



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON 25

B-79640

OCT 18 1948

The Honorable,

The Secretary of Agriculture.

My dear Mr. Secretary:

Reference is made to your letter of August 20, 1948, requesting a decision as to whether the authorization and proviso in section 703 of the act of September 21, 1944, 58 Stat. 742 (5 U.S.C. 565a), may be considered as superseding the proviso in section 2 of the act of March 3, 1925 (16 U.S.C. 571) with respect to cost of water supply and sanitary systems for the buildings of the Forest Service, and the related authorization in the act of May 27, 1930 (16 U.S.C. 573).

The referred-to provisions of law, as contained in the United States Code, read as follows:

16 U.S.C. 571. "In addition to buildings costing not to exceed \$1,500 each, the Secretary of Agriculture, out of any moneys appropriated for the improvement or protection of the national forests, may construct, improve, or purchase during each fiscal year three buildings for national forests purposes at not to exceed \$2,500 each, and three at not to exceed \$2,000 each. The cost of a water supply or sanitary system shall not be charged as a part of the cost of any building except those costing in excess of \$2,000 each, and no such water supply and sanitary system shall cost in excess of \$500."

16 U.S.C. 573. "The Secretary of Agriculture is authorized to expend not to exceed \$8,000 annually, out of any money appropriated for the improvement or protection of the national forests, for the fiscal year 1930 or for subsequent years, in the completion of water supply or sanitary systems costing in excess of the \$500 limitation as imposed by section 571 of this title."

5 U.S.C. 565a. "The Department of Agriculture is authorized to erect, alter, and repair such buildings and other public improvements as may be necessary to carry out its authorized work; Provided, That no building or improvement shall be erected or altered under this authority unless provision is made therefor in the applicable appropriations and the cost thereof is not in excess of limitations prescribed therein."

As pointed out in your letter, the limitation of \$500 contained in section 571, supra, was reduced to \$450 by the 10 percent reduction of limitations required by section 320 of the Economy Act of June 30, 1932, 47 Stat. 412. A-60741, March 16, 1935.

You cite the Department of Agriculture Appropriation Act, 1949, Public Law 712, approved June 19, 1948, as providing, under the appropriation "National Forest Protection and Management," for "the construction and maintenance of all other improvements necessary for the proper and economical administration, protection, development, and use of the national forests," and state that such construction is subject to the "limitation (in the first paragraph under 'Salaries and Expenses') of \$10,000 on buildings, but without any limitation on the cost of a water supply or sanitary system."

The view is expressed that it is reasonable to construe section 565a, supra, as superseding the limitation on the cost of water supply and sanitary systems leaving this, along with all other improvement limitations, subject to control by appropriation language. It is pointed out that due to increased costs and other factors the present \$450 limitation is prohibitive and that, while until recently the limitation caused no difficulty in view of the authority contained in section 753, supra, to spend \$8,000 annually in completion of

systems in excess of the limitation, such authorization is no longer adequate.

The effect of the construction contended for would be to remove the limitation on the cost of water supply and sanitary systems for Forest Service buildings and where no limitation on such improvements is contained in an appropriation act authorizing the construction of buildings, there would be no limit as to the amount that could be expended for such systems.

However, such a construction would be entirely inconsistent with the purposes for which section 703 of the act of September 21, 1944 was enacted. Said section was designed to give the Department of Agriculture authority generally to erect, alter, and repair buildings and public improvements. Such authority is necessary to overcome the provisions of section 3733, Revised Statutes (41 U.S.C. 12), which requires express authorization for buildings and improvements. However, section 703--5 U.S.C. 565a, supra,--neither expressly nor by necessary implication repeals specific provisions of law authorizing the Department or its bureaus to construct improvements. It is a familiar doctrine that repeals by implication are not favored. Hence, if the prior provisions contained in 16 U.S.C. 571, 573, be not inconsistent with the provisions of section 565a, supra, such provisions may not be considered as repealed.

It is pertinent to note at this point the report of the Committee on Agriculture and Forestry on H.R. 4278, 78th Congress, which became the act of September 21, 1944, wherein it is stated, with re-

spect to section 703 (pages 23, 24, Senate Report No. 803), as follows:

"Section 703. Buildings.--This section provides authority for the erection, alteration, and repair of buildings and public improvements necessary for the work of the Department of Agriculture, except that it is expressly stipulated that any such building or improvement must be further provided for in the applicable appropriation, together with the limitations which the Congress deems necessary on such operations. Section 3733, Revised Statutes (41 U.S.C. sec. 12) requires express authorization for buildings and public improvements, and the effect of section 703 of this bill will be to permit the continued provision for such expenditures in the annual appropriation acts, but within such limitations as these provisions will carry. For many years, the appropriation acts of the Department under the several items where needed have included provisions for the construction, alteration, or repair of buildings or other improvements, usually within certain specific limitations or limitation formulas.

"This section contains a limitation proviso similar to that appearing in several other sections of this bill. The purpose of this proviso is to require that not only must express provision be made in the appropriation item pursuant to the authority, but also that such express provision will not be operative unless it also prescribed the limitations which Congress determines should be placed thereon."

Thus, there is expressed a very definite determination to control limitations with respect to buildings and improvements. Having acted specifically in the field of water supply and sanitary systems for Forest Service buildings by the acts of March 3, 1925 and May 27, 1930, with no change with respect thereto in the intervening years, except as effected by section 320 of the Economy Act of June 30, 1932, such limitations must be held to stand in the absence of a specific limitation in the annual appropriation acts. In other words, so far as concerns Forest Service water supply and sanitary systems, section 703 of the act of September 21, 1944, must be considered inoperative unless and until the Congress has taken action in a particular appropriation act. Such conclusion appears in consonance with the limitation control provision of such act.

While it may be that the \$450 limitation is prohibitive, such argument was advanced in June 1926, by the then Secretary of Agriculture, when the limitation was \$500, and it was held in 6 Comp. Gen. 60 that the total amount of expenditures for a water supply and sanitary system must be kept within that limitation. The act of May 27, 1930, providing the \$8,000 authorization was designed to overcome the inadequacy of the limitation. If, as contended, the \$8,000 authorization is no longer adequate, the matter is one for presenting to the Congress.

Your question is answered accordingly

Respectfully,

(Signed) Lindsay C. Warren

Comptroller General
of the United States