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Report No. 544.

HOUSE OF REPRESENTATIVES.

GEORGE MAGUIRE.

APRIL 26, 1848.

Laid upon the table.

Mr. BARRINGER, from the Committee on Indian Affairs, made the following

REPORT:

The Committee on Indian Affairs, to whom were referred the petition and accompanying papers of George Maguire, having considered the same, report:

The petitioner claims the sum of \$862 80, according to his account rendered for services rendered the government as "acting superintendent" of Indian affairs at St. Louis, Missouri, from September 2, 1838, to March 29, 1839, being the period from the death of General Clark, former superintendent, to the appointment of his successor, Major Pilcher. He rests his claim on the actual rendition of the services, and that, by tacit assent, and the acts of the department, he was, if not appointed, at least recognized as acting superintendent during the interregnum in the office aforesaid. He insists that communications of the Indian agents were addressed to him, instructions given by him, and through him orders and instructions of the department were transmitted. He does not pretend that an appointment was conferred, or additional pay for his services promised by the government or any branch thereof, either before or after their performance. During the period for which he claims this additional compensation, he was acting as clerk in the office, and receiving pay therefor. The claim was presented to the commissioners of Indian affairs for payment, which was disallowed on the ground that the petitioner never was recognized as acting superintendent, and that there was no authority of law for such an allowance. An appeal was taken from this decision to the Secretary of War, who affirmed the opinion of the Commissioner of Indian Affairs. It appears, also, that Major Hitchcock, disbursing

military officer of the department, was informally requested to exercise a general supervision of the affairs of the office until a successor to General Clark could be appointed, and that he complied with this request, and that the files of the Indian bureau furnish evidence of his having acted in that capacity. The committee see no just reason for overruling the opinions of Mr. Crawford or Mr. Poinsett in regard to this claim. The appointment of superintendent is with the President and Senate; and to recognize the policy of paying salaries to those who claim the compensation of the office by implication, for services rendered, when the constitution clearly vests the appointment in the Executive and the Senate, would be establishing a precedent leading to great abuse and a false expenditure of the public money.

The committee are of opinion that the claim ought not to be allowed, and ask to be discharged from the further consideration of the subject. The papers marked 1, 2, 3, 4, 5, 6, 7, and 8, are asked to be considered a part of this report, and to be printed.

No. 1.

OFFICE OF SUPERINTENDENT OF INDIAN AFFAIRS,
St. Louis, March 30, 1839.

SIR: I transmit an account of my own as acting superintendent of Indian affairs, from the date of the decease of the late General Clark, until the day on which Major Pilcher assumed the duties of the office.

In presenting this account, I take the liberty of remarking, that during a large portion of the nine years I have been engaged in this office, my compensation was extremely moderate, and that throughout the whole of it I have been, without intermission of any kind, constantly and exclusively engaged in its duties. These circumstances in connexion with the fact, that in addition to my usual clerical duties, I have actually executed those charged for, and that the principle embracing the claim, in its present shape, has already (as I understand) been recognised, at a recent period, at Washington, will, I may be permitted to hope, be deemed sufficient reason for its allowance by the department.

I shall feel obliged by as early a decision on the subject as is compatible with the convenience of the department.

Very respectfully, I have the honor to be, your obedient servant,
 GEORGE MAGUIRE.

T. HARTLEY CRAWFORD, Esq.,
Com. Indian Affairs, Washington.

No. 2.

ST. LOUIS, *June 15, 1839.*

SIR: Apprehensive that a letter I had the honor to transmit to your address, under date of the 30th March instant, respecting a

claim of my own, as acting superintendent of Indian affairs, has, in the press of business, been overlooked, I now respectfully beg leave to request your attention thereto, and ask that it be referred to the Secretary of War or the President.

I have the honor to be, your obedient servant,

GEORGE MAGUIRE.

T. HARTLEY CRAWFORD, Esq.,
Com. Indian Affairs, Washington.

No. 3.

WAR DEPARTMENT,
Office Indian Affairs, August 7, 1839.

SIR: Your letters of the 30th March and 15th of June last, with an account enclosed in the former, have been received.

The department has at no time regarded you as the acting superintendent of Indian affairs at St. Louis, nor am I aware that any intimation has ever been given that any additional allowance would be made for services rendered after the decease of General Clark. On the occurrence of that event, Major Hitchcock was, I understand, informally requested to exercise a general supervision of the business of the superintendency, and the files of this office exhibit abundant evidences of his compliance. I perceive no good principle on which your account can be allowed.

The President and Secretary of War being now both absent from Washington, I am unable to refer the subject to them as you request. Should you wish it, it will be done on their return.

Very respectfully, your obedient servant,

T. HARTLEY CRAWFORD.

GEORGE MAGUIRE, Esq., St. Louis.

No. 4.

St. Louis, August 17, 1839.

SIR: I have the honor of acknowledging the receipt of your letter of the 7th instant.

