

I am therefore without authority to answer your question. I may add, however, that the question seems to be fully covered by my decision of February 15, 1897 (3 Comp. Dec., 353).

Respectfully, yours,

R. B. BOWLER,
Comptroller.

Mr. GEORGE W. EVANS,
Disbursing Clerk, Department of the Interior.

ERECTION OF BUILDINGS ON LAND BEFORE THE CONSENT OF THE LEGISLATURE TO THE PUR- CHASE IS GIVEN.

Section 355 of the Revised Statutes prohibits the expenditure of public money upon land purchased for fortification purposes, or for the erection of a public building of any kind, until the consent of the legislature of the State to the purchase is obtained, although the use of public funds in payment of the purchase money of such land before such consent is given may not be prohibited by the statute.

TREASURY DEPARTMENT,
OFFICE OF COMPTROLLER OF THE TREASURY,
April 23, 1897.

SIR: I am in receipt by your reference of a letter of the 10th instant from the Chief of Engineers, U. S. A., calling attention to the appropriation in the fortifications appropriation act of March 3, 1897 (29 Stat., 642):

"Sea walls and embankments: * * * For construction of a riprap wall for protection of the eastern beach of United States lands at Sandy Hook, New Jersey, seventy-five thousand dollars."

The Chief of Engineers states that the land to be protected consists of a strip connecting Sandy Hook with the mainland, 2,200 feet long, and extending from the Atlantic Ocean to Shrewsbury River, and was purchased by the United States in July, 1892; that the consent of the legislature of New Jersey, in which State the land is situated, to the purchase has not been given, although such consent was requested by the Secretary of War in a letter addressed to the governor of New Jersey on December 15, 1893. The Chief of Engineers further states that "owing to the continued widening and deepening of the breach in the isthmus between the river and the ocean, it is of the greatest importance that immediate action be taken

to check the devastating work of the sea and to repair the damage already done," and that "the funds appropriated are barely sufficient for the purpose, and further delays will render additional appropriations necessary."

In view of these facts, he asks whether this appropriation may be now used, notwithstanding the provisions of section 355, Revised Statutes. That section provides that—

"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."

Under that section it has been held that no money can be expended for the purchase of land until the opinion as to the validity of the title has been given (10 Opin. A. G., 353, 354), although it has been held that such purchase can be made, notwithstanding the consent of the legislature thereto has not been given (10 Opin. A. G., 35; 15 *id.*, 212; 4 Lawrence's Comp. Dec., 152). In this latter opinion Comptroller Lawrence considered the question at least doubtful, but concluded that the construction placed upon this section by the Attorneys-General in the opinions above cited should not be changed.

The land purchased in 1892 was no doubt purchased without first obtaining the consent of the legislature thereto, because of these opinions. If the matter were an original one, I should have serious doubts as to the legality of this practice, but concur in the conclusion reached by Comptroller Lawrence that it is now too late to change the construction heretofore placed upon this statute.

All the opinions of the Attorneys-General agree that no money can be expended upon a site thus purchased until the consent of the legislature has been given. The language of section 355, Revised Statutes, in my opinion, clearly indicates that no money shall be expended upon the land, for any purposes whatever, until this consent has been given, and not that "no public money shall be expended" "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." These latter words, in my opinion,

qualify the words "any site or land purchased by the United States," and not the words "no public money shall be expended." It is hardly to be presumed that Congress would authorize the expenditure of money for the preparation of a lot for the erection of a building and not for the erection of the building itself. The prohibition is evidently against the expenditure of any money whatever upon a site until the consent has been given.

The exact purposes for which the land in question was purchased and is to be used are not stated by the Chief of Engineers. As, however, the appropriation has been made in the fortifications appropriation act, it is apparent that the land is to be used for fortification purposes, even if the words "public building of any kind whatever," in section 355, are not to be construed in a liberal sense, so as to include public works of all kinds. It is believed that this section has been thus broadly construed in practice by all the Executive Departments.

The use of this money at the present time clearly comes within the prohibition of section 355, and is not authorized.

Respectfully, yours,

R. B. BOWLER,
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The SECRETARY OF WAR.

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