

# MAINE STATE LEGISLATURE

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# FIFTIETH LEGISLATURE.

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HOUSE.

No. 72.

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## STATE OF MAINE.

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EXECUTIVE DEPARTMENT, }  
Augusta, February 21, 1871. }

*To the Senate and House of Representatives :*

I have the honor to transmit herewith, for such action as you may deem proper, a letter from Hon. William W. Belknap, Secretary of War, with a communication from Lieutenant Col. James B. Fry, U. S. Army, formerly Provost Marshal General of the United States.

SIDNEY PERHAM.

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WAR DEPARTMENT, WASHINGTON CITY, }  
February 16th, 1871. }

*To the Governor of the State of Maine, Augusta :*

SIR,—I have the honor herewith to transmit, as requested by the writer, a communication from Lt. Col. James B. Fry, U. S. Army, formerly Provost Marshal General of the United States, defending himself from certain imputations upon his administration of the affairs of the Provost Marshal General's Department contained in the report of the commissioners appointed by or under the authority of the Legislature of the State of Maine to inquire into the enlistment frauds committed in that State during the late war.

Very respectfully,

Your obedient servant,

WM. W. BELKNAP,

*Secretary of War.*

LOUISVILLE, KY., February 13, 1871.

Brigadier General E. D. Townsend,  
Adjutant General U. S. Army,  
Washington, D. C.

GENERAL:—A few weeks since I received from some anonymous friend in Maine a copy of the daily "Portland Advertiser," containing an extract of a report made by certain commissioners acting under the authority of the Maine legislature, in the investigation of enlistment frauds during the late war.

The tone of the Report seemed to throw some responsibility for these frauds on me, in my capacity as Provost Marshal General of the United States. I immediately wrote to His Excellency the Governor of Maine for a copy of the official report, and have been assured by him that it should be furnished as soon as printed.

This copy has not yet been received, but I am in receipt of the Bangor Daily Whig containing the full text of the report, and I desire without further delay to make such comments thereon as seem to be imperatively demanded by the honor of the service, and my self respect.

The report fills me with profound surprise. I did not know that such an investigation was being prosecuted, and I had not the remotest hint that the doings of my office were under review and criticism. It is certainly a very singular circumstance that an investigation of this character, professing to deal with the transactions of my office, and throwing aspersions on my official character should have been conducted without calling on me for any information or giving me the slightest opportunity to be heard. I was, perhaps, better prepared than any other person to give official information bearing upon the subject under investigation, yet for reasons best known to themselves the commissioners did not see fit to call upon me.

My only resource, therefore, is to make this communication to my proper military superiors, asking that it be laid before the governor of Maine, and requesting that it be made as public, and a matter of as permanent record as the report to which it relates.

The commissioners charge me with transcending the requirements of law in 1864, from which frauds resulted. Their report

says, "We shall not, however, have fully discharged our duty, unless we indicate in some general way the conclusions we have unavoidably arrived at as to the persons upon whom the responsibility for these unauthorized credits rests." "When the Provost Marshal General in his letter of July 9, 1864, appointing Governor Cony and Major Gardiner to the Naval commission, instructed them that, 'in determining the credits the State of Maine and the different sub-divisions of it were entitled to, the secretary thinks it will be fair to assume that the state in which naval enlistments have been made is entitled to credit for the enlistments unless it shall appear by more direct evidence that the credits belong elsewhere,' he seems to us to have transcended the requirements of law. The terms and intentment of the act were to throw the burden of proving residence upon the towns; the effect of the instruction was to assume the residence to be at the place of enlistment, and throw the burden of disproving it upon the town making an adverse claim."

"The instruction from the same officer to Governor Cony and Major Littler, of December 10, 1864, authorizing the credit of the 251 naval recruits is of the same force and refers to the foregoing instruction. The mere private endorsement upon the Marine Corps list in the hands of Messrs. Pike and Colby, authorizing a credit of the names it contained to districts and sub-districts of Maine, and the similar instructions for a like credit of about 200 names on a list held by G. P. Cochrane, to districts and sub-districts in the State of — does not seem to us to have had the slightest pretext of law or propriety to vindicate it."

