

I think the proper rule to be applied in all cases of this kind is as follows:

Where an officer or employee who receives annual or monthly compensation is absent with leave without pay, one day's pay should be deducted from his compensation for the month for each day he is so absent.

I have therefore to advise you that in each of the cases specified by you, you are authorized to make payment in accordance with this rule.

I have also to advise you that the decision rendered to you by the Acting Comptroller of the Treasury September 2, 1904, was made under a misapprehension of facts and is in conflict with this rule, and it is hereby reversed; and if not acted upon by you, you will apply the same rule in that case.

AUTHORITY TO PURCHASE LAND FOR A BRIDGE SITE.

The appropriation made in the act of April 27, 1904, for continuing the construction, including approaches, of the highway bridge across the Potomac River at Washington, D. C., and for any and all other purposes connected therewith, is applicable to the purchase of land for a site for the approaches of said bridge.

(Comptroller Tracewell to the Secretary of War, September 16, 1904.)

By reference by the Chief of Engineers by your authority, dated September 6, 1904, of a communication from Col. A. M. Miller, Corps of Engineers, of the same date, you request my decision of the question which he therein presents as follows:

"1. The following acts providing for the construction of a highway bridge across the Potomac River have been passed and approved:

"(a) Act of Congress (Public No. 49), approved February 12, 1901, contains the following:

"Sec. 12. That the Secretary of War be, and he is hereby, authorized to enter into a contract with the Baltimore and Potomac Railroad Company or any other party to construct within two years after the passage of this act, at a point not less than five hundred feet above the site of the present Long Bridge, a new and substantial bridge for highway travel, of

iron or steel, resting upon masonry piers and provided with suitable approaches, and with a sufficient draw, all in accordance with plans and specifications to be approved by the Secretary of War; and there is hereby appropriated (one-half out of the revenues of the District of Columbia and one-half out of any money in the Treasury not otherwise appropriated) the sum of five hundred and sixty-eight thousand dollars; or so much thereof as may be necessary, to be paid from time to time, as the construction of the said bridge progresses, by the Secretary of War, under such regulations as he shall prescribe."

"(b) The above-mentioned section was amended in the act (Public, No. 218) making appropriations for the government of the District of Columbia, approved July 1, 1902, in the following terms:

"Highway bridge across Potomac River: Section twelve of the "Act to provide for eliminating certain grade crossings on the line of the Baltimore and Potomac Railway Company in the city of Washington, District of Columbia, and requiring said company to depress and elevate its tracks and to enable it to relocate parts of its railroad therein and for other purposes," approved February twelfth, nineteen hundred and one, is hereby amended by striking out therefrom the words "two years" and inserting in lieu thereof the words "four years," and the limit of cost for the bridge across Potomac River is hereby increased to nine hundred and ninety-six thousand dollars. And the Secretary of War is authorized to enter into a contract or contracts for the construction of said bridge within the said limit of cost." * * *

"(c) In the act (Public, No. 187) making appropriations for the government of the District of Columbia, approved April 27, 1904 (33 Stat., 372), was the following item:

"For continuing construction, including approaches, of the highway bridge across the Potomac River at Washington, District of Columbia, and for any and all purposes connected therewith, four hundred and twenty-eight thousand dollars; and the total cost of said bridge and approaches shall not exceed one million one hundred and ninety-six thousand dollars."

"2. I would respectfully request that the opinion of the Comptroller of the Treasury be requested as to whether, under the above acts and amendment, the War Department is authorized to purchase the necessary land for approaches to the bridge."

The provisions of law quoted by you *supra* do not contain any express provision for the purchase of land on which to construct the approaches to the bridge. It is implied by your question that it will be necessary to purchase land "for approaches to the bridge."

My attention has also been called to the report of the board of engineers constituted to select a site and formulate plans, etc., for the bridge (H. Doc. No. 138, 57th Cong., 1st sess.), on page 12 of which there is an estimate of the cost of the bridge, one item of which is as follows:

"Southwest approach, including temporary roadway to Alexandria turnpike and land damages. \$34,180;"

and it has been suggested that the appropriation having been made in pursuance of this report should be construed as intended to provide for the purchase of the land for the approaches.

