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B-125309, Dec. 6, 1955

Number: B-125309

Date: 1955-12-06

B-125309, DEC. 6, 1955

TO MR. GEORGE D. GREEN, AUTHORIZED CERTIFYING OFFICER, DEPARTMENT OF AGRICULTURE:

REFERENCE IS MADE TO YOUR LETTER OF AUGUST 19, 1955, FILE NO. A DISBURSEMENT VOUCHERS, REQUESTING TO BE ADVISED WHETHER THE VOUCHER ENCLOSED THEREWITH, STATED IN FAVOR OF THE SCHOOL OF AMERICAN RESEARCH IN THE AMOUNT OF $300, PROPERLY MAY BE CERTIFIED FOR PAYMENT.

YOU STATE THAT IN THE CONSTRUCTION OF A TIMBER ACCESS ROAD ON THE APACHE NATIONAL FOREST THERE WAS DISCOVERED A SITE OF OLD INDIAN RUINS THROUGH WHICH THE ROAD MUST PASS. THE PROPOSED PAYMENT REPRESENTS THE COST OF ARCHAEOLOGICAL AND EXPLORATORY WORK DONE BY THE SCHOOL OF AMERICAN RESEARCH, WHICH IS ASSOCIATED WITH THE MUSEUM OF NEW MEXICO, ON THAT PART OF THE RUINS FALLING WITHIN THE ROAD PRISM AND CONSISTED OF THE DIGGING OF TEST TRENCHES TO EXPOSE ROOMS OF THE RUINS, COLLECTING POTTERY AND STONE TOOLS, AND MAPPING AND PHOTOGRAPHING SOME AREAS. IT APPEARS THAT THE MUSEUM FURNISHED TECHNICAL GUIDANCE AND MAPPERS FOR THE PROJECT. ALSO, IT WAS ESTIMATED THAT THE LABOR ALONE TO EXCAVATE THE INDIAN RUINS WITHIN THE ROAD PRISM WOULD COST APPROXIMATELY $300, AND IT DEVELOPED THAT THE RUINS WERE FAR MORE EXTENSIVE THAN HAD BEEN ANTICIPATED. WE NOTE THAT THE ROAD CONSTRUCTION WAS BY CONTRACT. NO INFORMATION HAS BEEN FURNISHED AS TO WHETHER CONSIDERATION WAS GIVEN TO ISSUING AN ADDITIONAL WORK ORDER UNDER THE CONTRACT, WHICH COURSE OF ACTION PERHAPS WOULD HAVE BEEN MORE APPROPRIATE. WE ASSUME THAT THERE IS COORDINATION WITH THE SMITHSONIAN INSTITUTION WHERE NECESSARY.

PAYMENT FOR THE WORK IS PROPOSED TO BE MADE FROM THE APPROPRIATION "FOREST ROADS AND TRAILS, FOREST SERVICE," INCLUDED IN THE DEPARTMENT OF AGRICULTURE AND FARM CREDIT APPROPRIATION ACT, 1955, 68 STAT. 308, WHICH PROVIDES IN PERTINENT PART AS FOLLOWS:

"FOR EXPENSES NECESSARY FOR CARRYING OUT THE PROVISIONS OF SECTION 23 OF THE FEDERAL HIGHWAY ACT APPROVED NOVEMBER 9, 1921, AS AMENDED (23 U.S.C. 23, 23A), RELATING TO FOREST DEVELOPMENT ROADS AND TRAILS, INCLUDING THE CONSTRUCTION, RECONSTRUCTION, AND MAINTENANCE OF ROADS AND TRAILS ON EXPERIMENTAL AREAS UNDER FOREST SERVICE ADMINISTRATION, $16,000,000, WHICH SUM IS AUTHORIZED TO BE APPROPRIATED BY THE ACTS OF SEPTEMBER 7, 1950 (64 STAT. 786), AND JUNE 25, 1952 (66 STAT. 158), TO REMAIN AVAILABLE UNTIL EXPENDED: * * *"

