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B-18740 July 23, 1941

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Chairman, National Capital Park and Planning Commission, Washington, D.C.

My dear Mr. Chairman:

I have a letter dated July 12, 1941, from the Acting Executive Secretary of your Commission, as follows:

"On June 30, 1941, the Chief Disbursing Officer, Division of Disbursement, Treasury Department, deposited the sum of $90,000 to the credit of appropriation '3290100 - National Capital Park and Planning Commission, 1939, on Certificate of Deposit #530. This amount represented the unexpended balance of the appropriation which was made available to the Commission in the Second Deficiency Appropriation Act approved June 25, 1928 [1938] (52 Stat. 1117), as follows:

"'For an additional amount for each and every purpose requisite for and incident to the work of the National Capital Park and Planning Commission necessary toward carrying into effect the provisions of the Act entitled, "an Act for the acquisition, establishment, and development of the George Washington Memorial Parkway along the Potomac from Mount Vernon and Fort Washington to the Great Falls, and to provide for the acquisition of lands in the District of Columbia and the States of Maryland and Virginia requisite to the comprehensive park, parkway, and playground system of the National Capital," approved May 29, 1930; fiscal year 1939, $300,000, to be expended in carrying out the provisions of section 1 (b) of such Act.'

"By letter of July 5, 1941, the Chief Disbursing Officer informed the Commission that this unexpended balance was deposited in accordance with section 5 of the Act approved June 20, 1874 (U.S.C., Title 31, Section 713).

"The Commission believes that this action was most unfortunate for the reasons given herein and, therefore, requests that these funds be set up to the Commission in the form of an appropriation available until expended.

"At hearings before the Appropriations Committee of the House of Representatives, it was stated that this money would be used to acquire a parkway extending from the District of Columbia line to Bladensburg, Maryland, said parkway being an extension of the Anacostia River Park within the District of Columbia and authorized under Section 1 (b) of the George Washington Memorial Parkway Act. This sub-section authorizes the National Capital Park and Planning Commission to turn over to the Maryland-National Capital Park and Planning

Commission funds to acquire park lands in the Anacostia River Valley and its tributaries, the National Commission to "contribute' on-third and advance to the Maryland Commission two-thirds of the funds appropriated, provided that the National Commission receives from the Maryland Commission certain definite commitments in repayment.

"As soon as the appropriation was passed, the National Commission proceeded to cooperate with the Maryland Commission in surveying the area that was proposed to be acquired, finally fixing definite boundary lines and make a detailed appraisal of each piece of property to be acquired. This took considerable time.

"On the 26th day of May, 1939, the National commission and the Maryland Commission entered into an agreement (see #HCP - 915, dated May 26th, 1939, on file in your office). After reciting certain facts, etc., the agreement provides:

"'The National Commission agrees to pay to the Maryland Commission by way of an advance the sum of $200,000, and also by way of a contribution the sum of $100,000, upon delivery to it of coupon bonds of the Maryland Commission known as The Maryland-National Capital Park and Planning Commission 3.5 bonds, Series I (Issue of June 1, 1939): of the par value to #200,00, when duly executed by the Maryland Commission, and guaranteed as to payment of intent and principal by the County Commissioners of Prince George's County, and more particularly described in the resolution of the Maryland Commission dated May 12, 1939.

"'The Maryland Commission agrees to issue and deliver to the National commission the said bonds as aforesaid and in accordance with the terms of the resolution referred to.'

"In June, 1939, the Maryland Commission delivered to the National Commission two hundred bonds of $1,000 denomination each, making a total of $200,000, representing the share of said Maryland Commission in full as the fulfillment of the obligation under aforesaid supplementary agreement 'I', which bonds are now on deposit in the Treasury of the United States (see receipt dated June 29, 1939). As the law required the Maryland Commission to give the National Commission certain commitments to reimburse the National Commission, it was mutually agreed that the most satisfactory commitments would be for the Maryland Commission to issue and turn over to the National Commission bonds practically identical with the Prince Georges County Road and School Bonds, but with the interest coupons beginning to run eight years from date as provided by this act. The bonds were guaranteed both by the Maryland Commission and the County Board of Commissioners of Prince Georges County, and the Board proceeded at once to levy a special tax to provide for interest and sinking fund with which to redeem these bonds.

