

In the absence of this statutory authority, no commutation of any part of the traveling expenses of Agent Gavett could have been made. He would have been reimbursed for actual and necessary expenses while traveling on duty under the provisions of the act of June 16, 1874 (18 Stat., 72), which reads:

“ * * * * *Provided*, That only actual traveling expenses shall be allowed to any person holding employment or appointment under the United States, and all allowances for mileage and transportation in excess of the amount actually paid are hereby declared illegal; and no credit shall be allowed to any of the disbursing officers of the United States for payments or allowances in violation of this provision.”

If traveling without a commutation of traveling expenses under the Treasury Regulations of April 10, 1903, and prior regulations, he would have been entitled to be reimbursed for laundry and baths under the terms and conditions of these regulations. One of the purposes of a commutation is to avoid the taking of vouchers to show the actual expenses of a traveler, by allowing him a sum certain and leaving him the judge of what expenses he will incur in making such travel. Sometimes all of traveling expenses are commuted by law, as in the case of army officers when making certain kinds of public travel, by paying them a certain rate of mileage in lieu of both transportation and living expenses.

Traveling expenses always consist of transportation charges and food and lodging. The latter is covered by the general word *subsistence*. When this word is used in a statute in relation to traveling expenses, without any qualifying or limiting expressions, it has always been held, in so far as I am aware, to have been used in its broad sense of meaning, namely, the personal living expenses of the traveler exclusive of transportation expenses. (See 2 Comp. Dec., 497.) This sense has always been attributed to the statute in question. I do not feel at liberty to change a departmental construction which has been enforced for nearly eighteen years.

The action of the Auditor is affirmed.

EXPENSES INCURRED BY THE DEPARTMENT OF JUSTICE IN CONDEMNATION PROCEEDINGS.

Expenses incurred by the Department of Justice for surveys, photographs of buildings, and fees of expert witnesses in connection with the condemnation of land for a site for a building for the use of the House of Representatives are properly payable from an appropriation for the Department of Justice, and not from the appropriation for the purchase of the site.

(*Comptroller Tracewell to the Secretary of the Interior, June 20, 1903.*)

I have received, by reference from you of the 15th instant, the following letter addressed to you by the United States attorney for the District of Columbia:

“ By act of March 3, 1903 (Fifty-seventh Congress, second session, page 114), the sum of \$750,000 was appropriated to acquire a site for and toward the construction of a building for office uses of the House of Representatives, and this appropriation, with others to be hereafter made, is to be disbursed by you.

“ The act cited makes no provision for paying expenses incident to the proceeding; but the condemnation is directed to be conducted in the manner prescribed for providing a site for an addition to the Government Printing Office (act of July 1, 1898, 30 Stat., pages 648, 649).

“ This latter act provides (middle of page 649, 30 Stat.) that the cost occasioned by the inquiry and assessment shall be paid by the United States; and as to other costs which may arise, they shall be charged or taxed as the court may direct.

“ The condemnation proceedings are now so far advanced as that it becomes imperatively necessary that the testimony in the Government's behalf should be prepared, and in that line it is desirable that builders, contractors, and real estate men of character, standing, and judgment should in advance be employed to examine the whole square and the improvements upon it; it is also desirable that photographs be made of many, if not of all the buildings, so that the case can be clearly and satisfactorily presented to the commissioners appointed to ascertain the value of the premises taken.

“ It is impossible to contract in advance with these proposed witnesses as to their charges for these services, because it can not be ascertained how much of their time will be requisite for making their examination, and how much more for their attendance at the sittings of the commission.

"It has occurred to me that, inasmuch as the disbursement of the appropriation is under your charge, I may properly apply to you for authority to employ such witnesses as are necessary, and to incur such costs as are advisable in the way of photography and surveying, within reasonable limits to be determined by you.

"On making a like application to the Department of Justice for guidance, I am referred to the regulations issued by that Department requiring in advance the rate of compensation and probable duration of employment to be stated.

"Inasmuch as the present proceeding is a little out of the ordinary course of Government condemnations, and because also the fund itself is in your hand, I should greatly appreciate your advice and direction in this matter.

"It is proper to state that the Hon. Joseph G. Cannon, the Hon. William P. Hepburn, and the Hon. James D. Richardson, who constitute the Congressional commission having this subject in charge, are particularly interested that there shall be no avoidable delay; they have expressed their willingness to cooperate with this office in every particular, and have volunteered to visit you in the matter.

"The commission of valuation will be appointed by the court on the 9th proximo, and will proceed immediately with its work. Whatever, therefore, is to be done by the Government in the way of preparation must be completed before that date."

Your indorsement thereon is as follows:

"Respectfully forwarded to the Comptroller of the Treasury for opinion as to whether the expenses desired to be incurred by the United States attorney, and referred to in the within letter, would be a proper charge against the appropriation of \$750,000, in the act of March 3, 1903 (32 Stat., 1115), for the acquiring of a site for and toward the construction of a building for office uses of the House of Representatives.

