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Recommended Citation

H.R. Rep. No. 184, 46th Cong., 2nd Sess. (1880)

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FRONTIER DEFENSE EXPENSES OF TEXAS.

FEBRUARY 6, 1880.—Recommitted to the Committee on Military Affairs and ordered to be printed.

MARCH 9, 1880.—Referred to the House Calendar and ordered to be printed.

Mr. UPSON, from the Committee on Military Affairs, submitted the following

REPORT:

[To accompany bill H. R. 3774.]

The Committee on Military Affairs, to whom was referred the bill (H. R. 3774) to authorize the Secretary of the Treasury to ascertain and report to Congress the amount of money expended and indebtedness assumed by the State of Texas in repelling, suppressing, and guarding against invasions, raids, incursions, and hostilities, by Indians and Mexicans, in said State and upon its borders, and in frontier defense, respectfully submit the following report:

The object of the bill under consideration is quite fully expressed in its caption, which is, in brief, to ascertain, through the chief auditing officer of the government, the amount of money expended and indebtedness incurred, necessarily, by the State of Texas, in the defense of her frontier against the hostilities of Indians and Mexicans; such amount when ascertained to be reported to Congress for its future action thereon. The periods within which, under the bill, the accounts to be audited must have accrued are from February 25, 1855, to January 28, 1861, and since October 20, 1865.

As to the amount claimed by, or justly due to, the State of Texas for frontier defense, it is not deemed necessary to consider under the bill in question.

During the periods specified in the bill it is found that in consequence of inadequate protection, resulting from a failure on the part of the general government to furnish the military forces necessary to give proper security to the actual and *bona fide* settlers, American citizens, residing upon the Indian and Mexican frontiers and within the territorial limits of the State of Texas, that State has necessarily expended large sums of money and incurred a large amount of indebtedness in protecting her people upon those borders against Mexican and Indian hostilities.

Assuming the facts above stated as established, is the general government, by the obligations arising from its original functions and delegated constitutional powers, or from repeated acknowledgments and uniform precedents, evidenced by its public enactments before and after Texas was admitted into the Union of States, properly chargeable with such expenditures and indebtedness? The affirmative of this proposition we believe clearly established by the organic law and admitted theory of our government, and recognized by a long line of undisputed precedents, which form a part of the public history of the country. One of the prime objects of the formation of the national government was

to secure protection to the citizens of all the States, as is plainly comprehended in the preamble to the Federal Constitution, viz:

We, the people of the United States, in order to form a more perfect Union, establish justice, insure domestic tranquillity, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution of the United States of America.

Among the exclusive powers delegated to Congress were to "provide for the common defense and general welfare of the United States." * * * "To raise and support armies." * * * "To provide for calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasions."

"To provide for organizing, arming, and disciplining the militia."—(U. S. Con., Art. 1, Sec. 8.)

By the Constitution the citizens of each State are entitled to equal privileges, equally freed from public burdens and services, and entitled to equal protection and security from the general government.

The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States. (Con., Art. IV, Sec. 2.)

The United States shall guarantee to every State in this Union a republican form of government, and shall protect each of them against invasion. (Con., Art. 4, sec. 4.)

By the conditions of the "articles of annexation" adopted March 1, 1845, by the Congress of the United States, under which the Republic of Texas, having accepted the same, was admitted into the Union as a State, Texas ceded to the United States "all public edifices, fortifications, barracks, ports, and harbors, navy and navy-yards, docks, magazines, arms, armaments, and *all other property and means pertaining to the public defense* belonging to the said Republic of Texas." (Sec. 2, Art. of Annexation.)

By joint resolution of the Congress of the United States admitting Texas into the Union, December 29, 1845, it was declared—

That the State of Texas shall be one, and is hereby declared to be one, of the United States of America, and admitted into the Union on an equal footing with the original States in all respects whatever.

Texas having been admitted into the Union on an equal footing with the original States, and upon the express condition that she would and did cede to the United States all her property and means pertaining to the public defense, it must be conceded that it was a part of the contract of annexation that the general government was to and did assume to protect the people of Texas against invasions and attacks of the public enemy, of whatever name or class, and that a failure to give such protection would be a violation of the compact, rendering the general government, at least, responsible for the expenditures and indebtedness necessarily and actually made and incurred by the State of Texas in giving, or endeavoring to give, such protection to her people.

