



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON 25

MAY 13 1959

D-139510

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DIGEST - MAY 13 1959

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Honorable Clarence Cannon, Chairman
Committee on Appropriations
House of Representatives

Dear Mr. Chairman:

Your letter of May 1, 1959, acknowledged May 4, requests a decision as to the availability of the appropriation "Shipbuilding and Conversion, Navy," for the purpose of dredging a deeper channel in the Singing River near Pascagoula, Mississippi.

You state the Committee is advised that the Navy Department contemplates an expenditure under this appropriation of approximately \$770,000 for deepening the channel in order to permit certain naval vessels currently under construction by the Ingalls Shipbuilding Corporation to be operated from the Shipyard to deep water upon completion. The legality of the use of the appropriation for such purposes is said to be questioned because of the policy of the Congress over many years to specifically appropriate funds to the Corps of Engineers for the prosecution of river and harbor projects authorized by law. Also, you point out that in 1954 there was authorized an appropriation of funds to the Corps of Engineers for deepening the channel of the Singing River.

Before undertaking to answer the question presented for decision, it is believed desirable to set forth the pertinent facts and circumstances, and information informally obtained from representatives of the Navy and the Corps of Engineers relative to the matter.

As stated in your letter, ^{P.L. 780 (4/3/54)} section 101 of the River and Harbor Act of 1954, 68 Stat. 1246, authorized certain works of improvement of rivers and harbors and other waterways for navigation, flood control, and other purposes to be prosecuted under the direction of the Secretary of the Army and supervision of the Chief of Engineers. At page 1251 there is included the project "Pascagoula Harbor, Mississippi: Modification of existing project in accordance with plans on file in the Office of the Chief of Engineers, at an estimated cost of \$877,000."

The project is described at pages 10 and 11 of Senate Report No. 2087, 83d Congress, on the bill which became the River and Harbor Act of 1954. The plan of recommended improvement is therein stated to be "Channel from the Gulf of Mexico to the L & N. Railroad bridge in Pascagoula, having a depth of 30 feet and a width of 250 feet, with 35-foot depth over the bar." The said report and the hearings held on the bill by the Subcommittee on Flood Control-Rivers and Harbors, Senate Committee on Public Works (pages 69 to 76), emphasize the urgency of enlarging the channel to meet the requirements of the Ingalls Shipbuilding Corporation as well as other industries in the area. In this connection, we wish to point out that our examination of the authorizing documents for this project, the U. S. Coast and Geodetic Survey navigation chart referred to therein by the Chief of Engineers for locating the project, and comprehensive atlases used by the Operations Division of the Office of the Chief of Engineers does not disclose any reference to a "Singing" River in the project area.

When the President approved the bill which became the River and Harbor Act of 1954 he stated, in the White House Office press release thereon dated September 3, 1954, among other things, that eight of the projects authorized in the act were not supported by reports of the Chief of Engineers, United States Army, as provided for by section 202 thereof. Further, that he would not request appropriations to start construction of these projects until reports thereon had been completed and data essential to their evaluation was available. We understand that the Pascagoula Harbor project is one of the eight projects referred to by the President. We understand, also, that under date of March 11, 1959, the Secretary of the Army transmitted to the Congress the Chief of Engineers' favorable survey report on this project.

In January of 1957 the Navy entered into a contract with the Ingalls Shipbuilding Corporation, Pascagoula, Mississippi, to construct two nuclear submarines. The submarines are scheduled for completion during the middle part of 1960. It appears that the existing controlling channel depth for the Pascagoula Channel, namely 22 feet, is inadequate to permit safe passage of these type submarines to and from the shipyard during underway trials. Under the terms of the contract all underway operations are required to be conducted by a Navy crew.

Apparently, the Navy executed the cited contract in expectation of an appropriation to the Corps of Engineers to implement the authorized project for Pascagoula Harbor. The Congress not having made the

necessary appropriation to the Corps of Engineers as of the present date, the Navy is confronted with the problem of operating the submarines upon their completion. To alleviate the problem the Navy has asked the Corps for an estimate of the cost of deepening the Pascagoula Harbor and Channel to satisfy its operational requirements and, as stated in your letter, proposes to pay the cost thereof from its appropriation for Shipbuilding and Conversion.