"In view of the necessity for early action in the matter as set forth in the United States attorney's letter, it is requested that the determination of the question presented be expedited."

The manner prescribed in the act of July 1, 1898, *supra*, for providing a site for the Public Printing Office is as follows:

"The Attorney-General, upon request of the said Public Printer, is authorized and directed to make application to the supreme court of the District of Columbia, by petition, at a general or special term of said court, for an assessment of the value of said parcels of real estate, and said petition shall contain a particular description of the property required, with the name of the owner or owners thereof, and his, her, or their residence, as far as the same can be ascertained, and the said

court is hereby authorized and required, upon such application, without delay, to notify the owners and occupants of each such parcel, and to ascertain and assess the value of the same by appointing three commissioners to appraise the values thereof and to return the assessment to the court, and when the values of such parcels are thus ascertained, and the said Public Printer shall deem the same reasonable, the sum or sums so ascertained shall be paid into said court for their use.

"That the fee simple of all premises so appropriated for public use under the provisions hereof, and of which an appraisal shall have been made under the order and by direction of said court, shall, upon payment into the said court as aforesaid of the amount so ascertained and assessed as to each parcel, be thereupon vested fully in the United States and the right of possession thereof.

"That the said court may direct the time and manner in which possession of the property condemned shall be taken or delivered, and may, if necessary, enforce any order or issue any process for giving possession. The cost occasioned by the inquiry and assessment shall be paid by the United States; and as to other costs which may arise, they shall be charged or taxed as the court may direct.

"That whenever, and as title to the several parcels of such real estate shall be acquired as aforesaid, and the same shall be ready for delivery, and the sufficiency thereof shall be certified by the Attorney-General of the United States, the Secretary of the Treasury is hereby authorized and directed, upon the requisition of the said Public Printer, to pay into court the condemnation price of such property, parcel by parcel."

Aside from these special provisions, the general law provides as follows:

"That hereafter all legal services connected with the procurement of titles to site for public buildings, other than for life-saving stations and for pier-head lights, shall be rendered by the United States district attorneys. * * *"

It is well settled that in the purchase of land on account of the United States the preliminary expenses of such purchase, as procuring abstracts of titles, etc., and such other services as are not legal services are payable from the appropriation for the purchase of the land, but that the expenses of any legal proceedings taken by the Department of Justice in connection therewith are payable from an appropriation of that Department.

"However this may be, section 355, Revised Statutes, specifically provides for the payment of the expenses of procur-

ing such evidence from the appropriations for the Department under which the land sought to be purchased is to be used, and it has been the established practice for many years—probably over fifty—to pay such expenses from the appropriation from which the purchase money of the land itself is payable, provided these expenses arise in cases where land is to be purchased and not condemned, for when a suit for condemnation is brought the expenses of such suit, like all other suits in which the United States are a party, are payable from the appropriations made for the Department of Justice. (See 1 Comp. Dec., 317; 2 Comp. Dec., 201.)” 3 Comp. Dec., 216

In 2 Comp. Dec., 201, it was held that in a suit in a United States court brought to condemn land for use in connection with the work of improving a river the expenses of taking the jury to view the land were payable from the appropriation of the Department of Justice made for the expenses of United States courts and not from the War Department appropriation for the improvement in connection with which the land was needed. It was therein said:

“Expenses of this character have in the past usually been paid from the appropriation for the work for which the land to be condemned was to be used. That purchase, in my opinion, can hardly be sustained by the general principles governing the use of appropriations in a case like the present, where an expense ordinarily chargeable to the appropriations under the Department of Justice is sought to be charged under an appropriation under the War Department, because it arises in a suit in which the latter Department is interested, such suit being for a purpose for which there is a special appropriation by Congress.

“As a general rule, the expenses of suits in which the United States are a party are payable from the appropriations under the Department of Justice, and there is no reason, excepting the previously existing practice, why expenses of the character mentioned in Mr. Black’s telegram should not be paid from these appropriations. Uniformity in the settlement of the accounts of officers of the United States requires a change in the practice heretofore prevailing, and for the reasons stated in the Comptroller’s decision of November 2, 1894 (1 Comp. Dec., 46), in regard to the payment of fees of district attorneys in civil customs cases, and of March 23, 1895 (1 Comp. Dec., 317), in regard to the payment for the services of Mr. Sawtelle as special assistant United States attorney, expenses of the character mentioned by Mr. Black will not hereafter be payable from the appropriations under the Department of War.”

In a decision of this office of April 22, 1903, construing the following provision in the act of June 17, 1902 (32 Stat., 388)—

“That where in carrying out the provisions of this act it becomes necessary to acquire any rights or property, the Secretary of the Interior is hereby authorized to acquire the same for the United States by purchase or by condemnation under judicial process, and to pay from the reclamation fund the sums which may be needed for that purpose, and it shall be the duty of the Attorney-General of the United States upon every application of the Secretary of the Interior, under this act, to cause proceedings to be commenced for condemnation within thirty days from the receipt of the application at the Department of Justice.”

it was held that if a suit for condemnation is brought under this act the expenses of this suit, like all other suits to which the United States is a party, are payable from the appropriations made for the Department of Justice. See also 2 Comp. Dec., 377, in regard to condemnation of land in Federal courts.

