



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON 25

PH 711

373

B-52600
B-97131

MAY 7 - 1952

The Honorable

The Secretary of the Army

My dear Mr. Secretary:

Reference is made to the case of Interstate Construction Company v. United States, Civil Action No. 901, decided by the District Court of the United States for the Southern District of Illinois, Southern Division, on June 26, 1951, in which a judgment for \$7,000 was stipulated for and entered in favor of the plaintiff.

The record discloses that this suit, involving the Department of the Army, was brought under the act of August 7, 1946, 60 Stat. 902, as amended, 41 U.S.C. 106 note, authorizing the departments and agencies of the Government to consider, adjust, and settle equitable claims of contractors, subcontractors, and material men, for work, supplies, or services furnished between September 16, 1940, and August 14, 1945, under contracts entered into pursuant to section 201 of the First War Powers Act, 1941, 50 U.S.C. Supp. IV, App. 611.

Section 4 of the 1946 act provides that payment of the amounts allowed thereunder shall be made from appropriations or funds for similar work, services, or supplies available at the time of the settlements and authorizes appropriations therefor to be made when no such appropriations are then available. Section 6 of the act provides that whenever any claimant is dissatisfied with the action taken by the depart-

757864/087783

B-52600
B-97131

ment or agency on his claim and the claim does not exceed \$10,000, that he may petition any Federal District Court of competent jurisdiction for determination of the amount equitably due, and upon filing of the petition, the court, setting as a court of equity, is vested with jurisdiction to make such determination and "to enter an order directing such department or agency to settle the claim in accordance with the finding of the court."

While said section 6 plainly provides that the findings of the court are controlling as to the amount to be paid the claimant and petitioner, no change is contemplated in the availability of the applicable appropriations as provided in section 4. However, section 4 makes no provision for payment of judgments as such and in this case the court, instead of issuing an order to the Department of the Army to pay the amount awarded, entered a judgment against the United States in the usual form and manner. It is reported that said judgment has been paid by the Finance Officer, Army Finance Center, St. Louis, Missouri.

Under the provisions of Title 31 United States Code, section 583, estimates of appropriations for the payment of judgments against the United States are required to be submitted to the Congress, and when the appropriations are made, payment of the judgments, with certain exceptions not material here, is required to be made by the General Accounting Office. 28 U.S.C. 2414. Consequently, in the absence of specific authority, appropriations or funds of the departments or agencies for

B-52600
B-97131

operations or activities out of which the causes of action arise are not available to pay such judgments. 15 Comp. Gen. 933.

Since an estimate for the payment of the judgment here in question was properly submitted to the Congress and an appropriation therefor was made by the Supplemental Appropriation Act, 1952, Public Law 253, approved November 1, 1951, ^{45 Stat. 736} a settlement will be issued by the Claims Division of this Office charging the amount of the judgment to the appropriation "20X1741 Judgments, United States Courts" and directing the deposit thereof to the credit of the appropriation of the Department of the Army from which the erroneous payment was made.

The matter is called to your attention with the view to avoiding a recurrence of the unauthorized payment procedure followed in this case, which might well result in duplicate payment of judgments and possibly unrecoverable losses to the United States.

Sincerely yours,

Lindsay C. Warren
Comptroller General
of the United States