

31 Op. Atty. Gen. 340

340 Assignment of Space in Interstate Commerce Building

States. The purchase of commodities from the Agricultural Adjustment Administration would greatly facilitate the execution of the Agricultural Adjustment Act, because, amongst other reasons, surplus agricultural products acquired from time to time by the Agricultural Adjustment Administration in carrying out its part of the national recovery program cannot be disposed of through the ordinary channels of trade without interfering with the object sought to be attained by the acquisition of such products. It seems proper to consider this fact in interpreting the provisions of the Federal Emergency Relief Act of 1933, since both the Relief Act and the Agricultural Adjustment Act are parts of the same legislative program looking toward the economic recovery of the country.

I have the honor to advise you that the question submitted to me should be answered in the affirmative.

Respectfully,

HOMER CUMMINGS.

To the SECRETARY OF AGRICULTURE.

PROPOSED ASSIGNMENT OF INTERSTATE COMMERCE BUILDING TO THE USE OF THE INTERIOR DEPARTMENT

The proposed assignment of the new Interstate Commerce Building for the use of the Department of the Interior is unauthorized by law. The Interstate Commerce Building is to be used by the Commission so far as its needs reasonably require, but if there should be any surplus space when the building is completed, or if in the future surplus space becomes available, then it will lie in the power of the Secretary of the Interior, as successor of the Public Buildings Commission, to assign such space as may be appropriate.

DEPARTMENT OF JUSTICE,

November 7, 1933.

SIR: In your letter of October 23, 1933, you request my opinion "with reference to the legality of the proposed assignment by the Office of National Parks, Buildings and Reservations of the new Interstate Commerce Building for the use of the Department of the Interior." In response to a request from me for further information you wrote on October 31, 1933, that what you have in mind "is to take that building for occupancy by the Interior Department

because we are so crowded here that I have had to move several of our bureaus out of the building recently."

By Section 10 of the Act of March 1, 1919, c. 86, 40 Stat. 1213, 1269 (U.S.C., Title 40, Sec. 1), the Public Buildings Commission was created and it was vested with "the absolute control of and the allotment of all space in the several public buildings owned or buildings leased by the United States in the District of Columbia", with exceptions not pertinent here. By the President's Executive Order of June 10, 1933, pursuant to the Act of March 3, 1933, c. 212, 47 Stat. 1489, 1517-1519, the Public Buildings Commission was abolished and its power and functions were transferred to you. The validity of this portion of the Executive order of June 10, 1933, was sustained, in my opinion, to the President on September 18, 1933.

I agree with the opinion of your Solicitor that the Act of March 1, 1919, together with the provisions of the Executive order, clearly authorize you to make the proposed assignment unless there is other legislation sufficient to limit the broad powers transferred to you as successor of the Public Buildings Commission. In my opinion, there is such legislation, and I conclude that you do not have power to make the proposed assignment.

The construction of the building referred to in your letter as the Interstate Commerce Building was authorized by the Act of July 3, 1930, c. 846, 46 Stat. 860, 907, in the following language—

"Interstate Commerce Commission or General Accounting Office Building: For the construction of the building originally intended for the Interstate Commerce Commission, but which is to be occupied by either the Interstate Commerce Commission or the General Accounting Office, as may be determined by the Public Buildings Commission, under a total estimated cost of \$4,500,000."¹

¹ In the same Act, Congress also authorized the construction of a connecting wing between the building now under consideration and the Labor Department Building. This authorization was in the following language—

Connecting wing, Labor-Interstate Commerce Commission Building: For the construction of the connecting wing between the building for the Department of Labor and the building originally intended for the Interstate Commerce Commission, but which last-named building is to be occupied by either said Commission or the General Accounting Office, as may be determined by the Public Buildings Commission, under a total estimated cost of \$2,000,000.

342 *Assignment of Space in Interstate Commerce Building*

The same statute also authorized the construction of other buildings within the District of Columbia, including the Archives Building, Department of Justice Building, Department of Labor Building, Post Office Building, and Public Health Service Building.