"The Secretary and Legal Adviser of the National Capital Park and Planning Commission then notified the Maryland Commission that the National Commission had received these bonds, had deposited them in the Treasury and that the $300,000 was this obligated and would remain in the Treasury, subject to checking until finally expended.

"The National commission drew checks upon this fund from time to time. On the 25th day of June, 1941, the National Commission received from the Maryland Commission a request for another check of $90,000.

"As these funds were appropriated for land acquisition and were obligated by the agreement with the Maryland Commission, it is the Commission's belief that they should be made available until expended, and it is requested that a warrant be issued setting the funds up under a continuing appropriations title.

"Also, the Commission wishes to emphasizes strongly the fact that the acquisition of the lands under the terms of the supplementary agreement; namely, for park and primary purposes, was a part of a major improvement and construction program for public benefit, and involves other public works of major proportion and public benefit. The project of which the park lands will become a part will involve a major road and parkway construction program, and also a flood control project, not only to protect the parkway itself, but the surrounding public generally. The acquisition of this land is most closely tied in with a major flood and river control project, one of which is an integral part of the other.

"The reasons for restoring this fund to the credit of the Disbursing Officer can be briefly summarized as follows:

"1. The funds were properly and legally obligated in their entirety. (See HCP - 915).

"2. A total of $200,00 in bonds of the Maryland Commission were deposited into the Treasury as the fulfillment of the Maryland Commission in its entirety under this agreement and the National Commission was obligated to pay the said sum of $90,000 to the Maryland Commission.

"3. That the lands to be acquired comprise part of a major public improvement project, the acquisition of land being the first step thereof, which entails construction of an extensive road and parkway system, and a very important flood control and navigation project."

Section 1 (b) of the act of May 29, 1930, 46 Stat. 484, authorized the extension of the Anacostia park system in such manner as may be agreed upon by the National Capital Park and Planning Commission and the Maryland National Capital Park and Planning Commission, but provided, among other things, that no money shall be contributed by the United States until the National Capital Park and Planning commission shall have received definite commitments from the Maryland Commission for the balance of the cost involved in such extension. Said section further provided, in substance, that, in the discretion of the National Capital Park and Planning commission, upon agreement by the Maryland Commission to reimburse such cost, the Maryland Commission may be advanced not to exceed $3,000,000 exclusive of the Federal contribution, such agreement to provide for the reimbursement to the United States of the advance, without interest, exclusive of the Federal contribution, within eight years from the data of expenditure. In the Second Deficiency Appropriation Act, fiscal year 1938, 52 Stat. 1117, there was appropriated for the "fiscal year 1939, $300,000 to be expended in carrying out the provisions of section 1 (b) of such act."

On May 26, 1939, your Commission agreed, by the terms of contract No. HCF- 915, to pay to the Maryland Commission $200,000 by way of advance and $100,000 by way of contribution upon delivery by the Maryland Commission of certain bonds, more particularly described in the agreement, in the amount of $200,000. These bonds were duly delivered in June, 1939, and deposited in the Treasury of the United States, whereupon your Commission advised the Maryland Commission that the

amount of $300,000 was obligated and would remain in the Treasury subject to checking until expanded.

On June 30, 1941, there apparently remained in the checking account of the Chief Disbursing Officer, Division of Disbursement, Treasury Department, an amount of $90,000 representing the balance of the appropriation "3290100-National Capital Park and Planning Commission, 1939", which the Chief Disbursing Officer deposited to the credit of the appropriation to be carried to the surplus fund of the Treasury pursuant to section 5 of the act of June 20, 1874, 31 U.S.C. 713, as follows:

"After the 1st day of July, in each year, the Secretary of the Treasury shall cause all unexpended balances of appropriations which shall have remained upon the books of the Treasury for two fiscal years to be carried to the surplus fund and covered into the Treasury: Provided, That this provision shall not apply to permanent specific appropriations, appropriations for rivers and harbors, lighthouses, or public buildings, or the pay of the Navy and Marine Corps; but the appropriations named in this proviso shall continue available until otherwise ordered by Congress."

