

1-3-1894

J. K. White. Letter from the Acting Secretary of the Treasury, transmitting an estimate of appropriation submitted by the Secretary of the Interior to pay J. K. White for drawings, etc., for buildings at the site of Lower Brule Agency, S. Dak.

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Recommended Citation

H.R. Exec. Doc. No. 53, 53rd Cong., 2nd Sess. (1894)

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J. K. WHITE.

L E T T E R

FROM

THE ACTING SECRETARY OF THE TREASURY,

TRANSMITTING

An estimate of appropriation submitted by the Secretary of the Interior to pay J. K. White for drawings, etc., for buildings at the site of Lower Brule Agency, S. Dak.

JANUARY 4, 1894.—Referred to the Committee on Indian Affairs and ordered to be printed.

TREASURY DEPARTMENT, *January 3, 1894.*

SIR: I have the honor to transmit herewith, for the consideration of Congress, an estimate of appropriation, submitted by the Secretary of the Interior on the 28th ultimo, to pay the claim of J. Kenneth White for drawings, etc., for buildings at the site of Lower Brule Agency, S. Dak., \$183.33.

Respectfully yours,

W. E. CURTIS,
Acting Secretary.

The SPEAKER OF THE HOUSE OF REPRESENTATIVES.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, December 26, 1893.

SIR: I have the honor to state that by authority of the Department of June 24, 1893, and upon the recommendation of this office, J. Kenneth White, a skilled tracer, was employed to assist the draftsman of this office in preparing the drawings and sketches of the agency buildings to be constructed on the Lower Brule Reservation, S. Dak., for the reason that in the consolidation of the Crow Creek and Lower Brule agencies the drawings made for the buildings to be erected were found to be very defective, that it was necessary to go over the whole work, and that as there were but two persons in the employ of this office skilled in this kind of work, it was necessary to have further assistance in order to complete the drawings in a reasonable time.

The claim of Mr. White was submitted to the accounting officers of the Treasury for settlement, but when it reached the Second Comptroller the same was disallowed, for the reason that the appropriation "consolidating Crow Creek and Lower Brule agencies, S. Dak.," did not specifically authorize the employment in the Indian Bureau, in any capacity, of the claimant or any other person, and the allowance and payment of his claim would be a direct violation of the letter and spirit of section 4 of the act of August 5, 1882 (22 Stat., 255).

The Comptroller states that the services were rendered, the compensation just and reasonable, and all the equities in favor of the claimant are not denied.

Under date of the 6th day of September, 1893, upon the recommendation of this office, the Department granted authority for this office to expend a sum not exceeding \$183.87 in the open-market purchase from J. Kenneth White of the plans and tracings for the several agency buildings proposed to be erected at the new site for the Lower Brule Agency, S. Dak., required for use in the erection of said buildings.

A claim for the above sum in favor of Mr. White was submitted for the action of the Auditor and Comptroller, but the latter officer again disallowed said claim, for reasons stated in his communication of the 20th of September to the Department, conceding at the same time that he had a just claim for work, but that he must appeal to Congress for his compensation.

The Department, under date of the 22d of September, 1893, informed this office that in view of this decision and the fact that the services of Mr. White were rendered the Government under the authority of the Department and the Civil Service Commission, directed that an item be included in one of the appropriation bills providing for the payment of this claim, and that said item be accompanied by all the correspondence had in the matter.

With this end in view I submit herewith, in triplicate, copies of the correspondence, together with a proviso, to be attached to some item in the Indian appropriation bill now being formulated for the fiscal year ending June 30, 1895, authorizing the Secretary of the Treasury to pay the amount of said claim out of the sum of \$50,000 appropriated by act approved March 3, 1893, "For removal, etc., of Lower Brule Agency."

Very respectfully, your obedient servant,

D. M. BROWNING,
Commissioner.

The SECRETARY OF THE INTERIOR.

