the erection of such structures and improvements as may at any time thereafter be considered necessary to adapt it to the use authorized by said statute. In this connection, in an opinion rendered July 6, 1937 (39 Op. Atty. Gen. 73), former Attorney General Cummings rejected the contention that section 355, Revised Statutes, has application only to lands upon which a Government agency intends to erect a public building. He stated:

"* * * Section 355, Revised Statutes, does not refer to lands upon which the acquiring agency 'intends to erect a public building' but to lands 'purchased by the United States for the purposes of erecting' buildings thereon. The opinion of the Attorney General cited refers to lands not charged by the statute authorizing their purchase with the purpose of erecting buildings thereon.

"The purpose for which the lands here involved are to be used is fixed by Title VII, which says that such lands are to be used, among other things, 'to erect and construct thereon and in connection therewith such buildings, dikes, dams, canals, and other works as may be necessary'. This purpose, fixed by Congress, cannot be changed by the intention, present or future, of the purchasing authority. Whatever such intention may be it does not change the fact that the lands when purchased are charged with the purposes set forth in Title VII, thus bringing them within the provisions of Section 355, Revised Statutes."

Accordingly, no reason is apparent why section 355 of the Revised Statutes should not be regarded as applicable to lands acquired under section 4 of the Columbia Basin Project Act.

Respectfully,

Comptroller General
of the United States.