



COMPTROLLER GENERAL OF THE UNITED STATES  
WASHINGTON 25

B-129395

January 22, 1957

Honorable Warren G. Magnuson  
United States Senate

Dear Senator Magnuson:

Further reference is made to your letter of September 28, 1956, and enclosure, requesting a report in connection with a claim by \_\_\_\_\_, for damages to his property incident to the construction of power transmission lines thereon by a Government contractor. You suggest, in your letter, that it would seem that the \_\_\_\_\_ Insurance Company--the construction contractor's surety--should not be permitted to do further business with the Government until "after this situation has been cleared up."

As indicated in our letter of October 16, 1956, to you, it was found necessary to request a report in the matter from the Department of the Interior. Enclosed for your information is a copy of the report together with a copy of letter of December 26, 1956, from the Secretary of the Interior transmitting the report here.

The report discloses that the Administrator of the Bonneville Power Administration takes the position that since the Insurance Company (the surety) undertook to complete the contract upon the default of the contractor, it should settle and adjust the claim in accordance with a provision in the contract requiring such action by the contractor and so advised the surety. \_\_\_\_\_ agreed to put an adjuster in the field to take care of this and similar claims, but it appears that as of the date of the report such action had not been taken. The report also discloses that the Administrator of the Bonneville Power Administration was advised by the Office of the Regional Solicitor of the Department of the Interior that the Government would not be liable under the Federal Tort Claims Act, 28 U.S.C. 1346(b), 1504, 2110, 2401, and 2671-2680, or under its right-of-way agreement with Mr. \_\_\_\_\_, for the damage caused by the contractor.

Apparently, the Regional Solicitor views the Government as not liable under the Federal Tort Claims Act because he considers the contractor involved an independent contractor and hence not an employee of the Government. The Federal Tort Claims Act covers claims

for damages only when "caused by the neglect or wrongful acts of any employee of the Government." See Strangi v. United States, 211 F. 2d 305.

As to the right-of-way agreement involved here, while the Department did not furnish us a copy of the specific agreement, it did furnish us informally a copy of a standard or typical (as we understand it) right-of-way agreement form (copy enclosed) used by the Bonneville Power Administration. It is understood that the agreement between the Administration and Mr.            was on such a form. This agreement does not provide that the Government will pay for damages occasioned by the negligence of an independent contractor hired by the Government to construct transmission lines.

Presumably, after receiving the views of the Office of the Regional Solicitor, the Administrator, pursuant to the authority vested in him by 16 U.S.C. 832a(f) and 832k, determined that Mr.            had no valid claim against the Administration. Such determination appears to have been concurred in by the Secretary of the Interior.

Under the first cited code section, the Administrator has authority to settle claims arising under contracts "upon such terms and conditions and in such manner as he may deem necessary." Under the second cited code section the Administrator is authorized to settle claims (not in excess of \$1,000) arising out of torts resulting from acts or omissions of "employees acting within the scope of their employment" and the said section makes the Administrator's determination in such claims final and conclusive. We would like to point out here that the last paragraph of 16 U.S.C. 832a provides that all functions vested in the Administrator may be exercised by the Secretary of the Interior. In view of the foregoing we would have no jurisdiction in the claim involved here, whether it be a claim under the contract of easement or a claim sounding in tort.

Concerning the contractor's surety (            Insurance Company) doing any further business with the Government pending settlement of the instant claim, you are advised that this is a matter within the jurisdiction of the Secretary of the Treasury. See 6 U.S.C. 6-13, particularly sections 8 and 9. Specifically, in connection with the forfeiture of the surety's right to do business with the Government, your attention is invited to 6 U.S.C. 11, which provides:

"If any such company shall neglect or refuse to pay any final judgment or decree rendered against it upon any such recognizance, stipulation, bond, or undertaking made or guaranteed by it under the provisions of sections 6 to 13 of this title, from which no appeal or supersedeas has

been taken, for thirty days after the rendition of such judgment or decree, it shall forfeit all right to do business under sections 6 to 13 of this title."

We have been informally advised by a representative of the Department of the Treasury that in view of the last quoted code provision a surety is not removed from the list of approved sureties by the Department unless he neglects or refuses to pay a final judgment. In any event, it appears from the enclosed report that the Bonneville Power Administration intends to submit the facts of the case to the Secretary of the Treasury for whatever action the Secretary determines appropriate.

The enclosure accompanying your letter is returned, as requested.

Sincerely yours,

JOSEPH CAMPBELL

Comptroller General  
of the United States

Enclosures