

## EXPENSES IN CONDEMNATION PROCEEDINGS.

The compensation of commissioners, stenographers, etc., for services in connection with the condemnation of land for a site for a building for the use of the House of Representatives are expenses incident to the condemnation proceedings, and therefore are payable from an appropriation for the Department of Justice, and not from the appropriation for the purchase of the site.

(Comptroller Tracewell to George W. Evans, disbursing clerk, Department of the Interior, January 14, 1904.)

I have your letter of January 8, as follows:

"I have the honor to submit herewith, for an expression of opinion from you whether or not I can pay the following accounts from the appropriation 'Office building, House of Representatives,' as provided for in the sundry civil act of March 3, 1903, viz:

Robert I. Fleming .....	\$2,000.00
A. A. Wilson .....	2,000.00
James F. Oyster .....	2,000.00
The Washington Post Company .....	132.00
The Law Reporter Company .....	30.00
Hanna & Budlong, stenographers .....	1,735.84
The Washington Title Insurance Company .....	1,550.00

"The vouchers above referred to have been presented to me for payment, but before making requisition on the United States Treasury for funds to pay the same, and in view of your decision of June 20, 1903 (copy herewith), I am not entirely satisfied whether or not I am authorized to draw the money for this purpose or make the payments in question."

The above accounts are for services rendered in connection with condemnation proceedings for the acquisition of a site for and toward the construction of a building for office uses of the House of Representatives, under the act of March 3, 1903 (32 Stat., 1113). This act contains no provision for the payment of expenses incident to the condemnation proceedings, but authorizes the Secretary of the Interior to proceed in the manner prescribed for providing a site for an addition to the Government Printing Office in the act of July 1, 1898 (30 Stat., 648), 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, \* \* \* 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 value 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."

In my decision of June 20, 1903 (9 Comp. Dec., 793), to which you refer, and in which the question as to whether the expenses desired to be incurred by the United States attorney under the act of March 3, 1903, *supra*, would be a proper charge against the appropriation of \$750,000, I held as follows:

"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.) (See 1 Comp. Dec., 317; 2 *id.*, 201; 3 *id.*, 216.)

You ask for an expression of opinion as to whether the accounts of the commission of inquiry and assessment, for personal services rendered, and the other incidental items for advertising, stenographers, and abstracts of title, submitted by you, shall be paid from the appropriation "Office building, House of Representatives," under the sundry civil act of March 3, 1903. No question is raised as to the validity of the accounts, and no opinion is expressed thereon.

From the foregoing it will be seen that the question for my decision is, whether the mode provided by Congress to ascertain and assess the value of the property for the site for a building to be used by the House of Representatives is such as to constitute it a suit at law, thereby bringing any compensation for services rendered in connection therewith, within

the appropriation for the Department of Justice specifically provided for such suits.

In my decision of June 20, 1903, *supra*, I held that expenses incurred for surveys, photographs of buildings, and fees of expert witnesses in connection with the condemnation proceedings herein are properly payable from an appropriation for the Department of Justice, and not from the appropriation for the purchase of the site.

In the event of any litigation by parties interested in disputing the assessed valuation, it has been held in 3 Comp. Dec., 216, and in other decisions, that any expenses incurred by the United States attorney in connection with such suit, like all other suits in which the United States is a party, would be payable from the appropriations made for the Department of Justice.

In the case now under consideration the court was authorized and required to ascertain and assess the value of the property for said site by appointing three commissioners to "appraise the value thereof and to return the assessment to the court." These commissioners were vehicles of the court; they were selected as persons skilled in real estate values and appointed to advise the judge of the court. As soon as they returned the assessments to the court their work was completed. The work upon which they were engaged was undoubtedly part of the condemnation proceedings and the suit instituted therefor, and compensation for such service has been provided by Congress in its appropriation for the Department of Justice.

In the Standard Dictionary condemnation is defined as a "proceeding whereby private property is taken for public use, including the ascertainment of the compensation to be paid." The duties of this commission were to determine the value of the property of each particular owner and to rate and fix the proportionate amount to be paid therefor.

Justice Strong, in delivering the opinion of the court in *Kohl v. United States* (91 U. S., 376), used the following language:

"The right of eminent domain always was a right at common law. \* \* \* That it was not enforced through the agency of a jury is immaterial; for many civil as well as criminal proceedings at common law were without a jury. It is difficult, then, to see why the proceedings to take land by virtue of the Government's eminent domain and determining

the compensation to be made for it, is not, within the meaning of the statute, a suit at common law, when initiated in a court."

All the other items of expense submitted by you are incidents of the condemnation proceedings, and as such should be approved by the Attorney-General and be paid from an appropriation of the Department of Justice.

You are, therefore, not authorized to make any disbursements in connection with services required by the Department of Justice in the condemnation proceedings.

The question as to the ultimate right of the Department of Justice to have its appropriation reimbursed for these expenditures out of the appropriations for the procurement of a site and for the erection of this building is not considered herein, and no opinion is expressed thereon. The Attorney-General, through his proper agencies, can have this question determined if he so desires.

#### COMMUTATION OF QUARTERS OF AN OFFICER OF THE REVENUE-CUTTER SERVICE WHILE ON INSPECTION DUTY.

Where an officer of the Revenue-Cutter Service occupied quarters on board a revenue steamer while temporarily absent from his station on inspection duty, he was not entitled to commutation of quarters.

(Comptroller Tracewell to George A. Bartlett, disbursing clerk, Treasury Department, January 19, 1904.)

In your communication of January 8, 1904, you request my decision of the question whether payment of the account of Capt. C. F. Shoemaker, of the Revenue-Cutter Service, for commutation of quarters, amounting to \$105.29, can be legally paid by you.

The account is for commutation of quarters from October 14 to December 19, 1903, at the rate of \$48 per month, while temporarily absent from his station and occupying quarters on board the revenue steamer *Gresham*.

It appears that prior to the period specified Captain Shoemaker was on duty as chief of the Revenue-Cutter Division, Treasury Department, and receiving commutation of quarters at the rate now claimed, with which he provided himself with quarters, there being no actual quarters provided for him in