

that it does not support but on the contrary raises a doubt as to the existence of an exigency which will not admit of delay. The voucher should not be paid as presented.

In connection with the voucher of Lamb & Tilden for rubber hand stamp, I think the nature of the purchase and our knowledge of the daily needs of the service, coupled with the fact that this bureau was just coming into being and such needs could not have been anticipated, sufficiently corroborates the formal certification. It appears that Lamb & Tilden were not contractors for such articles and that the stamp was within a contract of the general supply committee, but upon inquiry as to why this purchase was not made under the general supply committee contract, I am advised that said contract does not provide for immediate delivery, but allows 10 days' time in which to make delivery on such orders, and that Lamb & Tilden's price for immediate delivery was lower than the price the regular contractor would make for immediate delivery. In view of these facts, payment of this voucher is authorized.

#### PURCHASE OF LAND.

Certain proceeds of sale of Indian lands which the Secretary of the Interior is authorized by law to apply to the construction of school buildings and to "such other improvements as he may deem for the public welfare" are not available, because of the prohibition found in section 3736, Revised Statutes, for the purchase of city lots, or of a right of way through them, in connection with sewer construction.

Comptroller Downey to the Secretary of the Interior, November 20, 1914:

I have your letter of the 14th instant in which you ask whether you are authorized to apply any part of an unexpended balance of proceeds arising from the sale, under the act of March 27, 1908 (35 Stat., 49), of certain lots in Lawton, Okla., to the purchase of four lots, or of a right of way through them, in connection with the construction of a storm-sewer system in that city.

In the act of March 27, 1908, above mentioned, the Secretary of the Interior was authorized and directed to plat and sell (subject to certain reservations not here material) a certain tract of Indian land, the proceeds of which sale were to be applied, among other things, to the erection of two suitable school buildings in Lawton.

The act of February 18, 1909 (35 Stat., 637), provided as follows:

"\* \* \* *Provided further*, That not exceeding one-half of the amount which may be set aside by the Secretary of the Interior, under the act above referred to (act of Mar. 27, 1908), for the construction of two school buildings, may be applied by the Secretary of the Interior to such other improvements as he may deem for the public welfare."

In a decision of this office of May 7, 1914 (69 MS. Comp. Dec., 760), referred to by you, it was held that the provision above quoted

authorized the Secretary of the Interior to set apart from the proceeds of sale of the lots referred to in the act of March 27, 1908, a sum equal to one-half of that set aside and used for school purposes, and to apply said sum to improvements other than schools; and that the balance remaining of said sum, after providing for a sanitary sewer system might be used for the construction of a storm sewer system in Lawton. It is this unexpended balance of the sum above referred to from which it is now sought to make the purchase here in question.

With your letter you inclose a copy of one from the commissioner of public property, of Lawton, which contains the following statement relative to the purchase of the four lots in question:

"If all the sewer as planned can't be built with the funds on hand a sufficient amount can be built to be of material advantage. For instance, if all west of Eighth Street were omitted the water could be caught at that place where there is chance for surface drainage. Again, if lots mentioned hereafter were purchased outright so as to prevent flood damage all of the 72-inch sewer might be left for future construction. The right of way mentioned by Mr. Keys is across lots 11, 12, 13, and 14, block 22, north addition. These lots can be purchased outright for \$100 each, and it might be better to buy them and omit the 72 inch (if necessary), or build the sewer, fill them with surplus dirt, and resell them. The difference between the selling and cost price would doubtless be less than the cost of right of way."

It would appear from the statement quoted that the purchase of the lots mentioned, or of a right of way through them, is not absolutely necessary to the construction of the sewer system, but is suggested merely as one of a number of precautionary measures mentioned, in view of the possible contingency that the funds available will prove insufficient to construct the entire system as planned.

The provision quoted above from the act of February 18, 1909, is quite broad in its terms, and, in the absence of restrictive legislation, would appear to authorize the purchase of the lots in question if the purchase were necessary to the construction of the sewer system. However, section 3736, Revised Statutes, provides as follows:

"SEC. 3736. No land shall be purchased on account of the United States, except under a law authorizing such purchase."

The prohibition found in the section above quoted relates not only to purchases of fee simple estates in land but also to those of lesser estates or *interests* in land, including rights of way of the character involved in the case now under consideration. It has even been held by the Attorney General in an opinion of October 24, 1910 (28 Op. Atty. Gen., 464), that the acquiring, by the Government, of a *leasehold* interest in land is a purchase of land within the meaning of this statute.

