

Fever, intermittent .....	42
Fever, remittent .....	16
Fever, typhoid .....	12
Felons .....	6
Gonorrhoea .....	4
Gastritis .....	1
Hamorrhoids .....	9
Hamoptysis .....	4
Hepatitis .....	3
Hernia .....	6
Jaundice .....	4
Mumps .....	24
Neuralgia .....	7
Onanism .....	17
Ophthalmia .....	10
Organic heart disease .....	7
Pneumonia .....	43
Pleurisy .....	6
Phthisis .....	23
Pericarditis .....	3
Paralysis .....	3
Pregnancy .....	1
Rheumatism .....	13
Syphilis .....	21
Struma .....	10
Variola .....	14
Varioloid .....	13
Excision of testes .....	1
Wounds .....	15

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*Documents  
1873  
Vol 1*

## Legislative Document No. 14.

## ANNUAL REPORT

OF THE

## QUARTER-MASTER GENERAL

TO THE

GOVERNOR OF THE STATE OF KENTUCKY,

FOR THE YEAR 1873.

FRANKFORT, KY.:

PRINTED AT THE KENTUCKY YEOMAN OFFICE.

S. I. M. MAJOR, PUBLIC PRINTER.

1874.

## REPORT OF THE QUARTER-MASTER GENERAL.

STATE OF KENTUCKY,  
OFFICE OF QUARTER-MASTER GENERAL,  
FRANKFORT, February 12, 1877. }

*To His Excellency, P. H. LESLIE:*

SIR: The war claim of Kentucky consists of twelve installments, amounting to \$3,630,364 37, of which sum there has been collected from the United States Government \$3,116,780 96, leaving a balance of \$513,663 41 yet unadjusted. This amount is, however, subject, upon settlement, to a credit of \$58,718, being the proceeds of United States property, which, remaining in the hands of the State at the close of the war, was sold and paid into the Military Fund. I have recently made with the Third Auditor a settlement upon the fourth, tenth, and twelfth installments, which is now in the hands of Second Comptroller. I am assured that this settlement will be completed in a few days, when there will be paid thereupon about \$120,000. In the meantime the Third Auditor has taken up the fifth installment, and will, as soon as the labor can be performed, make a settlement upon that, together with the sixth, eighth, ninth, and eleventh installments.

The routine necessary to be pursued in these settlements is long and tedious, yet it only needs to be intelligently and patiently followed to recover almost every dollar claimed by the State. I say almost every dollar, for it would be remarkable, indeed, if, in the disbursements of nearly \$3,700,000, made under such exigent circumstances, there were not some irregular expenditures which cannot be justified under the laws for reimbursements to the States; yet, notwithstanding the fact that much of the service in Kentucky was of an extraordinary nature, and rendered under peculiar circumstances, we are not likely to find any larger per cent. of our claim finally suspended than those States which, being far removed from the battle-fields of the war, were not subjected to the embarrassments belonging to the raising, organizing, and equipping troops in this State, where they were often in action before the organizations could be completed. In the settlement of the State war claims, the War Department has, until recently, ruled that a State could be reimbursed only for expenses attendant upon the recruiting and

enlisting of men, who were actually mustered into the United States service.

The Treasury Department sustained this ruling, and thereby did great injustice to the States, and more especially to Kentucky—inasmuch as this State being at the time the common battle-ground, where troops furnished upon her quota were often in active service from the very day of their enlistment, and all the Kentucky regiments suffered more or less before they could be mustered into the service of the United States. Indeed, in some instances regiments were on duty for as much as five months before their muster; were engaged in many battles, and lost largely. Yet the State was denied reimbursement for pay, clothing, &c., advanced to such men. I took up the question, and after many references and delays, and a deal of arguing on both sides, I succeeded in having the ruling withdrawn.

I submit herewith a copy of argument, with rulings, indorsements, &c.

I also append tabular statement of the entire claim by installments, giving the payments, with dates thereof, on each installment respectively; also showing amounts suspended, &c.

There will also be found the proper returns of all ordnance, ordnance stores, &c., belonging to the State, whether in arsenal, the hands of the militia, or of military schools. During the year a number of the militia organizations failing to make the regular reports required of them, and giving other evidences of their inefficiency, have been disbanded, and their arms called in. These arms have almost invariably been found to be in a bad condition.

I have received from the Kentucky University two bronze pieces of artillery, with caissons and complete equipments, to be charged upon the quota of the State at the United States Ordnance Office. On the other hand, all the small arms and accoutrements now in the hands of the cadets of the University will be credited upon quota, under a recent act of Congress authorizing the Chief of Ordnance to equip those military schools whose cadets are under the command of an officer of United States Army detailed by the Secretary of War.

The arsenal and magazines are in good repair, and the arms and ammunition will be found therein in good condition.

Very respectfully,

FAYETTE HEWITT,  
Quarter-Master General.

STATEMENT of the condition of the account of the State of Kentucky with the United States, January 10, 1874.

