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On the Relief of G. Gaines

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IN SENATE OF THE UNITED STATES.

JUNE 6, 1844.

Submitted, and ordered to be printed.

Mr. WHITE made the following

REPORT :

[To accompany bill S. 28.]

The Committee on Indian Affairs, to which was referred Senate bill 28, "for the relief of George S. Gaines," with the accompanying petition of said George, report :

Petitioner represents that, in the year 1830, he was appointed conductor of an exploring party of Choctaw Indians, under the treaty of Dancing Rabbit creek, to which were added instructions to him as commissioner to treat with the Choctaws west for an additional country for the Chickasaws; and that he has been paid for his services as commissioner only, and not as conductor, for which he claims \$1,072.

He also states, that in 1831 he was appointed superintendent of the emigration and subsistence of the Choctaws, under said treaty, in which capacity he disbursed the sum of \$31,371 32, for which he claims, in addition to what has been allowed him, a commission of 2½ per cent., amounting to \$784 28. As a reason for this claim, petitioner states, that, owing to the urgency of the service, he did not wait for the appointment of a paymaster; in consequence of which, and of the exposure to which he was subjected, he had \$1,800 stolen from him whilst asleep. He further states, that, having great influence with the Choctaws, from an acquaintance of many years, these services were strongly importuned by the War Department, and were rendered by him at great sacrifice of his private business.

Although it appears to the committee that Colonel Gaines discharged these duties with great diligence and success, yet they cannot recognise the argument of personal inconvenience as a justification for augmenting official emolument. This leaves but a single point of inquiry, viz: whether, by the existing laws and usages, the petitioner has received an equivalent for his services.

In rendering his account for the first item of services, Colonel Gaines charged a *per diem* allowance of \$1,072 for his services as *commissioner*, which sum was allowed to him by the Secretary of War, but in the capacity of *conductor*, together with the sum of \$1,292 as mileage. It appears that both these employments were recognised by the department as a single and indivisible duty, and as entitling the party to but one compensation. It does not appear, from any thing before the committee, that any duties were performed by Colonel Gaines as commissioner, or any attempt made to negotiate for the purposes alleged. It is true, the petitioner represents that he travelled a good deal with the exploring party through the Choc-

taw country, had in view for the Chickasaws, to inform himself of the character of the country, but that he never even divulged to the Choctaws his intention to treat with them. At an early day, his authority to negotiate was revoked by the successor of the Secretary of War who had appointed him.

In reference to the second item of the account, the commissions claimed while acting as superintendent of emigration, the committee are advised that there is no precedent for such a claim. The commissioner was allowed and paid for this service the sum of \$2,008. His duties ceased on the west bank of the Mississippi river, where he surrendered the emigrants to another superintendent. There is no proof of the loss of the \$1,800 by theft, or allegation of its non recovery, though, indeed, this fact is only set forth by the petitioner as an *inducement* for the allowance of commissions, and not as the subject of claim. His predecessor in the removing superintendency says he "well remembers Colonel Gaines's losing this sum by a villain," but it does not appear that he had or could have had a personal knowledge of the fact.

The committee are not informed how long the petitioner was engaged in the several duties for which he claims extra pay, but, from all the proofs before them, are inclined to think that he has received an adequate compensation. That compensation for the first item of service was, as above stated, \$2,364; and for the second, \$2,008—in all, \$4,372. The duties were specific, and appear to have been paid for according to the most usual and liberal standard. Subjoined to this report are certain letters from the Second Auditor, showing the amount of compensation that has been paid to the petitioner, and a memorandum of the opinion of the Secretary of War.

The committee therefore recommend that the bill be indefinitely postponed.

TREASURY DEPARTMENT,

Second Auditor's Office, January 11, 1844.

SIR: Your letter of the 8th instant, to the Secretary of War, has been referred to this office, and, in reply to your inquiries, I have the honor to state, that George S. Gaines has received a per diem allowance for his services as commissioner to negotiate with the Chickasaws, and as conductor of a Choctaw exploring party in 1830 and 1831, the sum of \$1,072—mileage, \$1,292; and for his services in 1831 and 1832, as superintendent of the removal of the Choctaws, \$2,008.

For the disbursements made by him he has received no compensation.

I have the honor to be, with great respect, your obedient servant,

W. B. LEWIS.

HON. A. S. WHITE,

Chairman Com. on Indian Affairs, Senate U. S.

TREASURY DEPARTMENT,

Second Auditor's Office, January 17, 1844.

SIR: The accompanying copy of a letter of yesterday's date, from this office to the Secretary of War, in reply to a letter of the Hon. James M.