Whether the instructions of July 9 and December 10, 1864, above mentioned be right or wrong, I am not responsible for them. They were *Mr. Stanton's, not mine*. This is plain from their terms, for I say, not that *I* think, but that "the Secretary thinks," &c., and this is confirmed by my final report (page 70) dated March 17, 1866, where I say, referring to this same matter, "the Secretary of War decided," &c. Under the law, my orders and decisions were made in my own name and not in that of the secretary, as will appear by reference to them. When I, as his subordinate officer, communicated his decisions, as in this case, they were *his, in fact*, and not mine. But the terms of the instructions, and those of my final report, though sufficient proof, are not the only nor the strongest proof on this point. I have the original of my recommendation to the Secretary of War for carrying out this law. The

whole tenor of these instructions as framed by me, was to throw restrictions around these credits, and the 4th Article of them was in the following terms :

IV. "Their *residence must* BE PROVED *to the satisfaction of the Secretary of War.* When the residence is established, *as required by the law,* the names of the men credited will be placed on the enrollment lists of the places to which the credits are allowed. It shall be the duty of the Acting Assistant Provost Marshal General of the State to see to this."

It appears that in the opinion of the commissioners this recommendation of mine would have fulfilled the requirements of the law and prevented frauds. But Mr. Stanton rejected it and substituted the paragraph which the commissioners think transcended the law and produced evil results.

I am happy to have the commissioners on my side of this question, but I must leave *them* to contest the correctness and wisdom of Mr. Stanton's construction of law. The issue is one for jurists to decide, and I let it rest between the commissioners on the one side, and the deceased War Minister, Attorney General, and Justice of the U. S. Supreme Court on the other. I know the latter to have been an able jurist; of the former I know nothing. Besides the charge I have just explained, the commissioners say that by mere private endorsement credit was allowed for a marine corps list, in the hands of Pike and Colby, to districts and sub-districts in Maine, and that by similar endorsement a like credit was allowed upon a list in the hands of G. P. Cochrane to districts and sub-districts in the State of ——— .

The commissioners say that there does not seem to them to have been the slightest "*pretext of law or propriety*" to vindicate the allowance of these two lots of credits. Let us see first as to the "law." The acts of July 4, 1864, section 8, governing on this subject, said, the men therein described *should* be credited "upon satisfactory proof of their residence made" (not to these commissioners but) "*to the Secretary of War.*" As the commissioners do not know, or even pretend to know, that "satisfactory proof was *not* made to the Secretary of War," their charge must be regarded as the mere assertion of a negative. Granting for the sake of the argument that with all that wisdom after the fact, acquired by the light of six years, the commissioners have ascertained that the *truth* regarding some or all of these credits would not now justify their allowance, and still it will not follow that they ought

not to have been allowed *at the time* on proof which was then satisfactory to the Secretary of War.

It is sufficient on the point of "propriety" to say that the action in these cases cannot be properly passed upon without a full knowledge of the circumstances under which it was taken. The commissioners lacked that knowledge and could not acquire it, even if they had tried so to do. So much for the general features of such credits as were allowed.

Now in relation specially to the so called "marine corps list," and the "list held by G. P. Cochrane," which the commissioners say were credited by "mere private endorsement."

I made no mere private endorsement on papers for the allowance of credits, and if I had done so my subordinates would not have been justified in regarding them. The "marine corps list" came to the War Department with an official letter dated October 7, 1864, from Major Nicholson, Inspector of the Marine Corps, a proper officer to give the facts in relation to these men. He desired that they be credited to the localities "set opposite their names." The list was forwarded to Major Littler, with directions to credit, "provided they have not been heretofore credited."