No. of installment.	Amount of installment.	Am't allowed.	When allowed.	Balance suspended.	Am't deducted for sale of property.
First . . . . .	\$753,752 47	\$706,722 69	Dec. 6, 1866	.....	\$2,016 32
		40,398 30	April 17, 1867		
		5,595 60	July 27, 1867	1,035 88	
Second . . . . .	34,457 00	31,860 55	July 27, 1867	2,596 45	
Third . . . . .	349,478 63	187,639 74	Feb. 5, 1867		
		*54,511 63	June 5, 1867		
		83,412 64	Oct. 14, 1867		
		4,341 65	June 1, 1868	10,572 97	619 74
Fourth . . . . .	671,257 05	551,298 52	Feb. 5, 1867		
		34,341 78	Feb. 6, 1868		
		3,588 37	June 5, 1867		
		222 17	August 11, 1868	81,806 21	1,341 32
Fifth . . . . .	304,638 46	190,482 76	Feb. 5, 1867		
		12,681 72	June 5, 1867		
		36,481 91	June 1, 1868		
		28,174 51	April 23, 1870	36,817 56	
Sixth . . . . .	319,788 90	226,460 54	Feb. 5, 1867		
		8,917 86	June 5, 1867		
		31,812 52	August 11, 1868	52,597 97	
Seventh . . . . .	47 00	.....	.....	47 00	
Eighth . . . . .	193,697 71	2,472 56	Feb. 5, 1867		
		14,086 31	July 20, 1869		
		50,119 75	May 27, 1871		
		103,881 44	June 15, 1871	23,137 65	25,177 06
Ninth . . . . .	132,451 01	422 89	Feb. 5, 1867		
		26,662 16	June 15, 1871	105,365 96	23,589 14
Tenth . . . . .	582,692 43	525,258 72	August 19, 1872	57,433 71	
Eleventh . . . . .	226,842 96	9,141 66	July 27, 1867		5,974 42
		145,710 00	Oct. 18, 1870	71,991 30	
Twelfth . . . . .	70,260 75	.....	.....	70,260 75	
Total . . . . .	\$3,630,364 37	\$3,116,700 96	.....	\$513,663 41	\$58,718 00

\* An error of \$24 1/2 was deducted from this allowance.

## LETTER

*To Third Auditor protesting against Rule requiring Affidavit of the Governor to a certain Class of Claims.*

*To the Third Auditor of the Treasury Department :*

It is respectfully submitted that the rolls, to which it is proposed to require the affidavit of the Governor of Kentucky, are made out from the muster-rolls, and other documents, on file in the office of the Quarter-Master General of the State, altogether, without the aid of any oral testimony or explanation, and their correctness appears by comparison of those papers, records, and files, and is not within the personal knowledge of the Governor of the State.

The Department requires his certificate to authenticate all matters of an official character, and if he is competent to certify officially anything in regard to the records and papers of the office of the Quarter-Master General, he is competent to certify to the rolls in question, for they are files and records of that office.

In *The United States vs. Liddle*, 2 Wash. C. C. R., 205, it was held, that the certificate of the Secretary of State was competent evidence to prove the official character of Mr. de Lima; the certificate being, that when the Spanish Charge d' Affaires presented his own credentials, he introduced de Lima as attached to the Legation, and as performing the duties of Secretary of Legation.

In *The United States vs. Bruner, Baldwin*, 234, the certificate of the Secretary of State of a like character was held to be full evidence of the fact.

In *The United States vs. Mitchell*, 3 Wash. C. C. R., 95, the certificate of the Governor of St. Thomas was offered in evidence, stating that the petition of the captain of a vessel, for leave to take away the cargo, was refused. The Court said: "We know no way by which that fact could be better proved than by this certificate, unless the deposition of the Governor had been taken, which it is not to be supposed he would have consented to give. This is very different from evidence of matters not official, in which latter case such a certificate could not be admitted.

The petition and the action had on it appeared, of course, among the files of the Executive office of St. Thomas. The Court did not require copies, but regarded as sufficient a certificate of the facts that would appear by the copies. Here the rolls in question made out in the Quar-

ter-Master General's Office, and part of its files, show the facts that appear by original documents and papers, and the certificate of the Governor that they correctly exhibit those facts is competent, full, and the best evidence.

When a list of land claims, pre-emptions, &c., allowed and rejected, is made out from the original voluminous mass of papers or long records in the General Land Office, it is sufficiently and conclusively authenticated by the certificate of the Commissioner. If his affidavit could be required, he could, in every suit in which the facts appearing by any abstract were to be proven, be made a witness to prove the abstract correct; and then would it not be objected that copies of the papers and records themselves, from which the abstracts were made, being the highest and best evidence, must be produced, and the abstract could not be admitted as evidence? Undoubtedly; and these copies could only be authenticated by the Commissioner's certificate, and not by his affidavit.

The Commissioner of the General Land Office lately refused to testify as a witness in regard to decisions and papers in the General Land Office, and he did right. If he could be compelled so to testify, he might be continually compelled to neglect the public business, and day after day attend suits between private parties, or sit in justices' offices to give his depositions. If the Governor of Kentucky can be required to furnish his affidavit in regard to these rolls, it is on the ground that his certificate is no authentication of them, or that his affidavit is the higher proof. Whichsoever the ground may be, it would give any private individual the right to summon him to testify as a witness in regard to a similar matter, and this he cannot be bound to do. Could the President of the United States be required to give a deposition or affidavit to prove correct an abstract or list made out in the General Land Office? Quite as well, certainly, as the Governor of a State can be to swear to papers made out in an Executive office.

In *Levy vs. Burley*, 2 Sumner, 355, there was a consular certificate as to the facts of the arrival and departure of a vessel, and the Captain's failure to deposit a register. No law authorized such a certificate or made it evidence, and it was held that the facts must be proven. And in *Wood vs. Pleasants*, 3 Wash. C. C. R., 201, it was held that the certificate of an officer of a foreign government, whose deposition could be taken, was not evidence of matters of fact.

The Governor of Kentucky cannot testify, of his personal knowledge, as to any of the facts appearing in these rolls. He cannot swear that the rolls are correctly made out from and by comparison of the mass of

original documents and papers, without personally verifying their correctness. He cannot be required to make that examination and comparison. But, it having been done by his subordinate, *he is authorized* to certify it correct, as the chief of every department every day certifies to the correctness of copies without personally comparing them. He certifies for his subordinate, whose act is, in law, his.

The State of Kentucky, like every other State, declines to burden her Governor with clerical duties, or require him to swear to the correctness of copies, exemplifications, and abstracts. No man would hold the office and do it, and without being tenacious of her or his dignity. She protests that it is not more respectful than it would be in the case of the President to demand that the Governor shall swear that papers are correct, as if his certificate to that effect might be false, or not entitled to credit. It is not consistent with the dignity of the Presidential office that *he* should be made to multiply such duties. It is as little consistent with the dignity of the Chief Magistrate of a State, when it cannot be required of a clerk of a court, a notary public, or a justice of the peace.

