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Expenses for Troops in Montana Territory

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IN THE SENATE OF THE UNITED STATES.

FEBRUARY 9, 1870.—Ordered to be printed.

Mr. HOWARD made the following

REPORT.

[To accompany bill S. 519.]

The Committee on Territories, having had under consideration the bill to provide for the settlement and payment of expenses incurred by the territorial authorities of Montana, for troops during the year 1867, submit the following report:

It appears from the papers and the evidence of Colonel Lewis taken in this case that in May, 1867, the authorities and people of Montana generally became greatly alarmed from an apprehension that they were about to be attacked by hostile Indians.

General Sherman, in his reply to a call from the War Department for information upon the subject of this claim, says that the "governor and civil authorities of Montana became stampeded," and made such reports that Major Lewis was sent there by General Augur to inquire into the condition of affairs generally, and to judge of the necessity for troops either to be sent there or mustered in as volunteers for a limited period.

Arriving in Montana he found that acting Governor Meagher had already issued his proclamation ordering out troops, and was then organizing and sending them into the field, and had entered into contracts for supplies.

The testimony in the case seems to disclose the fact that the civil authorities, under the inspiration of a sort of panic, acted hastily and injudiciously. The only ground for the panic proves to have been the killing by the Indians a man named Bozman, and wounding another, some one hundred and sixty miles from the principal settlements.

Speaking of this affair, General Sherman, in his annual report of October 1, 1867, says:

The Secretary authorized me, under advice of extreme caution, to call out volunteers for the emergency, if the regular troops were inadequate. Under date of May 14, 1867, I telegraphed to acting Governor Meagher, that re-enforcements were coming as fast as possible, but if the danger was as great as he had represented, to "call out in your interest the people and clear the way," adding, "there is no law authorizing the enrolling of troops in a Territory subject to the governor; but you should meet the emergency without a formal organization, and muster into service of the United States, confining yourself to self-protection." Governor Meagher had already called out volunteers, and subsequently asked me for arms, equipments, and to be mustered in. This I emphatically refused, in a dispatch of the 9th of May, but instructed General Augur, at Omaha, to order from his nearest post, viz: Salt Lake City, a discreet officer, to go to Virginia City, Montana, and to judge of the necessity of a call for volunteers. General Augur dispatched that most judicious officer, Major and Brevet Lieutenant Colonel William H. Lewis, Thirty-sixth infantry, who reached Virginia City about May 19, 1867, and after remaining there a month confirmed me in the belief that Gallatin Valley had not been invaded by hostile Indians at all; but that the mur-

der of a Mr. Bozeman more than sixty miles beyond Gallatin, in the direction of Fort C. F. Smith, was the only real act of hostility that he could hear of that had been committed in that quarter. I then recalled Brevet Lieutenant Colonel Lewis, and left the whole matter to General Terry, in whose department Montana was, and who was the person known to be *en route* for that Territory. For the further consideration of this matter I refer to General Terry's report herewith, and only allude to it here to show that the United States are not in any measure responsible for the call for volunteers in Montana, which acting Governor Meagher made, in spite of the decision to the contrary by the rightful department of government, and because I also learn that since the arrival there of Governor Green Clay Smith, he also has retained in service these volunteers and has also brought about a conflict with the Crows and other Indians outside of the settled limits of the Territory, when he knew that the government desired very much to retain peaceful relations with them.

On being informed of the supposed imminency of Indian hostilities in Montana Territory, General Sherman, then at St. Louis, sent to General Augur, then stationed at Omaha, the following telegraphic dispatch:

SAIN T LOUIS, Mo., May 24, 1867.

Colonel W. H. LEWIS, *Virginia City, M. T. :*

Muster in a battalion of eight hundred (800) men at once, at the cost of the United States, for three months. Equip them as you best can till the arms *en route* reach Fort Benton. Move quickly to the threatened point, where the danger will either disappear or be removed. Let the men furnish their own horses and arms, at forty cents per day, and be rationed by contract. When the service is rendered I will order payment by the regular paymaster.

W. T. SHERMAN,
Lieutenant General Commanding.

It is plain that this telegraphic order, although positive in its terms, was merely intended as provisional, and not to be carried out unless the officer charged with its execution should be of opinion that there was an emergency requiring its execution. General Augur, it seems, placed it in the hands of Colonel Lewis, whom he dispatched to Virginia City, with such instructions as are above set forth in General Sherman's annual report, which required him, before raising troops, to satisfy himself of the actual danger of Indian hostilities.

In his note to the Adjutant General, of November 14, 1867, General Sherman says:

I have the honor to acknowledge the receipt of the communication of A. Sands dated New York, October 28, 1867, asking whether the United States government recognizes commissary and quartermasters' vouchers for supplies obtained for the Montana Territory militia, referred by you for report, and to state, in reply, that the troops mustered into service in Montana by acting Governor Meagher, were not in the service of the United States.

He had no authority from me, but such authority was emphatically withheld. These so-called troops were never mustered into the service of the United States, and no department of government is liable for the debts created or the vouchers issued. The whole subject is covered in my annual report of the 1st of October.

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

W. T. SHERMAN,
Lieutenant General Commanding.

Colonel Lewis testified before the committee, as follows:

I was directed by General Augur, in command of the department of the Platte under General Sherman, to proceed to Montana and inquire into the condition of affairs there, and in case of necessity, to muster in volunteers. In pursuance of these orders I proceeded to Montana Territory.

