

Office Correspondence

FEDERAL RESERVE
BOARD

Date March 8, 1935.

To Governor EcclesSubject: Housing subsidy under pendingFrom Mr. Vest, Assistant Counsel.Emergency Relief Appropriation Act of 1935.

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In accordance with your suggestion I have talked with Mr. Frank Watson with regard to the provisions of the proposed Emergency Relief Appropriation Act of 1935 (hereinafter referred to as "the bill") which is now pending before the Senate. The bill which has been reported out by the Senate Committee on Appropriations provides an appropriation "to provide relief and work relief" and of the amount appropriated makes available \$450,000,000 for "housing".

OPINION

There is a possibility that those interpreting the law would be forced by the practical situation to give it a very liberal construction under which direct gifts or grants to individuals for private housing construction would be authorized. This, however, is open to serious question and it is more probable, in my judgment, that the Comptroller General would not recognize such an authority in the bill if passed in its present form. Certainly it cannot safely be assumed that the bill would be so interpreted as to uphold such an authority.

However, it is believed that the same result might be accomplished, indirectly and in a somewhat devious way, under the authority contained in the bill for the President to acquire real property or interest therein and to "grant, sell * * * or otherwise dispose of" such property.

DISCUSSION

In our discussion of this subject, Mr. Watson suggested that the provisions of the bill may, under a liberal construction, be interpreted as permitting grants and loans to finance private housing construction projects. In this connection he pointed out that there are a number of provisions in the bill whose interpretation is doubtful and that in order that the bill may be workable and practicable it will be necessary to interpret it in a liberal manner. For example, he suggested that although a sum is made available for public projects of States or political subdivisions thereof, there is no specific authority for loans or grants for this purpose. and, accordingly, that unless authority for such loans or grants is implied, the effect of the bill in this respect will be restricted to cases in which the Federal Government employs directly the workers on such projects (an impracticable interpretation which would substantially nullify the provision). He feels, therefore, that it is not improbable that a liberal interpretation will be forced upon those construing the statute, and that under such a liberal interpretation grants as well as loans might be made in the case of such public projects of States or political subdivisions and, on the same principles, that loans and grants could be made to individuals for private housing construction. He recognizes, however, that there is doubt as to whether this interpretation would be adopted.

I think it may be assumed that, under the rules relating to the interpretation of statutes, the provisions of the bill should be

liberally construed because of the remedial purpose involved and the obvious intent of Congress to confer broad and comprehensive authority upon the President. However, as a practical matter, the bill must be interpreted by the Comptroller General of the United States, and if he follows his usual practice in such matters, he will not be inclined to give the bill any broader construction than is clearly required by its provisions or clearly necessary in order to make the bill substantially workable. Accordingly, I feel that there is considerable doubt as to whether, as a practicable matter, such a liberal interpretation would prevail as to permit the funds allocated to housing to be used to make gifts or grants to private individuals for the purpose of housing construction (except through the indirect procedure hereafter described). In this connection it is to be noted that there were provisions in the bill as it passed the House which authorized the President "to make grants and/or loans and/or contracts", but this specific authority has been stricken from the now pending bill. Moreover it is believed that the courts or the Comptroller General would be naturally more reluctant to hold that Congress has, merely by implication, authorized appropriated funds to be given away than they would be to uphold an implied authority to make loans; and this would seem to be especially true as to cases in which the recipients would not be those who are themselves in need of relief, but presumably men of moderate circumstances able to finance at least a part of their home construction. A provision formerly in the bill to the effect that specific powers vested in the President by other

sections of the bill should not be construed as limiting the general powers and discretion vested in him by Section 1, has also been stricken out, a technical indication of an intent for a none too liberal construction.

In connection with this matter a recent decision of the Comptroller General is of interest. Congress appropriated \$3,300,000,000 to carry out the provisions of the National Industrial Recovery Act and provided that it might be expended "in the discretion and under the direction of the President" and it was contended that the authority of the President under this language was broad enough to permit expenditures in disregard of other laws. The Comptroller General stated: "This view overlooks the fact that when an undefined discretion is granted by law it is a legal discretion and not a discretion to disregard or to violate statutory law -- and that when a broader authority is intended, for instance, active disregard of other laws, the form of legislation long followed by the Congress has been to specifically include the words 'notwithstanding the provisions of other laws' or other words having like meaning."

Authority to Acquire and Dispose of Real Estate.

Even though the bill is construed as not authorizing direct gifts or grants to individuals for private construction, the provisions of section 4 of the bill would seem broad enough to permit the same result to be accomplished through an indirect and rather roundabout method which might or might not be found practical. This section authorizes the President, within the limits of the appropriation made in section 1, to

acquire by purchase or by the power of eminent domain any real property or any interest therein and to improve, develop, grant, sell, lease or otherwise dispose of such property or such interest. Under this it would seem that the President would be authorized, in order to provide "relief" or "work relief" to purchase a lot or an interest therein and grant or give the same to an individual on condition that he erect a building on such lot; or the President might purchase an interest in a lot owned by a certain individual with an agreement to reconvey the same to such individual without consideration when the latter had erected a residence or other building thereon. This procedure would be cumbersome and somewhat impractical but I believe that it would be permissible under the terms of the bill.

The argument may be made that the word "grant" in this connection does not authorize an outright gift but merely a conveyance of property for a consideration. The bill, however, apparently uses the word "grant" in contradistinction to the words "sell" and "lease", and, moreover, the word "grant" means to give.

While this method may be cumbersome and not at all practicable in many cases, it does seem to be a possible course of action which might be legally justified under the terms of the present bill.

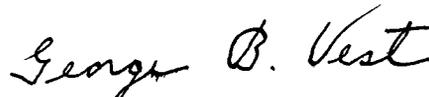
Possible Revision of Bill in Conference.

It is quite probable that in the consideration of the bill in conference between the House and Senate, considerable revision of its provisions will be necessary, because there is so much doubt as to the correct interpretation of its various provisions that it may be regarded

as impracticable or non-workable in its present form. It is possible that in conference the provisions of the House bill will be in large measure restored, which would probably mean the incorporation of provisions in effect authorizing grants for private housing construction. This, of course, is problematical at this time. In my judgment, there can be no reasonable certainty that funds appropriated by the bill may be used for gifts of grants (except by the devious method described) unless the point is specifically covered or unless a provision similar to that contained in the bill as it passed the House authorizing the making of grants and/or loans is restored to the bill.

Attention is invited to Section 8 of the bill as now pending which requires all mechanical sanitary work on construction projects undertaken under the bill to be let separately and by contract and awarded to the lowest qualified bidder. A requirement of this kind may be found to be an obstacle in connection with making grants or loans for private housing construction, as many individual home builders would not care to have separate contracts for plumbing and to award such contracts to the lowest qualified bidder.

Respectfully,



George B. Vest,
Assistant Counsel.