COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON 25

October 15, 1954

B-120012

Dear Mr. Secretary:

Reference is made to my letter of May 21, 1954, B-120012, requesting a complete report concerning the payment by your Department of part of the cost of paving a street adjoining the site of a Forest Service warehouse in Eugene, Oregon, and the reply thereto dated July 27, 1954, from your Administrative Assistant Secretary.

The letter of July 27, 1954, states that the street in question was in very bad condition, constituting a serious driving hazard as well as a drainage, mud and dust problem, and that the City of Eugene refused to pave it unless each property owner stood its share of the cost. The letter further states that the payment to the City of a special assessment for the street paving--which is acknowledged to be improper under the long-standing and well established rule that the Federal Government is not subject to such assessments--was not involved therein. The letter recites that the Government's title to the warehouse property extends 30 feet to the center of the street; that the Forest Service issued bid invitations for the paving of that portion of the street "owned" by said Service and awarded a contract therefor to the lowest bidder; that the low bidder was the company which was paving the remainder of the street under contract with the City of Eugene and the two jobs were performed simultaneously, with the City and the Forest Service independently paying the contractor for the individual job for which each had contracted. It is contended in the letter that since the title to the warehouse property extended to the center of the street the paving of the portion of the street abutting on the warehouse constituted an improvement of Government property and hence the contracting and payment therefor as set out above was legal and proper.

In the case of McQuaid v. Portland and V. Ry. Co., 22 Pac. 899, the Supreme Court of Oregon stated:

> "* * * When a street has been dedicated to the public, or land been taken for a street under the law of eminent domain, the inquiry as to whom the fee is in is not very material. * * *
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> "* * * The use of the land as a street includes, practically, its entire beneficial interest. There is

> no estate of a private character left in the dedicator, if the fee does remain in him, which he can utilize; and, if it vests in the lot owner by virtue of his deed to the lot, it confers no rights which are not secured to him by the implied covenant, arising out of the conveyance, that he shall have a right of way over the street, and egress and ingress to and from his premises by means thereof. * * *"

Also, the same court in the case of Paquet v. Mt. Tabor St. R. Co., 22 Pac. 906, stated that:

> "* * * The establishment of a public highway practically divests the owner of the fee to the land upon which it is laid out of the entire present beneficial interest, of a private nature, which he had therein. It leaves him nothing but the possibility of a reinvestment of his former interest, in case the highway should be discontinued as such. * * *"

It is apparent from the above that the property rights of the owner of the fee in a public street other than the right of way over the street and the right of egress from and ingress to his premises by means thereof, which rights belong to the abutting property owners regardless of who has the fee, are very limited and of little value and, indeed, consist only of the possibility of reversion in the remote contingency that the street be formally discontinued. While the land technically may be owned by the Government to the center of the street, that portion thereof which is occupied by the street clearly is subject to a permanent easement held by the City in trust for the public and the Government has absolutely no control or jurisdiction thereover. Also, the Government has no rights therein greater than those in the public at large and could not fence in such land or otherwise deprive the public of the use thereof or erect any structures thereon.

It is apparent that the nebulous interest of the Government in the land occupied by the public street is not sufficient to render such land Government property which may be improved under a mere general authorization in an appropriation act to improve Government property. 2 Comp. Gen. 308; 6 id. 353. The decision of this Office dated May 5, 1924, A-2179, cited by you as authority for the action taken here, authorized the construction of a sidewalk, curb and gutter along two streets abutting certain Department of Agriculture property solely by reason of the fact that such construction was to be upon land owned entirely by the Government and has no application here where the Government has very little interest in and no control or jurisdiction over the land in question. The procedure followed in

this instance appears to have been a mere subterfuge to circumvent the Government's immunity to assessments for street paving.

Accordingly, regardless of the necessity for or desirability of the paving, the payment here involved on the present record must be held illegal and unauthorized and an exception therefor will be stated against the accounts of the responsible certifying officer.

Sincerely yours,

FRANK H. WEITZEL

Acting Comptroller General
of the United States

The Honorable
The Secretary of Agriculture