



COMPTROLLER GENERAL OF THE UNITED STATES  
WASHINGTON 25

B-50958

AUG 9 1945

The Honorable,

The Secretary of the Interior.

My dear Mr. Secretary:

I have your letter of July 10, 1945, as follows:

"The following submission is on a matter of importance and urgency to the armed forces, and your special consideration and prompt decision are requested.

"The Office of Scientific Research and Development desires the Bureau of Mines to undertake the performance of certain tests and experiments with explosives, to be paid for with funds appropriated for the Office of Scientific Research and Development by Title I of the National War Agency Appropriation Act, 1945 (Public Law 372, 78th Cong.), pursuant to an order upon the Bureau of Mines under section 203 of Title II of the act cited, and section 604 of the act of June 30, 1932, as amended (U. S. C. sec. 686). In order to carry out this assignment, it will be necessary for the Bureau of Mines to construct on its property at Bruceton, Pennsylvania, a chamber partly above and partly below ground for testing explosives, and certain buildings adjacent thereto on the surface.

"The Bureau of Mines now has pending a proposed contract with a firm of architects for designing the necessary structures above referred to, and when satisfactory designs have been prepared, proposes to enter into a suitable contract for their construction. The estimated cost of construction is \$50,000, and the architect's fee \$2,000, all to be paid for from the funds appropriated for the Office of Scientific Research and Development.

"The underground chamber for testing explosives will be necessarily of heavy, concrete construction. When the desired experiments and testing have been accomplished, no further useful purpose can now be foreseen for this testing chamber. The incidental buildings on the surface will be of frame construction, but of a type and size that they could not be removed without some difficulty and loss of value. No use for the buildings is now foreseen after the accomplishment of the work referred to, but it cannot be said that no use for them can be found in the future. The buildings, however, are as necessary to the accomplishment of the work as is the testing chamber.

"No specific authority can be found in the appropriation act referred to nor elsewhere for the construction of these improvements. On the other hand, the powers of the Office of Scientific Research and Development are expressed in very broad terms. It would seem that authority for the proposed construction may be found in the necessities of the case: that it has an obvious relation to the war; that it is necessary to the full performance of the duties imposed upon the Office of Scientific Research and Development; that the amount to be expended is insignificant in relation to the large appropriation; and finally, that the proposed construction is not 'public buildings' or a 'public improvement' within the meaning of Rev. Stat. sec. 3733 (41 U. S. C. sec. 12), on account of the special and limited uses which it can serve.

"Assuming that the proposed contracts for architectural services and for construction are otherwise proper in all respects, will payments from the appropriated funds referred to be approved by your office?"

Funds were advanced by the Office of Scientific Research and Development from its appropriation for the fiscal year 1945, referred to in your letter, to a working fund account established under the Department of the Interior, Bureau of Mines (Working Fund No. 1455909), and are available for obligation after the fiscal year 1945 as authorized by section 601 of the act of June 30, 1932, 47 Stat. 417, as amended by the act of June 26, 1943, 57 Stat. 219 (31 U. S. C. 686c), if otherwise available for the contemplated use.

Section 3733, Revised Statutes, provides:

"No contract shall be entered into for the erection, repair, or furnishing of any public building, or for any public improvement which shall bind the Government to pay a larger sum of money than the amount in the Treasury appropriated for the specific purpose."

Inasmuch as there appears to be no specific statutory authority for the construction of the structures referred to in your letter, such construction is prohibited by the above-quoted provision of section 3733, Revised Statutes, if the structures are public buildings or

public improvements within the meaning of the said provision. 21 Comp. Dec. 420; 5 Comp. Gen. 575; 6 id. 619; 10 id. 140.

However, it has been held that certain structures which might, under some circumstances, be classified as public buildings or public improvements may be regarded rather as necessary facilities for conducting experiments or otherwise carrying out the objects of appropriations. 26 Comp. Dec. 829; 2 Comp. Gen. 133; 7 id. 629. It is a well-settled rule of statutory construction that where an appropriation is made for a particular object, by implication it confers authority to incur expenses which are necessary or proper or incident to the proper execution of the object, unless there is another appropriation which makes more specific provision for such expenditures, or unless they are prohibited by law, or unless it is manifestly evident from various precedent appropriation acts that the Congress has provided specifically for certain expenses of the Government, creating the implication that such expenditures should not be incurred except by its express authority. 6 Comp. Gen. 621; 17 id. 636.

In view of the facts and reasons as set out in your above-quoted letter, including particularly the fact that the only contemplated use for the involved structures is a temporary use necessary for the performance of certain tests and experiments with explosives, the said structures properly may be regarded as facilities for conducting such tests and experiments and not as public buildings or public

improvements such as contemplated by section 3733, Revised Statutes. Accordingly, since it has been administratively determined that the involved structures are necessary in connection with carrying out the objects of the involved appropriation, construction of the said structures need not be regarded as prohibited by the provisions of section 3733, Revised Statutes, and the question presented in the final paragraph of your letter is answered in the affirmative.

Respectfully,

(Signed) Lindsay G. Warren

Comptroller General  
of the United States