Moreover, the affidavit of the Governor, like his deposition, is not in any sense official. It is no more than the affidavit or deposition of any private citizen having the same personal information. What the Treasury Department wants is the *official* authentication and evidence of the Governor. His certificate is that; his affidavit is not, nor would he be Governor in giving it; and he could be contradicted and discredited like any other witness.

Wherefore, it is respectfully submitted that his affidavit ought not to be required, cannot be required, and would amount to nothing more than that of a private person would if required and given.

He *certifies* as Governor; he *testifies* as an individual without official character. He is no more Governor when a witness, deposing in *ex parte*, than he would be Governor if one of a jury. The Supreme Court has held that a State lays aside her sovereignty to become stockholder in a bank. You cannot have the affidavit of the Governor of Kentucky, but only of Mr. Leslie. The return of a sheriff on original process is conclusive. It cannot be impeached or contradicted. It is the return, not of the man, but of the officer. His affidavit of the fact of service given in another court would be that of the man, not official, and open to contradiction.

Respectfully submitted by

FAYETTE HEWITT,

*Quarter-Master General of Kentucky.*

NOVEMBER 3, 1873.

[COPY.]

WASHINGTON, November 12, 1873.

SIR: I have the honor to inclose herewith a copy of the "Report of Thomas M. Vincent, Assistant Adjutant General United States Army," dated December 30, 1867, relative to the claim of the State of Kentucky for the payment of one month's advance pay to her troops; and also the argument of Fayette Hewitt, Quarter-Master General of said State, dated November 3, 1873.

The request of General Hewitt "that the condition of payment be so modified as to allow the Governor to file certificates, instead of affidavits," is deemed reasonable and just by this office, as fully explained by the statement of the case in his argument herewith filed.

As the Executive of the State was called to that position several years after these troops were raised and sent into the field, it is fair to infer that he could have only such evidence of that service as appears on the records of the State in some of the Departments under his charge, and, therefore, his certificates to the copies of the records as Governor of said State were considered by this office to be as conclusive proof of the fact as his affidavit.

I would, therefore, suggest that the argument of the Quarter-Master General of Kentucky be sent to the Secretary of War for his action relative to the same, unless you may deem such reference unnecessary.

I am, very respectfully,

ALLAN RUTHERFORD, *Auditor.*

HON. J. M. BRODHEAD, *Second Comptroller.*

*Indorsement of Second Comptroller.*

Respectfully returned to the Third Auditor, with all the papers transmitted with this letter.

The certificate of the Governor, instead of his oath (as suggested by Quarter-Master General Hewitt), will be admitted as sufficient in the premises, and there is no necessity to refer the points to the War Department.

J. M. BRODHEAD, *Comptroller.*

2D. COMPTROLLER'S OFFICE, November 15, 1873.

## ARGUMENT

### *Against the Refusal of the Treasury Department to Pay for Troops Enlisted but never Mustered into the United States Service.*

#### *To the Third Auditor and the Second Comptroller, Treasury Department:*

The State of Kentucky protests against and asks a reconsideration of the ruling that she is not entitled to be repaid under the act of 27th July, 1861, the sums expended by her in paying men enlisted in regiments raised for the service of the United States, and not afterwards mustered into the service on account of death, happening in battle or otherwise, or disability, caused by wounds or sickness, while in the service, and actually employed in aiding to suppress the insurrection against the United States.

All the troops to which these men belonged were raised upon a call from the President, and never belonged to those known as State troops. The regiments formed by them and others were ultimately mustered into the service of the United States; but Kentucky being the seat of war from September, 1861, until the latter part of March, 1862, these troops were placed in active service as soon as raised, and some of the regiments were actually engaged in several battles before they were formally mustered into the service.

In some cases this was not done until the troops at last mustered in had been two, three, and four months in actual service in the field. During the time many men were killed or died of sickness, many disabled by wounds, or by sickness and ruin of health rendered unfit for duty; and many were captured, actually imprisoned when their companies were mustered in, and for months afterwards; and many of these, when at last exchanged or released, were, from the effects of imprisonment and sickness, unfit to be mustered into service.

All those who were living, and the proper representatives of those dead, the State of Kentucky regarded as entitled to the pittance of pay which the living or dead were promised when they enlisted. It would have been both inhuman and shameful if she had not paid them, and she did it.

She had the explicit assurance of the United States, that if those men were "employed in aiding to suppress the insurrection," what she might expend in paying them should be refunded to her. Undoubtedly, her authorities never dreamed that under that pledge and promise, and any possible regulations that human ingenuity could frame, not utterly in violation and disregard to the law, the department of war would become possessed of the notion that if the State paid a company from month to month, until it was mustered into the service, and in the meantime one or two of the men so paid should die, she would lose so much of the pay advanced by her for the United States as he or they might have received. As in that case the State would have an action against his estate for the moneys paid him without legal consideration, it would seem that the denial of pay was by a way of penalty for getting one's self killed too soon, or being killed at all.

When the man lived and *was* mustered in, the United States pays to the State, without demur, what she paid him before he was mustered in. That is, of course, because he was *entitled* to the pay from month to month, and when the State paid it. How could his dying before being mustered in change that? If the United States had paid him, and he died before being mustered in, would *they* have had an action against his estate to recover back the pay? The War Department must think so.

The United States have in other ways admitted their obligation to refund to Kentucky what it advanced in pay to these men or their representatives.

*First.* By refunding to her the first month's pay which she advanced for the United States to each man upon his enlistment, and which she was under no manner of obligation to advance, nor could have any right to have the same refunded to her, unless the enlistment without more placed the men in the service of the United States, and entitled them to pay.

Were they not from the day of the enlistment in that service? Were they not from that day subject to articles of war and to the commands of the military officers of the United States in Kentucky? Were they at liberty after enlistment to withdraw and go to their homes, or would that have exposed them to the pains and penalties of desertion?