DEPARTMENT OF THE INTERIOR,
December 28, 1893.

Respectfully forwarded through the honorable Secretary of the Treasury with the recommendation that the inclosed draft of an item be inserted in the Indian appropriation bill authorizing the payment of the claim of Mr. White out of the appropriation of \$50,000 for "Removal of Lower Brule Agency," approved March 3, 1893.

HOKE SMITH,
Secretary.

DEPARTMENT OF THE INTERIOR, OFFICE OF INDIAN AFFAIRS,
Washington, June 23, 1893.

SIR: The Indian appropriation act approved March 3, 1893, appropriates the sum of \$50,000, or so much thereof as may be necessary, for the removal of the Lower Brule Agency and its consolidation with the Crow Creek Agency in South Dakota,

for construction of agency buildings on the Lower Brule Reservation, and to complete the industrial school at Chamberlin, S. Dak.

Some time ago this office called upon the agent to prepare the necessary sketches for the required agency buildings. These sketches, having been received, are found to be very defective, so much so that it is necessary to go over the whole work and prepare a full set of plans and specifications for the construction of the building.

There are but two persons in the employ of this office skilled in this kind of work, and in order to complete the drawings within a reasonable time it will be necessary to have some further assistance. Without it the completion of the work will be delayed beyond the time when it really ought to be done. I therefore have the honor to recommend that I be authorized to expend a sum not to exceed \$100 in the employment of a skilled tracer to assist the draftsman of this office in preparing the required drawings, to be paid out of the appropriation above referred to. It is respectfully requested that the authority be given at the earliest possible date.

Very respectfully, your obedient servant,

D. M. BROWNING,
Commissioner.

The SECRETARY OF THE INTERIOR.

DEPARTMENT OF THE INTERIOR,
Washington, June 24, 1893.

SIR: In compliance with the recommendation contained in your communication of 23d, instant, authority is hereby granted for your office to expend a sum not exceeding \$100 in the employment of a skilled tracer to assist the draftsman of your office in preparing the drawings and sketches of the agency buildings to be constructed on the Lower Brule Reservation, S. Dak., for the reasons stated in your letter that in the consolidation of the Crow Creek and Lower Brule agencies the drawings made for the buildings to be erected were found to be very defective and that it will be necessary to go over the whole work, and that as there are but two persons in the employ of your office skilled in this kind of work it will be necessary to have further assistance in order to complete the drawings within a reasonable time, payable from funds applicable.

Very respectfully,

JNO. M. REYNOLDS,
Assistant Secretary.

The COMMISSIONER OF INDIAN AFFAIRS.

TREASURY DEPARTMENT, OFFICE OF THE SECOND COMPTROLLER,
Washington, D. C., August 21, 1893.

SIR: I have received, by your reference of the 17th instant, a communication from the Commissioner of Indian Affairs, with inclosures, recommending that the claim of J. Kenneth White for services as assistant draftsman in the Office of Indian Affairs during the month of July, 1893, be returned to this office, under the provisions of section 191 of the Revised Statutes, for reconsideration and appropriate action.

Mr. White's claim was disallowed on the 14th instant, for the reason that the appropriation charged "Consolidating Crow Creek and Lower Brule agencies, S. Dak.," did not specifically authorize the employment in the Indian Bureau in any capacity of the claimant or any other person, and the allowance and payment of his claim would be a direct violation of the letter and spirit of section 4 of the act of August 5, 1892 (22 Stat., 255). My views as to the construction to be given that section are more fully set forth in a letter addressed to Pay Inspector T. T. Caswell, U. S. Navy, dated the 7th instant, a copy of which is furnished herewith for your consideration.

Since writing that letter and disallowing the claim of Mr. White, I have found that the Court of Claims in the case of Nathan Plummer v. The United States (24 C. Cls. R., 517) passed upon the identical question at issue, and held that the evident purpose of Congress in passing the act of August 5, 1882, was "To deprive officers of the Government of all authority to employ in any of the Executive Departments at the seat of Government, or in the subordinate bureaus or offices thereof, civil officers, clerks, draftsmen, copyists, * * * except such as may be specifically appropriated for."

