



COMPTROLLER GENERAL OF THE UNITED STATES

WASHINGTON

ABR

B-13574

DEC -2 1940

The Honorable,

The Secretary of War.

Sir:

There was received November 22, 1940, your letter dated November 16, 1940, as follows:

"Under and by virtue of the authority contained in the Act of Congress entitled, 'First Supplemental National Defense Appropriation Act, 1941,' approved June 26, 1940 (Public No. 667-76th Congress), the United States, through the War Department, is acquiring an area of land in LaPorte County, Indiana for the establishment thereon of an ordnance plant to be known as Union Center Ordnance Plant.

"Title 2, paragraph entitled 'Expediting Production', of the aforesaid mentioned Act provides, in part, as follows:

"To enable the Secretary of War... to expedite the production of equipment and supplies for emergency national defense purposes, including all of the objects and purposes specified under each of the appropriations available to the War Department during the fiscal year 1941, for procurement or production of equipment or supplies, for erection of structures, or for acquisition of land... and for any other purposes which in the discretion of the Secretary of War are desirable in expediting production for military purposes and are recommended by the Council of National Defense and the Advisory Commission thereof, and approved by the President, \$150,000,000, to be immediately available...'

"Within the area that is being acquired there are electric distribution lines owned and operated by the Kankakee Valley Rural Membership Corporation of Wanatah, Indiana. It becomes necessary to remove and relocate these distribution lines along a route outside of the project area. The Corporation has agreed to the removal and relocation of the lines, provided the United States bear the actual cost of the construction work involved, including the costs for necessary rights of way along the relocated route. The Corporation proposes to perform the work and acquire necessary rights of way for the sum of \$7,453.26. The underlying fee in the lands now crossed by the present distribution line is being acquired from the

several members of the Corporation out of land acquisition funds appropriated by the aforesaid act. Therefore, no part of the aforementioned sum will be used for the actual acquisition of the Government land.

"Your opinion is requested as to whether or not the item of \$7,453.26 representing the cost of the construction work required by the relocation of the electric distribution lines afore-mentioned is a proper charge against the funds appropriated by the Act, cited above, and may be paid therefrom."

In addition to the provisions quoted in your letter from Title II of the First Supplemental National Defense Appropriation Act, 1941, approved June 26, 1940, it is provided in section one of the act approved July 2, 1940, Public No. 703, "To expedite the strengthening of the national defense", in part as follows:

"That (a) in order to expedite the building up of the national defense, the Secretary of War is authorized, out of the moneys appropriated for the War Department for national-defense purposes for the fiscal year ending June 30, 1941, with or without advertising, (1) to provide for the necessary construction, rehabilitation, conversion, and installation at military posts, depots, stations, or other localities, of plants, buildings, facilities, utilities, and appurtenances thereto (including Government owned facilities at privately owned plants and the expansion of such plants, and the acquisition of such land, and the purchase or lease of such structures, as may be necessary), for the development, manufacture, maintenance, and storage of military equipment, munitions, and supplies, and for shelter; \* \* \* and (3) to enter into such contracts \* \* \* and to amend or supplement such existing contracts, as he may deem necessary to carry out the purposes specified in this section \* \* \*."

In view of these provisions and those contained in the cited appropriation act there would appear no doubt of your authority to take such measures and to enter into such contracts as you may deem necessary for the establishment of the ordnance plant, including the removal of interfering public utility lines. While your letter does not so state, it is assumed the Kankakee Valley

Rural Membership Corporation is the owner of permanent easements for the maintenance of its electric distribution lines over the land involved, as distinguished from mere licenses which may be revoked by the owner of the underlying fee. If so, such easements are, of course, vested real property rights, or "land", and the removal of the power lines requires the acquisition of such rights, or land, by the Government. Having authority to acquire the land, which would include such easements or other vested interests therein, the question of whether such easements or rights should be acquired by purchase or by condemnation is primarily for administrative determination. Act of August 1, 1888, 25 Stat. 357, 40 U. S. C. 257. The value of such easements to the owner employing them for the maintenance of utility lines in actual use would normally be the net cost of removing and relocating such lines on other lands, including the cost of acquiring new rights-of-way, but not including any profit or betterment of its existing facilities. See decisions of May 15, 1940, and October 16, 1940, B-9521, addressed to you, respecting a similar situation at the Northeast Air Base. A contract to pay such costs of removal and relocation of the lines—representing the value of the easements—is thus, in effect, a contract for the acquisition of such easements, the purchase price being measured by the cost of removing and relocating the lines to compensate the owner for the conveyance to the Government of its existing easements, entailing the removal and relocation of the lines. The fact that

payment is to be made under a contract as for the removal and re-  
location of the lines does not render the transaction any the less  
one for acquisition of the easements, or of "land", within the  
authority of the cited appropriation and the act of July 2, 1940,  
supra.

Accordingly, I have to advise that if the said Kankakee Valley  
Rural Membership Corporation is the owner of easements or rights-of-  
way under which their right to maintain their lines over the land  
involved is paramount to the right of the Government as owner of  
the underlying fee to require their removal, and it is administratively  
determined that the proposed contract price for the removal and reloca-  
tion of such lines is fair and reasonable in comparison with the amount  
of just compensation which reasonably might be awarded upon condemnation  
of such easements, or if such price is no more than deemed necessary  
by you to be paid under contract in lieu of condemnation in order to  
expedite the building up of the national defense pursuant to the  
act of July 2, 1940, supra, the cited appropriation will be avail-  
able for otherwise proper payments under such contract.

Respectfully,

(Signed) Lindsay C. Warren

Comptroller General  
of the United States