Section 3736 of the Revised Statutes provides as follows:

"No land shall be purchased on account of the United States except under a law authorizing such purchase."

In 7 Comp. Dec., 524, it was held that in view of this express prohibition the purchase of land for a fishery station could not be implied from the provisions of the act of May 12, 1900, authorizing the establishment of such a station and appropriating money for the necessary surveys, erection of buildings and other structures. In that decision I said:

"In a letter of the 6th instant the Commissioner of Fish and Fisheries acknowledged the receipt of my letter to you, and replied as follows:

"The act of Congress in question authorizes and directs the Commissioner of Fish and Fisheries to establish a station for the investigation of fishery problems at some point in North Carolina, and provides \$12,500 for the necessary surveys, erection of buildings and other structures, and for the proper equipment of said station. While the act does not specifically authorize the purchase of land, it directs that other steps be taken which would be impossible without the possession of the land, and accordingly it would seem obvious that the purchase of sufficient land for the station was intended by this act."

"While it is true that when an appropriation is made for a specific object, it by implication confers authority to incur expenses which are necessary to its execution, or appropriate or incidental thereto, this rule can not be invoked in the face of an express prohibition of law, especially if a sufficient meaning can be given to the appropriation without disregarding the prohibition contained in some other statute. The act of May 12, 1900, *supra*, certainly does not in terms authorize the purchase of land. Whether it by necessary implication au-

thorizes such purchase is the question to be decided. Repeals by implication are not favored, and if a sufficient and reasonable meaning can be given to both statutes this must be done.

"If this act authorizing the establishment of a station stood alone, or if the matter of the establishment of fish-culture stations was a new and unconsidered one, there would be more force in the contention of the Commissioner. But the country is dotted with stations established by virtue of acts of Congress, and this act must be read in the light of other acts on the same general subject. If Congress, in authorizing from year to year the establishment of these stations, had omitted all reference to the acquisition of land therefor, it might reasonably be inferred that this was done with a full knowledge of the prohibition found in section 3736, Revised Statutes, and of the fact that the appropriations were being construed to authorize the purchase of land. A careful examination of the many acts relating to the establishment of fish-culture stations negatives this idea and convinces me that the appropriation under consideration does not make any exception to the general provisions of the law.

"The act of March 2, 1889 (25 Stat., 954), provides:

"For the purchase of ground, construction of buildings and ponds, and purchase of equipment of fish hatchery and rearing stations near Craig's Brook, Reed's Pond, and Branch Pond, Maine, eleven thousand dollars."

"The act of August 5, 1892 (27 Stat., 361), provides:

"For the establishment of fish-cultural stations in the States of Montana and Texas, at points to be selected by the United States Commissioner of Fish and Fisheries, including the purchase of the necessary lands and water rights, and the erection of buildings, and for such other constructions, equipment, and work necessary to place the stations on an efficient basis, * * * twenty thousand dollars."

"Acts similar in character, and all making specific provision for the purchase of land, have been passed providing for the establishment of stations in Michigan (26 Stat., 384), Vermont (*id.*, 964), New York (*id.*), Iowa (28 Stat., 386, 638), Tennessee (*id.*; 30 Stat., 612), New Hampshire (*id.*, 25), California (*id.*, 236), and North Carolina (*id.*, 662). Donations of land before the establishment of a station were required in the cases of Georgia and Washington (30 Stat., 612), and in several cases the purchase of land, already leased for station purposes, was authorized (26 *id.*, 384, 965; 29 *id.*, 279)."

The following passages from the opinion of Attorney-General Speed (11 Op. Att. Gen., 201) were also quoted by me therein:

"The doubt upon the point has arisen under the provision of the seventh section of the act of May 1, 1820 (5 Stat., 568),

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which declares 'that no land shall be purchased on account of the United States, except under a law authorizing such purchase.' This is a general and permanent enactment, and the doubt which has been suggested must be held to be well founded and incapable of being resolved in favor of the right of the Department to purchase the land in question, unless the words of the act of 1863, which have been quoted, are legally capable of being construed as conferring authority on the Department to make the proposed purchase. Certainly the words of the act do not expressly confer that authority. The power to purchase land, from the authority conferred to construct 'permanent defenses,' must be derived, if derived at all, by implication from those words. * * *

"It is clear, then, that the power to construct such defenses as are thus described, and to purchase materials therefor, may be executed entirely well without the exercise of a power to purchase land, although it will be readily conceded that the United States, in most cases, before expending money for the purchase of materials necessary in the construction of defenses of this description and for the erection of such works, as a matter of proper precaution and prudence, should become the owner of the sites on which they are to be reared. The power in question being derivable, therefore, only by implication from the authority conferred by the statute, the question is whether we are at liberty, in view of the general and permanent prohibition contained in the statute of 1820, to determine that the power conferred on the Executive Department by the act of 1863 embraces a power so clearly merely incidental to the one conferred.

