



COMPTROLLER GENERAL OF THE UNITED STATES

WASHINGTON

A-90922

FEB 23 1938

The Honorable,

The Secretary of War,

Sir:

There has been received your letter of January 26, 1938, as follows:

"Reference is made to your letter of January 6, 1938, A-90922, addressed to the Secretary of War on the subject of certain War Department contracts, wherein you expressed the view that 'Contracts for the repair of shoes and for laundry service are not contracts for the construction, alteration, or repair of any public building or public work of the United States' within the terms of the act of August 24, 1935, 49 Stat. 793.'

"The view expressed in that letter respecting contracts for repair of shoes seems to be at variance with the views expressed by the Attorney General in 38 Opinions of The Attorney General at pages 424 and 418 concerning a legally similar question. A further expression of your views in the light thereof is requested."

The four contracts referred to in the decision of January 6, 1938, were for the repair of shoes and for laundry which had been entered into after compliance with section 3709, Revised Statutes, inviting bids therefor. While it may be necessary and desirable to require bonds from contractors in such cases conditioned upon the protection of the public property while in the custody of such contractors and the return of such property to the United States, the conclusion in the decision of January 6, 1938, was that these

contracts were not within the terms of the Miller Act of August 24, 1935, 49 Stat. 793, authorizing the securing of payment bonds for the protection of materialmen and laborers. It will be noted that in the referred to opinion in 38 Op. Atty. Gen. 418, there was under consideration the applicability of the said act of August 24, 1935, to contracts for the "construction, alteration and repair of Coast Guard vessels, boats and aircraft." Obviously, contracts for laundry service and for the repair of shoes may not be compared with contracts for the construction, alteration and repair of Coast Guard vessels, boats and aircraft which are subject, as pointed out in the opinion, to the eight-hour law of August 1, 1892, 27 Stat. 340, and to the amended Davis-Bacon Act of August 30, 1935, 49 Stat. 1011. The other opinion referred to in your letter immediately followed and concluded upon the authority thereof that contracts for the remaking of mattresses owned by the Government into mattresses of the inner spring type and contracts for the manufacture of uniforms from cloth owned by the Government, where they involved a sum in excess of \$2,000 were under the Miller Act of August 24, 1935.

However, there was no remaking of the shoes or the clothes to be laundered in this case, and the contractor was not required to change the character thereof in any respect. The contractors in this case were simply required to perform a service for the Government--launder clothes under three of the contracts and repair

shoes under the fourth contract. I assume it would not seriously be contended that a shoe is a "public work" or that the making of a pair of shoes under Government specifications would be the construction of a public work. Hence, it is not apparent how it could be held that the repair of Government-owned shoes constituted the "repair of any \* \* \* public work." And clearly the doing of laundry work is not the "construction, alteration, or repair of" anything. However, should it be administratively determined to impose additional expense on the United States for securing payment and performance bonds such as provided for under the terms of the act of August 24, 1935, in connection with contracts for such services, this office is not required to interpose further objection thereto. Doubtless some case arising under such bonds will eventually reach the courts and there will be for judicial determination whether bonds in connection with service and supply contracts come within the terms of the act of August 24, 1935.

Respectfully,

(Signed) R. N. Elliott

Acting Comptroller General  
of the United States.