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B-69238 September 23, 1948

Number: B-69238

Date: 1948-09-23

B-69238 September 23, 1948

Administrator,

Federal Works Agency,

My dear General Fleming:

Reference is made to your letter of August 19, 1958, requesting reconsideration of the decision of July 13, 1948, B-69238, in which it was held that there was no authority for the execution of certain cooperative agreements covering the preparation by the Federal Works Agency of documents incident to refunding the outstanding bonds and obligations of The Central Nebraska Public Power and Irrigation District, the Loup River Public Power District, and Platte Valley Public Power and Irrigation District, on a prepaid expense basis.

The conclusion in said decision of July 13 was based to a material extent upon the proposition--as stated in letter dated July 31, 1947, from the Fiscal Officer, Federal Works Agency--that the preparation of the refunding documents "is the function of the District which this Agency is under no obligation whatsoever to perform." You now assert that if such statement were interpreted to mean that you are not authorized to perform the work in question, the determination in said decision finding that no authority existed for the execution of the proposed agreements cannot reasonably be challenged. However, your letter purports to show that there is a clear implication of authority in Federal Works Administrator, in connection with the administration of the subject securities, to perform refunding operations if necessary to protect the interest of the Federal Government therein.

In view of the points brought out in your letter, this Office is not inclined to disagree with your position that under circumstances rendering the refunding operations essential to the efficient administration of the securities, such refunding operations properly may be undertaken by your Agency. But this does not mean that it is within your authority to carry out this function under cooperative agreements contemplating payment of the expense of the operations from funds received from private sources. While you contend that no funds have been appropriated by the Congress for the performance of such work, no reason is apparent why, if the services are necessary to the efficient liquidation of the Public Works Administration program, the funds made available to your Agency for, among other purposes, "the protection of the financial interests of the United States in such [Public Works Administration] projects" (act of June 28, 1944, 58 Stat. 602, 603, as extended), would not properly be chargeable with the expense involved. The mere fact that no budget estimates or requests for funds

to cover the operations were submitted to the Congress is not controlling.

The specific question which is posed for decision in your letter of August 19, 1948 is "whether in the light of these facts we can enter into agreements with the obligors under which the obligors will reimburse the Government for the cost of performing the refunding operation which are legally empowered to perform." But since all moneys received under any such agreements--even if the agreements were otherwise proper--would have to be covered into the miscellaneous receipts of the Treasury, under section 3617, Revised Statutes, 31 U.S.C. 484, I doubt that the question as posed is really the one upon which a decision is desired. I take it that what you actually wish to know is whether the refunding operations may be financed directly from funds received from the districts. With respect to that question, it still would have to be concluded that only upon the basis of specific statutory authority could there be established an account designed to receive moneys from private sources for use in defraying expensed of authorized activities of an agency of the Federal Government.

Your resubmission of this matter is answered accordingly.

Respectfully,

(Signed) Lindsay C. Warren Comptroller General of the United States