



COMPTROLLER GENERAL OF THE UNITED STATES

WASHINGTON

B-173

FEB 27 1939

The Honorable,

The Secretary of the Interior.

Sir:

Your letter of December 20, 1938, is as follows:

"Section 6 of the Act of June 9, 1916 (39 Stat. 218), requires that persons who purchase timber on lands of Class Two shall be required to pay a commission of one-fifth of one per centum of the purchase price paid, to be divided equally between the Register and the Receiver within the maximum compensation allowed them by law.

"The Act of August 28, 1937 (50 Stat. 874), repeals all acts or parts of acts in conflict therewith without specifically referring to any act.

"In view of the fact that the duties performed by the Registers of the district land offices at Lakeview and Rosebury, Oregon, in connection with these timber sales have, following the passage of the Act of August 28, 1937, been transferred in their entirety to the Chief Forester at Portland, Oregon, and said Registers no longer perform any service whatsoever in connection with such sales, your opinion is requested as to whether or not the one-fifth of one per cent commission is to be collected in connection with timber sales made under the Act of August 28, 1937, and whether or not it is to be considered as a basis for determining the compensation of the Registers."

The act of June 9, 1916 (39 Stat. 218), provided for revesting in the United States title to certain lands theretofore granted to the Oregon and California Railroad Company; for dividing said lands into classes; for the sale of the timber and lands separately; and for disposition of the proceeds of such sales.

Section 4 of the act provided for the sale of the timber on timber lands as rapidly as reasonable prices could be secured therefor

in a normal market. The timber was to be sold for cash by the Secretary of the Interior, in cooperation with the Secretary of Agriculture, or otherwise. Upon payment of the purchase price, patents were to be issued to the purchasers.

Section 6 of the act provided:

"That persons who purchase timber on lands of class two shall be required to pay a commission of one-fifth of one per centum of the purchase price paid, to be divided equally between the register and receiver, within the maximum compensation allowed them by law; and the register and receiver shall receive no other compensation whatever for services rendered in connection with the sales of timber under the provisions of section four of this Act."

From the language used, it is obvious that the commission provided for therein was intended as compensation for services rendered by the register and receiver incident to the sales of timber authorized by section 4 of the act. By act of October 28, 1921, 42 Stat. 208, the President was authorized to consolidate the offices of register and receiver in certain cases. In such cases, the compensation of the register was to include the fees and commissions otherwise allowable to both. Assuming that such action was taken with reference to the offices at Lakeview and Roseburg, Oregon, the registers were entitled to the commission provided by section 6 for sales made under authority of provisions of section 4 thereof.

The act of August 28, 1937, 50 Stat. 874, fully covers the matters treated in the first five sections of the act of June 9, 1916, and provides an entirely new basis and procedure with respect to classification, use, and disposition of the land and timber.

Therefore the sales of timber were to be made as rapidly as possible, whereas under the said act of 1937 the land is to be managed for permanent forest production "and the timber thereon shall be sold, cut, and removed in conformity with the principle of sustained yield for the purpose of providing a permanent source of timber supply, protecting watersheds, regulating stream flow, and contributing to the economic stability of local communities and industries, and providing recreational facilities." There is nothing in the act authorizing the issuance of patents transferring title to the timber, but instead the Secretary of the Interior is authorized to make such rules and regulations as may be necessary and proper for the purpose of carrying out the purposes of the act. Consequently, under well established rules of construction the first five sections of the act of June 9, 1916, are to be regarded as repealed by the act of August 28, 1937. See Tracy v. Tuffly, 134 U. S. 206.

Your letter states that the registers at the offices involved no longer perform any services whatever in connection with the timber sales. In fact, such timber sales as are now made are not those authorized under section 4 of the act of June 9, 1916, and on which the commissions were allowed. Furthermore since section 4 of the act of June 9, 1916, is directly in conflict with the provisions of the act of August 28, 1937, it is expressly repealed by the last paragraph of the later act.

As no commission is provided in the 1937 act for timber sales made thereunder and as the registers perform no services in connection with such sales, it must be held that the provisions of section 6 of the 1916 act have no application to sales made under the 1937 act.

Your question is answered accordingly.

Respectfully,

(Signed) R. N. Elliott

Acting Comptroller General  
of the United States.