

THE CONSTRUCTION OF A SEWER ON LAND NOT
OWNED BY THE GOVERNMENT.

The use of the appropriation for repairs and preservation of public buildings for the construction of a sewer on land not owned by the United States is not authorized, except under a grant of an easement therein.

(Comptroller Traccetti to the Secretary of the Treasury, September 26, 1899.)

In your communication of the 21st instant you request my decision of the following question:

“It has recently been brought to the attention of this De-

partment. that, in conjunction with the Battle House, the Government owns and maintains a sewer leading from the post office and custom house in Mobile, Ala., which originally emptied into a slip at the foot of St. Francis street in said city; that over forty years ago the city filled up the slip, constructed a wharf, and built a culvert or drain from the point where said sewer originally ended to the river line, and said sewer has emptied into said culvert to the present time. The city authorities now require that the use of the sewer be discontinued, or that it be extended to the river line. The expense of making said extension is estimated at one hundred and fifty dollars (\$150), one-half of which it is understood the owners of the Battle House are willing to pay.

"In view of the fact that the sewer in question is not the *exclusive* property of the United States, I have the honor to inquire whether this Department can legally authorize an expenditure for one half of the cost of said extension. If not, then could the Department allow the owners of the Battle House to make the extension, and take from said owners, at a price to be agreed upon, a perpetual lease of said extension, the cost thereof to be charged against the appropriation for 'Repairs and preservation of public buildings' for the current fiscal year?"

In the absence of any clear provision for the purpose, it is not to be presumed that Congress intends that moneys appropriated for public buildings shall be expended in the construction of any structure on land which is not owned by the United States, and which would inure to the benefit of private persons, or subject the Government to embarrassment in its use. Perhaps under certain circumstances the erection of inexpensive temporary buildings on land held by the Government under a lease might be authorized by an appropriation for some specific object to which they were a necessary incident. But unless the Government owns the land, or possesses the right to use and occupy it, it would ordinarily be inexpedient to expend public money for the erection of any structure thereon, and manifestly should not be done without clear authority of law.

In the present instance the protection of the interests of the Government could be secured only by the grant by the municipality of an easement for the purpose, or by the exercise of the right of eminent domain.

"A right of drainage through the lands of another is an easement requiring for its enjoyment an interest in such lands, which can not be conferred by parol license; it can only be granted 'by deed or conveyance in writing.'" (*Wiseman v. Lucksinger*, 84 N. Y., 31.)

The expense of acquiring the necessary land for this purpose, either by purchase or by proceedings for condemnation, would probably be too great to justify such a course. It may also be impracticable to secure the grant by the municipality of Mobile of an easement for this purpose. If so, and if an arrangement can be made by which the owners of the Battle House will construct the sewer, and the right of the United States to use and occupy the sewer can be purchased for a reasonable consideration, as appears to be suggested by you, that may be the most feasible course. I see no legal objection to this course, provided the right of the United States to use the sewer in perpetuity is secured by a lease or grant from the municipality.