How could they be entitled to the *first* month's pay and the State have a claim against the United States for advancing *it*, and they *not* be entitled to pay for the succeeding months, and the State not have

the same right to advance that? If they were not in the military service of the United States, in what service were they? Certainly not in that of the State, for they had enlisted in that of the United States. Were they subject, then, to the military laws of the State? No one can doubt that they were not. The State was not her own paymaster in paying them.

*Second.* The United States have admitted that they were in their service from the date of the enlistment by repaying the funeral expenses of those of them who died in that service.

*Third.* The United States have admitted that these troops had been regularly enlisted in their service, and were a part of the army of the United States by means of that enlistment, by mustering them in, as already organized into companies, without re-enlistment, and by continuing them in the service, the officers holding commissions given by the Governor of Kentucky for the United States, the only commissions they ever held, and which were then nullities if officers and men were not in the service of the United States when they were given, as much as they were after they were mustered in.

A similar call was made upon the States when the war with Mexico commenced. A regiment of cavalry was raised in Kentucky and one in Arkansas. The company officers of each were commissioned by the Governor of the State. The companies of the Arkansas regiment rendezvoused at Washington, Arkansas, and were there a month before a United States officer was sent there to muster them into the service. The United States paid officers and men, not from the date of that mustering in, but from the organization of the companies respectively. The officers never held any other commissions than those given by the Governor. The Kentucky troops in question were raised in the same way, on a similar call. They never were State troops, in the State service, nor raised for it; and surely they were not serving, fighting, and dying "on their own hook," not paid by any government, nor under any flag. If they were, their bones ought to be removed from the National Cemeteries and denied the annual coronation of flowers. Not the State, but the United States, purchased their lives.

What, in such a case as the raising of companies under a call from the United States, as these were raised, and as those were that volunteered during the Mexican war, was the "mustering into service?" The enlistment of the man entitled him to the bounty, where there was one, and placed him actually, and legally in the service. The mustering in is

for the benefit of the Government, to perfect the record of the regiment, and not to secure the services of the soldier, or put him into the service. If it were necessary to effect the latter, he could not desert while not mustered in, nor be guilty of disobedience of orders, nor be under any obligation to march and fight, any more than any other private citizen. His enlistment and engagement would have been a mere bargain by him that he *would* be a soldier of the United States, *when mustered into the service*. If the United States, nevertheless, even on this hypothesis, used his services, and induced or forced him to risk his life or limbs, they are estopped to plead that he was not in their military service when shot, because they had not seen fit or had opportunity to have him formally mustered in.

Suppose the call on the State had been for 10,000 men, and they were raised, organized, equipped, received a month's pay, were put under a General of the Army of the United States, and, as part of it, were engaged in a dozen battles, and when "mustered in," at the end of six months, three thousand of them were *hors de combat*, would it have been held that, because there were but 7,000 mustered in, the State had furnished but 7,000, and must raise 3,000 more to fill the call? The question answers itself. If the law had been so, the United States had only to refrain from mustering in the men furnished until all were expended, and, by repeating the process, compel the State to furnish three men instead of one, and three for one in some other State, whose men were more promptly mustered in.

The State fully complied with all her obligations. She raised, armed, and equipped the men called for, and placed them under the command of the officers of the United States. The mustering in was the duty of the United States. It is permissible to suppose that they *could* have done it as soon as the men were raised, if they had seen fit; and it is also permissible to suppose that this was neglected and delayed only because no haste was necessary, as the troops were both actually and legally in the service without it. If the mustering in was necessary, and was neglected, they cannot profit by their neglect, nor the dead soldier's heirs, or the State which has paid them, suffer it. If it was unnecessary, and therefore delayed, then the soldiers were entitled to their pay, from day to day and every day, as well before as after they were mustered in.

*Fourth.* The United States having paid to the State what she expended in paying State troops, never mustered into the service of the

United States, under the acts of 1861 and 1872, have admitted that those raised for *her* service, and afterwards mustered in, were entitled to pay, and the State to be refunded what she paid them for the time previous to their mustering in. They were in *some* service. They were troops either of the United States or of the State. If of the State, those laws provided for paying the State what she paid them. If not of the State, they were troops in the service of the United States, entitled to pay as such. They were not troops in *no* service.

Will any public official of the United States gravely hold, that, because they enlisted *directly* in the service of the United States, they were neither entitled to pay as troops of the United States or of the State?

This is no technical proposition. The legislation of Congress, by the two acts of 1861 and 1872, permits no one to deny that the United States have deliberately declared that every man in the field shall be deemed to have been in the service of the United States, and that each State shall be repaid all that it expended in raising, arming, equipping, and paying its troops employed in aiding to suppress the insurrection. For the act of July, 1861, expressly so provides, and that of June, 1872, provided for like repayment to Kentucky on account of State forces called into service to act in concert with the United States forces.

These are but special expressions of the broad and just general intention on the part of the United States to consider everything as paid and advanced for them, that any State paid or expended to put and keep in the field any troops that aided to suppress the rebellion, from the time when they were raised. Justice required this, and the nation promised it.

These men who were killed, wounded, or disabled in the service of the United States, complied in entire good faith with all their engagements to the United States. In the faithful discharge of their duties they were slain or wounded, or ruined in health and strength, or, as prisoners of war, languished, many of them, their lives out in loathsome prisons. Suppose the State of Kentucky had not, as simple justice and common humanity required, paid the living survivors of them and the widows and orphans of the dead their pittances of pay, and they were asking it of the United States; and suppose the answer were, "You were entitled to no pay; you died or were disabled too soon; you were never mustered into our service." They would say, "Pay us, then, because we

were in the State service." Suppose the answer were, "No, you were not in the State service; you enlisted in ours."

Would not the dead or disabled soldiers have the right to say: "Then I was not fairly dealt with. If you meant that I should receive no pay until I should be mustered in, why did you not say so? Why did you conceal that intention from me to deceive me? Why did you use my services, and compel me to lose life or limb in your service? Why did you not have me mustered in at once?"

