

retired list, while on active duty, may be temporarily advanced to and commissioned in such higher grade or rank on the retired list, not above that of lieutenant commander in the Navy or major in the Marine Corps or captain in the Coast Guard, as the President may determine, and any officer so advanced shall, while on active duty, be entitled to the same pay and allowances as officers of like grade or rank on the active list: *Provided*, That any such commissioned or warrant officer who has been so temporarily advanced in grade or rank shall, upon his relief from active duty, or in any case not later than six months after the termination of the war or of the national emergency, declared as aforesaid, revert to the grade or rank on the retired list and to the pay and allowance status which he would have held had he not been so temporarily advanced: *Provided further*, That nothing in this Act shall operate to reduce the pay and allowances now allowed by law to retired officers."

Your are accordingly advised that Maj. Rittenhouse is not entitled while on active duty to the pay and commutation of quarters and of heat and light of a lieutenant colonel from July 9, 1918.

#### ABSTRACTS OF TITLE.

*Under the acts of July 2 and October 6, 1917, the expense of making necessary searches and abstracts of title to land acquired by the War Department during the existing emergency by purchase, requisition, or condemnation may be paid for under the appropriation which authorizes the acquirement of the land.*

**Comptroller Warwick to the Secretary of War, August 30, 1918:**

I have your letter of August 13, 1918, requesting decision "whether the expense of making the necessary searches and abstracts of title to property acquired during the existing emergency by purchase, requisition, or condemnation for the purposes stated above may be paid from the funds available for the procurement of the premises."

The purpose for which the land is stated as being acquired is "for artillery ranges, supply depots, and other purposes." The particular appropriations under which the land is or will be acquired are not stated, and no more than a general reply can be made to the question.

The act of March 2, 1889 (25 Stat., 941), requires that abstracts of title, etc., be furnished by the grantors of sites for public buildings free of expense to the United States.

Section 355 of the Revised Statutes provides:

"No public money shall be expended upon any site or land purchased by the United States for the purposes of erecting thereon any armory, arsenal, fort, fortification, navy-yard, custom-house, light-house, or other public building, of any kind whatever, until the written opinion of the Attorney-General shall be had in favor of the validity of the title, nor until the consent of the legislature of the

State in which the land or site may be, to such purchase, has been given. The district attorneys of the United States, upon the application of the Attorney-General, shall furnish any assistance or information in their power in relation to the titles of the public property lying within their respective districts. And the Secretaries of the Departments, upon the application of the Attorney-General, shall procure any additional evidence of title which he may deem necessary, and which may not be in the possession of the officers of the Government, and the expense of procuring it shall be paid out of the appropriations made for the contingencies of the Departments respectively."

The act of July 2, 1917 (40 Stat., 241) provides:

"That hereafter the Secretary of War may cause proceedings to be instituted in the name of the United States, in any court having jurisdiction of such proceedings for the acquirement by condemnation of any land, temporary use thereof or other interest therein, or right pertaining thereto, needed for the site, location, construction, or prosecution of works for fortifications, coast defenses, and military training camps, such proceedings to be prosecuted in accordance with the laws relating to suits for the condemnation of property of the States wherein the proceedings may be instituted: *Provided*, That when the owner of such land, interest or rights pertaining thereto shall fix a price for the same, which, in the opinion of the Secretary of War, shall be reasonable, he may purchase or enter into a contract for the use of the same at such price without further delay: *Provided further*, That the Secretary of War is hereby authorized to accept on behalf of the United States donations of land and the interest and rights pertaining thereto required for the above-mentioned purposes: *And provided further*, That when such property is acquired in time of war or the imminence thereof upon the filing of the petition for the condemnation of any land, temporary use thereof or other interest therein or right pertaining thereto to be acquired for any of the purposes aforesaid, immediate possession thereof may be taken to the extent of the interest to be acquired and the lands may be occupied and used for military purposes, and the provision of section three hundred and fifty-five of the Revised Statutes, providing that no public money shall be expended upon such land until the written opinion of the Attorney General shall be had in favor of the validity of the title, nor until the consent of the legislature of the State in which the land is located has been given, shall be, and the same are hereby, suspended during the period of the existing emergency."

See also the act of October 6, 1917 (40 Stat., 352), relative to procuring land for proving grounds, and act of October 6, 1917 (40 Stat., 427), under which section 355 of the Revised Statutes is not to apply to appropriations for the Ordnance Department "now available for the purchase of land and for improvements upon such land."

The various methods of acquiring land are by purchase, requisition, and condemnation. The act of 1889 cited does not apply to

lands not purchased as sites for public buildings. (8 Comp. Dec., 212.)

It is customary in purchases of land to have the grantor submit such evidences of title as he may have, and then have the title brought down to cover the date of the conveyance being consummated. This is at the cost of the grantee, unless the agreement of sale otherwise specifies; and if the detail of taking title is handled otherwise than through the office of the Attorney General, in pursuance of the acts cited, excepting the application of section 355 of the Revised Statutes, I am of opinion the abstract of title may be paid for under the same appropriation which authorizes the purchase of the land.

I think the charge against the appropriation is similarly authorized where the land is taken by requisition and paid for by agreement.

In each of these cases the purpose of the abstract of title is to prove the title of the grantor, so that it may be known whether the purchaser is obtaining the title bargained for.

In the condemnation proceedings the abstract of title has not the same uses as in a purchase, and its procurement is not an expense ordinarily payable from the appropriation authorizing the purchase of the land. (See 23 Comp. Dec., 53; affirmed in 79 M. S. Comp. Dec., 948.)

But, having regard to the nonapplication of the provisions of section 355 of the Revised Statutes, I think an abstract of title of land so procured is a proper charge against the appropriation under which the land is procured by condemnation.

#### JURISDICTION OF EMPLOYEES' COMPENSATION COMMISSION.

The Employees' Compensation Commission has jurisdiction to decide whether a claimant is a civil employee of the Government and whether upon the facts stated he is entitled to the relief authorized, and as to the extent and duration of disability, rate of allowance, etc., and the accounting officers of the Treasury will not refuse payment unless the commission should clearly exceed its jurisdiction.

Comptroller Warwick to Chairman, United States Employees' Compensation Commission, August 30, 1918:

I have a letter from the chief of accounts of the United States Employees' Compensation Commission, dated August 6, 1918, requesting a decision as to whether he is authorized to pay a voucher of one John Mills for compensation in the sum of \$4.33 on account of injury while in the employment of the T. A. Gillespie Loading Co., contractor for certain Government work.