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Tennessee volunteers (to accompany bill H. R. no. 916).

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TENNESSEE VOLUNTEERS.

[To accompany bill H. R. No. 916.]

FEBRUARY 8, 1837.

MR. E. WHITTLESEY, from the Committee of Claims, made the following
REPORT :

The Committee of Claims, to which was referred "so much of the President's message as relates to such of the Tennessee volunteers as presented themselves at the places of rendezvous in Tennessee, and were not mustered into the service, but rejected;" and which was instructed by a resolution of the House of Representatives, passed on the 16th of December last, "to inquire into the expediency of making suitable compensation for the expenses incurred by the volunteers or militia in equipping for a campaign, and who were received into the service of the United States, but immediately discharged, as may seem just," and to which was referred a memorial of the Legislature of the State of Tennessee, asking for indemnity for losses sustained and services performed by certain volunteer militia of said State, under the requisitions of General Gaines and of the Secretary of War, during the year 1836; and to which was referred the petition of Captain Fair and his officers, on behalf of themselves and their company, who volunteered under the proclamation of Governor Cannon of the 6th of June, 1836, were mustered into service, and dismissed without pay; and to which was referred the petition of Captain Richard Warner and other officers, praying compensation for losses and expenses of a company of Tennessee volunteers commanded by them, which volunteered twice under the proclamation of the Governor of the State of Tennessee, but were dismissed; report, in part:

The memorial of the Legislature of the State of Tennessee presents the main facts, and the committee refer to it as an appendix of this report.

The subject of these claims was brought to the attention of the Legislature of Tennessee at its late session, by the Governor of that State, and by resolutions and memorials, and was referred to a select committee. That committee made a detailed report on the 18th of October last, to which this committee refer in the appendix.

It is proposed, by the bill herewith reported, to make provision for those who volunteered and whose services were accepted, and who were mustered into the service either under General Gaines's first or second call, or under the proclamation of Governor Cannon of June 6th, 1836, issued under a requisition of the Secretary of War, dated May 25, 1836; those who volunteered under the proclamation of June 6th, and were mustered

into the service, and were dismissed or discharged, are those who were under the command of General Wool.

The special committee in Tennessee included all those who were mustered under the first and second orders of General Gaines, and under the proclamation of the 6th of June, in one class—making two divisions, however, in this class, and including in the first division those who were mustered under General Gaines's requisition, and including in the second division those who were mustered into the service under the proclamation of June 6th, and dismissed or discharged by General Wool.

The committee having the subject now under consideration, inform the House that, if the volunteers under the first and second requisitions of General Gaines were paid according to the laws in force at the times they respectively volunteered, the rule of compensation as to clothing would be different.

General Gaines, on the 8th of April, 1836, requested Governor Cannon to furnish, without delay, a brigade of mounted volunteers, to consist of two or three battalions, to repair to the headquarters of the western department of the army, at Natchitoches, Louisiana, for the protection of that frontier. On the 28th of April, Governor Cannon issued his proclamation calling on the militia of Tennessee to volunteer their services. Sixteen companies were mustered into the service under this proclamation.

General Gaines, on the 28th of April, by a letter of that date, informed Governor Cannon that the Indians were peaceably disposed, and desired him to suspend the movements of the volunteers called for by his letter of the 8th. He further informed Governor Cannon, "if the reports of the peaceable disposition of the Indians should be confirmed, he would send an officer of the army to muster the volunteers and discharge them." That duty was performed by Captain Wickliffe, of the United States army. Muster-rolls of the sixteen companies mentioned were returned to the War Department.

Captain Cannon and his company also volunteered at the same time, and their services were accepted; but they failed to reach the place of rendezvous, in consequence of the delay in the mail containing an order to him to repair to Knoxville or Nashville. Captain Darnel and his company, and Captain Totten and his company, volunteered at the same time, but they did not rendezvous at Jackson. The rolls of these three companies have not been returned to the War Office.

The act in force at that time was the act passed on the 19th of March, 1836. The first section of that act provides "that the officers, non-commissioned officers, musicians, artificers, and privates of volunteer and militia corps, who have been in the service of the United States at any time since the first day of November, in the year of our Lord one thousand eight hundred and thirty-five, or may hereafter be in the service of the United States, shall be entitled to and receive the same monthly pay, rations, clothing, or money in lieu thereof, and forage, and be furnished with the same camp equipage, including knapsacks, as are or may be provided by law for the officers, musicians, artificers, and privates of the infantry of the army of the United States."

When that law was passed, and when the troops mentioned volunteered their services, the infantry of the army of the United States were allowed for their clothing according to the period of their service. The value of

clothing, for a year, was established, and payment was made on a per diem calculation for the period of actual service.

The necessity of reciting the section mentioned, and of stating the rule of allowance, will be made apparent by a subsequent part of this report.