Desirous of conducting in such manner as I thought the occasion and best interests of the service required, it is true that neither in my communications with the agents or the department itself, did I assume the style of "acting superintendent;" but that I performed the duties, and exercised the functions of that office, as far as prudence and the circumstances of the case admitted, is a fact unquestionable, in support of which I refer to the files of the department itself, to those of the office here, to the agents generally, and especially to one of the oldest and best officers of the department, Major Cummins.

The letter of the department directing me to consult with, and obey the instructions of Captain Wickliffe, was, as far as my memory serves, the only one which indicated that the disbursing officer was to be considered as exercising a general supervision here; and the action consequent upon that gentleman's appointment, left me somewhat at a loss to determine what really was the position I should thereafter occupy.

In communicating the death of General Clark, I stated to the department that I would attend to the current business of the office, until its pleasure was known. Months elapsed; communications and returns from agents were forwarded to, and the replies of the department, transmitted as usual through the office here, addressed to myself; from all which I could but infer that the tacit assent of the department was given that I should continue, until otherwise instructed, to perform the duties of superintendent. The agents, too, it appears, acted on the same supposition, as their letters, many of which are on file in your office, will show; and the action of Major Hitchcock was, so far as the superintendency was concerned, certainly not other than concurrent with my own.

As I have heretofore observed, my claim is just in itself; it rests on grounds similar to those on which others, which have been recognised, were based. Do me the favor, therefore, to have this and my previous letters on the subject laid before the Secretary of War or the President for decision.

Very respectfully, your obedient servant,

GEORGE MAGUIRE.

T. HARTLEY CRAWFORD, Esq.,

Commissioner Indian Affairs, Washington.

No. 5.

ST. LOUIS, November 30, 1839.

SIR: Herewith I have the honor to submit a claim of my own as acting superintendent of Indian Affairs, and copies of letters touching the same, which I addressed the Commissioner of Indian Affairs, under date March 30, June 15, and August 17, and a copy of one from that officer of the 7th August.

The commissioner has, as will be seen, decided against the claim; but believing he has taken an erroneous view of the case, and that the claim is not in the remotest degree weakened, as he intimates, because payment was not, on behalf of the government, promised in advance; or because an "informal" request may have been made to another officer to attend the duties charged for, when the record clearly shows the claimant had, at least, concurrent action in the performance of those duties, of which fact the department has abundant proof.

The opinion of Major Hitchcock certainly had, on all matters of import, its due weight with me; but in the greatest mass of the business of the superintendency, I undoubtedly acted in accord-

ance with the views I myself happened to entertain—unless in matters where the instructions of the department had been received. The files of the commissioner's office, at Washington, will show that the commissioner himself has approved "instructions" I had given agents; this, too, at a time when Major Hitchcock was here; but it will be recollected there was a period of some months during which this officer was at the eastward—having gone to settle his accounts at Washington, &c., &c.; and certainly, during this period, I enjoyed not the advantage of his aid; but, on the contrary, myself rendered, in addition to the duties of the superintendency, such little assistance as lay in my power, in relation to the disbursing department.

In fact, sir, I served the department long, have earned the money claimed, and hope to get it.

With sentiments of perfect respect, I have the honor to be, your obedient servant,

GEORGE MAGUIRE.

Hon. JOEL R. POINSETT, *Washington.*

No. 6.

WAR DEPARTMENT, *December 23, 1839.*

SIR: I have received your letter of the 30th ultimo, and its enclosures, and in answer have to inform you that the claim presented by you for services as acting superintendent of Indian affairs cannot be allowed by this department. Not only would its allowance establish a precedent likely to prove expensive and injurious to the service, but, in my opinion, would be without the authority of law. The salary of superintendent could be legally awarded only to the person appointed to that office by the President.

Very respectfully, your obedient servant,

J. R. POINSETT.

GEORGE MAGUIRE, Esq.,
St. Louis, Missouri.

No. 7.

THE UNITED STATES,

To George Maguire, Dr.

For my services as acting superintendent Indian affairs, from the 2d September, 1838, to 29th March, 1839, inclusive, (seven months less three days,) at \$1,500 per annum..... \$862 70

No. 8.

WAR DEPARTMENT,
Office Indian Affairs, April 13, 1848.

SIR: In reply to the inquiry in your letter of the 11th instant, I have the honor to inform you that there is no evidence on the files of this office, "that George Maguire acted as superintendent of Indian affairs at St. Louis, from the death of General Clarke to the appointment of Major Pilcher, his successor." He was not assigned to the duties of *superintendent*, nor required to perform them; on the contrary, Major Hitchcock of the army, then disbursing officer of the Indian department at St. Louis, was requested to attend to the higher and more important duties of the office; and, so far as was necessary, it is believed he did so. Mr. Maguire was the medium of communication to and from the agents and sub-agents during the interregnum, as the clerk attached to the office is now in the absence of the superintendent elsewhere within his superintendency on public business, which is necessarily sometimes the case for a considerable period.

Very respectfully, your obedient servant,

W. MEDILL.

Hon. D. M. BARRINGER,
Ch'n Com. on Indian Affairs, House of Reps.