That the services were rendered, the compensation just and reasonable, and all the equities in favor of the claimant are not denied; but, after a careful review of all

the facts in the case, and with the act of August 5, 1882, and the decision of the Court of Claims in view, I am unable to see how I can consistently either modify or reverse my former action in this case.

The inclosures accompanying the commissioner's letter are herewith returned,
Very respectfully,

C. H. MANSUR,
Second Comptroller.

Hon. WM. H. SIMS,
Acting Secretary of the Interior.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, August 31, 1893.

SIR: I have the honor to acknowledge receipt, by Department reference of August 24, 1893, of a communication from the Second Comptroller of the Treasury, dated August 21 last, adhering to his disallowance of August 14, 1893, of the claim of J. Kenneth White, for services as assistant draftsman in this office, preparing plans and tracings for certain buildings proposed to be erected at the new site for the Lower Brule Agency, S. Dak.

The honorable Comptroller states that Mr. White's claim was disallowed on the 14th instant for the reason that the appropriation charged "Consolidating Crow Creek and Lower Brule agencies S. Dak," did not specifically authorize the employment in the Indian Bureau in any capacity of the claimant or any other person, and that the allowance and payment of his claim would be a direct violation of the letter and spirit of section 4 of the act of August 5, 1882 (22 Stat., 255).

He further states that the services were rendered by Mr. White, the compensation was just and reasonable, and all the equities in favor of claimant not denied; but after a careful review of the facts in the case, with the act of August 5, 1882, and the decision of the Court of Claims in the case of Nathan Plummer v. The United States (24 C. Cls. R., 517, cited in said letter), he is unable to see how he can consistently either modify or reverse his former action in the case.

In view of the conclusion reached by said honorable Comptroller, "that the services were rendered, the compensation just and reasonable, and all the equities in favor of claimant are not denied," and as considerable delay and inconvenience will necessarily arise in case Mr. White has to go to Congress for relief in this matter, I have the honor to return the papers in the case with the recommendation that authority be granted for this office to purchase in open market, from J. Kenneth White, for the sum of \$183.87, the plans and tracings for the several agency buildings proposed to be erected at the new site for the Lower Brule Agency which he actually prepared; said plans and tracings now being in the possession of and used by this office; payment therefor to be made from the appropriation "consolidating Crow Creek and Lower Brule agencies, South Dakota."

Very respectfully,

D. M. BROWNING,
Commissioner.

The SECRETARY OF THE INTERIOR.

DEPARTMENT OF THE INTERIOR,
Washington, September 6, 1893.

SIR: In compliance with the recommendation contained in your communication of 31st ultimo, authority is hereby granted for your office to expend a sum not exceeding \$183.87 in the open market purchase from J. Kenneth White, of the plans and tracings for the several agency buildings proposed to be erected at the new site for the Lower Brule Agency, S. Dak., required for use in the erection of said buildings, for reasons fully set forth in your letter above noted; payable from funds applicable.

The inclosures of your letter are herewith returned.
Very respectfully,

JNO. M. REYNOLDS,
Acting Secretary.

The COMMISSIONER OF INDIAN AFFAIRS.

TREASURY DEPARTMENT,
OFFICE OF THE SECOND COMPTROLLER,
Washington, D. C., September 13, 1893.

SIR: Referring to claim of J. Kenneth White, for plans and tracings furnished by him of buildings for new Lower Brule Agency, S. Dak., amounting to \$183.33, now before this office for adjustment, I will thank you to furnish me with a copy of your letter, dated the 31st ultimo, to the Secretary of the Interior, recommending the open-market purchase of said plans and tracings.

Very respectfully,

C. H. MANSUR,
Second Comptroller.

Hon. D. M. BROWNING,
Commissioner of Indian Affairs.