"I am of the opinion that we are not and that the general effect of the act of 1820 is to render the exercise by an Executive Department of a power to purchase land on account of the United States illegal unless the intention of Congress that such a power should be exercised has been so clearly expressed in the law which is invoked as containing the authority that the power may be said to be an express one under the words of that law. * * *

"There never was a time in the history of this Government when the purchase of land on account of the United States, without authority of law, was a legal act on the part of the Executive. What effect then can the act of 1820 have, as a substantive expression of the will of Congress, unless that of prohibiting the purchase of real estate on account of the United States under merely implied authority? I can conceive of none."

In a later decision rendered by Attorney-General Devens (15 Op. Att. Gen., 212), he held that an act making an appropriation for the construction of a movable dam impliedly

authorized the purchase of such land as was necessary for the construction of the dam. Neither section 3736, prohibiting the purchase of land without authority of law, nor the opinion of Attorney-General Speed construing that section were referred to in his opinion. His conclusion and the reason therefor are comprised in the following short paragraph:

"In my opinion that provision impliedly authorizes the purchase, with the approval of the Secretary of War, of such land as is necessary for the construction of the dam. This view rests upon the well-established rule of interpretation that whenever a power is given by statute everything necessary to the making of it effectual or requisite to attain the end is implied." (1 Kent's Com., 464.)

In a still later opinion by Attorney-General Garland (19 Op. Att. Gen., 79), he held that an appropriation made for the erection of monuments or memorial tablets at Gettysburg did not authorize the purchase of land. The following are his reasons therefor:

"The appropriation is specifically for the erection of monuments or memorial tablets. There is no express authority in the law to purchase land. The specific language that the money is for the erection of monuments or tablets, applies it to that use and rebuts the implication that it may be applied to any other purpose. The appropriation under consideration is found in the sundry civil bill. In the same act ten different appropriations are made for the erection of structures, and a much larger number for the continuance or completion of buildings already commenced. In the former, where the site is to be purchased before the erection can be commenced, the appropriation specifically provides for the purchase of the site. When the legislature thus, in the same act, makes the distinction by recognizing that the appropriation for an erection does not, by implication, embrace the purchase of the site, it would be an unwarranted construction of a later clause in the same act to imply that which so much care had been taken to express in like cases in previous clauses of the same enactment."

And in a still later opinion by Attorney-General Griggs (22 Op. Att. Gen., 665), following the opinion of Attorney-General Devens, but without referring to the opinions of Attorneys-General Speed and Garland, he held that the appropriation for transportation of the Army and its supplies, which contained a provision for constructing roads and wharves, impliedly authorized the purchase of such land as may be

necessary for the erection of wharves so provided for. His reasons for this conclusion are expressed by him as follows:

"It is a settled rule of interpretation that whenever a power is given by statute, everything for the making of it effectual, or requisite to attain the end, is implied. (1 Kent's Com., 464.) Now apply this rule to this case. It is impossible to build a wharf without having the land upon which to build it. Then when Congress has made an appropriation, and one of the objects for which the appropriation is to be used, specially designated in the act, is the construction of wharves, does it not necessarily follow that the right to purchase land upon which to build such wharves is implied? In what other manner can land upon which a wharf is to be erected be obtained? Proceedings in condemnation, if such could be had, would result virtually in the purchase of the land condemned, for such land as might be taken would be at an appraised value to be paid for by the Government, and, in the absence of express provision in the statute, the same objection can be urged to taking any part of the appropriation with which to lease land as may be suggested to the purchase of land on account of the United States to be used for the location of wharves. I think therefore that the only reasonable construction is to conclude that the authority to construct wharves impliedly authorizes the purchase of the necessary land for the purpose."