He could make an even graver charge. He could say, "By your act of July 27, 1861, you solemnly promised that each State should be repaid whatever it might expend, or whatever debt it might incur, for paying its troops employed in aiding to suppress the existing insurrection. You said nothing about our being mustered in. You did not whisper it. You thus induced us to enlist in your service. Why did you not say in your law that we should be paid only from the time we might be mustered into your service? Then we who are dead would still, perhaps, be living, and the wounded and disabled whole and sound; for we should not have been used and expended by you while not mustered in. If the widows and children of us who died were not entitled to receive pay for our services, we have been murdered, for you had no right to expose our lives to danger. You had not bought them."

It is true that the Secretary of the Treasury framed regulations, by which he declared that reimbursement would be made only for expenditures on account of troops that had been and might be mustered and received into the service of the United States, *or actually employed in it*. These dead, wounded, disabled, and prisoners *were* actually employed in it, and, even under these regulations, were entitled to pay.

Moreover, if troops were employed for months before being mustered in, the mustering in, even under the regulations, *related* to the enlistment, and entitled *all* the command to pay from its date. It was precisely as if they had *then* been mustered in. If a sheriff sells land under execution, and does not make his deed for a year, it *relates* to the day of the sale. And certainly the Secretary meant that if a State paid the men of a company before it was mustered in, and it was afterwards mustered in, it should be reimbursed *all* it might have paid. He did not mean that if a man paid died afterwards, before his company was mustered in, she should lose what she had paid to that man.

For the law provided for reimbursing costs, charges, and expenses incurred, not only in paying, but in enrolling, subsisting, clothing, sup-

plying, arming, equipping, and transporting the troops. If all these expenses were incurred for a company of seventy-five men, and five months after they were incurred, twenty-five of them had been killed in battle, would the United States refuse to pay one third of the amount expended? Certainly not. Why? Simply because the expenditure was for the company as a military unit; and that part of the men for whom it was made died afterwards would not affect the right of the States to repayment. So the company was *paid* as a unit. Every man was entitled to be paid monthly. If he died after a monthly payment had been made, had it any the less been made? Certainly neither the law nor regulation said to the State, "provided, nevertheless, that whatever costs, charges, and expenses you may incur for enrolling, subsisting, clothing, supplying, arming, equipping, paying, or transporting men who may die or be disabled before their command is mustered into the service, and who, therefore, shall never be mustered in, shall *not* be repaid to you."

If there had been such a proviso, what reason could have been given to reconcile the State to it? That such men should be deemed to have been in the *State* service? The answer to that would have been that it would be false in fact, no matter how it might be "deemed." That men so dying and disabled would not be deemed to have been in the service of the United States. The answer would have been, that if they should be "employed in aiding to suppress the insurrection," or "*actually* employed in the service," it would be the same under the regulation as if they were mustered in. That if the men should be such fools as to obey orders when not legally bound to do so, and get themselves killed or wounded while not mustered in, the State *ought* to lose what it might have paid them for being as great a fool as they. There really seems no better reason for such a proviso.

The *pay* of a company is no more divisible than the clothing or arming, transporting or subsisting it; and the Secretary never meant that what might be paid on either score should be cut down by deducting what portion on either might afterwards appear to have been paid to, for, or on account of, a particular man, who did not live to be mustered in, or might be so disabled that he could not be.

The proposition seems to outrage all sense of right and justice. Two men enlist on the same day. The company is immediately organized, armed, equipped, and supplied, and sent into the field. Four months afterwards it is engaged in battle, and one of the two men is killed

The next day the company is mustered in, and immediately after the other dies. *His* widow and children are entitled to his back pay, and have been paid it by the State, and the United States repay it to her. So she has paid that of the other, and *that* she is told she must lose.

It is then more meritorious in a soldier to be killed late than soon! Suppose the first was killed because he was more daring, in a forlorn hope, in saving the flag, and the other kept out of danger's way, or was a camp follower or otherwise, not required to be under fire?

Would it have aided the suppression of the rebellion, or been good policy to inform the troops raised by the States that they would not be considered entitled to pay, or as in the service, until they should be regularly mustered into it? Would the United States now like to be represented as saying, "We did not tell them that, because we knew it would be bad policy, but it was our intention to act on that rule?" or as saying, "We neither said it nor meant it then; but it is convenient now to say that we meant it, though we knew it was not so understood."

What else than one or the other of these *can* they say, if they refuse to reimburse to the States what they so paid in good faith, and under a law in whose language there is no manner of ambiguity?

Respectfully submitted by

FAYETTE HEWITT,

*Quarter-Master General of Kentucky.*

NOVEMBER 10, 1873.

TREASURY DEPARTMENT,

THIRD AUDITOR'S OFFICE,

WASHINGTON, D. C., Nov. 14, 1873. }

SIR: I have the honor to inclose herewith an argument of Fayette Hewitt, Quarter-Master General of Kentucky, relative to expenses incurred by the State of Kentucky on account of troops raised by said State, but from causes stated did not muster into U. S. service.

As this State, like all the other States who raised troops under the various calls of the President, raised them solely for the benefit of the United States, and not for the State; and as each man was enlisted in good faith and placed in camp to await the convenience of the U. S. mustering officers, it can hardly be considered fair to require the State to run the risk of loss by death, disease, or other causes, when she

would have been protected against such loss had the United States furnished a mustering officer to muster each man as he was delivered at camp. The act of Congress of July 27, 1861, which provides for reimbursement to the States the "expenses necessarily incurred on account of their volunteers" employed in aiding to suppress the insurrection against the United States, makes no mention of muster into U. S. service. It is the opinion of this office that the act referred to was intended to cover more than those volunteers who were formally mustered into United States service, and that by the use of the word "*employed*," those persons who volunteered and were enlisted and went into camp under the call of the President through the Governor of their State, and who, from no cause of their own, were not mustered formally into the U. S. service, were also included, and that therefore the States are properly entitled to reimbursement for that class of expenses. Rule Two of the Treasury, for the settlement of State claims, has been construed in such a manner as to exclude that class of claims; but I think a careful reading of the first sentence of said rule will justify the allowance of this class of expenses, as these men were actually employed in U. S. service, though not formally mustered, and were considered deserters from the U. S. service, if they deserted after signing enlistment papers, though they never mustered formally into the United States service.

