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Report : Claim of Kansas

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IN THE SENATE OF THE UNITED STATES.

FEBRUARY 7, 1882.—Ordered to be printed.

Mr. COCKRELL, from the Committee on Military Affairs, submitted the following :

R E P O R T :

[To accompany bill S. 87.]

The Committee on Military Affairs, to whom was referred the bill (S. 87) "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 Kansas in repelling invasions and suppressing Indian hostilities," have duly considered the same, and submit the following report :

The title clearly indicates the object and nature of the bill. In the Forty-sixth Congress a bill very similar was pending, and was, with some amendments, favorably reported by this committee of that Congress. In the Forty-fifth Congress a similar bill was also reported favorably from the Committee on Military affairs.

The facts are that the State of Kansas has actually expended sums of money in repelling invasions and suppressing hostilities by Indians, which expenditures were deemed necessary and proper by the executive authority from his knowledge of the then existing conditions.

The State of Kansas now asks Congress to authorize the Secretary of the Treasury to investigate these expenditures, and to determine under proper rules the amount so expended, and to report the same to Congress. When this is done the State of Kansas will ask Congress to appropriate the money to pay the amount so found to have been expended.

The real question is whether the United States should refund to the State of Kansas the amount so expended.

Your committee have made some inquiries in regard to the legislation of Congress in the past upon this question, and find the following :

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 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 Indians, and an appropriation of \$4,300 was made for that purpose. (See 5 U. S. Stats., p. 71.)

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 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 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 an act approved June 14, 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 5 U. S. Stats., p. 490.)

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, vol. 5, p. 542.)

There was appropriated to the State of California, by act approved August 5, 1854, the sum of \$924,259.65, 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, vol. 10, p. 583.)

Mr. McDougal, from the House Committee on Military Affairs, which had the bill making said appropriation referred to it, made a report in which it is 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 to furnish and maintain such military force as the exigencies of the States may demand; and it clearly appears from the legislative history of Congress that such has always been the understanding of the government.

"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."

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 act approved February 27, 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. 151.) 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 act approved March 21, 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.)

Mr. Stanton, from the House Committee on Military Affairs, June 22, 1860, reported this bill, and in his report says:

"The liability of the Federal Government to indemnify a State or Territory for expenses necessarily incurred in protecting their citizens against a public enemy in their own midst, has been repeatedly, if not uniformly, recognized by Congress. Your committee, however, are of opinion that before the Federal Government should assume liabilities of this character it ought to be satisfactorily shown, not only that a necessity existed for calling the military forces into service, but that the expenditures have been reasonable in amount, and have not been improvidently incurred."

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 States 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.)

These legislative precedents clearly establish the fact that the United States have uniformly assumed the payment of expenditures made by

the States in repelling Indian invasions and suppressing Indian hostilities.

The United States should therefore assume the payment of such expenditures to the State of Kansas as this bill requires, the accounting officers of the Treasury Department to investigate and adjust the accounts of Kansas for such expenditures, and to report the amount to Congress. Your committee recommend the passage of the substitute for said bill herewith reported, which substitute is in accord with the principles of legislation heretofore enacted by Congress in similar cases.