The reasons given in the opinions of Attorneys-General Speed and Garland appear to me to be more cogent, and their conclusions more conservative of sound principles of law, than those in the contrary opinions.

Therefore unless the terms of the appropriation clearly manifest an intention to except it from the prohibition contained in section 3736, or clearly authorize the purchase of land, I do not think such authority can be implied from language providing for the mere construction of a building or other structure.

The question arises under your submission on the language of the act cited, providing for the erection of the bridge and its approaches, whether, in view of the history of this legislation, the intention of Congress is clearly manifested—that the appropriations therein made were intended by Congress to be used in procuring the necessary lands upon which to construct the approaches to said bridge. If such intention is manifest and clear, then these acts are not repugnant to section 3736 of the Revised Statutes prohibiting the purchase of lands on account of the United States.

While it may be true and this office has held that the estimates upon which an appropriation is based can not be used to vary the clear meaning of the language found in the act, yet it has never been held by this office, or by any court, that these aids may not be used to arrive at the meaning of Congress, which, without their use, would be difficult, if not impossible, to ascertain, but with their use would be clear and apparent.

Section 3736 of the Revised Statutes does not require any specific formula of language to be used which will authorize the purchase of lands on account of the United States.

If it were not for said section, the authority of Congress to build a bridge or other structure carrying an appropriation adequate thereto would clearly authorize the use of such appropriation for every incident necessary to build said bridge or structure, including the purchase of all necessary sites. But with section 3736 standing as permanent legislation, in order to purchase lands on account of the United States for sites on which to erect public buildings or bridges, in my judgment, an act providing simply for the construction of a bridge at a certain place over a certain stream would not carry with it the authority to purchase sites for said bridge to rest upon or the approaches thereto.

But in my judgment the language of the act of April 27, 1904, *supra*, when read in the light of the estimates—

"Southwest approach, including temporary roadway to Alexandria turnpike and land damages, \$34,180,"

clearly shows that the appropriation therein made of \$428,000 was intended to be applicable to the procuring of sites for the approaches to said bridge, and every expense incident thereto, and to the construction of these approaches. Otherwise what force and meaning can be given to the language of the act—

"Continuing construction, including approaches of the highway bridge across the Potomac River * * * and for any and all purposes connected therewith, \$428,000, and the total cost of said bridge and approaches shall not exceed \$1,196,000."

Specific authority is here granted to continue the construction of the bridge and money appropriated therefor. Specific authority is also given "for approaches" and for any and all purposes connected therewith.

If this language does not authorize the procurement of sites for approaches to this bridge, when read in the light of the estimates upon which it is made, followed by an appropriation adequate thereto, it strikes me that it would be exceedingly difficult to use any general language which would accomplish this result.

If authority to purchase lands on account of the Government is not therein granted for sites for the approaches to this bridge, it follows that such authority can only be granted by the use of words specifically authorizing in terms the purchase of lands. There has been no such holding as to these statutes by either this office, the courts, or the Attorney-General, and I assume no such holding can or will be made.

If the language used clearly shows the intent of Congress that the appropriation made is intended to be used in the purchase of lands on account of the Government, they should be so used to accomplish the purpose for which the appropriation is made, and when so used this use is not in violation of said section 3736.

I have the honor, therefore, to advise you that in my opinion the appropriation carried in the act of April 27, 1904, may be used for the purchase of lands for the site for the approaches of said bridge as set out in the estimates hereinbefore quoted.

FORFEITURE BY AN ENLISTED MAN OF THE NAVY OF HIS RIGHT TO REIMBURSEMENT FOR LOSS OF PERSONAL PROPERTY.

The right of an enlisted man of the Navy to reimbursement for personal property lost in the wreck of the steamship *Leyden* was forfeited by his subsequent desertion.

(Decision by Comptroller Tracewell, September 17, 1904.)

The Secretary of the Treasury, under date of August 30, 1904, referred to this office the certificate of settlement, dated January 4, 1904, by the Auditor for the Navy Department, of the account of Michael Shields, fireman, first class, U. S. Navy, and directed a reexamination of the same account by authority of section 8 of the act of July 31, 1894 (28 Stat., 207).