The Navy's justification for the use of this appropriation to deepen the channel, as informally learned by our representatives, is based upon the conclusion that it is a necessary expense incident to construction of the submarines. It is their view that since the appropriation is available for expenses necessary for the construction of vessels, any expense necessary to complete delivery under a procurement account properly comes within the scope of the appropriation availability.

The appropriation "Shipbuilding and Conversion, Navy" contained in Title IV of the Department of Defense Appropriation Act, 1959, Public Law 85-724, approved August 22, 1958, 72 Stat. 715, is made in general terms for, among other things, " * * * expenses necessary for the construction, acquisition, or conversion of vessels as authorized by law * * *." The appropriation does not expressly authorize expenditures for improvements to rivers and harbors.

It is a settled rule of appropriation construction that an appropriation made in general terms for a particular purpose is available for expenses reasonably necessary to the proper accomplishment of the object or purpose for which made, except as to expenditures in contravention of some statutory provision or for some purpose for which other appropriations are more specifically available. See 29 Comp. Gen. 419; 32 id. 326, 34 id. 195. Cf. 17 id. 636. Hence, the propriety of charging the proposed expenditure to the appropriation in question depends upon a determination of whether the item of expense is subject to the exception to the said general rule. See 20 Comp. Gen. 102 id. 272.

Under the terms of 33 U.S.C. 540, Federal investigations and improvements of rivers, harbors, and other waterways are declared to be under the jurisdiction of and required to be prosecuted by the Department of the Army under the direction of the Secretary of the Army and the supervision of the Chief of Engineers, except as otherwise specifically provided by law. And section 2 of the Flood Control Act of 1946, 50 Stat. 641, and similar provisions of later legislation declare it to be the policy of the Congress that "to

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project or any modification not authorized, of a project for flood control or rivers and harbors shall be authorized by the Congress unless a report for such project or modification has been previously submitted by the Chief of Engineers, United States Army, in conformity with existing law." 33 U.S.C. Supp. V, 701b-8.

In accordance with these laws the established policy of the Congress, in respect of river and harbor and flood control projects, is that they first be recommended to the Congress by the Chief of Engineers, through the Secretary of the Army, as being economically and financially feasible and then be dealt with in two separate legislative acts. The appropriations, of course, are provided in the appropriation bill, but before any appropriation is provided for a project that project is adopted by a legislative act, so that an appropriation for it will be in order in the appropriation bill.

There can be no doubt that the Secretary of the Army and the Chief of Engineers specifically are charged by law with the duty and responsibility of carrying out improvements of rivers and harbors and other waterways for navigation, flood control, and other purposes, subject to appropriations provided therefor. As has been pointed out, the Congress has not made an appropriation to carry out the Pascagoula Harbor project authorized in the River and Harbor Act of 1934. Such action, of course, being solely within the discretion of the Congress, the absence or inadequacy of such an appropriation may not be regarded as expanding the uses of other appropriations not expressly made available therefor.

To conclude that the Pascagoula Harbor project authorized by the Congress, but for which no specific appropriation has been provided to the Corps of Engineers for its prosecution, may nevertheless be accomplished by the Corps either in whole or in part through use of a general appropriation made available to the Navy on the basis of a determination that it is an expense necessary to the accomplishment of the purpose for which the appropriation was made, would result in unlawfully circumventing the referred-to legislative policy of the Congress in authorizing and appropriating funds to the Corps of Engineers for such works. That is the effect of the proposed use of the appropriation as contended for by the Navy. Therefore, we see no proper basis for applying the cited "necessary expense" rule of appropriation construction to the instant case. On the contrary, the case in our view comes squarely within the exception to the rule.



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For these reasons, we conclude that the appropriation "Ship-
building and Conversion, Navy" is not legally available for expendi-
tures incident to enlarging the Pascagoula Harbor and Channel, in
the absence of specific statutory authority therefor.

Sincerely yours,

JOSEPH CAMPBELL
Comptroller General
of the United States