The very able and exhaustive report of Mr. Plumb, from the Senate Committee on Military Affairs, submitted January 28, 1879, and re-adopted and submitted January 21, 1880, as the report of the Senate Military Committee for the Forty-sixth Congress on the bill (S. 1650) for the relief of the State of Kansas, similar in its purposes to the bill under consideration, is fully concurred in by your committee and made a part of this report, and is as follows:

Mr. Plumb, from the Committee on Military Affairs, submitted the following report (to accompany bill S. 1650): The Committee on Military Affairs, to whom was referred the bill (S. 1860) for the relief of the State of Kansas, having had the same under consideration, make the following report:

The bill under consideration provides that the Secretary of the Treasury shall be

authorized to examine, settle, and audit all proper claims of the State of Kansas for moneys expended by it in organizing, arming, equipping, supplying, subsisting, transporting, and paying the volunteer and militia forces of the State, called into active service by the governor thereof, after the 15th of April, 1861, to aid in repelling invasions, and suppressing Indian hostilities in said State and upon its borders, and report his action thereon to Congress.

It appears to the satisfaction of the committee that the State of Kansas has actually incurred and paid expenses in repelling invasion and suppressing Indian hostilities, and that such expenditures were made necessary by the state of affairs existing at the time; the question remaining to be considered is whether or not the general government is properly chargeable with such expenditures.

Your committee are of the opinion that from the legislative history of Congress it has been the understanding that the government was so liable.

By act approved March 21, 1828, the Secretary of War was required to pay the claims of the militia of the State of Illinois and the Territory of Michigan, called out by any competent authority, on the occasion of the then recent Indian disturbances, and that the expenses incident to the expedition should be settled according to the justice of the claims. (See Laws of United States, vol. 4, p. 258.)

By act approved March 1, 1837, an appropriation was made for the payment of the Tennessee volunteers, called out by the proclamation of Governor Cannon on the 28th of April, 1836, to suppress Indian hostilities; and a direct appropriation was also made to Governor Cannon to reimburse him for moneys expended on account of such volunteers. (See Laws of United States, vol. 5, p. 150.)

By act approved March 3, 1841, a direct appropriation was made to the city of Mobile, for advances of money and expenses incurred in equipping, mounting, and sending to the place of rendezvous two full companies of mounted men, under a call from the governor of Alabama at the beginning of the hostilities of the Creek Indians. (See Laws, vol. 5, p. 435.)

By act of August 11, 1842, \$175,000 was appropriated as a balance for the payment and indemnity of the State of Georgia for any moneys actually paid by said State on account of expenses in calling out her militia during the Seminole, Cherokee, and Creek campaigns, or for the suppression of Indian hostilities in Florida and Alabama. (See Laws, vol. 5, p. 504.) By act approved August 29, 1842, a similar appropriation was made to the State of Louisiana. (See Laws, October 5, p. 542.)

By act approved July 7, 1838, an appropriation was made to the State of New York of such amount as should be found due by the Secretary of War and the accounting officers of the Treasury, out of the appropriation for the prevention of hostilities on the northern frontier, to reimburse the State for expenses incurred in the protection of the frontier in the pay of volunteers and militia called into service by the governor. (See 5 U. S. Stats., p. 268.) By an act approved June 13, 1842, the State of Maine was reimbursed for the expenses of the militia called into service by the governor for the protection of the northeastern frontier. (See 15 U. S. Stats., p. 490.)

By act approved March 2, 1861, the State of California had appropriated to her \$400,000 to defray the expenses incurred by the State in suppressing Indian hostilities for the years 1854, 1855, 1856, 1858, and 1859. (See 12 U. S. Stats., p. 199.)

By act approved July 2, 1836, Captains Smith, Crawford, Wallis, and Long, of the militia of Missouri, and Captain Sigler of the Indiana militia, were paid for services rendered in protection of those States against the Indians, and an appropriation of \$4,300 was made for that purpose. (See 5 U. S. Stats., p. 71.)

By act approved February 2, 1861, there was appropriated to reimburse the Territory of Utah, "for expenses incurred in suppressing Indian hostilities in said Territory in the year 1853," the sum of \$53,512. (See 12 U. S. Stats., p. 15.) This bill was considered by the House Military Committee, and was reported by Mr. Stanton, who, in his report, says:

"The liability of the Federal Government for necessary expenses incurred by the States and territories in repelling invasions of their territory by a foreign enemy, or of hostile tribes of Indians within our borders, has been so often recognized that it can no longer be considered an open question.

"The committee also believe that the action of the State and Territorial authorities in calling out their military force and engaging in hostilities furnished at least *prima facie* evidence of the necessity of their action.

