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B-105602 December 17, 1951

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The Honorable The Secretary of the Army

My Dear Mr. Secretary:

Further reference is made to you letter of September 12, 1951, with enclosures, acknowledged November 2, 1951, requesting a decision as to whether the Corps of Engineers may enter into an agreement with the Commonwealth of Virginia to reinburse the State for disbursements to suppress, extinguish, and control fires on Governmenta-owned forest land located in several counties within the State.

It appears from your letter that the Government owns, for flood control purposes, approximately fifty thousand acres of valuable forest land bordering the water lines of the Buggs Island and the Philpott Dam and Reservoir Projects located in several counties within the State of virginia and that a portion of the Buggs Island acerage lies within the State of North Carolina. It is stated that the Corps of Engineers, in order to promote adequately the suppressing of forest fires on these lands, desires to enter into cooperative agreements with the respective States, as exemplified by an extract of the fire control plan for the Altemca Dam Reservior Area, Etowah River, Georgia, under the terms of which the Corps of Engineers and the State Forest Services would each bear the cost of its own suppression personnel regardless of land ownership.

It is further stated that pursuant to the provisions of the Flood Control Acot of 1936, as amended, 33 U.S.C.A. 701, et seq., the Corps of Engineers is charged witht he responsibility for protection of the land procured as necessary to accomplish the Buggs Island and Philpott projects, and that the said act authroized utilizing the services of State agencies in carrying out the purposes of the act, and to pay all or part of the estimated or actual cost of services furnished by such State agencies. However, it is stated in the said letter that even if it is conceded that the act generally authorizes agreements with the States which require reinbursement of expenses incurred by them, it is not clear whether payments to the States for fire suppression would be justified thereunder in view of prior Office decisions, 24 Comp. Gen. 599; 26 id. 382, and B- 100938, March 16, 1951, 30 Comp. Gen. 376, followed a long line of decisions of the accounting officers of the Government, which precluded a charge against appropriated funds for fire-fighting services, rendered by a State or municipality in connection with extinguishing fires on Government-owned property, where there was no legal obligation upon the United States to pay for such services. Such holdings were based upon the premise, stateed generally, that where there existed a statutory duty of a State or municipality to render fire protection or fire-fighting services to property within its limits, without

cost to the owners of the property, such duty extended to protecting the property of the United States located within such limits, and that is the Government thus was legally entitled to fire protection or fire-fighting services there was no authority to charge appropriated funds with the cost thereof.

In the instant case, the question for determination is whether there is a legal duty upon the State Forester of the State of Virginia, or its fire- fighting facilities, to extinguish fires which might arise on forest lands without cost to the owner and whether such duty extends to the Federal forest land located in several counties within the State. The District Forester, Virginia Forest Service, Salem, Virginia, in a letter, dated January 12, 1951, addressed to the Resident Engineer, Philpott Dam, apprently contends that the duty of his agency does not extend to supressing fires on Federal property situated within the individual counties of the State, in that such property is not taxable and that the cost of suppressing fires in individual counties is billed and paid by the Board of Supervisors of each county. I am unable to agree with that conclusion.