Hughes, of the 15th instant, addressed to that officer, you may find to be more full and satisfactory concerning certain payments of money to Colonel George S. Gaines, for his services rendered in 1830, 1831, and 1832, than the letter to you of the 11th instant, on the same subject. I might have added, in my reply to those inquiries, that the Secretary of War, in his decision, refused to allow compensation to Colonel Gaines for his services in both capacities of commissioner and conductor.

I have the honor to be, sir, with great respect, your obedient servant,
W. B. LEWIS.

HON. A. S. WHITE,

Chairman Com. on Indian Affairs, Senate U. S.

TREASURY DEPARTMENT,

Second Auditor's Office, January 16, 1844.

SIR: In reply to the letter of the Hon. James M. Hughes of the 15th instant, addressed to the Secretary of War, asking to be informed "of the amount of money paid to Colonel George S. Gaines for services in removing the Choctow Indians, specifying particularly on what account the money was paid him," &c., and by you referred to this office for reply, I have the honor to state, that the amount paid him for said service was \$2,008, acting in the capacity of superintendent of the removal of the Choctaws.

Previously to this, Colonel Gaines was employed by the Department of War to conduct an exploring party of Choctaws west of the Mississippi, and also to negotiate with the Choctaws and Chickasaws. In rendering his account, Colonel Gaines claimed a per diem allowance of \$1,072 for his services as commissioner; and it appears, on reference to the papers on file, that that sum was allowed, but for services as conductor of the exploring party. It is proper to say, however, that he has been paid in one capacity only.

Colonel Gaines has been paid mileage, amounting to \$1,292.

I have the honor to be, &c.

W. B. LEWIS.

HON. SECRETARY OF WAR.

WAR DEPARTMENT, *November 21, 1843.*

From evidence now submitted, it appears that Colonel Gaines did not acquiesce in the original settlement of his claims, but that, though there was more or less neglect on his part to prosecute them, he did so from time to time, by correspondence direct, and through his representatives in Congress. General Eaton, whose testimony was necessary, being out of the country, and the ill health of Colonel Gaines, appear to have delayed the final settlement up to this time. The decision heretofore made is therefore reconsidered, and the claims are open for further adjustment.

It appears that Colonel Gaines reluctantly undertook the duties he performed, and only after the most urgent solicitation of the authorized agents of the Government, by whom he was promised the most liberal compen-

sation; and it appears, also, that these duties were of great importance and value, and subjected him to great personal sacrifice and loss. Under these circumstances, the most liberal compensation consistent with law and the established principles in such cases should be made to him.

Colonel Gaines contends that the amount he received for the period he was with the exploring party of Choctaws was for services as commissioner to negotiate with them for part of their new country for a residence for the Chickasaws; and he now claims, in addition, pay for his services in the separate and distinct capacity of conductor of the exploring party. There is nothing to show that he held appointments or was to be paid in the two different capacities, or that any distinction was made in the duties. The services were rendered at one and the same time, and those as commissioner imposed no additional labor or expense; and as the allowance of double compensation is opposed as well by the spirit and intent of all laws applicable to such cases as by the established principles of settlement in relation to them, the department cannot recognise Colonel Gaines as having acted in more than one capacity, for which the amount he has received compensated him. Any further allowance can be made only by Congress.

Persons receiving the rate of compensation he did for his services as exploring agent were allowed the same also for every twenty miles of travel. This was done in the cases of the commissioners who negotiated the treaty with the Choctaws, and the same allowance should be made to him for the whole number of miles he travelled in the performance of the duty.

Why different rates of compensation at different times were allowed for services as superintendent of removal does not appear; but as the services were very valuable, and as much so at one time as another, he should be allowed the same rate for the whole time, viz: eight dollars per day.

As Colonel Gaines had authority from the department to employ such assistants as were necessary, to aid him in the performance of his duties as superintendent of the removal of the Choctaw Indians, I do not think he should be held accountable for their acts; and whatever charges have been made against him for moneys in their hands, for which they have not properly accounted, should be withdrawn, the amounts credited to him, and charged to the assistants, respectively, who failed so to account.

In regard to the claim for a percentage on the amount disbursed by him as superintendent of removal, it does not appear that any such allowance was promised to him, and I do not therefore feel at liberty to grant it. Its allowance would be establishing a new principle, which the department could not refuse to apply in the cases of other superintendents. A departure from the established principles and practice in such cases can be authorized only by Congress.

J. M. PORTER.

DECEMBER 15, 1843.

I certify that the foregoing is a true copy, from the files of this office.

W. B. LEWIS,

Second Auditor of the Treasury.