"As there is no evidence before the committee tending to show that these expenses were unnecessarily incurred, the committee feel bound to recognize the liability of the claim."

By the act approved June 21, 1860 (it being an Army appropriation bill), the sum of \$18,988 was appropriated to reimburse the State of Iowa for the expenses of militia called out by the governor "to protect the frontier from Indian incursions." (See 12 U. S. Stats., p. 68.)

By the same act the sum of \$123,544.51 was appropriated to the State of Texas for the "payment of volunteers called out in the defense of the frontier of the State since

the 28th of February, 1855." By the "act making appropriations for the sundry civil expenses of the government for the year ending June, 1864, and for other purposes," an appropriation was made to "pay the governor of the State of Minnesota, or his duly authorized agent, the costs, charges, and expenses properly incurred by said State in suppressing Indian hostilities within said State, and upon its borders, in the year 1862, not exceeding \$250,000, to be settled upon proper vouchers to be filed and passed upon by the proper accounting officers of the Treasury." (See 12 U. S. Stats., p. 754.)

In the sundry civil bill of the following year an appropriation of the sum of \$117,000 was made to the same State "to supply a deficiency in the appropriation for the costs, charges, and expenses, properly incurred by the State of Minnesota in suppressing Indian hostilities in the year 1862." (See 13 U. S. Stats., pp. 350, 351.)

By act approved May 28, 1864, the sum of \$928,411 was appropriated for the payment of damages sustained by citizens of Minnesota "by reason of the depredations and injuries by certain bands of Sioux Indians." (See 13 U. S. Stats., p. 92.)

Besides the appropriation made to the State of California, before referred to, by act approved August 5, 1854, the sum of \$924,259.65 was appropriated to reimburse the State for expenditures "in the suppression of Indian hostilities within the State prior to the 1st day of January, 1854." (See U. S. Stats. at Large for 1853 and 1854.)

The question of the liability of the general government for the payment of this class of demands seems to have been carefully considered by the Committee on Military Affairs of the House, in connection with this claim of California for reimbursement.

Mr. McDougal submitted the report of the committee, in which he said:

"The question remaining for consideration is, whether or not the general government is properly chargeable with their expenditures?"

"It is the opinion of this committee that the obligation of the Federal Government to furnish specific and particular defense to each several State is included in its obligation to maintain the 'common defense' of the Confederacy. That invasions from abroad, insurrections at home, and aggressions from the savage tribes inhabiting our borders, are alike within the protective province of the Federal Government. Congress possesses the exclusive power 'to raise and support armies in time of peace,' and possesses the power to call forth the militia 'to suppress insurrections and repel invasions.' In the tenth section of the first article of the Constitution, the States stipulate that they will not 'keep troops or ships of war in time of peace.'

"The conclusion necessarily follows that the general government is, by the implied, if not the express, terms of the Federal compact, bound.

"The question here presented appears to have been distinctly raised in 1831 upon a claim presented by the State of Missouri. By act approved March 3 of that year, Congress made an appropriation for the service of the Missouri militia against the Indians, 'provided that the Secretary of War shall, upon full investigation, be satisfied that the United States are liable for the payment of said militia, under the second paragraph of the tenth section of the first article of the Constitution of the United States.' (See Laws, vol. 4, p. 465.)

"General Cass, then Secretary of War, examined the subject submitted, and gave the opinion of the government as to its constitutional obligations, affirming the liability of the government, and directing payment to be made to the State of Missouri.

"Instances of similar legislation might be cited, but it is believed that but little doubt can exist either as to the constitutional obligation or the exposition given by Congressional legislation."

Your committee, after having given the subject such consideration as time and opportunity would allow, feel bound to conclude that the general government owes to the States the duty of protection, especially against the incursions of hostile savages, over whom the United States authorities have, from the foundation of our government, exercised a kind of parental control. And this being the case, when, from any cause, the States are not given such protection, and reasonable and necessary expenses are incurred by such States in repelling invasions from the Indians and suppressing hostilities, reimbursement should be made for the same by the United States.

This claim of the State of Kansas coming, as we believe it does, within the principle just stated, should, in the opinion of the committee, be paid whenever the proper amount has been satisfactorily determined.

The bill provides for no appropriation, but leaves that matter to be determined hereafter by Congress upon the facts to be reported by the Secretary of the Treasury, under the provision of the bill.

The committee therefore recommend that the bill be passed without amendment.

Your committee therefore report back the bill (H. R. 3774) with the following amendment, viz: "Provided, That nothing in this act shall be construed to commit the Government of the United States to the payment of such claims," and recommend its passage as amended.