

DECISION

THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

FILE: B-185770

DATE: APR 8 1976

MATTER OF: Southern Pacific Railroad Company

DIGEST:

1. 43 U.S.C. § 881 (1970) requires that before patent may be issued on land granted to railroad by United States, railroad must pay cost of surveying, selecting, and conveying land. Where surveys were conducted by Government but railroad did not apply for patent until many years after surveys, Department of Interior may not capitalize original cost of surveys in determining charge to railroad, but should recover only amount originally paid for surveys as ascertainable from survey contracts. /
2. Where surveys of land were conducted for Government by contractors but railroad did not apply for patent until many years after surveys, and there is no way to determine how the costs of issuing and supervising contracts for surveys, Department of Interior may add reasonable percentage to cost of surveys to recover costs of issuing and supervising contracts.
3. Where surveys of land were conducted for Government by contractors but railroad did not apply for patent until many years after surveys, Department of Interior may recover costs of searching records for original contracts and calculating ratable cost per acre, since these costs are incident to conveyance of lands.

The Assistant Secretary, Program Development and Budget, Department of the Interior, has requested a decision from this Office concerning the costs to be charged the Southern Pacific Railroad Company in connection with its application for title to 37,653.84 acres of land, pursuant to section 321(b) of the Transportation Act of 1940, 49 U.S.C. § 65(b)(1970). The proposed conveyance is subject to the terms of 43 U.S.C. § 881 (1970), which states:

"Before any land granted to any railroad company by the United States shall be conveyed to such company, or any persons entitled thereto under any of the acts incorporating or relating to said company, unless such company is exempted by law from the payment of such cost, there shall first be paid into the Treasury of the United States the cost of surveying, selecting, and conveying the same by the said company or persons in interest."

The Assistant Secretary advises that the Interior Board of Land Appeals, in its decision IBLA 73-197, held that agency instructions, issued pursuant to 43 U.S.C. § 881, require applicants for patents on railroad grant lands to pay the actual costs of surveying the land when the actual costs can be readily ascertained. The Board determined that in this case, since the surveys were performed under contract, " * * * the gross cost of each survey can be readily calculated from the contract terms and the ratable cost per acre surveyed * * *,"

The area in question was surveyed under eleven contracts. Ten contract payments were made in 1856 and one in 1896. The Department has calculated the cost per acre to have been approximately two cents, or \$926.70 for the entire 37,653.84 acres. These costs represent only the proportionate amount paid contractors for the field work performed, and do not include the cost of issuing and supervising the contracts. The Department has also calculated that the \$926.70, if capitalized over the intervening years at 3 percent, 4 percent, and 5 percent, would amount to approximately \$31,000, \$98,000, and \$308,000, respectively.

The Assistant Secretary has asked the following questions:

1. Should the costs incurred by the Government be recovered in the amounts originally paid?
2. Should an amount paid in 1856 by the Government and recovered in 1975 be capitalized at an appropriate percentage, and if so, what percentage is recommended?
3. Since it is impossible to determine the cost the Federal Government incurred to issue and supervise the contracts, should only the contract amount be considered in calculating the amount due?

4. Should the cost of searching the records for the original contracts and calculating the ratable cost per acre, and the actual cost of conveying the land to the company be recovered?

In answer to the first and second questions, we believe that the costs incurred by the Government for the surveys should not be capitalized but should be recovered in the amount originally paid. The language of section 881 of title 43, United States Code, quoted, supra, requires in essence that prior to the conveyance of land granted to any railroad company, by the United States, the company must pay the costs incurred for surveying, selecting and conveying the land. This does not support an inference that those costs, if not paid at the time of survey, are to be capitalized. We are aware of no other basis for that inference. In the absence of any clear authority to do so, the Department is not empowered in these circumstances to capitalize the amounts originally paid by it for the surveys. It may recover only the costs actually incurred when ascertainable which, according to its own calculations, amount to \$926.70.

As to the Assistant Secretary's third question, we believe that the Department may add a reasonable percentage to the contract amount in order to recover the costs of issuing and supervising the contracts. We note that Departmental regulations, cited in IBLA 73-197, allow adoption of a charge for surveys in lieu of actual costs when actual costs are unknown. Although the actual costs of surveying, selecting, and conveying the land were readily ascertainable from the terms of the contracts themselves, as discussed above, the Assistant Secretary states that it is impossible to determine the costs of issuing and supervising the contracts. Under these circumstances we believe it is a reasonable construction of the law to allow imposition of a reasonable charge for contract administration, when actual costs are unknown.

Finally, with respect to recovery of the costs enumerated in the fourth question, 43 U.S.C. § 881 mandates recovery of all of the costs of conveying the land. The cost of searching the records for the original contracts and calculating the ratable cost per acre, should be recovered from the railroad company, since they are legitimate and necessary costs incident to the conveyance of the land.

R. F. KELLER

~~Acting~~

Comptroller General
of the United States