

ERECTION OF BUILDINGS.

An appropriation in general terms for experiments and demonstration in live-stock production in a certain district is not available for the erection, on an experimental farm, of a large number of farm buildings, although described as temporary.

Comptroller Downey to the Secretary of Agriculture, December 24, 1914:

I have your letter of the 9th instant in which you ask whether, in view of the provisions of section 3733, Revised Statutes, the appropriation "Experiments and demonstrations in live-stock production in cane-sugar and cotton districts of the United States" is available for the construction of certain agricultural buildings, more particularly described hereinafter, on a tract of land which you state is about to be conveyed to the United States by the State of Louisiana, title to the land conveyed to remain in the United States only so long as the land shall be used for the purposes of the appropriation mentioned.

With reference to the number, purposes, construction, etc., of the buildings you state as follows:

- 1 horse barn, 136 by 36 by 22.
- 1 tool shed, 36 by 84 by 22.
- 2 beef-cattle barns, 36 by 134 by 22.
- 1 dairy barn, 36 by 60 by 22.
- 1 feed barn, 36 by 80 by 22.
- 10 to 30 hog cots, 6 by 8 by 6.
- 2 feed houses, 12 by 16 by 8.
- 4 silos, 16 feet diameter, 36 feet high.
- 1 one-story house for superintendent, 38 by 48.
- 1 one-story office, 18 by 36.
- Two or more one-story cottages, 34 by 36.
- 6 or more one-story negro cottages, 16 by 24.

"These buildings are to be of frame construction, with roofing of sheet asbestos, and for the most part with dirt floors. They are to be of the very simplest construction, are to be of a temporary nature, and it is contemplated that when the purposes of the appropriation are accomplished in that vicinity the buildings will be destroyed. Inasmuch as these buildings are to be constructed by day labor under the supervision of employees of this department, it is impracticable at this time to state just what amount will be needed for their erection, but it is estimated that such cost will not exceed \$30,000, the apparent high cost being due rather to the large amount of material to be used in their construction than to the character of the buildings."

The appropriation sought to be charged with the proposed expenditure in this case is in the following terms:

"Experiments and demonstrations in live-stock production in the cane-sugar and cotton districts of the United States: To enable the Secretary of Agriculture, in cooperation with the authorities of

the States concerned, or with individuals, to make such investigations and demonstrations as may be necessary in connection with the development of live-stock production in the cane-sugar and cotton districts of the United States, \$60,000: *Provided*, That no part of this appropriation shall be used in the purchase of animals for breeding purposes." Act of June 30, 1914 (38-441).

By a decision of this office to you of date August 26, 1914, it was held that the appropriation under "General expenses, Bureau of Soils," for soil-fertility investigation might be used for the erection, on the farm of the department, of two small temporary buildings necessary for experimental purposes.

In said decision it was said:

"But where an appropriation is made for a particular object, by implication it confers authority to incur expenses which are necessary, proper, and incident to the proper execution or attainment of the object, unless such expenses are otherwise more specifically provided for or elsewhere forbidden by law.

"I do not think the erection of temporary structures like those here in question, designed for the special use noted and serviceable only in that connection is to be construed as the erection of a "public building" or "public improvement" within the meaning of section 3733, even if that section should be held applicable to work to be done without contract.

"I notice that your estimates for appropriations for the present fiscal year explained the purpose to be accomplished by the use of \$3,000 in erecting these structures. The increased appropriation was made by Congress, as requested."

That decision by the Assistant Comptroller was justified by the circumstances of the case and the facts stated, and when justification can be found for an apparently necessary expenditure it should be authorized. But I can not feel authorized to extend that decision to the extent necessary to include the extensive constructions proposed in your present submission. In the decided case referred to the necessities of the situation clearly appeared, the structures were unquestionably temporary in their character, they were to be upon the department's farm belonging to the Government, and, more important still, it appeared that expenditure for these buildings, which was but a minor part of the appropriation, was included in the estimates submitted and the amount of the estimates therefor was allowed and appropriated, indicating clearly the intention of Congress that the money should be so used even though such intention was not specifically declared in the appropriating act.

In your present submission more than 30 buildings are contemplated. Some of them are very large and for such purposes that they could scarcely be very pronouncedly temporary in the character of construction. One is a large residence. Two or more, number not stated, are good-sized cottage residences. Six or more, number not

stated, are also residences. The estimated cost not definitely ascertained is \$30,000, one-half of the whole appropriation.

If use of this appropriation for construction of buildings is authorized, it is not my province to attempt to regulate the exercise of your discretion as to the number or size of buildings to be constructed and attention is not called to the extent of the proposed construction for that purpose. But the magnitude of the necessities in respect both to number and size as well as cost tends strongly to the conclusion that Congress, if intending any such use of the appropriation, would have specifically so authorized. And in this connection an important consideration is the fact that the estimates as submitted to and considered by the committee and submitted by the committee to the House in its proposed and recommended bill made the appropriation specifically available for "the erection of such temporary farm buildings as may be found necessary." After considerable discussion this provision with others was stricken out, and although not much was said on the building question except to refer to the necessity for the erection of "a very cheap building of some character," the discussion indicates knowledge and consideration and rejection of the provision as submitted. The Senate committee added to the provision an authorization for the erection of buildings in the same language as originally submitted and increased the appropriation from \$50,000 to \$100,000. The building authorization was again stricken out on a point of order and the amount reduced to \$60,000 in conference, and so finally enacted.

It can not be said that such an action is conclusive against the use of an appropriation for the stated purpose if the action may be otherwise explained and the appropriation can be construed as available without the words stricken out, but when regarded as necessary to the purpose in the submission of the estimates and so much the matter of consideration by the legislative body as to be stricken out, reinserted, and again stricken out, the situation savors strongly of a declaration against the proposed use of the appropriation. The facts stated clearly distinguish this case from the one considered in the decision of August 26, 1914. There are other considerations found both in the facts and in the law but not necessary to discuss in detail, indicating an absence of justification for me, by construction, to make this appropriation available for the purposes proposed.

Congress is in session and it seems to me clear that the desired authority should be procured at the hands of that body. I can not feel justified in granting it.