Q. There is, among the papers of this case, a telegram purporting to be a dispatch sent to you by General Sherman, under date of May 24, 1867. I ask you to look at that dispatch and say if you recognize it as a copy of a dispatch received by you from General Sherman; and if so, state, if anything, what you did subsequent to the receipt of that dispatch.—A. I received a dispatch of that purport, dated May 24, as well as I recollect, authorizing me to raise a battalion of eight hundred volunteers if necessary; to furnish themselves with horses and arms, at a cost to the government

of forty cents a day. I replied to the dispatch that I could not raise men on those terms, that they would not consent to furnish horses and arms at forty cents per day.

Q. State whether you made any report to General Sherman or General Augur, in which you indicated the necessity for the presence of troops there.—A. I did. I reported that I believed troops should be mustered in, and it was my intention to muster in a battalion of not to exceed four hundred men. That report was based upon the fact that I had received information, before I reached there; that an Indian campaign was to take place by troops going north from Platte river. I believed they would force the Indians into Gallatin Valley and that troops would be necessary to protect the settlers in that valley. The event proved that no such raid was made. I had information, however, that such a raid was to be made, and believing the effect of it would be as I stated, I reported that troops would be necessary.

Q. Where did you receive the dispatch of General Sherman referred to?—A. At Virginia City, and I answered it from that point. Several dispatches passed between General Sherman, General Augur, and myself. I recommended that in case no volunteers were accepted, the regular forces which were then at the mouth of Judith River, on the Missouri, should be moved up into Gallatin Valley. General Sherman replied that the troops I referred to could not be spared at that time; that they were wanted to protect the river road, but that I might communicate with Major Clinton, in command of the troops named, and if, in his opinion, any portion of them could be spared, he had authority to forward them. I wrote to Major Clinton to that effect. I did not receive any answer to my communication while I was at Virginia City. I subsequently got the answer after I reached Salt Lake City, stating that he could not spare any troops. Finally, I received a telegram from General Sherman asking me what depredations actually had been committed. I could not learn at that time that more than one murder had been committed. I learned that a man by the name of Bausman, who, with another man, was coming from Fort C. F. Smith to Gallatin Valley, was attacked by Indians; Bausman killed and the other man wounded. General Sherman then replied that if there were no other actual depredations he did not think it was necessary to send troops. And as that was the only murder I knew having been committed at the time, and the only depredation I was aware of the Indians having committed there, I returned to my post and did not muster in any troops.

Q. State whether your failure to muster in troops was not in consequence of the dispatch received by you from General Sherman?—A. Yes; I should have mustered in a battalion of not to exceed four hundred men but for that dispatch. As before stated, I believed there was to be an Indian campaign, which would drive the Indians out of Platte Valley, and that they would overrun Gallatin Valley, rendering a force there necessary for the protection of the settlers.

Q. Did you have any conferences with the territorial authorities as to what you had done?—A. I did. I communicated to Governor Meagher what was done. Before I arrived there, Governor Meagher had called out troops and sent them to the mountain passes towards the Yellow Stone.

Q. At the time you left Montana and returned to Salt Lake City, did you communicate to the territorial authorities any disapproval of what they had done?—A. I was not called upon either to approve or disapprove anything they had done. I had nothing to do with the territorial authorities or with what they had done.

It appears then that none of the troops in question were ever mustered into the service of the United States, and that in reality there was no necessity whatever for calling them out. A single homicide had been committed, or is supposed to have been committed, by the Indians, upon a man by the name of Bozman, whose companion was also wounded by them. Whether these persons gave any provocation for this violence seems entirely unknown; and there is no proof whatever before the committee of any of the surrounding circumstances. Nor does it appear that the governor of Montana, or any of its constituted authorities, made any inquiry into the circumstances of this alleged murder, or any effort to ascertain how far the Indian tribe to which the suspected murderer or murderers belonged sympathized in the act, or whether they were preparing for war or were intending any further violence. For aught we know, and for aught they seem to have known, the homicide may have been the result of provocation or insult on the part of Bozman or his companion, or some sudden excitement, which often in more civilized regions leads to such sad results.

And your committee submit that, without evidence of the reality and magnitude of the danger, evidence satisfactory to men of ordinary pru-

dence and self-command, it would be setting an unsafe precedent in regard to territorial governments to recognize the liability of the United States for such military services. Doubtless the government is, as a general rule, bound to protect the people of a territory from Indian hostilities. But in the present case there were none worthy of the name, and no reasonable occasion for calling out the militia of Montana. The constituted authorities were bound to make a careful inquiry as to the necessity of so important a step. It might easily have led to an extensive and costly Indian war, involving the loss of thousands of lives and millions of treasure. Instead of performing this obvious duty, they seem, in the language of General Sherman, to have been "stampeded"—frightened out of their propriety—when, by a moment of self-possessed and calm inquiry that could have harmed no one, the panic would have been quieted and the occasion for troops would have vanished from their imagination.

The committee do not refer to the services of the men called out by the territorial authorities, but only to the expense of arms and supplies. These seem to have been furnished by persons in good faith, and without knowledge of the want of authority to call out the militia, and the committee recommend compensation for them.

They think it would not be doing exact equity to such persons to withhold from them a reasonable indemnity for property thus furnished under what they undoubtedly presumed to be competent authority.

They, therefore, herewith report a bill for that purpose.