I would therefore suggest that Rule Two of the Treasury be modified so as to include this class of expenses, or that those troops who were enlisted and actually went into camp, and were subject to the orders of the commandant of the camp or post, be recognized as actually employed in United States service, and that the States, who acted as the agents of the Government in raising these troops, be allowed the expenses incurred on account of the same.

The argument of General Hewitt is referred to your office for your decision thereon.

I am, very respectfully,

ALLAN RUTHERFORD, *Auditor.*

HON. J. M. BRODHEAD, *Second Comptroller.*

*Indorsement of Comptroller.*

Respectfully referred to the Secretary of War.

The opinion of the Third Auditor of the Treasury, dated November 14, 1873, and the argument of the State Agent of Kentucky, are

herewith submitted to the Secretary of War for his consideration in the premises, since the question presented therein involves, in my judgment, matters both of fact and regulation requiring the sanction of the War Department before an allowance of the claim. With this view, the present reference is made.

Respectfully,

J. M. BRODHEAD, *Comptroller.*

2D COMPTROLLER'S OFFICE, December 1, 1873.

Upon the argument of the Kentucky State Agent, referring to payments to troops, the following remarks are respectfully submitted:

8885. War Department, December 2, 1873.

The United States Government, through the War Department, allows:

1. Pay to troops from date of *enrollment* when the latter is fixed by roll or record showing their proper muster into its service.

2. Pay to men from date of enlistment when the latter is based upon original individual enlistment papers, which must have been taken in triplicate, under the army regulations, and must have at once named for the recruit a designated company or regiment *previously* organized by enrollment and muster into United States service, or must have shown that the status of the man was that of a general service recruit, who was subject to assignment to no other kind of organization than one already once completed by *enrollment* and muster into United States service—one extant of the time of enlistment. These *data* are found in the Mustering Regulations and the Army Regulations which were in force during the war of the rebellion. *Exempli gratia*: "Men are *enrolled* for the public service and *enlisted* for the army." (*Worcester's Dic.*, ed. 1860. \*)

The State of Kentucky claims reimbursement of amounts paid to men alleged to have been *enlisted* within or from that State into or for the service of the General Government, which claims, the State alleges, have been disallowed for the reason that from death, desertion, or other causes, the men paid were never mustered into the service of the United States.

In every case where the State produces an original enlistment paper (one of the triplicates excluding the other two), taken strictly in accordance with the record of the aforesaid rules, and establishes the fact that

\*We first raise an army by *enrollment*, and thereafter, as vacancies casually occur in the ranks, we fill them by individual *enlistments*. The distinction is clearly visible in law.

it (the State), and not the United States Government, has paid the soldier from date of *enlistment* to a subsequent proper period of time, the amount properly paid on that account should be reimbursed.

THOS. H. BRADLEY, *Brvt Capt. U. S. A.*

WAR DEPARTMENT, December 4, 1873.

Respectfully referred to the Adjutant General of the Army for remarks, by order of the Secretary of War.

H. T. CROSBY, *Chief Clerk.*

WAR DEPARTMENT, December 5, 1873.

*Mem.* The rulings of the War Department in cases of this kind, to-wit: referring to questions of enrollment, enlistment, first payment, etc., currently emanate from the Adjutant General's Office. The Adjutant General's remarks in this case, which follow upon the heels of another from the same State, decided by him, should be approved.

THOS. H. BRADLEY, *Brvt Capt. U. S. A.*

WAR DEPARTMENT, December 15, 1873.

WAR DEPARTMENT,  
ADJUTANT GENERAL'S OFFICE,  
December 9, 1873. }

Respectfully returned to the Secretary of War.

Further than the principle advocated in a report from this office dated December 30, 1867, respecting one month's advance pay (\$13) to certain recruits who were killed in battle, died from, or who were discharged for physical disability, subsequent to enrollment by the State and prior to muster into the service of the United States, this office is not willing to advocate or recommend. The result based on that report was communicated to the Third Auditor of the Treasury January 8, 1868, and is, therefore, before the accounting officers. This office, by its experience, from day to day, has become more fixed in the view that the public interest demands the positive and rigid adherence to the regulations which have been fixed and established, and that no extension of them to meet this war claim should be authorized.

If claims cannot be thus met they should be provided for by special action of Congress; and there are now claims of the kind before that body, and others have been met by its legislation. If a regulation is opened or extended to meet this case and that, it soon becomes of no binding force, and the object it first sought is entirely defeated, the health-

ful checks to protect the public interest are entirely removed, and the law eventually becomes infringed. In other words, there is no guide, and the original law and the original regulation as a part, and the only proper point of that law, stands abrogated.

E. D. TOWNSEND, *Adjutant General.*

*Memoranda.* If the men who were paid the \$13 advance pay received from the State other money *as pay*, the decision communicated to the Third Auditor, January 8, 1868, will cover. But all rolls submitted by the State to support the claim should, before final action, be referred to the Adjutant General of the Army for verification, through official records. Why was not the present claim submitted at the same time as that for the \$13 advance pay? It was *not* a usual thing for the State to pay troops, considered by it as in, or organizing for the service of the United States.

ADJUTANT GENERAL'S OFFICE, December 9, 1873.

Respectfully returned to the Second Comptroller of the Treasury.

The rulings of this Department in reference to cases of this class currently emanate from the office of the Adjutant General of the Army; therefore, the views of this Department in this case are exhibited in the indorsement signed by that office. It is suggested, however, that Lieut. Bradley's remarks, herewith inclosed, concisely exhibit the premises on the points first apparent, but new matters of fact appear in the indorsement noted.

H. T. CROSBY, *Chief Clerk.*

In the absence of the Secretary of War.

WAR DEPARTMENT, December 16, 1873.

TREASURY DEPARTMENT,  
SECOND COMPTROLLER'S OFFICE,  
December 26, 1873. }

Respectfully returned to the Third Auditor.

