

A-5894,

December 3, 1924.

The Honorable

The Secretary of the Interior.

Sir:

I have your letter of October 23, 1924, transmitting certain correspondence and requesting decision on a matter therein submitted, to wit, whether The Alaska Railroad is authorized to enter into an arrangement for the construction of a railroad spur of a little over two miles in length, the said spur to connect with the main line of the road and the coal mine of the Howard-Jesson Company, the doubt which exists as to the authority for the construction being by reason of the contemplated plan of payment of the construction costs, etc.

In your submission you quote from a letter addressed to you under date of August 18, 1924, by Mr. Noel W. Smith, as follows:

"It is my recommendation, in order that the Government cannot be accused of discriminating in favor of any one particular coal property, and at the same time not be accused of extravagant investment of money in branch construction to wild-cat propositions, that

we construct an extension to the Moose Creek Branch on the refund basis commonly employed under similar circumstances on the eastern railroads. Under this arrangement the Howard-Jesson people would pay for the entire construction of the extension of the branch and the railroad would own and maintain it. The Alaska Railroad would pay to the Howard-Jesson people a certain sum, which I would suggest as \$5.00 per car for every loaded car shipped out over this branch until the original sum expended in the construction of the branch had been paid back, to the Howard-Jesson Company.

"If you approve of this arrangement it will, I believe, give The Alaska Railroad a consistent policy to follow in future requests for extensions and avoid expenditure of Government money on projects that might prove to be unprofitable. It will also allow of the starting and permit the completion of the extension to the Moose Creek Branch at an earlier date than if we wait for the authority of Congress to make this extension and will not interfere with the payment for the construction, if you so desire, if and when the appropriation has been passed by Congress."

It appears that the matter was submitted by you to the Solicitor of the Department of the Interior for an opinion as to the authority for the plan of purchase contemplated. The Solicitor's opinion, copy of which was forwarded for consideration in connection with your submission, held that the plan was not authorized, on the assumption that the rebates were contemplated being made from transportation earnings. It further appears that Koel W. Smith was so advised and pursuant to such advice has wired that it is important that some progress be made to get another reliable coal

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mine in operation; that there is a sufficient balance under the appropriation for "Construction and Operation of Railroads in Alaska," available for making the rebate allowances; and he recommended that the rebate plan of construction be authorized.

The question for decision, therefore, is whether there is authority or law to construct the spur under an arrangement whereby the Howard-Jesson Company will pay the entire construction costs, the said spur immediately to become the property of, and be maintained and operated by, the United States, reimbursement for such construction costs to be made to the Howard-Jesson Company by the Alaska Railroad on the basis hereinbefore outlined, the appropriation for construction and operation to be used in making the refunds.

The act of March 12, 1914, 38 Stat. 305, entitled "An Act To authorize the President of the United States to locate, construct, and operate railroads in the Territory of Alaska, and for other purposes," empowered, authorized and directed the President, among other things "to construct and build a railroad or railroads along such route or routes as he may designate and locate, with the necessary branch lines, feeders, sidings,

switches, and spurs," the total cost of the work thus authorized not to exceed \$35,000,000.

The act of October 18, 1919, 41 Stat. 293, provided for completion of the road between Seward and Fairbanks and necessary sidings, spurs, etc., on or before December 31, 1922, and that "the additional sum of \$17,000,000 is hereby authorized to be appropriated, to be immediately and continuously available until expended."

The total sum thus authorized to be appropriated was \$52,000,000, and the amount appropriated was \$52,000,000 as follows:

Date of act	Reference	Amount
March 12, 1914	38 Stat. 307	\$1,000,000
March 3, 1915	38 Stat. 361	2,000,000
February 28, 1916	39 Stat. 23	2,000,000
July 1, 1916	39 Stat. 306	6,247,620
March 4, 1917	39 Stat. 1202	3,000,000
July 12, 1917	40 Stat. 150	7,500,000
October 6, 1917	40 Stat. 372-373	4,000,000
July 1, 1918	40 Stat. 676	5,250,000
July 11, 1919	41 Stat. 51	1,964,351
July 19, 1919	41 Stat. 202	2,038,029
Nov. 4, 1919	41 Stat. 335	6,000,000
June 5, 1920	41 Stat. 916	7,000,000
March 4, 1921	41 Stat. 1405	4,000,000
	Total	\$52,000,000

Each of the appropriations cited, supra, was "for carrying out the provisions of this Act" of March 12, 1914, 38 Stat. 305, each being made "to continue available

until expended," and all being carried under the appropriation title "Construction and Operation of Railroads in Alaska."

The act of November 18, 1921, 42 Stat. 221, provided in order "to complete the construction and equipment of the railroad between Seward and Fairbanks, together with necessary sidings, spurs, and lateral branches," that "there is hereby authorized to be appropriated * * * therefor, the sum of \$4,000,000, to be immediately and continuously available until expended."

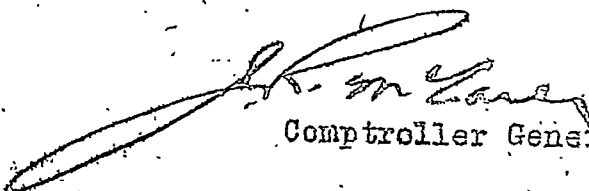
In the act of May 24, 1922, 42 Stat. 594, the sum of \$3,110,210 was appropriated pursuant to the authorization just quoted; however, said amount was not made available until expended and was, therefore, digested with fiscal year limitation under the title "Construction and Equipment of Railroads in Alaska, 1922 and 1923."

In the act of January 24, 1925, 42 Stat. 1217, the sum of \$889,140 was appropriated pursuant to the authorization of \$4,000,000, and said amount, not being made available until expended, was likewise digested with fiscal year limitation, being carried under the title

"Construction and Equipment of Railroad in Alaska, 1923 and 1924."

The construction of the spur is for administrative consideration only as for work to be done under a Government appropriation. If the administrative authorities are not prepared to enter upon such construction, there is no authority from the standpoint of obligating or appropriations to agree that owners shall construct and according to results reimbursement be made to those who constructed. The obligating of appropriations cannot be so authorized, but must be definite and certain, and the decision is accordingly.

Respectfully,



Comptroller General.