When General Gaines wrote to Governor Cannon, on the 8th of April, 1836, he also addressed a letter to the Secretary of War, informing him of the requisition he had made on the Governor of Tennessee. The Secretary of War received that letter on the 4th of May, and, under that date, informed Governor Cannon he was instructed by the President to request his excellency to call into the service of the United States the number of militia which had been, or might be, required by General Gaines to serve not less than three months after their arrival at their places of rendezvous, unless sooner discharged.

Governor Cannon wrote to the Secretary of War, on the 28th of April, and apprized him he had complied with the requisition of General Gaines, and had called on the militia to volunteer for six months.

This letter did not arrive at Washington until the 9th of May. On that day the Secretary of War wrote to Governor Cannon acknowledging the receipt of his letter of the 28th of April, and, after adverting to and stating the contents of his letter of May 4th, he says: "I presume that, agreeably to the provisions of the act of February 28, 1795, the term of service of the troops thus called out cannot be extended beyond three months, and this is the term stated in my letter to you of the 4th instant; where, however, the numbers are supplied by volunteers, I am not aware that there is any legal objection to their term of service reaching six months; and this arrangement is certainly more efficient and economical for the United States, and the President approves it."

The foregoing, in the opinion of the committee, shows that the volunteers mustered under General Gaines's first call were in the service of the United States, and liable to do duty for the period of six months. It appears from the rolls, they were mustered into the service at different periods in May, and were discharged at the following periods, to wit: three companies on the 31st of May; two companies on the 10th of June; seven companies on the 16th of June; and four companies on the 23d of June.

On the 23d of May, 1836, Congress passed an act entitled "An act authorizing the President of the United States to accept the services of volunteers, and to raise an additional regiment of dragoons or mounted riflemen.

The first section authorizes the President of the United States to accept the services of ten thousand volunteers to serve six or twelve months. They were to furnish their own clothes.

The second section, among other things, provided that the said troops, when called into actual service, should be placed on the same footing with similar corps of the United States army, except as to clothing; and, in lieu of clothing, every non-commissioned officer and private should be entitled, when called into actual service, to receive, in money, a sum equal to the cost of the clothing of a non-commissioned officer or private (as the case might be) in the regular troops of the United States.

The Secretary of War, on the 25th, enclosed a copy of the act of the 23d of May to Governor Cannon, and said, he was instructed by the President to request that he cause to be raised, in the State of Tennessee, two thousand five hundred volunteers, to be called into the service of the United States when they might be required. In relation to the clothing, he

said: "It is proper to observe, that the provision in the second section of the act of May 21, [23] 1836, which allows to volunteers a commutation for clothing, when called into actual service, must be construed to give them a claim for such commutation from that time, which will be paid to them at the same time and in the same manner as they receive their monthly pay. No other construction can be given to the law, as it is impossible to tell, till the end of the service, the whole amount of commutation which will be due to a volunteer."

This construction of that part of the act relating to clothing proceeds on the ground that the allowance for clothing was to be in proportion to the period of service; and, in that particular, is in accordance with the act of March 19, 1836, and other acts regulating the infantry of the army of the United States.

In giving a construction to the second section of the act of May 23, 1836, the Attorney General, on the 3d and 8th of November, 1836, decided that the non-commissioned officers and privates, called into service, and accepted under the authority of that act, were entitled to the full amount of pay for their clothing, for the period for which they volunteered, whether for six or twelve months, at the time they so entered the service. It does not appear why the phraseology of the two acts varied; but that there is a variation is too apparent to deny, and this committee concur with the Attorney General in the construction given by him to the said section.

His decision relates to those mustered into actual service. Governor Cannon having received the letter from the Secretary of War, last mentioned, issued his proclamation, on the 6th of June, calling on the citizens of Tennessee to volunteer to the number of two thousand five hundred, and accompanied it with the letter from the Secretary of War. He said, that "those companies of volunteers heretofore organized and reported, under the proclamation of the 28th of April last, by the requisition of General Gaines, and now under orders to be discharged from that service, will be received, under the present call, by companies, and mustered into the service," &c. He then states that other companies would be received, and designates the places where, and the times when, they will be mustered.

It appears from the copy of a letter written by the Secretary of War on the 20th of June, 1836, that, on the 7th of the same month, Governor Cannon informed the Secretary of War of his proceedings under this law of May 23, and under the requisition of the Secretary of the 25th of the same month; and, in reply, he says: "I have had the honor to receive your letter of the 7th instant on the subject of the quota of volunteers assigned to the State of Tennessee, and I am directed by the President to express to you his gratification at the prompt measures you have adopted in order to raise these troops."

More volunteered under this proclamation than the quota assigned to the State of Tennessee, and Governor Cannon has been censured for not apportioning the requisition to the different regiments of militia, so as to obtain the proper number of troops and no more.

