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Louis V. Bogy

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IN THE SENATE OF THE UNITED STATES.

JUNE 26, 1868.—Ordered to be printed.

Mr. TRUMBULL, from the Committee on the Judiciary, submitted the following

REPORT.

The Committee on the Judiciary, to whom was referred a communication of the Secretary of the Interior, relative to the appointment of Louis V. Bogy as a special agent to receive and purchase goods for the Indian service, together with a copy of his appointment, beg leave to report :

That in the discharge of the duty assigned them they addressed to the Secretary of the Interior a note inquiring under what law or authority the appointment of Louis V. Bogy as special agent was made, and received from him a reply, which, together with the communication referred and a copy of the appointment, are hereto annexed as a part of this report.

The only law referred to by the Secretary as authorizing the appointment of said Bogy is the last proviso to the first section of the act of the 3d of March, 1863, "making appropriations for the current and contingent expenses of the Indian department, and for fulfilling treaty stipulations with various Indian tribes," in these words: "*And provided further, That hereafter all special agents and commissioners not appointed by the President shall be appointed by the Secretary of the Interior,*" which by the Secretary is construed to give him express authority to appoint special agents and determine their duties. Your committee cannot assent to this construction of the proviso, unless some other previously existing statute can be shown authorizing either the President or some other officer to appoint special agents charged with duties similar to those assigned to said Bogy. No such statute has been shown, and none is believed to exist. The proviso seems to have been intended to take from the Commissioner and superintendents of Indian affairs, or other officer, except the President, the power to appoint special agents or commissioners, and confer that power, whatever it was, upon the Secretary of the Interior, rather than to confer upon him a new authority to appoint special agents at will and for all purposes.

Prior to the enactment of the proviso in 1863, the law authorized the President alone to appoint sub-agents, and superintendents, were also authorized in certain cases, to appoint inspectors, supervisors, mechanics, and teachers, charged with the execution of duties in the Indian country; but no law existed authorizing the President or any other officer to appoint a special agent to perform the important duties assigned to said Bogy by the Secretary of the Interior. On the contrary, statutes have from time to time been passed creating the offices of Indian agents, assigning their duties, and adding to their number, and, in all cases, providing for their appointment by the President, by and with the advice and consent of the Senate. On the 5th day of July, 1862, Congress declared—

That hereafter no goods shall be purchased by the Indian department, or its agents, for any tribe, except upon the written requisition of the superintendent in charge of the tribe, and only upon public bids, in the mode prescribed by law for the purchase of other supplies.

To suppose that Congress, in the face of these statutes, by a proviso to an appropriation act, declaring "that all special agents and commissioners not appointed by the President shall be appointed by the Secretary of the Interior," intended to vest the Secretary with power to appoint a special agent, fix his compensation, give him authority to appoint persons to assist him, and to purchase such goods and merchandise as might be required for the Indian service for the year, together with such other large powers as were conferred on said Bogy, seems to your committee a manifest perversion of the intention of Congress, and of the true meaning of its legislation. They therefore recommend the adoption of the following resolution :

Resolved, That the appointment by the Secretary of the Interior of Louis V. Bogy as special agent, under the circumstances and for the purposes stated in his communication to the Senate of the 8th of April, 1867, and as explained in his letter to the Committee on the Judiciary of the 18th of April, 1867, was improper and unauthorized.

DEPARTMENT OF THE INTERIOR,
Washington, D. C., April 18, 1867.

SIR : At a late hour in the day, I had the honor on yesterday to receive your letter of that date, informing me that my reply of the 8th instant to the Senate resolution of the 5th had been referred to the Judiciary Committee, and requesting that I would inform you "under what law or authority the appointment of Louis V. Bogy as special agent was made."

In reply I have to state that the business of the department, and especially that of the Indian Bureau, cannot be efficiently conducted without the occasional employment of special agents. Contracts are often made for the purchase of goods, agricultural implements and other needful supplies, for the fulfilment of Indian treaties, amounting to many thousands of dollars. After such contracts are made it would be a culpable and inexcusable neglect of duty to leave the contractors to select and forward just such articles in fulfilment of their contracts as they might think proper, and in order to secure a faithful and honest compliance with the terms of the contracts it is an imperative necessity that the department shall have a competent and reliable agent, at the place of delivery, to inspect, receive and forward the goods.

The exigencies of the service not unfrequently make it necessary to go into open market and purchase, on the moment, large quantities of goods and supplies of various kinds, and when this is the case the services of a special agent are required. Many other cases might be named wherein such temporary appointments are equally imperative.

I am not aware of any provision of law specifying the particular cases in which special agents may be appointed and prescribing in detail their duties, but the necessity for their occasional employment is recognized and authority expressly given to appoint them, leaving their duties to be determined by the circumstances which induce and justify the appointment.

The last proviso to the first section of the act of 3d March, 1863, making appropriations for the current and contingent expenses of the Indian department and for fulfilling treaty stipulations with various Indian tribes, (Statutes at Large, vol. 12, page 792,) is as follows :

And provided further, That hereafter, all special agents and commissioners not appointed by the President shall be appointed by the Secretary of the Interior.

Under this provision of law I did not doubt my power to appoint Mr. Bogy a special agent for the performance of the duties which were assigned him.

My action in this case is, I believe, in harmony with the long established usage of the department, and I should have felt that I was derelict in the discharge of my own duty had I failed to have an agent of the department present to inspect and receive the large quantity of goods which had recently been con-

tracted for, and to see that they were properly packed, shipped and forwarded to their destination.