The remarks of the Adjutant General of the Army in the matter of reference within described are concurred in, and the settlement of the claims as described of the State of Kentucky may be made on the basis, and under the rule as stated by the Adjutant General.

J. M. BRODHEAD, *Comptroller.*



DATE.	TO WHOM ISSUED.	Cartridge-box Straps.	Waist-bells, Buckles, and Plates.	Scabbards and Frogs.	Cap Pouches.	Gun Slings.	Cartridges.	Gun Caps.	Sergeants' Swords.	Non-commiss'd Officers' Swords.	Non-commiss'd Officers' Sword Belts.	Cavalry Sabres.	Canteens.
INFANTRY.													
July 27, 1868.	" Bullitt Rifles," Shepherdsville.	80	80	80	80		250	250					
Aug. 3, 1868.	Megowan, T. B., Jailor of Fayette county.	20	20	20	20								
Nov. 6, 1868.	" Louisville Guards," Louisville.	80	80	80	80								
Dec. 29, 1869.	" Helm Guards," Louisville.	80	80	80	80								
Jan. 14, 1869.	" Thomas Zouaves," Louisville.	80	80	80	80								
Sept. 8, 1869.	Wesleyan University.	100	100	100	100								
May 26, 1870.	Kentucky University.	100	100	100	100								
Dec. 16, 1870.	Kentucky University.	100	100	100	100								
July 27, 1870.	" Steele's Company," Nicholasville.	60	60	60	60				3				
July 28, 1870.	" Hanly's Company," Nicholasville.	60	60	60	60								
Aug. 5, 1870.	" Woodford Rifles," Midway.	60	60	60	60								
Aug. 19, 1870.	" Bardstown Guards," Bardstown.	100	100	100	100								
Sept. 28, 1870.	" Ashland Rifles," Lexington.	60	60	60	60								
Oct. 22, 1870.	" Citizens' Guards," Lexington.	60	60	60	60								
Nov. 14, 1870.	" Miller's Company," Lancaster.	60	60	60	60								
Nov. 7, 1871.	" Kennard's Company," Cynthia.	60	60	60	60								
Feb. 23, 1871.	Kentucky Military Institute.	120	120	60	60								
Oct. 16, 1871.	Lynchland Institute.	60	60	60	60				10				

Oct. 16, 1871.	Austin's Academy.	61	61	61	61								
Oct. 16, 1871.	" Camp Rifles," Louisville.	50	50	50	50								
Dec. 25, 1871.	" Wadell Greys," Louisville.	60	60	60	60								
Oct. 6, 1872.	Warren College.	85	85	85	85					5	5		85
Feb. 29, 1873.	Murray Male and Female Institute.	50	50	50	50								
Dec. 16, 1873.	" East's Guards," Irvine.	60	60	60	60								
CAVALRY.													
July 29, 1870.	" Forrest Rangers," Fayette county.	64	64						64				

## INVENTORY of State Arsenal, taken November 1st, 1871.

No.	ORDNANCE.	Condition.
ARTILLERY.		
1	12-pounder cannon (brass)	Good.
8	6-pounder cannons (brass)	Good.
2	6-pounder cannons (iron)	Good.
2	6-pounder cannons (iron)	Dismounted.
1	Howitzer (English trophy, brass)	Good.
1	H. M. gun	Good.
1	Coffee-mill gun	Good.
ARTILLERY CARRIAGES.		
5	6-pounder caissons	Good.
12	Carriages	Good.
1	Coffee-mill gun carriage	Good.
1	H. M. gun carriage	Good.
1	Howitzer (English trophy) carriage	Good.
ARTILLERY EQUIPMENTS.		
482	Artillery waist-belts	Good.
8	Tow hooks	Good.
20	Trail handspikes	Good.
7	Sponges	Good.
4	Rammers	Good.
15	Buckets	Good.
6	Tongues (extra)	Good.
16	Vent punches	Good.
3	Lanyards	Good.
3	Prolongs	Good.
9	Wheels (extra)	Good.
ARTILLERY AMMUNITION.		
44	24-pounder canister shot	Good.
49	24-pounder shrapnel	Good.
56	24-pounder siege shells	Good.
64	24-pounder cartridges (blank)	Good.
100	12-pounder percussion shells	Good.
48	12-pounder spherical case shot	Good.
45	12-pounder canister shot	Good.
32	12-pounder shells	Good.
16	12-pounder fuse shells	Good.
1,214	6-pounder canister shot	Good.
166	6-pounder percussion shells	Good.
162	6-pounder fuse shells	Good.
602	6-pounder spherical case shot	Good.
23	6-pounder projectiles	Good.
22	6-pounder solid shot	Good.
144	Hotchkiss fuse shells, 12-3, 67 in.	Good.

## INVENTORY of State Arsenal—Continued.

No.	ORDNANCE—SMALL ARMS.	Condition.
MUSKETS.		
2,552	Altered percussion muskets, calibre .69	Good.
144	Belgian muskets, calibre .69	Good.
149	Harper's Ferry muskets, calibre .69	Good.
85	Springfield muskets, calibre .57	Good.
73	Flint-lock muskets, calibre .69	Good.
17	Austrian muskets, calibre .58	Good.
38	Cadet muskets	Good.
12	Austrian muskets	Damaged.
35	Springfield muskets	Damaged.
16	Altered percussion muskets	Damaged.
117	Assorted arms	Worthless.
220	Springfield rifle muskets, calibre .60	Good.
RIFLES.		
406	Austrian rifles, calibre .58	Good.
57	Austrian rifles	Damaged.
143	Harper's Ferry rifles, calibre .54	Good.
123	Enfield rifles (long), calibre .58	Good.
24	Enfield rifles (short), calibre .58	Good.
110	Springfield rifles, calibre .58	Good.
157	Union rifles, calibre .46	Good.
86	Mississippi rifles (full stock), calibre .56	Good.
40	Mississippi rifles (half stock), calibre .56	Good.
68	Ballard rifles, calibre .44	Good.
CARBINES.		
314	Smith & Wesson carbines	Good.
310	Ballard carbines, calibre .44	Good.
80	Ballard carbines, calibre .56	Good.
3	Gallagher carbines	Good.
2	Joslyn carbines	Good.
7	Sharpe's carbines	Good.
338	Ballard musketoons, calibre .46	Good.
5	North's carbines	Good.
1	Spencer carbine	Good.
1	Star patent carbine	Good.
1	Blaiss carbine	Good.
1	Swivel	Good.
WORTHLESS ARMS.		
600	Ballard carbine barrels (locks)	
204	Ballard carbine barrels (without locks)	
140	Musket barrels (with locks)	
105	Musket barrels (without locks)	
18	Mississippi rifle barrels	
PISTOLS.		
99	Percussion pistols	Good.
1	"John Brown" pike	Good.

