

THE PURCHASE OF LAND WITHOUT AUTHORITY  
OF LAW. 702970

An appropriation for the erection of a monument to Sergt. Charles Floyd does not authorize the purchase of land for a site therefor, and a conveyance to the United States of land therefor in consideration for a sum specified is in contravention of section 3736, Revised Statutes, which prohibits the purchase of land except under a law authorizing its purchase, and is void.

(Assistant Comptroller Mitchell to the Secretary of War, April 12, 1900.)

I have received your letter of the 31st ultimo, as follows:

"I have the honor to transmit herewith a letter from Capt. H. M. Chittenden, Corps of Engineers, United States Army, dated February 17 ultimo, submitting papers pertaining to the acquisition by the United States of an acre of ground within which is to be erected a monument to the memory of Sergt. Charles Floyd (see item in deficiency appropriation act of March 3, 1899, 30 Stat., 1225), authorizing the Secretary of War to cooperate with the Floyd Memorial Association in the erection of said monument.

"Attention is invited to the indorsement on said letter by the Judge-Advocate-General of the Army, dated 20th instant, from which it appears that in the absence of statute the Secretary of War has no authority to acquire land on behalf of the United States (sec. 3736 R. S.), and in the opinion of the Judge-Advocate-General the act appropriating the money for the erection of the monument in question does not authorize the acquisition of the land upon which it is to be built; also that he is not aware of any statute which would prohibit the expenditure of the said appropriation without acquiring title to the site."

Your letter does not present any specific question upon which you desire my decision, nor does any such question clearly appear from the papers submitted, therefore my reply must necessarily be based upon such question or questions as occur to me from the subject-matter of the case.

The act of March 3, 1899 (30 Stat., 1225), provides:

"Monument to Sergeant Charles Floyd: To enable the Secretary of War, in cooperation with the Floyd Memorial Association, to cause to be erected over the remains of Sergeant Charles Floyd, a member of the Lewis and Clark expedition, who died and was buried August twentieth, eighteen hundred and four, near the present site of Sioux City, Iowa, a fitting monument commemorative of that expedition and of the first soldier to lay down his life within the Louisi-

ana purchase, five thousand dollars: *Provided*, That the total cost and expense to the United States of erecting said monument shall not exceed five thousand dollars."

It appears that for the consideration of \$1 the Floyd Memorial Association, a corporation under the laws of the State of Iowa, executed a deed conveying to the United States one acre of land for, and the right of way to, the site for the monument. The Attorney-General has given it as his opinion that the deed vests in the United States a valid title to the premises. The State has not ceded jurisdiction over the premises conveyed. It is now desired to proceed with the erection of the monument, expending the appropriation made therefor.

The questions which occur to me are—

First. Does the act above cited authorize the purchase of land upon which to erect the monument?

Second. *Can any part of the appropriation be used in paying for land?*

Third. Does the deed above mentioned vest in the United States a valid title to the premises?

Fourth. Is it necessary that the title should be conveyed to the United States before the money can be expended on the monument?

Fifth. Do the provisions of section 355, Revised Statutes, apply in this case; in other words, must the State cede jurisdiction before the appropriation can be expended in the erection of the monument on the site proposed?

The Judge-Advocate-General, in his indorsement of March 20, 1900, says:

"The Chief of Engineers in the latter indorsement recommends that Captain Chittenden be authorized to procure the title to the site for the monument, payment therefor to be made from the appropriation for the erection of the monument; and that a draft of an act ceding the jurisdiction of the State over the site to the United States be prepared.

"In the absence of statute the Secretary of War has no authority to acquire land on behalf of the United States (sec. 3736, R. S.), and in the opinion of this office the act appropriating the money for the erection of the monument does not authorize the acquisition of the land upon which it is to be built, for the reason that the act can be given full force and effect without purchasing the title to the land.

"The act provides for the expenditure to be made in cooperation with the Floyd Memorial Association; and, as stated by the Chief of Engineers—

"No provision is made for the care and maintenance of the monument after erection, or of the site."

"In my opinion it may fairly be assumed that Congress intended that the monument should be cared for by the association, and that the United States should be at no further expense in the matter than that of the appropriation for assisting in its construction.

"I am aware of no statute which would prohibit the expenditure of this appropriation without acquiring title to the site; and, in practice, appropriations have frequently been expended in works of improvement without acquiring title to the sites of such works, particularly in improvement of navigable waters and highways."

I concur in the opinion of the Judge-Advocate-General that the act above cited does not authorize the purchase of land, therefore the *first* question is answered in the *negative*.

The *second* question is also answered in the *negative*.

If it were necessary for me to pass upon the *third* question, I should find some difficulty in agreeing with the Attorney-General, basing my doubts upon the decision of the circuit court for the district of Oregon in the case of *United States v. Tichenor* (12 Fed. Rep., 415), in which the court held, quoting from the syllabus:

"A conveyance of lands to the United States is void and inoperative unless the purchase is authorized by Congress. Section 3736 of the Revised Statutes."

In view of my answer to the *fourth* question, it does not seem necessary to consider this point further.

In regard to the *fourth* and *fifth* questions, I am of the opinion that it was the intention of Congress, in making the appropriation above mentioned, to authorize the expenditure of the money in cooperation with the Floyd Memorial Association in assisting said association in the erection of the monument, and that when the monument was erected the duty and obligation of the United States was to end. This seems to contemplate that said monument was to be erected on land owned or controlled by the association, and I find nothing in the act which makes the acquirement of the title to the site by the United States a condition precedent to the expenditure of the money. I, also, am of the opinion that section 355, Revised Statutes, does not apply to this case. In reaching this conclusion I have not overlooked the decision found in 3 Comp. Dec., 530.