Not to go further back than the administration of the affairs of this department by my immediate predecessor, I might, were it deemed necessary, specify a number of special agents whose appointment was deemed by him to be essential to the proper conduct of the various interests intrusted to its management and control, and warranted by the same authority of law, several of whom are still in the discharge of duties assigned to them by him in connection with the subject of Indian affairs.

Very respectfully, your obedient servant,

O. H. BROWNING,
Secretary.

Hon. L. TRUMBULL,
Chairman Judiciary Committee United States Senate.

[Special session United States Senate.—Ex. Doc. No. 3.]

Letter of the Secretary of the Interior, communicating, in compliance with a resolution of the Senate of the 5th instant, information in relation to the employment of Louis V. Bogy in the Department of the Interior.

DEPARTMENT OF THE INTERIOR,
Washington, D. C., April 8, 1867.

SIR: In reply to a resolution of the 5th instant, requesting the Secretary of the Interior "to inform the Senate whether Louis V. Bogy, late Commissioner of Indian Affairs, is now in the employ of the Department of the Interior; if so, in what capacity, what are his duties, and what is his compensation; and when was he appointed, and by whom, and what instructions, if any, have been issued to him, and by whom, and when," I have the honor to state that Louis V. Bogy is now in the employment of this department, in the capacity of special agent. The accompanying paper is a copy of a letter addressed to him on the subject. The date of his appointment, by whom made, the nature of his duties, the instructions issued to him, and the rate of his compensation, are therein set forth.

The immediate shipment of the goods purchased and required for the Indian service west of the Mississippi is of the utmost importance. The contract under which they are to be delivered should be faithfully observed, so that no just cause of complaint may exist in regard to their quantity or quality. The services of an efficient and trustworthy person are indispensable to secure that result and to superintend the shipment of the goods. Clerks in the Indian bureau were formerly detailed, from time to time, to examine the goods intended for the Indians, and some of the predecessors of Mr. Bogy deemed it their duty to remain a considerable time in New York, with a view of giving their immediate personal attention to the subject. The contracts were entered into by Mr. Bogy while he was Commissioner of Indian Affairs. Having full confidence in his integrity and capacity, I appointed him a special agent, and detailed two clerks from the department, who were familiar with the terms of the contracts and the description and quality of the goods to be delivered, to accompany and assist him in receiving, shipping, and forwarding them.

Requisitions have recently been made by superintendents and agents for goods, in addition to those purchased under existing contracts. It is necessary that they be procured at once, as the delay incident to advertising for proposals would render it impossible to fulfil at the proper time our obligations to the Indians, and to meet the present urgent necessities of various tribes. A purchase on the most advantageous terms, in open market, was therefore determined on. Mr.

Bogy was directed to make it, and to superintend the shipping of the goods to their proper destination.

At the close of the thirty-ninth Congress there was no longer a Commissioner of Indian Affairs. Various delegations who had visited this city on matters of the highest importance to the government, as well as to the tribes they represented, were at that date engaged in considering and adjusting the terms of treaty stipulations. Satisfactory progress had been made in negotiations, but they were not concluded. I was compelled to permit them to be broken off, subject to be renewed only on the appointment of a Commissioner of Indian Affairs, thus losing the benefit of all that had been accomplished, or to appoint an agent to prosecute and complete them, under the supervision of the department. I adopted the latter alternative, as more conducive to the interests of the contracting parties. Mr. Bogy was entirely familiar with the questions involved, and had repeatedly conferred with the Indians respecting them. He was therefore appointed to consummate the negotiations. The instructions to him were oral. After executing this trust he left Washington, and is now engaged in discharging his duties as special agent.

I deem it proper to add that Mr. Bogy did not solicit these employments, but consented, at my earnest request, to accept them. I was then, and still am, fully satisfied that the business could be transacted more advantageously for the government and the Indians with his assistance than without it.

The appointment is, of course, but temporary, and will expire with the completion of the duties assigned to him.

I am, sir, very respectfully, your obedient servant,

O. H. BROWNING, *Secretary.*

Hon. B. F. WADE,
President of the Senate.

DEPARTMENT OF THE INTERIOR,
Washington, D. C., March 4, 1867.

SIR: You are hereby appointed a special agent for the purpose of receiving all the goods for the Indians to be delivered under the contracts lately entered into with C. Franklin Bates, of New York, John V. Farwell & Co., of Chicago, and S. C. Hunt & Co., of St. Louis; and also to buy such other goods and merchandise as may be required for the Indian service for the present year. You are authorized to appoint such persons to assist you in selecting such goods, and forwarding and shipping the same, as may be necessary. You will take charge of such goods and merchandise, and have them forwarded to their destination. Those for the Indians on the Missouri river, and for the western States and Territories, you will have forwarded to St. Louis, and from thence you will see that they are all sent to their proper destination in the Indian country. You will consequently be authorized to make such contracts for freight and other incidental expenses as may be necessary, giving in all cases, whether for the purchase of said goods and merchandise, or for the employment of agents and experts, &c., and warehousing, forwarding, and freighting the goods, such vouchers as may be necessary to enable the parties to obtain the settlement of their claims against the Indian bureau. You will give such approved security as the law requires, in the event of any moneys being placed in your hands for the above purpose.

You will be allowed your necessary expenses, and \$10 per day for your services.

Very respectfully, your obedient servant,

O. H. BROWNING, *Secretary.*

Hon. Louis V. BOGY,
Washington City, D. C.