If Governor Cannon had apportioned the number to be raised in each regiment, there would not have been any supernumeraries; but his course was approved, at the time, by the President.

General Gaines, on the 28th of June, 1836, requested Governor Cannon to furnish him with a regiment of mounted gun-men, volunteers if practi

cable, to consist of ten companies, to be enrolled, and to repair to the headquarters of the western department, at Camp Sabine, in companies or in a body, as might be found most convenient, by the way of Little Rock, Arkansas.

On receiving this last-mentioned requisition, Governor Cannon issued his proclamation bearing date on the 20th of July, 1836, and thereby called on Captains Totten, Darnel, Dunlap, Hays, Neely, Curry, Yoakum, Jetton, Rogers, and Turney, to enter the service with their respective companies. In giving these companies the preference to others, he says: "The Executive has adopted this course, not only in compliance with the request of General Gaines heretofore communicated, but as an act of justice to those volunteers who were discharged or rejected without adequate compensation for the many sacrifices to which their patriotism had subjected them, and to guard against similar disappointments in future."

Rolls of eight companies, under this requisition, have been returned to the Adjutant General's office. Three only of the captains designated, to wit, Darnel, Neely, and Yoakum, are on these rolls. It is said there were changes in the several companies that volunteered under the first requisition, subsequent to the time of their being dismissed, and before they were called on to volunteer again, either under the proclamation of the 6th of June, or that of July 20. What number of the same officers or men volunteered under two or more of these requisitions, it is not within the power of the committee at present to determine.

The memorial of the Legislature of Tennessee states that "the message of the 8th of October exhibits the numbers that volunteered, organized, and reported under the different calls. But many of the companies reported under every proclamation, and are, therefore, thrice counted."

The President of the United States, under date of August 5, 1836, disapproved of the requisition of General Gaines, and ordered Governor Cannon to dismiss the troops who had volunteered their services under it.

In the letter addressed to Governor Cannon, the President says: "I would barely add further, that the authority given you by the order of the 4th of May having been satisfied, by yielding to the requisition of General Gaines, a new authority from the Department of War was necessary to authorize you to comply with that of the 28th of June."

If the committee concurred in the opinion expressed by the President, it would be a subject of doubt with them whether the United States should discharge a debt thus erroneously or illegally incurred; but, on recurring to the order of the 4th of May, it appears to the committee that Governor Cannon's authority was plain and explicit. The Secretary said:

"I am instructed by the President to request your excellency to call into the service of the United States the number of militia which have been, or may be required, by General Gaines." And in a subsequent letter, he approves of volunteers.

Those who volunteered under the Governor's proclamation, of the 6th of June and the 20th of July, and were received into actual service, are entitled to pay for clothing under the act of May 23, 1836.

The memorialists complain that they incurred great expenses in equipping themselves for the service, in the purchase of clothing, horses, and accoutrements, and that many of them lost their crops for that season; while others say they abandoned their pursuits and callings, and, being dismissed

the service, they were without profitable employment for the remainder of the year.

Under these circumstances, they call on the United States to be just, if they cannot be liberal.

The select committee of the Legislature of Tennessee found great difficulty in fixing on any rate of compensation that would not be exceedingly onerous on the State, if any thing like a remuneration should be made to the patriotic volunteers for the expenses they had incurred, and for the losses they had sustained. After mature deliberation, they recommended that three months' extra pay, amounting to sixty-nine dollars and seventy-five cents, be allowed to those who were mustered into the service under General Gaines's requisitions, and under the proclamation of the 6th of June.

They say there were four companies who tendered their services to Governor Cannon, at Fayetteville, but were not received, because the requisition was full before they arrived; and that twenty-three companies organized and were reported under the various calls, who did not attend the places of rendezvous, by reason of orders from the Governor, or other intelligence that their services were dispensed with by the General Government, or by their officers. They recommend that these twenty-seven companies be allowed half as much as those mentioned above, or \$34 87½ each.

It is understood that the bill that accompanied the report of the select committee was not passed into a law, but was superseded by a proposition to submit the subjects contained in the report to the favorable consideration of Congress.