As I understand the letter of the United States attorney, the sole object of the expenses for witnesses (or experts), photography, and surveying, which he asks you to authorize, is, or will be, expenses of the Department of Justice in connection with the condemnation proceedings under the act, and unless there is something in the act itself which requires that they shall be paid from the appropriation for the site and building, they would seem to be governed by the principles laid down in the foregoing decisions. The act, it is true, provides that—

“The appropriations herein and hereafter made for said site and building shall be disbursed by the Secretary of the Interior.”

but this can not, I think, be held to extend your authority in the matter of disbursements under the appropriation to expenditures in connection with services required of the Department of Justice in the condemnation proceedings.

The fact that when the United States attorney made application to the Department of Justice he was referred to the regulations of that Department governing expenses of expert services and testimony would indicate that the Department of Justice recognizes that the matter of allowances for such expenses and charges is within the jurisdiction of that Department.

From the foregoing discussion it will be seen that the principal question to determine is whether the Secretary of the Interior has any control over expenses incurred by the United States attorney in connection with the condemnation proceedings, and whether he can authorize him to employ the witnesses and incur the costs contemplated by him. My own opinion is that all such expenses should be ordered and approved by the Attorney-General and paid from an appropriation of the Department of Justice, under the regulations of that Department governing the procurement of expert services and testimony in connection with the conduct or investigation of cases in which the United States is a party. (Regulations, paragraphs 681-689.) Since, however, the question appears to be one of administration involving your Department, you may desire, after considering what has been said above, to consult further with the Attorney-General before answering the letter of the United States attorney, or you may prefer to obtain an advisory opinion from him under section 356 of the Revised Statutes.

TRANSFER OF APPROPRIATIONS TO THE DEPARTMENT OF COMMERCE AND LABOR.

Under the provisions of the acts of February 14 and March 3, 1903, the Secretary of the Department of Commerce and Labor will, on July 1, 1903, acquire control of the unexpended balances, whether in the Treasury or advanced to disbursing officers, of all appropriations made for objects pertaining to the various offices, bureaus, divisions, and other branches of the public service to be transferred from other Departments to the Department of Commerce and Labor, and, at the time of transfer, of appropriations for the compensation of the particular employees to be transferred.

The Auditor for the State and other Departments is required by the acts of February 14 and March 3, 1903, to receive and examine all accounts of the Department of Commerce and Labor for disbursements made by that Department for expenses in connection with the offices, bureaus, divisions, and other branches of the public service, and for the compensation of the particular employees which are to be transferred thereto.

(Comptroller Tracewell to the Secretary of the Treasury, June 23, 1903.)

In your communication of June 17, 1903, you request my decision of a question which you present as follows:

"As the Department is about to transfer appropriations to the Department of Commerce and Labor, as required by sec-

tion 3 of the act of February 14, 1903, to establish said Department, the opinion of the Comptroller is requested as to whether all unpaid balances of appropriations existing on July 1, 1903, shall be transferred."

By the statement that "the Department is about to transfer appropriations to the Department of Commerce and Labor," I understand is meant the transfer, on the books of the Treasury Department, from ledgers in which appropriations for the Treasury and other Departments and establishments are kept, to a ledger in which appropriations for the Department of Commerce and Labor are to be kept, the unexpended balances of the appropriations referred to. Such transfers are, in form, merely bookkeeping transactions. But in substance I understand your question to be, whether under the provisions in the act of February 14, 1903 (32 Stat., 825), all unpaid balances of the appropriations referred to which may exist on July 1, 1903, will be under the control of the Secretary of Commerce and Labor.

Section 3 of said act contains the following provision:

"All unexpended appropriations, which shall be available at the time when this act takes effect, in relation to the various offices, bureaus, divisions, and other branches of the public service, which shall, by this act, be transferred to or included in the Department of Commerce and Labor, or which may hereafter, in accordance with the provisions of this act, be so transferred, shall become available, from the time of such transfer, for expenditure in and by the Department of Commerce and Labor, and shall be treated the same as though said branches of the public service had been directly named in the laws making said appropriations as parts of the Department of Commerce and Labor, under the direction of the Secretary of said Department."

It is also provided in section 13 of this act that the transfer of "the various offices, bureaus, divisions, and other branches of the public service" provided for in said act shall take effect on the 1st day of July, 1903.

The act of March 3, 1903 (32 Stat., 1082), further provides for the transfer by the Secretary of the Treasury to the Department of Commerce and Labor of particular employees indicated therein, and the Secretary is directed to make these transfers "as soon as may be practicable and before the first day of July, nineteen hundred and three." The same section also provides that "the compensation of all persons trans-