



COMPTROLLER GENERAL OF THE UNITED STATES

COMP. GEN.
WASHINGTON

B-11161

FILE COPY

AUG 21 1940

Honorable Gray Mashburn,
Attorney General of Nevada,
Carson City, Nevada.

Sir:

Reference is made to your letter of July 2, 1940, as follows:

"This office has just received a request from the State Department of Highways of the State of Nevada asking us to determine whether or not an issue of particular importance in this State has been the subject of an opinion from your office, to wit:

"Will the Federal Government reimburse the State for expenses incurred in the removal of public utility lines, located on non-appropriated and unreserved Federal lands, in order to accommodate the construction of a Federal aid highway, in a case where the utility company has a valid and subsisting license, permit or easement from the United States allowing its poles to be so located on public domain?

"We have received copies of several of your opinions on the question of the removal of utility lines, numbered A-36464, A-38299 and A-44362, but in each case the issue is quite different from the query here presented. In each of these opinions, national parks or federal forest lands were involved, and the roads or trails to be constructed were built by the United States Government with federal funds. In the situation of interest to us nonappropriated public lands, from which no revenue is derived from the State by taxation, are involved, and the public way to be constructed is a State highway, the cost of which is apportioned to State highway funds and federal aid funds allotted under the Post Roads Act, approved July 11, 1916, as amended by the Federal Aid Highway Act (42 Stats. 212, approved November 9, 1921.)

"The expenditure of appropriations made for forest roads and trails, is limited by the statutes allocating the same to certain items, namely, 'the survey, construction, reconstruction, and maintenance of forest roads,' and for the 'payment of wages, salaries and other expenses for help employed in connection with such work.' (Section 23, Federal Aid Highway Act). The expenditure of federal aid funds is not so restricted. Section 6 of the Federal Aid Highway Act provides that the State shall select a system of highways and 'upon this system all federal aid apportionments shall

be expended' in accordance with the rules and regulations promulgated under Section 18 of this Act; and such appropriation is made to be 'expended according to the provisions of such Act (Federal Aid Highway Act of 1938, 52 Stats. 633, approved June 8, 1939) making appropriations for the biennium ending June 30, 1940.'

"As we read the decisions reached in the opinions of your office on the subject of removing utility lines from park and forest lands, such opinions appear to be based on the fact that 'no existing appropriation is available for use in payment of the cost of removal and resetting' poles on such park or forest lands in connection with the construction of forest roads and trails by the United States. Since the construction of federal aid highways by the various States across unappropriated public lands comes under an appropriation of broader application, and since the United States is not directly involved in such projects, it seems to us logical to believe that if the question has been considered by you, a different conclusion might have been reached than that given in the opinions referred to above.

"If you have considered the matter, we would appreciate having a copy of your opinion thereon. If you have not considered this particular problem, your opinion would be timely and helpful to this State, since we have several instances involving the above set of facts which need clarification."

As the matter is stated to involve "expenses incurred in the removal of public utility lines, located on nonappropriated and unreserved Federal lands, in order to accommodate the construction of a Federal aid highway" it is assumed such highway construction is being, or has been, undertaken by the State of Nevada pursuant to section 3 of the Federal Highway Act as amended by the act of June 24, 1930, 46 Stat. 805, to read, in part, as follows:

"The Secretary of Agriculture is authorized to cooperate with the State highway departments and with the Department of the Interior, in the survey, construction, reconstruction, and maintenance of main roads through unappropriated or unreserved public lands, nontaxable Indian lands, or other Federal reservations other than the forest reservations. Such sums as the Congress may hereafter authorize to be appropriated under the provisions of this section shall be apportioned among those States having more than 5 per centum of their area in the lands hereinbefore described and shall be prorated and apportioned to said States in the proportion that said lands in each of said States is to the total area of said lands in the States eligible under the provisions of this section, and no contribution from

the States shall be required in the expenditure thereof; * * *
(Underscoring supplied.)

While no decision directly on the question indicated by your letter appears to have been rendered by this office, there is enclosed for your information a copy of decision B-7434, December 27, 1939, 19 Comp. Gen. 608, which involved the relocation of telephone and telegraph lines within Indian pueblo lands, in connection with highway projects undertaken by the State Highway Commission of New Mexico pursuant to the said Federal Highway Act amendment of June 24, 1930, supra, which decision may have some bearing on your question. Note particularly the following statement in the decision, after reference to the decisions A-36464, July 22, 1931, A-38299, September 8, 1931, and A-44362, December 1, 1932, mentioned in your letter:

"* * * Conceding that the removing and resetting of the telephone lines in the instant case were necessary to the successful prosecution of the projects, the sole question for consideration is whether the right of the Mountain States Telephone and Telegraph Company to maintain the lines was paramount to the right of the United States to demand their removal. * * *"

While I am not authorized to render a decision to you on the question, it may be stated generally that where highways are being constructed on Federal lands with Federal funds by State highway departments in cooperation with the Federal Government, pursuant to the Federal Highway Act amendment of June 24, 1930, supra, it does not appear there would be any more obligation on the State to pay for the removal or relocation of interfering utility lines than there would be on the Federal Government, for which the highways are, in effect, constructed, if the Federal Government directly constructed such highways over its own lands. If this does not sufficiently answer your doubt, the matter would appear to be one for presentation, in the first instance, in full detail as to an actual case, or cases, by the appropriate State official to the Federal Works Administrator, the head of the agency now charged with the administration of the Federal Highway Act, and if deemed necessary or appropriate, that official may submit any doubtful question involved to this office for decision.

Respectfully,

(Signed) R. N. Elliott

Acting Comptroller General
of the United States

Enclosure