TREASURY DEPARTMENT,
OFFICE OF THE SECOND COMPTROLLER,
Washington, D. C., September 20, 1893.

SIR: This office is in receipt of a claim in favor of J. Kenneth White, amounting to \$183.33, for "plans and tracings" furnished by him of buildings for new Lower Brule Agency, S. Dak., purporting to be an open-market purchase under authority dated September 6, 1893.

On August 8, 1893, a claim for services of Mr. White, as assistant draftsman in the office of Indian Affairs, during the month of July, 1893, for \$100 was received, from which it appears that on the 29th of June you appointed the claimant "an assistant draftsman in the office of Indian Affairs at a salary of \$100 per month payable from and limited to the authorization of 24th instant for expenditure of \$100 for this service."

This claim was disallowed August 14 as being in direct violation of the law as found in the act of August 5, 1882 (22 Stat., 255).

On August 16, the disallowed claim was again transmitted to this office, under the provisions of section 191 of the Revised Statutes, for reconsideration and appropriate action, and on August 21 I addressed a letter to the then Acting Secretary of the Interior, reaffirming my former action in disallowing the claim, and cited in addition to the act of August 5, 1892, the case of Nathan Plummer v. The United States (24 C. Cls. R., 517) as being in point.

On August 31 it appears that the Commissioner of Indian Affairs addressed a letter to you, recommending that authority be granted for the purchase in open market, from J. Kenneth White, for the sum of \$183.67, of the plans and tracings, "said plans and tracings now being in the possession of and used by this Indian Office."

It is submitted that as the "plans and tracings" in question were in the possession of the Indian Office there was not such an exigency as would warrant a resort to the law providing for open-market purchases. Nor can I perceive how that could be purchased in open market which was already in the possession of and used by the Government. The claimant was at work upon a salary for the Government when he made the plans and tracings of the said buildings, and presumably they were made upon paper the property of the United States. That he has a just claim for work may be conceded, but he must appeal to Congress for his compensation, and until Congress authorizes his payment there is no law known to the accounting officer by which his claim can be allowed. The principle that what can not be done directly under the law can not be done indirectly is so well established that I am unable to approve the claim and same will be disallowed.

Very respectfully,

C. H. MANSUR,
Second Comptroller.

Hon. HOKE SMITH,
Secretary of the Interior.

DEPARTMENT OF THE INTERIOR,
Washington, September 22, 1893.

SIR: I transmit herewith a communication dated 20th instant from the honorable Second Comptroller of the Treasury relative to the claim of J. Kenneth White for \$183.33 for plans and tracings furnished by him of buildings for the new Lower Brule Agency, S. Dak.

The Comptroller states "that he has a just claim for work may be conceded, but he must appeal to Congress for his compensation and until Congress authorized his

payment, there is no law known to the accounting officers under which his claim can be allowed."

In view of this decision and the fact that the services of Mr. White were rendered the Government under the authority of the Department and the Civil Service Commission, I have to direct that an item be included in one of the appropriation bills providing for the payment of this claim and that said item be accompanied by all the correspondence had in the matter.

Very respectfully,

WM. H. SIMS,
Acting Secretary.

The COMMISSIONER OF INDIAN AFFAIRS.

ITEM.

Consolidating Crow Creek and Lower Brule agencies, South Dakota: That the Secretary of the Treasury be, and he hereby is, authorized and directed to pay to J. Kenneth White the sum of \$183.33 for plans and tracings furnished by him of buildings for new Lower Brule Agency, S. Dak., under authority of the Secretary of the Interior, out of the appropriation of \$50,000 appropriated by act approved March 3, 1893, "for removal of Lower Brule and consolidating with Crow Creek Agency in South Dakota, and for construction of agency buildings at some place on the Lower Brule Reservation, and to complete the Indian industrial school at Chamberlain, S. Dak."

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