I cannot doubt that these buildings were authorized by Congress in recognition of, and in view of caring for, the particular needs of the Departments and Offices named. If further indication of this intention on the part of Congress is necessary, it may be found in a statement of Congressman Elliott who, as Chairman of the House Committee on Public Buildings and Grounds, had much to do with shaping the building program (72 Cong. Rec. 60)—

“An administration building for the Department of Agriculture is being completed at a cost of \$2,000,000. An extension to the Government Printing Office is being made at a cost of \$1,250,000. A beautiful building for the Bureau of Internal Revenue is being erected which will cost \$10,000,000. A building for the Department of Commerce which is the largest office building in the world, will cost \$17,500,000. An archives building, in which to house the valuable records now in nonfireproof buildings, has been authorized at a limit of cost of \$8,750,000.

It is also the intention to build a home for the Department of Labor, one for the Department of Justice, and other buildings in which to house the independent departments and bureaus of the Government. In addition to this project Congress has authorized under a separate Act the construction of an addition to the House Office Building on the west side of New Jersey Avenue, adjacent to the present House Office Building, at an estimated cost of \$7,500,000.

The United States Supreme Court has never had a satisfactory or adequate home. * * * A new Supreme Court house will be erected on the block of ground north of the Congressional Library, which will be in keeping with its dignity and importance.”

The legislative designations of these buildings in the appropriation Acts, and the authorization of their construction in accordance with a plan carefully formulated by the Public Buildings Commission, constitutes, in my opinion, a

legislative adoption of that plan. When Congress expressly provided for the construction of an Archives Building to provide for safe storage of "valuable records now in non-fireproof buildings" it could not have contemplated that its purpose was subject to frustration through exercise of the power granted by the Act of March 1, 1919.

In the Act of May 25, 1926, c. 380, 44 Stat. 630, which originally authorized the present building program in the District of Columbia, Congress provided in section 1 (U.S.C. Supp. VI, Title 40, Sec. 341)—

"That all sketches, plans, and estimates for buildings shall be approved by the Secretary of the Treasury and the heads of the Executive Departments which are to be located in such building."

"Congress would not have provided that the plans should be approved by the "heads of the Executive Departments which are to be located in such building", if it had contemplated that as soon as the building was completed it should be occupied by some other Department without regard to the wishes of the Department for whom it was planned.

With respect to the building now under consideration, however, there is no need to seek the intention of Congress in implication or inference. It is expressly declared that the building now under consideration "is to be occupied by either the Interstate Commerce Commission or the General Accounting Office, as may be determined by the Public Buildings Commission." The power thus granted to the Public Buildings Commission is now vested in you; but the very fact of the grant carries with it its limitation. If Congress had contemplated that the Public Buildings Commission had power to assign the proposed buildings as it saw fit, regardless of their designation in the Acts authorizing their construction, the express grant of authority to determine whether the building in question should be occupied by the Interstate Commerce Commission or the General Accounting Office would have been unnecessary. When Congress intended the Public Buildings Commission to have unlimited power to determine the use to be made of the new buildings, it expressly said so. For instance, in the Act of March 4, 1931 (c. 522, 46 Stat. 1552, 1605), it made an appropriation "For the construction of a building to be assigned

Unlimited Coinage of Silver

to the Coast Guard, or some other Government activity, as may be determined by the Public Buildings Committee, * * *."

Although I conclude that the new buildings must be made available to the agencies for whom they were constructed, except as Congress has expressly given power to the Public Buildings Commission (a power now exercised by you) to determine otherwise, I do not mean to be understood as saying that you are wholly without power with respect to the new buildings. As your Solicitor points out, Congress must have foreseen that the importance and magnitude of the operations of the various branches of the Government continually expand and contract with reference to each other as times and circumstances demand. Congress could not have intended that space not actually required by a Department in a building assigned to its use must lie idle while at the same time another Department is in need of additional space. There is no need to resort to Congress in every such contingency. It was the duty of the Public Buildings Commission to take care of such matters, and that power may now be exercised by you. The new buildings are to be used by the agencies for whom they were constructed so far as their needs reasonably require. If there is any surplus space when the building is completed, or in the future such space becomes available, it will lie in your power to assign it as may be appropriate.

Respectfully,

HOMER CUMMINGS.

To the SECRETARY OF THE INTERIOR.

UNLIMITED COINAGE OF SILVER

The President has authority to proclaim and put into effect a plan for the unlimited coinage (at the present fixed ratio to gold and subject to 50 percent seigniorage) of domestic silver produced after the effective date of the proclamation.

DEPARTMENT OF JUSTICE,

November 8, 1933.

SIR: I have the honor to comply with your request for my opinion upon the authority of the President to proclaim and put into effect a plan for the unlimited coinage, (at the