



COMPTROLLER GENERAL OF THE UNITED STATES

WASHINGTON

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The Honorable,

The Postmaster General.

My dear Mr. Walker:

I have your letter of September 20, 1941, as follows:

"This Department purchases approximately 200,000 tons of coal annually for use in Federal buildings under the administration of the Department. It is possible to store approximately 60 per cent of such coal in the fuel storage rooms of the several buildings. If it were possible to contract for the delivery of coal during May and June when the industry is at its lowest point of activity, it is believed that more favorable prices might be obtained. However, under the existing practice which schedules deliveries of all coal which can be handled before September 1 but prohibits the contractors from beginning such deliveries prior to July 1, it has been found impossible to obtain satisfactory results by reason of the fact that the contractors seem to require more than two months' time to make such deliveries. Over a period of several years shipments during July and August have not exceeded 40,000 tons which is only about one-third of the amount of coal which might be stored prior to the beginning of the heating season.

"Your decision is requested whether there would be any objection from an accounting standpoint to the consummation of contracts contemplating deliveries of coal during the months of May and June—all costs, including the price of the coal, freight, and drayage, to be paid from the appropriation for the fiscal year in which the coal is to be used. In this connection your attention is invited to the opinion of Comptroller Warwick addressed to the Secretary of the Treasury under date of June 28, 1921, also 27 Comp. Dec. 879."

Sections 3732, 3735, and 3679 of the Revised Statutes as amended, so far as here pertinent, provide:

"No contract or purchase on behalf of the United States shall be made, unless the same is authorized by law or is under an appropriation adequate to its fulfillment, \* \* \*"

"It shall not be lawful for any of the Executive Departments to make contracts for stationery or other supplies for a longer term than one year from the time the contract is made."

"No Executive Department or other Government establishment of the United States shall expend, in any one fiscal year, any sum in excess of appropriations made by Congress for that fiscal year, or involve the Government in any contract or other obligation for the future payment of money in excess of such appropriations unless such contract or obligation is authorized by law. \* \* \*"

In decision of this office dated June 7, 1940, 19 Comp. Gen. 980, 982, it was stated that these sections plainly require that "unless otherwise authorized, the Government shall not be committed by contract or purchase beyond the extent and availability of appropriations, and, as to supplies and stationery, for a period longer than a year." Also, see 9 Comp. Gen. 6 and cases there cited.

It is not understood from your letter that your Department desires to enter into coal contracts of more than one year in duration, nor to meet the needs of more than one fiscal year; but that it is desired to consummate such contracts prior to the beginning of the fiscal year in which the coal is to be used and perhaps even prior to the enactment of the appropriation act by which funds to cover purchases for that year are provided. There is no provision in the current Post Office Department appropriation act which specifically authorizes advance purchases of this character. Compare 27 Comp. Dec. 879, cited in your letter, wherein a specific statutory provision authorized the Secretary of the Treasury to make

purchases of coal "in advance of the availability of the appropriation for the payment thereof." It seems clear, therefore, that a definite contract for purchase of coal entered into during one fiscal year to meet the needs of the following fiscal year, and which is awarded prior to enactment of the appropriation act by which funds for that purpose are provided, would not constitute a contract which "is authorized by law or is under an appropriation adequate to its fulfillment" within the meaning and purpose of section 3732 of the Revised Statutes, as amended. See 21 Op. Atty. Gen. 244, 248. Also, such a contract would appear to contravene the requirement contained in section 3679 of the Revised Statutes in that it would involve the Government in a contract for the future payment of money "in excess of appropriations made by Congress for that fiscal year." In other words, a purchase made before any appropriation whatever had been provided for that purpose would obviously be a purchase which, at the time made, was in excess of appropriations made by Congress.

However, attention is invited to the fact that appropriation acts for your Department are not infrequently enacted into law several weeks and sometimes months prior to the beginning of the fiscal year to which they relate. For example, the Post Office Department Appropriation Act, 1941, was approved March 25, 1940, and the Post Office Department Appropriation Act, 1942, was approved May 31, 1941. There would appear no objection to the award of contracts for coal for an ensuing

fiscal year at any time after the act making an appropriation for that year and for that purpose had been enacted, provided, however, that in the absence of a specific provision in the appropriation act so providing no payment may be made under such contracts until the new fiscal year begins even though delivery may be made prior thereto. In this connection see my decision to you of June 10, 1941, 20 Comp. Gen. 868. As indicated in that decision, it would appear to be advisable to incorporate in any such contracts which call for delivery prior to the beginning of the fiscal year a provision apprising the contractor of the fact that payments under the contract may not be made until after the beginning of the new fiscal year.

Of course, there can be no advance assurance that Post Office Department appropriation bills will be enacted into law in time to permit contracts to be awarded for deliveries in May and June. And, in view of the clear terms of the provisions of law above quoted, the United States may not be committed by contract or otherwise to receive and pay for coal for the use of your Department unless and until the Congress has enacted an appropriation providing funds with which to make the payment. Of course, it is realized that for a number of years each Post Office Department appropriation act has provided funds for the procurement of coal to meet the needs of the Department; and it is all but certain that funds similarly will be provided

for that purpose in future appropriation acts. Also, it appears reasonable, as stated in your letter, that the interests of the Government would best be served by the procurement of coal for the succeeding fiscal year in May or June when the industry is at a low point of activity. Under the circumstances, you are advised that, although the United States may not be unconditionally obligated by your Department under contracts involving the purchase of coal until an appropriation act providing funds with which to make payment therefor has been enacted, nevertheless there would be no objection, from an accounting standpoint, to the award of a conditional contract for that purpose—that is, a contract which specifically provides by its terms that the Government's liability thereunder is contingent upon the future availability of appropriated moneys with which to make payment for the coal. See 20 Comp. Gen. 572. Such a contract would then become operative if and when the appropriation subsequently should be made. New York Central and Hudson River Railroad v. United States, 21 Ct. Cls. 468.

In view of the fact that the interests of the Government would appear to be best served by procurement of coal for the use of your Department in a given fiscal year in advance of the date when money is made available for that purpose, and since the provisions of law as above quoted seem to interfere to some extent with the unhampered

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accomplishment of that purpose, there is suggested for your consideration the advisability of proposing to the Congress the incorporation into future Post Office Department appropriation acts of a provision which would specifically permit the making of contracts for coal for the needs of any fiscal year in advance of the making of an appropriation to provide for such needs.

Respectfully,

(Signed) Lindsay C. Warren

Comptroller General  
of the United States.