



COMPTROLLER GENERAL OF THE UNITED STATES

WASHINGTON

A-36314

APR 29 1931

The Honorable,

The Secretary of the Treasury.

Sir:

There has been received your letter of April 18, 1931, in  
pertinent part as follows:

"The Act of Congress approved May 25, 1926, authorized the Secretary of the Treasury to provide suitable accommodations in the District of Columbia for the Executive Departments and independent establishments of the Government and 'to acquire, by purchase, condemnation, or otherwise, such sites \* \* \* as he may deem necessary, and to cause to be constructed thereon \* \* \* adequate and suitable buildings for any of the foregoing purposes.'

"Said Act also contains the following provision:

" 'In all cases where the construction of buildings in the District of Columbia, under the provisions of this Act, requires the utilization, in the opinion of the Secretary of the Treasury, of contiguous squares as sites thereof, authority is hereby given for closing and vacating such portions of streets as lie between such squares and such alleys as intersect such squares, and the portions of such streets and alleys so closed and vacated shall thereupon become parts of such sites.'

"The Act of May 25, 1926, above referred to, was amended by an Act of Congress approved January 13, 1928 (45 U.S. Stat. p. 51) which authorized and directed the Secretary of the Treasury 'to acquire, by purchase, condemnation, or otherwise, all the lands obtainable with the funds that may be appropriated, including buildings and other structures, included within the triangle bounded by Pennsylvania Avenue and B Street (now Constitution Avenue) extending from Fifteenth Street to Sixth Street, N.W., \* \* \*.'

"This act authorized the appropriation of \$25,000,000.00, or so much thereof as may be necessary to carry out the provisions of the act.

"Under date of March 31, 1930, Congress enacted a further amendment of the two Public Buildings Acts hereinbefore referred to, increasing the authorization for the purchase of land in the triangle area to \$40,000,000.00.

"The Deficiency Act approved May 29, 1928, appropriated \$7,000,000.00 for the acquisition of property 'as authorized by the Act entitled "An Act authorizing the Secretary of the Treasury to acquire certain lands within the District of Columbia to be used as sites for public buildings," approved January 13, 1928, fiscal year 1929.' Further appropriations on account of said Act of January 13, 1928, will be found in the Treasury Appropriation Act of December 20, 1928, the Deficiency Act of March 4, 1929, the Treasury and Post Office Act of May 15, 1930, the Deficiency Act of July 3, 1930, and the Treasury and Post Office Act of February 23, 1931. These appropriations total more than \$28,000,000.00.

"Pursuant to the several authorizing and appropriating Acts above mentioned, the Secretary of the Treasury has caused to be acquired, through condemnation, purchase or otherwise (or has now in process of acquisition), practically all of the lands in the triangle area above designated.

"Plans and specifications are now practically completed for demolition, excavation, and foundation work incident to the construction of the new buildings to house the Post Office Department, Interstate Commerce Commission and Labor Department. In fact, the old buildings on the site of the Department of Labor building are now being removed under a contract which is to be completed June 11 next. It is desired to let a contract for the excavation and foundation work for these buildings at an early date, and such contract will make necessary the closing and excavation of certain streets which now carry the tracks and other physical structures of the Mount Vernon, Alexandria, and Washington Railway Company.

\* \* \*

"Section 1 of the Act of January 13, 1928, authorizes and directs the Secretary of the Treasury to acquire, by purchase, condemnation, or otherwise, all of the lands obtainable with the funds that may be appropriated, including buildings and other structures, included within the triangle bounded by Pennsylvania Avenue, Constitution Avenue, Fifteenth Street and Sixth Street, N.W.

Unless money is available to pay for the physical structures of the railway company hereinbefore mentioned, it will be quite impracticable to proceed this summer with the foundation work necessarily incident to the projected building program within the triangle area designated, thereby depriving thousands of persons of employment, and seriously disrupting the President's plan for economic rehabilitation.

"It seems fair to assume that Congress, by appropriating the large sums of money it has for the acquisition of lands, buildings and structures in said triangle area, intended to enact such legislation as would enable this Department to proceed promptly with said building program.

"Will you please, therefore, favor this Department with your decision as to whether the monies appropriated under the authority of Acts hereinbefore referred to are available for the purpose of acquiring the railway tracks and other physical structures now owned by said railway company within the triangle area hereinbefore described."