The submission requests that the balance of said appropriation be reestablished on the books of the Treasury as an appropriation available until expended for the reasons that the funds were obligated in their entirety by contract No. HCP-915; that the Maryland Commission had completely performed its obligations under the contract to the extent of delivering the bonds required of it; the National Capital Park and Planning Commission, consequently, is obligated to pay to the Maryland Commission the remaining amount of $90,000; and that the lands to be acquired with such funds comprise part of a national public improvement project.

If such funds have been properly and legally obligated, the carrying of the unexpended balance of the appropriation to the surplus fund of the Treasury will not preclude an eventual payment to the Maryland Commission of such amount of that balance as may be due, inasmuch as such a contingency is provided for in section 4 of the act of June 14, 1878, 20 Stat. 130, and section 2 of the act of July 7, 1884, 23 Stat. 254, which contemplate and recognize that claims payable from lapsed appropriations shall be submitted to this office for certification and thereafter be reported to the Congress for a reappropriation is for the acquisition of land does not in any way change it from an annual appropriation, as clearly designated in the act, to one available until expanded--it being apparent that it does not fall within any of the excepted classes of appropriations designated in section 5 of the act of June 20, 1874, supra.

In this connection attention is invited to the decision of January 10, 1940, 19 Comp. Gen. 702, 704, wherein it was said in part:

"The Second Deficiency Act of 1938, approved June 25, 1938, 52 Stat. 1114, is entitled 'An act making appropriations to supply deficiencies in certain appropriations for the fiscal year ending June 30, 1938, and for prior fiscal years, to provide supplemental appropriations for the fiscal years ending June 30, 1938, and June 30, 1939, and for other purposes. Accordingly, all appropriations made by said act must be considered annual appropriations subject to fiscal year limitations, unless otherwise provided in the act, or otherwise exempted by law, and in that connection it is noted that the appropriation quoted in your submission, 52 Stat. 11118, provides in specific terms that it is

for the 'fiscal year 1939.'*** Accordingly, with respect to the query whether the appropriation is subject to fiscal year restrictions it must be held that said appropriation is one for the fiscal year 1939 and is not available for the payment of obligations incurred subsequent to June 30, 1939."

What was said in that decision appears to be equally applicable in the present case and, consequently, there is no basis for concluding that the appropriation of $300,,000 as made in the act of June 25, 1938, was or is an appropriation without fiscal year limitations or available until expended.

However, while the appropriation involved must be considered as one for the fiscal year 1939, there is for consideration section 1 (b) of the act of May 29, 1930, which authorizes the National Capital Park and Planning Commission, in its discretion, to make payments to the Maryland Commission, partly as a contribution and partly as an advance, upon receipt of certain commitments from the latter Commission, making provision for the total cost of the work and for repaying the amount of the advance. Those commitments were made by the Maryland Commission upon delivery of the bonds in the amount of $200,000, and, from all that appears, the National Capital Park and Planning Commission might at that time have advanced to the Maryland Commission the full amount of $300,000 appropriated by the act of June 25, 1938, and covered by contract No. HCP0915. Instead, the funds were not paid to the Maryland Commission upon delivery of the bonds, but were retained in the Treasury of the United States and the Maryland Commission was advised that such funds would be subject to withdrawal until finally expended.

It is evident that it was the intent of Congress, as expressed in section 1 (b) of the act of May 29, 1930, supra, that the National Capital Park and Planning Commission might, if it chose, advance to the Maryland Commission the funds appropriated in the act of June 25, 1938, upon compliance with the conditions expressed therein. Also, it appears that the National Capital Park and Planning Commission, in advising the Maryland Commission that the funds would be available for checking until expended, did so under the impression that said funds were in effect held for the account of the Maryland Commission, since the Government's obligation, as established in contract No. HCP-915, was to pay to the Maryland Commission the amount of $300,000 upon delivery of the bonds described in the contract.

Taking the foregoing into consideration, this office would not object in this particular instance to restoring the funds in question to the credit of the chief disbursing officer upon submission of appropriate documents for the purpose as of June 30, 1941, and the issuance by him, also as of that data, of a check in favor of the Maryland National Capital Park Planning Commission for such amount as is properly due under contract HCP- 915.

Respectfully,

Lindsay C. Warren Comptroller General of the United States