



COMPTROLLER GENERAL OF THE UNITED STATES  
WASHINGTON 25

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The Honorable,

The Secretary of the Interior.

My dear Mr. Secretary:

I have your letter of February 11, 1944, as follows:

"Under authority of Section 4 of the Act of June 11, 1940 (54 Stat. 279), the Secretary of the Interior has granted to the Eastern Band of Cherokee Indians the beneficial interest in the lands embraced within the so-called Boundary Tree tract for a consideration of \$25,000 and excluded the lands from the Great Smoky Mountains National Park. The act provides that payment for the lands shall be made by the transfer to the credit of the Fund 'National Park Service, donations' from any funds in the United States Treasury to the credit of said Band, of a sum equal to the fair market value of such land, and that 'funds so transferred shall be available for national park and monument uses, including the acquisition of lands for inclusion in the Great Smoky Mountains National Park.'

"The question has arisen as to whether the phraseology 'including the acquisition of lands for inclusion in the Great Smoky Mountains National Park' limits the use of the funds transferred to the credit of the National Park Service, insofar as land acquisition is concerned, to the purchase of lands for the Great Smoky Mountains National Park. A small portion of the funds is urgently needed to complete pending acquisitions in other areas initiated by the National Park Service under existing acquisition authority.

"Your views as to the availability of the funds for land acquisition by the National Park Service in any national park or monument area where the acquisition of land has previously been authorized by law are respectfully requested."

Section 3736, Revised Statutes, provides:

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

The appropriation fund entitled, "National Park Service, donations", was established pursuant to the act of June 5, 1920, 41 Stat. 917, which provides, so far as here material, as follows:

"Hereafter the Secretary of the Interior in his administration of the National Park Service is authorized, in his discretion, to accept patented lands, rights of way over patented lands or other lands, buildings, or other property within the various national parks and national monuments, and moneys which may be donated for the purposes of the national park and monument system."

Except for the inclusion of the phrase, "including the acquisitions of lands for inclusion in the Great Smoky Mountain National Park", there would appear to be no doubt but that the Congress is directing the deposit of the moneys representing the price of the land to the credit of the appropriation fund, "National Park Service, donations" and directing that the funds so deposited shall be available for national parks and monument uses anticipated their use for whatever purpose that fund was otherwise available. The word, "including", has various shades of meaning, sometimes of restriction and sometimes of enlargement, and has been used by the Congress in some cases out of abundant caution to designate objects otherwise covered by the preceding language. Cannon v. Nicholas, 80 F. 2d 934, 936. Also, it has been used sometimes as the equivalent of the word, "also", or "and". Jacksonville Terminal Company v. Blanshard, 82 S. 300, 301; Heffner v. Ketchen, 296 Pac. 768, 770.

In 2 Comp. Gen. 198, it was held:

"The authority given to the Secretary of the Interior, in the act of June 5, 1920, 41 Stat. 917, to accept donations of land or of funds for national park purposes, impliedly authorizes the use of funds so donated for purchase of lands necessary for park purposes, notwithstanding the prohibition in section 3736, Revised Statutes, against the purchase of land generally except when specifically authorized by law."

Having in view the fact that the act of June 11, 1940, referred to in your letter, authorizes the exclusion from the Great Smoky Mountain National Park of the lands granted to the Indians, it is believed that the phrase in question was not intended as a limitation to restrict the use of the amount so received and deposited to the credit of the fund "National Park Service, Donations", to the acquisition of land solely for that particular park, but was inserted by the Congress as a precaution to overcome any presumption that the authorized exclusion of lands from that park might have been intended as a permanent reduction in the area of that park.

Accordingly, the \$25,000 in question is considered available not only for the acquisition of lands for the Great Smoky Mountain National Park but, also, for the acquisition of other lands for addition to any national park or monument the establishment or enlargement of which has not been negatived by any other act of the Congress.

Respectfully,

(Signed) Lindsay C. Warren

Comptroller General  
of the United States.