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B-48590 April 3, 1945

Number: B-48590

Date: 1945-04-03

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Honorable Harry R. Sheppard, House of Representatives.

My dear Mr. Sheppard:

I have your letter of March 21, 1945, enclosing an opinion dated March 16, 1945, of Vincent D. Nicholson, Associate Solicitor of the Department of Agriculture, with respect to a loan which was made by the Rural Electrification Administration to the Texas Power Reserve Cooperative for the acquisition of two small pole treating plants and requesting advice as to whether a loan of that type is authorized under the provisions of existing law.

The said opinion is as follows:

"this loan was made to the Texas Power Reserve Electric Cooperative, which is a central, or federated, cooperative, the membership of which consists of 58 electric distribution cooperatives in Texas which have been financed by EEA. The loan was made to take care of an emergency situation in which the construction program of many of these cooperatives had been brought to a virtual standstill by reason of their inability to obtain treated poles. A committee representing these cooperatives visited pole suppliers generally throughout the area and received almost no encouragement with respect to deliveries. Many suppliers refused to accept any orders from the cooperatives and it appeared that other interests in the electric power and light field were receiving preferential treatment in deliveries. In at least one instance, a utility company obtained poles from a treating plant although the cooperative had received no deliveries on prior orders placed with this plant. The utility company used the poles for construction of certain lines in the area served by the cooperatives for the purpose of serving persons who were members of the cooperative and whom the cooperative had expected to serve. The cooperative was told by representatives of this treating plant that the utility company was an old customer and that they proposed to take care of its needs first."

"The committee representing the cooperatives with respect to this problem of obtaining poles discovered that two small creosoting plants were for sale and an application was made to the Rural Electrification Administration for funds with which to purchase these plants as a solution of the acute problem with which the cooperatives were faced in their construction program."

"It is my opinion that the loan is clearly within the lending authority conferred by the Rural Electrification Act of 1936. The sole purpose of the acquisition of these two pole treating plants was the furnishing of electric

service to persons not already served and, therefore, it would seem to fall exactly within the language of Section 4 of the Act. The loan contract with the borrower contains an express requirement that the plants shall be used exclusively for supplying poles to the member cooperatives."

"An electric distribution line cannot be build without poles and it is absolutely necessary for business and engineering reasons that the poles should be creosoted. Since treated poles were not available in sufficient quantities for these cooperatives to proceed with construction which had been approved by the War Production Board and for which the Rural Electrification Administration had already made loans, it seems clear that this loan for the treating of poles rests upon exactly the same authority as loans for the purchase of poles."

As you doubtless are aware, the jurisdiction of this office is such that authoritative decisions are authorized to be rendered only at the request of a disbursing officer, certain certifying officers, or the head of an executive department or other Government establishment except in connection with the review of specific claims which have been settled by this office.

However, it is deemed appropriate to invite your attention to the fact that the primary purpose of the Rural Electrification Act of 1936 is, as stated in section 2 thereof, 49 Stat. 1363 (7 U.S.C. 902), the making of loans "for rural electrification" and that section 4. Of the act, 49 Stat. 1365 (7 U.S.C. 904) provides:

"The Administrator is authorized and empowered * * * to make loans to persons, corporations, States, Territories, and subdivisions and agencies thereof, municipalities, peoples utility districts and cooperative, nonprofit, and limited-divided associations organized under the laws of any State or Territory of the United States for the purpose of financing the construction and operation of generating plants, electric transmission and distribution lines or systems for the furnishing of electric energy to persons in rural areas who are not receiving central station service * * *."

It is a well settled rule of statutory construction that the terms of a statute should be construed so as to effectuate the legislative intent. The specific power embodied in the above-quoted statutory provision is the power "to make loans" and, although the purpose for which a loan properly may be made necessarily are limited by the language appearing in the act, there would appear to be no doubt that the Congress contemplated that the extent of the Administrator's authority in this respect an any question as to whether the object of a loan in a particular case comes within his statutory power to make loans for the purpose of financing the construction and operation of generating plants, electric transmission and distribution lines or systems would be viewed in the light of the controlling intent of the Congress to provide electric services to persons in rural areas not receiving central station service.

In other words, it appears that the inquiry as to whether a particular loan come within the scope of the terms of section 4. Of the Rural Electrification Act is, in the final analysis, whether the loan has for its basic object the furnishing of electricity to persons in unserved rural areas; and since that question is for the determination of the Administrator his decision in the matter may not be challenged in the absence of evidence of an abuse of the discretion vested in him.

With respect to the specific loan involved in the above-quoted opinion, it appears to be clear from the factual data contained in the opinion that the loan was not made until after it became apparent that the acquisition of the pole treating plants covered thereby by the Texas Power Reserve Electric Cooperative -- a central or federated cooperative composed of 58 electric distribution cooperatives in the State of Texas which had been financed by the Rural Electrification Administration -- represented they only practical solution to the pole supply problem facing certain of the cooperatives engaged in the construction of electric distribution lines in that State. And there is nothing to suggest that the loan was designed to enable the borrower to furnish any part of the output of the plants to persons not actively engaged in the prosecution of the rural electrification program. On the contrary, it appears that the loan contract expressly stipulates that the plants shall be used exclusively for supplying poles to the member cooperatives and that fact, coupled with the other matters set for the view that the loan has as its sole purpose the accomplishment of a vital and necessary operation in connection with the construction of facilities for the furnishing of electric energy to unserved persons in rural areas and, therefore, properly may be regarded as coming within the scope of the provisions of section 4 of the Rural Electrification Act.

In accordance with your request, the above referred to opinion is returned herewith.

Sincerely yours,

(Signed) Frank L. Yates Acting Comptroller General of the United States.