

PURCHASE OF LAND BY ARMY.

The purchase of land as a means of settling the owner's claim for damages growing out of its use by the Army under an option to purchase is not embraced in any of the exceptions to the act of July 11, 1919, 41 Stat. 128, prohibiting the use of Army appropriations for the purchase of real estate, and such use of appropriations is expressly forbidden by the provisions of section 3736, Revised Statutes, which limits the purchase of land to cases where it is specifically authorized by law.

Comptroller Warwick to the Secretary of War, October 6, 1919:

I have your letter of September 20, 1919, requesting decision whether there is authority under either the appropriation "Ordnance stores, ammunition" or "Inland and port storage and shipping facilities" to purchase a 15.8-acre tract of land at East Alton, Ill., upon which the Ordnance Department entered into occupation about October, 1918, under an option to purchase and in connection with the use of the plant of the Western Cartridge Co.

It appears from the papers submitted that the Government erected 18 frame buildings on the land at a cost of \$100,000; that the proposed use was abandoned and the owner of the 15.8-acre tract claims approximately \$6,200 damages, but has consented to sell the tract for \$8,690, also releasing all claims for its use and for damage to another tract of 17 acres adjoining; that the floors of four of the buildings have been strengthened at a cost of about \$200 each, to make them available for the storing of machinery which has been removed into the buildings from the works of the Western Cartridge Co., and that this would enable the Government to deal more fairly with the owner of another tract of about 16 acres who claims to have been damaged \$10,815.

The appropriations referred to appear in the Army appropriation act of July 11, 1919, 41 Stat. 121, 125, as follows:

"STORAGE AND SHIPPING FACILITIES. For inland and port storage, including all necessary buildings, docks, tracks, handling and other facilities for Government supplies, including rentals and hire of the necessary employees, \$30,000,000."

"ORDNANCE STORES, AMMUNITION. Manufacture and purchase of ammunition for small arms and for hand use for reserve supply, ammunition for burials at * * *, ammunition for firing the morning and evening gun at * * *, \$1,600,000."

The storage use to which the buildings on the land are being put is not particularly determinative of the authority to purchase the land, but I may invite attention that the Army appropriation act of July 11, 1919, in which the above appropriations appear, also contains a specific authority under Chapter II for the sale or lease of real property acquired by the United States since April 6, 1917, for storage purposes for the use of the Army. It may be fairly assumed therefrom that a need to acquire land for storage uses was not contemplated by said appropriations.

My decision is particularly requested, however, "Whether payment for this land can properly be made notwithstanding the general restrictions upon the acquisition of real estate contained in the Army appropriation act, approved July 11, 1919," 41 Stat. 128, which provides as follows:

"That no part of any of the appropriations made herein nor any of the unexpended balances of appropriations heretofore made for the support and maintenance of the Army or the Military Establishment shall be expended for the purchase of real estate or for the construction of Army camps or cantonments except in such cases at National Army or National Guard camps or cantonments which were in use prior to November 11, 1918, where it has been or may be found more economical to the Government for the purpose of salvaging such camps or cantonments to buy real estate than to continue to pay rentals or claims for damages thereon, and except where industrial plants have been constructed or taken over by the Government for war purposes and the purchase of land is necessary in order to protect the interest of the Government."

The acquisition of this land is specifically intended as a means of settling the owner's claim for damages. What the option may have authorized as to occupation of the land by the Government and under what authority it has continued to be occupied has not been shown.

It is not necessary to determine here whether the claims arising therefrom were a matter for adjustment under the provisions of the act of March 2, 1919, 40 Stat. 1272, relating to adjustment of express or implied agreements.

The question with relation to the appropriations is now for consideration only as a simple one for the purchase of lands. That purchase is not shown to be within any of the purposes in the exceptions to the act of July 11, 1919, and such use of the appropriations is within the prohibition of the Revised Statutes, section 3736, that "No land shall be purchased on account of the United States, except under a law authorizing such purchase."

The question is answered accordingly.

EMPLOYMENT OF PERSONAL SERVICES.

As the employment of stenographic services by the War Department in reporting an investigation is an employment of personal services for which a clerical force is provided by regular appropriations, and as no specific appropriation was made for the expense to be incurred by the War Department in connection with such investigation, payment therefor from War Department appropriations is not authorized.

6-10-26

Comptroller Warwick to the Secretary of War, October 7, 1919:

I have your letter of September 30, requesting decision whether an account in the sum of \$933.75 in favor of Griffith L. Johnson for