The Code of Virginia, 1950, provides under title 10, section 32, that the care, management, and preservation of the forest reserves of the State and the forests thereon, and all moneys appropriated in that behalf, or collected therefrom in any way, and all personal and real property acquired shall be subject to the control of the Director of Conservation and Development, and, to such extent as may be expressly provided by law, the Board of Conservation and Development, shall put into effect the best methods of preventing the destruction of forests by fire. Section 10-84 establishes in the Department of Conservation and Development a Division of Forestry. Section 10-85 provides that the head of such Division shall be called the State Forester. Section 10-46 requires each county in the State to repay into the State treasury monthly, any amounts expended in the preceding month by the Director in such county for forest protection, forest fire detection, prevention and suppression not exceeding in any one year amount measured by the acreage, computed upon the basis of one cent an acre, of privately-owned forests int he county, and section 10-47 authorizes thae governing bodies of the several counties to levy taxes and appropriate money for purposes of forest protection, imporvement and management. Section 10-57 provides that when any forest warden sees or there is reported to him a forest fire, he shall repair immediately to the scene of the fire and employ such persons and means as in his judgement are expedient and necessary to extinguish the fire, within the limits of t he expense he has been authorized to incur in his instructions from the State Forester, and that the expenses thus incurred, upon approval of the State Fprester, shall be paid from the fund provided for protection of forests in the several counties, as appropriated for such purpose. Section 10-58 authorizes the State Forester, whenever possible, to collect the costs of fire fighting under the direction of a forest warden under the provisions of section 10-57, from the person responsible for the origin of the fire by his negligence or intent, and such costs so collected shall, under certain limitations, be repaid to the county in which the costs were incurred. Under title 27, section 1, of that code, it is provided that whenever the necessity arises during any emergency resulting from fire or other public disaster, the firemen of any county, city or town may, together all necessary equipment, lawfully go or be sent beyond the territorial limits of such county, city or town to any point within the State, to assist in meeting such emergency, and in such event the acts performed for such purpose by such county, city or town, shall be deemed conclusively to be for a public and governmental purpose.

It is apparent from the referred-to provisions of the Code of Virginia, 1950, that the State of Virginia has provided a state-wide plan for the detection, prevention and suppression of forest fires, and that the costs thereof are not required to be paid by the land owner. Also, there appears to be nothing in such laws, excluding Federal forest lands fromt he benefits of such fire protection. Such being the fact, it is difficult to perceive any sound basis for the view that forest lands of the United States are excluded from the benefits of such plan without payment. It is true that the individual counties defray, at least in large measure, the cost of suppressing fires on the forest land located therein, but it is nevertheless true that funds authorized and used for such purposes are derived by taxation. In the decision 24 Comp. Gen. 599, cited above, there was considered and discussed the fact that under the Constitution of the United States, the Federal Government is exempt from State or municipal real estate taxes. And, in that connection, it was pointed out that the duty of a municipality to afford fire protection to property within its limits, was not contingent upon such property being taxable.

As stated in Office letter of November 2, 1951, to you, request was made of the Attorney General of the State of Virginia for an expression of his views as to whether the State Forestry officials of the State of Virginia are legally required, without reinbursement from the Federal Government, to prevent and supress fires on the involved forest property within the scope of its area of operations. a reply to said letter has now been received. While that offical did not express his views on the specific question presented, he did acquiesce in the stand taken by the District Forester, Virginia Forest Service, in the letter of January 12, 1951, supra, to the extent of stating that, in his opinion, "state forestry officials should be reinbursed by the federal government for any costs incurred in fire prevention and suppression services performed by them on federal forest land." In his reply, he invited attention to Title 7, section 21 of the Virginia Code, 1950, wherein the United States is coded the power and jurisdiction to protect the lands acquired by it for the improvement of rivers and harbors and for other purposes from damage, depredation, or destruction, and to operate and administer the lands and property thereon for which acquired. Examination of that section of the Virginia Code does not appear to disclose that it has any particular bearing upon the matter in question--at least, I find nothing contained therein nor in the letter of the Attorney General of a convincing nature to indicate that the United States is not legally entitled to fire- fighting services without payment.

In view of the foregoing, it must be concluded, in the absence of judicial determination otherwise, that it is the statutory duty of the State Forester of the State of Virginia to prevent and suppress fires on the forests within the State Boundaries; that, following the rationale of the Office decision, supra, the Federal Government is entitled to the benefits of such services without payment therefor; and that inasmuch as the Corps of Engineers is already entitled to fire-fighting services without payment, there is no legal basis for concluding that its authority, under the provisions of 33 U.S.C. 701b-2 to engage and pay for the services of State agencies, authorizes the payment of appropriated funds to the State of Virginia for fire suppression services performed by it under the proposed cooperative fire control agreement.

Sincerely yours,

Lindsay C. Warren Comptroller General of the United States