Of the Cochrane list I know nothing, having no recollection of any such list or transaction as that set forth, and I am informed that the records of my office furnish no information on the subject. I never knowingly ordered a credit in blank, and if there is a genuine signature of mine on the list described by the commissioners as the Cochrane list, it was obtained through some misrepresentation, misunderstanding or fraud; but until I see the list and can determine as to the genuineness of it and of my signature, I shall certainly think there is a forgery in it. The commissioners, it seems, have seen none of these mere private endorsements, but assert their existence on "verbal testimony." They say "We have only verbal testimony of the special orders to credit the names borne on the Marine Corps list offered by Pike & Colby, and Cochrane." They do not say in terms that these mere private endorsements were mine, but I infer from the context that they meant it.

But in determining the responsibility for credits and their consequences—which the commissioners place entirely on my shoulders—there are some other points to be borne in mind. The State and town authorities sought and accepted these credits and knowingly paid bounties for them. The General Government could neither exact or regulate these payments; all it could do in this

regard it did do, that is, set the example of paying bounties for and to actual recruits only. It is a significant fact that there were few or no frauds in the matter of government bounties. It was clearly the duty of *the towns* to see that their bounties were honestly and properly disbursed. It was *my duty* to see that the men were obtained for the service. How well the former was performed is indicated by the report of these commissioners; how well the latter may be inferred from the fact that the army was languishing for recruits when I entered on the duties of Provost Marshal General in 1863, and that, notwithstanding all its casualties, it contained more than a million of men when the war closed in 1865.

It looks like very sharp practice, to say the least of it, for the authorities in Maine to have sought and accepted paper credits, and to have openly and voluntarily paid large sums of money to scoundrels for their part in preparing them, and then long after the war, when the people are smarting under the pecuniary consequences of their own folly, for another class of authorities to come out and condemn the General Government as culpable, and as the cause of the burdens which they inflicted upon themselves.

Though I had no power to regulate local bounties or forestall frauds in them; I was, when the war closed, actively engaged in the prosecution of persons perpetrating these frauds. Some 30 or 40 of the worst cases were under arrest by my bureau, about twenty of which had been regularly tried by U. S. authority, convicted and sentenced to fine and imprisonment. One of these, G. M. Delaney, a witness before these commissioners, was found guilty, among other things, of defrauding recruits of money voted by the towns and cities of Maine, and was sentenced to ten years' imprisonment and a fine of forty-five thousand dollars. I, at Washington, was comparatively withdrawn from the fraudulent practices carried on in the States under the very eyes of the State and town officers, and as I understand the law within their jurisdiction. Yet I recall no arrests or punishments for these crimes in the State of Maine or elsewhere, except those by my bureau.

The disagreeable and unpopular duty of drafting men into the ranks of the army, after volunteering had become inadequate, was put upon me without agency or solicitation on my part, and at the sacrifice of more desirable employment in other fields of service. I know that I discharged it faithfully, industriously, honestly—to the satisfaction of my superior officers—and with the cordial concurrence, so far as I know, of Governor Coburn and Governor

COMMUNICATION.

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Cony, the two Executives of Maine with whom I had official intercourse. Yet when this duty was ended by the termination of the war, my services were by many measured rather by the extent of their annoyance to individuals, than by their importance to the nation. I have not complained of this, but have looked patiently and confidently to time for justice, and I shall continue so to look, notwithstanding the wrong done me so unexpectedly by these commissioners in Maine. And I shall even hope for justice from them when this explanation reaches them—an explanation that never would have been necessary had they given me an opportunity to appear before them. This I should have gladly done, not merely in defence of my official course, but to aid them in detecting and if possible punishing the perpetrators of those frauds in their State which I labored assiduously to prevent.

Very respectfully,

Your ob't serv't.

JAMES B. FRY,

*Lt. Col. and Ass't Adj. Gen'l.*



STATE OF MAINE.

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IN HOUSE OF REPRESENTATIVES, }  
February 22, 1871. }

Laid on the table and ordered to be printed, on motion of Mr.  
SEWALL of Oldtown.

S. J. CHADBOURNE, *Clerk.*