This committee do not doubt the expenses and losses of the volunteers who were received into the service were great, and, to very many of them, embarrassing; but no Government has attempted to remunerate all the expenses and losses her citizens or subjects encountered preparatory to a war, or in prosecuting it. These burdens have fallen on different and distinct sections of this country, at different periods of its history. The ships of our merchants rotted at the wharves during the existence of the embargo and non-intercourse acts, previous to the late war with Great Britain. The commerce of the country was suspended, if not annihilated, and men of wealth were reduced to want. After the war was declared, the whole northern and northwestern frontiers were laid waste. The inhabitants on the Chesapeake, and on its tributary waters, and on the southern sea-board, were annoyed by the enemy, and their buildings burnt and their crops destroyed. Those at New Orleans, and in its vicinity, incurred heavy losses. The militia and the citizens in the interior of the country, remote from the march of the invading enemy, with great alacrity repaired to the frontiers, whenever they were threatened by the enemy, or actually in his possession. Tennessee and Kentucky bore their share of the dangers of the war, and won imperishable renown. At a more recent date, the inhabitants of Indiana, Illinois, and Michigan, have borne the burdens and encountered the dangers of an Indian war. In the instances referred to, the pay of all who entered into the military service of the United States was regulated by law. Thousands left their homes in security, and voluntarily repaired to the nearest scene of danger on every sudden emergency, at the sacrifice of their business, and incurred heavy expenses in their equipments. Very many of them were not paid for the time they spent in the public service: but none were remunerated for their losses or extraordinary expenses.

Patriotism consists in love of country; and the evidence of that is mani-

tested by sacrificing time and property in maintaining her rights, and periling life in her defence.

Whenever these sacrifices are fully remunerated by money, patriotism is sunk in sordid avarice.

The committee will not draw any invidious distinction between the citizens of different States; but it is due to the memorialists to say, they have, to the recent requisitions, promptly responded, by a voluntary tender of their services, not in defence of their own soil, but in defence of remote and distant points. They were tendered under existing laws, and, when accepted, the liabilities and duties of the respective parties were well defined and made known.

The motive that governed the volunteers was a high sense of duty, arising from an ardent love of country. All they can ask is, that the Government of the United States pay what it promised. Whatever sacrifices beyond this they have made, are voluntary offerings to the cause of freedom, which money cannot, nor should, compensate.

It has been the policy of the United States to give encouragement to volunteers. When militiamen are called into the service by draughts, families are frequently left in great indigence and want. A poor man cannot hire a substitute; and if he leaves his family in distress from indigence or sickness, he counts the hours when he shall discharge the duty of husband and parent.

Volunteers are generally those without families; or, if otherwise, they leave them in comfortable health, and with the means of support.

These are some of the reasons which have operated in giving a preference to volunteers.

The volunteers under General Gaines's first call incurred the same expense as those who volunteered under the proclamation of the 6th of June, or that of the 20th of July. They volunteered for the same service, and if they had not been dismissed, all would have shared the same perils and dangers.

The committee see no reason why they should not be put on the same footing as to clothing. When they volunteered, both expected to be paid for their clothing by the month; and it is owing to the act of May 23, 1836, and to the construction given by the Attorney General to it, different from the construction of the then Secretary of War, that gives pay for clothing to one class, and withholds it from the other.

It was the evident design of Congress, by directing that the clothing be paid for at the commencement of the service, to compensate the volunteers for extraordinary expenses. These expenses are a part of the contract the moment he enters the service. His time is paid for, according to the period he serves, when pay for clothing is in the nature of bounty.

By paying for the clothing and for the time of service, the system is uniform.

The committee applied to the Paymaster General for estimates as to those called out under General Gaines's first and second order, and under the proclamation of the 6th of June.

These have been furnished, accompanied by an explanatory letter.

First call by Gen. Gaines: pay, travelling, and expenses that will probably arise				\$60,000
Allowance for clothing	-	-	-	40,000
Volunteers under the proclamation of 6th of June	-	-	-	95,000
Second call by Gen. Gaines	-	-	-	35,310
				<u>\$230,310</u>

A part of the volunteers under the first call volunteered under the subsequent requisitions; and it is the opinion of the committee they should be paid for clothing but once, unless they volunteered more than once, under the act of May 23, 1836; and if they did, they have vested rights, which Congress will not violate.

Gov. Cannon, in his message to the Legislature of Tennessee, on the 10th of October last, mentions his liabilities to the Union Bank, for money obtained to aid the volunteers to enter the service; and it appears, on referring to the certificate of the cashier, that such liabilities on the 20th of October were \$13,002 38.

The committee wrote to the Secretary of War, on the 28th day of January, to know whether any money was wanted for the quartermaster's department in relation to these volunteers; and if there was, they requested that an estimate be submitted. No answer having been received, the committee are unwilling to delay the report any longer. They will report an appropriation of \$13,500, to repay any money Gov. Cannon may necessarily have expended on account of this service.

It appears the Executive staff have been necessarily engaged, more or less, during the season, in calling out and organizing the different corps. Paymaster General Towson informed the committee, verbally, it had been usual to pay for such services according to the rank of the appropriate officers of the army of the United States. No estimate for this purpose was submitted, as the time they respectively served is not stated; but the committee recommend that three thousand dollars be appropriated to settle what is due on account of those services.

Those who were mustered into service, and have been reported to the War Department, form a distinct class; and, in the opinion of the committee, should be separately provided for.