The act of August 23, 1894, 28 Stat. 494, authorizing the Washington, Alexandria and Mount Vernon Electric Railway Company, now the Mount Vernon, Alexandria and Washington Railway Company, to extend its line of road into and within the District of Columbia, contained a reservation, in section 25, that the act "may at any time be altered, amended, or repealed by the Congress of the United States," and is similar in this respect to other statutes authorizing other public utilities to use the streets of the District of Columbia. Even as early as the act of May 8, 1872, 17 Stat. 84, Congress provided that certain electric railroad companies -

" \* \* \* are hereby required to remove their tracks, respectively, from the Capitol grounds, as hereby established, and to run the same as they may be directed, from time to time, by the officer in charge of the public buildings and grounds, as the grading and filling up of said grounds may render necessary. \* \* \*"

And in the act of March 3, 1875, 18 Stat. 385, these same railroad companies were directed to take up such portions of their tracks as might come in the way of the improvement of the Capitol grounds and relay the same as might be directed by the officers in charge of the improvements of the Capitol grounds. The same procedure has maintained since that time of requiring public utilities occupying the streets of the District of Columbia to relocate their lines when they interfered with public improvements; the act of March 4, 1929, 45 Stat. 1544, requiring the Washington Railway and Electric Company to make certain changes in its line along Michigan Avenue "and do all necessary work in connection therewith, the cost and expense of the removal and relaying of tracks and replacing the trolley poles, and all necessary work incident thereto, to be borne by the said Washington Railway and Electric Company." This office held in decision of January 30, 1931, 10 Comp. Gen. 331, 332, that:

"Rights of way or franchises granted by municipalities or by State or Federal authorities to public utility corporations, in public streets, etc., to operate their business are usually coupled with reservations that the public utility company will, upon demand of the granting authority, vacate the streets, etc., or relocate or divert its conduits, lines, etc., to meet the needs of the granting authority as they arise. \* \* \*"

As the submission is understood, the situation here does not contemplate that the Mount Vernon, Alexandria and Washington Railway Company shall relocate or divert its line within the triangle bounded by Pennsylvania Avenue and B Street, extending from 15th to 6th Street, N.W., for if such relocation were to be made, the statutory precedents,

coupled with the reservation in its grant to use the streets, would require relocation to be made at the expense of said company.

Apparently, the plan contemplates that the part of its line included within the triangle mentioned shall be abandoned, and if this be true, the situation is similar to that contained in the act of June 6, 1902, 32 Stat. 321, for the acquisition of a site in the District of Columbia for the erection of the municipal building that -

" \* \* \* the Commissioners of the District of Columbia are hereby authorized to change the route of the Washington, Alexandria, and Mount Vernon Electric Railway in such a manner as to cause said portion of E street to be vacated by the tracks of said company, and jurisdiction is hereby conferred upon the supreme court of the District of Columbia upon petition of said company to inquire into, hear, and determine the amount of the actual cost and expense to the company for the removal of its tracks from E street by reason of the provisions herein contained, and to enter judgment against the United States and the District of Columbia jointly, in such sum as may be so ascertained as aforesaid, \* \* \*."

The statutory history referred to seems clearly to establish that under the statutory reservations contained in the grants to use the streets, an electric railway company may be compelled to relocate its tracks without expense to the United States and that where such railway company is required to abandon a part of its line, the right to obtain compensation therefor is a matter of legislative grant, as in the cited act of June 6, 1902. It is not shown why the situation was not administratively presented to the Congress when it was administratively found that this electric railway company had its tracks in a street or streets interfering with the Federal building program.

However that may be, the Mount Vernon, Alexandria and Washington Railway Company in the instant matter has submitted itself to the courts of the District of Columbia in a bill to enjoin the Secretary of the Treasury from causing the removal of the tracks, and it is the long established procedure of the accounting officers of the United States to not act upon claims the matters involved in which are pending in the courts. Accordingly, it is not at this time determined whether any payment on account of the abandonment of the tracks in the triangle in question may be charged to existing appropriations for construction work in the area in question.

Respectfully,

(Signed) J. R. McCarl  
Comptroller General  
of the United States.