

FILE NO. 71986

February 7, 1941

Mr. George Cobb  
Chief Engineer  
Municipal Building

ATTENTION OF MR. PHILLIPS

Dear Sir:

You have requested an opinion from this office regarding the right of the United States of America to condemn and close Custom House Alley, and perhaps a portion of Lombard Street.

I did advise you that the recent condemnation proceedings, instituted by the United States of America, to acquire property situated between Water and Lombard Streets, do not include any part of Custom House Alley, but that the Mayor and City Council of Baltimore was made a party to the proceedings solely because of its tax liens against the properties to be condemned.

The right of eminent domain may be exercised by the United States within any state, if so authorized by an Act of Congress, and if such Act provides that the state shall relinquish jurisdiction over that property, by an appropriate act of the state's own legislature. Article 96, Section 31, of the Public General Laws of Maryland, gives the consent of the State of Maryland to the acquisition by the United States of America of any land in this state required for any purposes of the United States Government. The question, therefore, is solely whether the constitution and statutory provisions are sufficient to authorize specifically the taking of property already devoted to a public use.

I have found several decisions which have direct bearing on this point. The case of United States vs. Denton, 30 Fed. Supplement, 372, arose from the condemnation of a portion of the Court House green of the Town of Denton, Maryland, for a post office. Some citizens of Denton, including the state judges of the circuit, contended that while the United States Constitution, and Article 96, Section 31, of the General Assembly of Maryland, give full power to the United States to condemn private property, they do not give the power to condemn property already in public use. Judge Chesnut decided that the United States of America has the right to select sites for its buildings, which are already in public use, if it does not act arbitrarily or without