

propagation, and distribution of these seeds, etc.—\$110,000 for the purchase thereof and \$20,000 for their propagation and distribution.

The word "purchase" in law means to acquire (property) by one's own act or agreement, as distinguished from the act or operation of law. The word "purchase" in the act in question is used in the sense of acquire or procure. If, then, it becomes necessary to acquire or procure these seeds, bulbs, trees, shrubs, vines, cuttings, or plants, or any part of the same without the limits of the United States, the Secretary of Agriculture will necessarily have to use an agent or in person make these purchases, which latter would be impracticable.

If a portion of this money can be spent profitably by the Secretary in securing valuable seeds and plants by sending an agent to procure and purchase them where they can be had, I see no reason why a part of this sum, which was primarily intended for the benefit and advancement of the country, should be wasted in the purchase of seeds and plants which it is well known beforehand will result in no material good, when the Secretary can use a portion of the same in the payment of purchasing agents and thereby procure such seeds and plants as, when introduced into this country, will result in an equivalent for these large annual expenditures, and especially is this so when this ruling does no violence to the language used in the act of appropriation.

If he is authorized to acquire property, he is necessarily authorized to use the means necessary to its acquirements, and in the judgment of the Secretary the means necessary to this end is a purchasing agent.

In the construction of this appropriation I can not close my eyes to the past history of the profligate expenditure of the annual sum appropriated for the purchase of seeds, plants, etc., and I can not gain the consent of my mind, by a strict construction of the language used, to perpetuate this rule of waste and folly.

It is my opinion, therefore, that you are justified in using such part of the \$110,000 appropriated as in your best judgment is necessary to pay an agent to procure for you such valuable seeds and plants as you may think necessary, in order to put into the hands of the farmers of this country seeds and plants that will prove a benefit to them and to the agricultural interests at large.

EXPENSES OF COMMISSIONERS APPOINTED TO REVISE AND CODIFY THE CRIMINAL LAWS

The act of June 4, 1897, providing for the appointment of three commissioners to revise and codify the criminal laws of the United States, and making an appropriation for their salaries, and "also a sum sufficient to pay the expenses of the commissioners," does not create a *commission* with authority to establish an office in Washington and employ a clerical force; nor is the appropriation made *in terms* for the payment of rent, as required by the act of March 3, 1877, to authorize the rent of property for Government purposes in the District of Columbia.

(Comptroller Tracewell to the Disbursing Clerk, Department of Justice, September 23, 1897.)

I have received your letter of the 18th instant asking from what date you are authorized to pay the salary of Mr. Augustus H. Hersey, who was appointed by the Attorney General as stenographer to the commission to codify the penal laws of the United States. Mr. Hersey's letter of appointment was not signed until September 1, although he took the oath of office on August 31.

In the sundry civil appropriation act of June 4, 1897 (30 Stat., 58), there was the following legislation:

"That the President, with the advice and consent of the Senate, shall appoint three commissioners whose duty it shall be, under the direction of the Attorney-General, to revise and codify the criminal and penal laws of the United States.

"That they shall proceed with their work as rapidly as may be consistent with thoroughness, and shall report the result of their labors to the Attorney-General when completed, to be by him laid before Congress, and shall make such other reports during the progress of their work as they shall see fit to the Attorney-General, to be laid before Congress at his discretion.

"That their report shall be so made as to indicate any proposed change in the substance of existing law, and shall be accompanied by notes which shall briefly and clearly state the reasons for any proposed change.

"That each of said commissioners shall receive a salary of five thousand dollars a year, which, as also a sum sufficient to pay the expenses of the commissioners, to be approved and certified to by the Attorney-General, is hereby appropriated out of any money in the Treasury not otherwise appropriated."

The question is presented as to whether this legislation authorizes the payment of Mr. Hersey. If so, it would seem to be clear that his appointment as stenographer does not make him an officer, and for the reasons stated in recent decisions of

this office he would not be required to take the oath of office prescribed by section 1757, Revised Statutes, to be taken by any person appointed to office.

The commissioners appointed by the President under the authority of the act of June 4, 1897, have organized as a commission, rented rooms, established offices in Washington, and employed a clerical force, including three stenographers. The expenses so incurred have been "approved and certified to" by the Attorney-General. The statute does not specifically authorize the employment of any persons or the incurring of any expense by a *commission*. The appropriation is made for the salaries and for the "expenses of the commissioners." It does not, it seems to me, create a commission with authority to establish an office in Washington and employ a clerical force to assist the commissioners.

While section 4 of the act of August 5, 1882 (22 Stat., 255), may not by a strict construction be applicable to the present case, yet the whole purpose and spirit of the act is to prevent the employment of clerks and other persons at the seat of Government and payment for their services from an appropriation made for any specific or general purpose, "unless said employment is authorized and payment therefor specifically provided by the law granting the appropriation." (See 1 Comp. Dec., 111; *id.*, 336; 3 Comp. Dec., 263.)

The expenses of the individual commissioners which are provided for would include traveling and incidental expenses. It is not meant that a commissioner could not pay, as a part of his expenses, for necessary clerical assistance rendered to him from time to time as it might be needed. I do not think the language which Congress has used in this case includes, or was intended to include, the organization of a commission, and the payment of a clerical force therefor in the city of Washington. You are therefore not authorized to pay Mr. Hersey's compensation as stenographer to the "Commission."

You do not refer to the matter, but I call your attention to the act of March 3, 1877 (19 Stat., 370), which provides:

"And hereafter no contract shall be made for the rent of any building, or part of any building, to be used for the purposes of the Government in the District of Columbia, until an appropriation therefor shall have been made *in terms* by Congress, and that this clause be regarded as notice to all contractors or lessors of any such building or any part of building."

Under this act, which is too plain to need interpretation, you are not authorized to pay for the rent of any rooms in the District of Columbia for the use of the commissioners. The appropriation for the expenses of the commissioners is certainly not an appropriation "in terms" by Congress for the payment of rent.

PAY OF BAILIFFS.

A marshal is entitled to credit for payments to three bailiffs attending upon the order of the court upon a day to which the United States circuit court of appeals is adjourned, although a quorum of the court does not appear and one judge opens and adjourns the court and then holds a circuit or a district court, or both, for which another set of three bailiffs is employed and paid.

(Decision by Comptroller Tracwell, September 25, 1897.)

Mr. Henry W. Swift, United States marshal for the district of Massachusetts, appeals from the Auditor's settlement of his account for pay of bailiffs for the six months ending December 31, 1896.

The principal item of difference amounts to \$456, which arises from the Auditor's ruling that when one judge on the same day opens the circuit court of appeals and adjourns it because of the absence of a quorum, and then holds the circuit or district court, or both, the marshal is not authorized by law to employ any bailiffs under the conditions which exist in his district as to the performance of the duties of bailiffs by office deputy marshals.

In addition to the facts stated in the Comptroller's decision of May 11, 1896 (2 Comp. Dec., 530), with reference to the practice in Boston in the employment of bailiffs to attend upon the courts, a further statement is necessary to a decision of the questions which have now arisen.

Prior to July 1, 1896, there were nine bailiffs employed, three for the circuit court of appeals, three for the circuit court, and three for the district court. This number was allowed in the accounts of the marshal without an itemized statement of the particular service rendered—that is, without inquiry as to whether upon a particular day all of said courts were held by one, two, or more judges.

Of these nine bailiffs three were deputy marshals, whose