

emolument return for that period shows that vouchers for clerical services rendered to him after he ceased to hold the office of marshal were included as part of the expenses of his office. The emolument return, however, was never adjusted in the First Comptroller's office, and therefore these items were never specifically allowed or disallowed. On the face of the emolument return no surplus of emoluments was shown. It may be that the clerk whose duty it was to state emolument accounts presumed none was necessary in this case, because there appeared to be no surplus emoluments to account for, although if an account had been stated and these vouchers had been disallowed, a surplus would have existed. The present Comptroller was the then First Comptroller, and he knows that the question was never presented to him for determination; therefore, whatever a proper adjustment of Mr. Grimes's emolument account would have shown, the case certainly can not be treated as an authoritative precedent for the allowance of clerk hire to a marshal after he ceased to be such officer as part of the expenses of his office.

The action of the Auditor is therefore affirmed.

R. B. BOWLER,  
Comptroller.

#### EXPENSE OF PROCURING ABSTRACT OF TITLE TO LAND FOR A FORTIFICATION.

The expense of procuring an abstract of title to land to be used as a site for a fortification is a proper charge against the appropriation made for the purchase of the site if the abstract is needed by the United States attorney to assist him in examining the title, provided the land is to be purchased and not condemned.

TREASURY DEPARTMENT,  
OFFICE OF COMPTROLLER OF THE TREASURY,

December 8, 1896.

SIR: I am in receipt by your reference of a letter from Maj. Charles E. L. B. Davis, Corps of Engineers, United States Army, stating that the United States attorney for the southern district of California, who has been instructed by the Attorney-General to assist Major Davis in procuring a valid title to certain premises sought to be purchased on Coronado Beach, San Diego, for fortification purposes, desires a certain abstract of title from an abstract company in San Diego.

You ask whether the expenses of procuring this abstract may

be paid from the appropriation "Sites for fortifications and seacoast defenses."

Section 355, Revised Statutes, provides:

"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, custom-house, light-house, 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, nor until the consent of the legislature of the State in which the land or site may be, to such purchase, has been given. The district attorneys of the United States, upon the application of the Attorney-General, shall furnish any assistance or information in their power in relation to the titles of the public property lying within their respective districts. And the Secretaries of the Departments, upon the application of the Attorney-General, shall procure any additional evidence of title which he may deem necessary, and which may not be in the possession of the officers of the Government, and the expense of procuring it shall be paid out of the appropriations made for the contingencies of the Departments respectively."

That section was taken from the joint resolution of September 11, 1841 (5 Stat., 468), which required that the Attorney-General should examine into the titles of all the lands and sites used for all classes of public works therein enumerated, as well those which had already been purchased as those which were thereafter to be purchased. It was no doubt because of the provision requiring an examination of titles of lands which had been previously purchased that the appropriation for the contingencies of the Department was named as that from which the expenses of procuring such abstracts were to be paid, because as to the titles of lands already then acquired the appropriations from which the purchase of such lands had been made no longer were available for the payment of such expenses.

However this may be, section 355, Revised Statutes, specifically provides for the payment of the expenses of procuring such evidence from the appropriations for the Department under which the land sought to be purchased is to be used, and it has been the established practice for many years—probably over fifty—to pay such expenses from the appropriations from which the purchase money of the land itself is payable, provided these expenses arise in cases where land is to be purchased and not condemned, for when a suit for condemnation is brought, the expenses of such suit, like all other suits in

which the United States are a party, are payable from the appropriations made for the Department of Justice. (See 1 Comp. Dec., 317; 2 Comp. Dec., 201.)

The clause in the sundry civil appropriation act of March 2, 1889 (25 Stat., 941), providing—

“that hereafter, in the procurement of sites for such public buildings, it shall be the duty of the Attorney-General to require of the grantors in each case to furnish, free of all expenses to the Government, all requisite abstracts, official certifications, and evidences of title that the Attorney-General may deem necessary,”

to which Major Davis refers, in my opinion has no application to the present case. That clause is part of some general legislation relating to public buildings following immediately after the appropriations for the public buildings under the Treasury Department. The exact public buildings to which it refers is not entirely free from doubt (see 2 Comp. Dec., 392), but I am clearly of the opinion that it has no relation whatever to sites for fortifications under the War Department. That Congress at times distinguishes between public buildings and fortifications is clearly seen from section 5 of the act of June 20, 1874 (18 Stat., 110), wherein it is provided that the balances of appropriations for “light-houses, fortifications, public buildings,” among others, shall not be credited to the surplus fund after two years as is provided therein for general appropriations.

If the abstract referred to by Major Davis is not intended for use by the district attorney in condemnation proceedings, but to assist him in examining the title of land which is sought to be purchased, the expense thereof is a proper charge against the appropriation “Sites for fortifications and seacoast defenses.”

Respectfully, yours,

R. B. BOWLER,  
*Comptroller.*

The SECRETARY OF WAR.

#### IN RE CONSTRUCTION OF SECTION 65, REGULATIONS OF THE INDIAN OFFICE, 1894.

A regulation made by the Secretary of the Interior for the government of the Indian Office, which provides that all his authorities to purchase supplies in open market shall expire with the fiscal year in which they are given, may be waived by the Secretary before or after a purchase is made and either specifically or by an order in contravention of the regulation.