NOTHING IN THE APPROPRIATION LANGUAGE OR IN THE FEDERAL HIGHWAY ACT REFERRED TO THEREIN SPECIFICALLY SHOWS THAT THE CONGRESS INTENDED THAT THE FUNDS SHOULD BE AVAILABLE FOR THE PURPOSE CONSIDERED HEREIN. HOWEVER, THAT THE CONGRESS INTENDED

TO PREVENT THE DESTRUCTION OF HISTORIC AND PREHISTORIC RUINS SITUATED ON GOVERNMENT-OWNED LANDS IS EVIDENCED BY THE ACT APPROVED JUNE 8, 1906, ENTITLED "AN ACT FOR THE PRESERVATION OF AMERICAN ANTIQUITIES," 16 U.S.C. 431-433; THE ACT OF APRIL 10, 1928, 20 U.S.C. 69-70; AND THE ACT OF AUGUST 21, 1935, 16 U.S.C. 461-467.

THESE ACTS ALL CONCERN THE PRESERVATION AND INVESTIGATION OF HISTORIC AND ARCHAEOLOGIC SITES. THE FIRST MENTIONED ACT PROVIDES, AMONG OTHER THINGS, THAT ANYONE DESTROYING ANY HISTORIC OR PREHISTORIC RUINS OR OBJECTS OF ANTIQUITY LOCATED ON LANDS OF THE UNITED STATES SHALL BE SUBJECT TO A FINE OF $500 OR 90 DAYS IN JAIL, OR BOTH. THE REGULATIONS ISSUED UNDER THE ACT SPECIFICALLY PLACE JURISDICTION IN THE SECRETARY OF AGRICULTURE OVER RUINS ON LANDS WITHIN THE EXTERIOR LIMITS OF FOREST RESERVES. THE SECOND ACT MENTIONED AUTHORIZES THE SECRETARY OF THE SMITHSONIAN INSTITUTION TO CONDUCT RESEARCHES AMONG THE AMERICAN INDIANS AND TO EXCAVATE AND PRESERVE ARCHAEOLOGICAL REMAINS. THE LAST MENTIONED ACT SPECIFICALLY DECLARES IT TO BE A NATIONAL POLICY TO PRESERVE FOR PUBLIC USE HISTORIC SITES, BUILDINGS, AND OBJECTS OF NATIONAL SIGNIFICANCE FOR THE INSPIRATION AND BENEFIT OF THE PEOPLE OF THE UNITED STATES.

THE ACTION OF THE CONGRESS IN ENACTING SUCH LEGISLATION INDICATES AN INTENT ON ITS PART THAT RUINS HAVING HISTORICAL VALUE AND LOCATED ON GOVERNMENT-OWNED LANDS SHOULD NOT BE NEEDLESSLY DESTROYED BY THE GOVERNMENT OR, IF THEIR DESTRUCTION CANNOT BE AVOIDED, THAT REASONABLE ACTION BE TAKEN TO OBTAIN ALL HISTORICAL INFORMATION CONCERNING SUCH RUINS PRIOR TO THEIR DESTRUCTION.

IN VIEW OF THE ABOVE LEGISLATION, AND SINCE IN THIS INSTANCE IT WAS NOT FEASIBLE TO REROUTE THE ROAD, AND SINCE THE RUINS IN QUESTION WERE DISCOVERED ONLY WHEN THE ROAD WAS UNDER CONSTRUCTION, THUS REQUIRING PROMPT ADMINISTRATIVE ACTION IF ANY HISTORICAL DATA RELATIVE THERETO WERE TO BE OBTAINED AND PRESERVED, IT REASONABLY APPEARS THAT THE COST OF THE WORK INVOLVED MAY BE CONSIDERED AS BEING A NECESSARY COST OF CONSTRUCTION. ACCORDINGLY, IF OTHERWISE PROPER, THE VOUCHER WHICH IS RETURNED MAY BE CERTIFIED FOR PAYMENT.