The statute quoted was originally enacted in an act of May 1, 1820, and, being in the interest of the Government, the accounting officers and the Attorney General have always given a wide scope to its operation. As illustrative of this scope it may be stated that in 7 Comp. Dec., 524, it was held that in view of the prohibition in this statute the right to purchase land for a fishery station could not be implied from the provisions of an act appropriating money for the necessary surveys and erection of buildings, etc., for such a station; and that in an opinion of the Attorney General of December 2, 1887 (19 Op. Atty. Gen., 79), it was held that, by reason of this statute, an appropriation for the erection of certain monuments, etc., at Gettysburg was not available for the purchase of land for the sites of such monuments.

This statute has not always been construed as requiring *specific* authority to purchase land, for in several cases this office has construed appropriations as available for such purpose, though not so in specific terms, but they have uniformly been cases where the appropriation was for a specific purpose, the purchase of land a necessity in the carrying out of the purpose, and the appropriation in such terms that authority to purchase necessary land might be regarded as authorized.

The provision of the act of February 18, 1909, above mentioned, authorizing the Secretary of the Interior to apply the sum therein mentioned "to such other improvements as he may deem for the public welfare" does not specifically authorize the purchase of land. It does not provide for the accomplishment of any specific improvement; there is nothing in its terms from which any reasonable inference of authority to purchase land may be drawn, and indeed it does not appear that the purchase of land or any interest therein is actually necessary in connection with the improvement undertaken.

I doubt not that the purchase in question is desirable, dictated by good business principles, and ought to be authorized by competent authority, but in the face of the statute quoted it can not be held that the unexpended balance in question is available therefor.

#### RETURN OF CHINESE INDEMNITY.

Under the terms of the joint resolution of May 25, 1908 (35 Stat., 577), the return to the Chinese Government of what remains after the payment of the judgments of the Court of Claims therein authorized of the \$2,000,000 set apart for that purpose, may be made in cash or as a credit upon subsequent payments to be made by China, as the Secretary of State may direct.

Comptroller Downey to the Secretary of the Treasury, November 23, 1914:

I have received, as per your indorsement of November 13, 1914, a letter addressed to you by the Secretary of State, as follows:

"I have the honor to invite your attention to joint resolution No. 29, approved May 25, 1908 (35 Stat. L., 577), which reads as follows:

"*Provided*, That within one year from the passage of this resolution any person whose claim upon the Chinese indemnity, nineteen hundred, was presented to the United States commissioners or to the Department of State and disallowed in whole or in part may present the same by petition to the Court of Claims, which court is hereby invested with jurisdiction to hear and adjudicate such claim, without appeal, and to render such judgments *de novo*, or in addition to any allowance or allowances heretofore made, as in each case shall be fully and substantially compensatory for actual losses and expenses of the claimant caused by the antforeign disturbances in China during the year nineteen hundred, excluding merely speculative claims or elements of damage: *And provided also*, That the sum of two million dollars be reserved from the Chinese indemnity, nineteen hundred, for the payment of such judgments, the same to be paid by the Treasurer of the United States as and when they shall be certified to the Secretary of the Treasury by the said court, and any balance remaining after all such claims have been adjudicated and paid shall be returned to the Chinese Government in such manner as the Secretary of State shall decide, and the Secretary of the Treasury is hereby authorized and directed to so return the same. \* \* \*

"In this connection I am informed by the Attorney General that under certificate of the clerk of the Court of Claims, attested by the chief justice, dated October 1, 1914, it appears that all claims filed in that court under and by authority of said joint resolution have been finally adjudicated and disposed of, and that the aggregate amount of said judgments was \$810,188.21.

"In addition to this amount it is understood that a payment of \$13,976.15 was made to Fearon, Daniel & Co. from the \$2,000,000, under authority of private resolution No. 1, approved April 22, 1910, which leaves an unexpended balance of the \$2,000,000 fund of \$1,175,835.64.

"In view of the foregoing it would appear that all obligations imposed by the joint resolution above quoted in respect to claims of American citizens have been fulfilled, and that it now becomes the duty of this department to initiate instructions looking to the return of the balance to the Government of China as directed by the said joint resolution.

"I therefore have the honor to request that steps be taken by your department for the payment of \$200,000 on account of the unexpended balance to the Government of China, by means of a warrant on the Treasurer of the United States, drawn payable to the order of Kai Fu Shah, minister of China to the United States.

"For your further information I inclose copy of a letter dated October 1 from the Attorney General in connection with the subject."

The Attorney General, in his letter to the Secretary of State, just referred to, stated that—

"It is apparent from the terms and provisions of the joint resolution that no further claims can be filed against this fund.

"The Treasury Department reports, by letter of September 23, 1914, that there has been paid out of this \$2,000,000 fund \$824,164.36, leaving an unexpended balance of \$1,175,835.64.

"You will observe that the report of the Treasury Department shows that there has been paid by the Treasurer of the United