## INVENTORY of State Arsenal—Continued.

No.	ORDNANCE—SMALL ARMS.	Condition.
SWORDS AND SABRES.		
300	Artillery sabres . . . . .	Good.
66	Cavalry sabres . . . . .	Good.
50	Sergeants' swords . . . . .	Good.
ACCOUTREMENTS.		
2,430	Cartridge-boxes . . . . .	Serviceable.
1,899	Cartridge-boxes . . . . .	Serviceable.
535	Cartridge-boxes (Mann's patent) . . . . .	New.
1,168	Waist-belts . . . . .	Good.
2,085	Waist-belts and hooks . . . . .	Good.
348	Waist-belts and plates . . . . .	Good.
1,557	Cap pouches . . . . .	Good.
2,688	Bayonet scabbards . . . . .	Good.
3,981	Shoulder-straps (long) . . . . .	Good.
3,609	Shoulder-straps (short) . . . . .	Good.
108	Shoulder-straps . . . . .	Old.
1,823	Gun slings . . . . .	Good.
400	Gun wipers . . . . .	Good.
100	Screw-drivers and wrenches . . . . .	Good.
13	Pistol bullet-moulds . . . . .	Good.
20	Shell wrenches . . . . .	Good.
CAVALRY EQUIPMENTS.		
2,218	Pistol holsters . . . . .	Good.
40	Pistol belts . . . . .	Good.
20	Cavalry saddles . . . . .	Good.
1	Officer's saddle . . . . .	Good.
36	Cavalry bridles . . . . .	Good.
2	Artillery bridles . . . . .	Good.
3	Halters . . . . .	Good.
31	Currycombs . . . . .	Good.
12	Saddle blankets . . . . .	Good.
168	Nose-bags . . . . .	Good.
23	Surcingles . . . . .	Good.
2	Simches . . . . .	Good.
268	Picket pins . . . . .	Good.
50	Picket lariats . . . . .	Good.
1,000	Saddle straps . . . . .	Good.

## INVENTORY of State Arsenal—Continued.

No.	ORDNANCE STORES.	Condition.
AMMUNITION FOR SMALL ARMS.		
109,483	Metallic cartridges, calibre .46 . . . . .	Good.
29,100	Metallic cartridges, calibre .44 . . . . .	Good.
78,500	Metallic cartridges, calibre .56 . . . . .	Good.
5,000	Metallic cartridges, (central fire) calibre .60 . . . . .	Good.
174,370	Minnie-ball cartridges, calibre .69 . . . . .	Good.
107,000	Minnie-ball cartridges, calibre .54 . . . . .	Good.
6,000	Minnie-ball cartridges, calibre .58 . . . . .	Good.
1,000	Minnie-ball cartridges, calibre .57 . . . . .	Good.
9,000	Union rifle cartridges, calibre .54 . . . . .	Good.
6,000	Billinghurst & Requa cartridges . . . . .	Good.
36,000	Buck and ball cartridges, calibre .69 . . . . .	Good.
10,000	Metallic cartridges (central fire), blank . . . . .	Good.
41,086	Colt's pistol cartridges (navy) . . . . .	Good.
30,000	Colt's pistol cartridges (small) . . . . .	Good.
253,000	Percussion caps . . . . .	Good.
1,280	Pounds musket balls . . . . .	Good.
SPARE PARTS.		
82	Upper bands . . . . .	Good.
421	Middle bands . . . . .	Good.
562	Lower bands . . . . .	Good.
14	Rammers . . . . .	Good.
225	Butt pieces . . . . .	Good.
170	Trigger guards and levers . . . . .	Good.
120	Lock-plates (musket) . . . . .	Good.
315	Lock-plates (carbine) . . . . .	Good.
25	Triggers . . . . .	Good.
200	Main-springs . . . . .	Good.
100	Carbine slides . . . . .	Good.
50	Carbine hammers . . . . .	Good.
25	Musket breeches . . . . .	Good.
125	Musket hammers . . . . .	Good.
50	Butt-plates . . . . .	Good.
3	Sponge-staffs . . . . .	Good.
4	Wipers . . . . .	Good.
2	Rammers . . . . .	Good.
3	Sponge-buckets . . . . .	Good.
1	Extra barrel (H. M. gun) . . . . .	Good.
3	Tongues (artillery carriage) . . . . .	Good.

## INVENTORY of State Arsenal—Continued.

No.	ORDNANCE DEPARTMENT.	Condition.
TOOLS AND MATERIALS.		
12	Bench vises . . . . .	Good.
1	Anvil . . . . .	Good.
1	Forge . . . . .	Good.
1	Lathe . . . . .	Good.
2	Drills . . . . .	Good.
2	Army scales . . . . .	Good.
3	Stoves . . . . .	Good.
7	Blacksmith's tongs . . . . .	Good.
7	Hand hammers . . . . .	Good.
9	Claw hammers . . . . .	Good.
2	Screw plates . . . . .	Good.
1	Hand saw . . . . .	Good.
33	Files . . . . .	Good.
1	Sprinkler . . . . .	Good.
3	Wash-pans . . . . .	Good.
3	Trucks . . . . .	Good.
2	Grindstones . . . . .	Good.
1	Quire sand-paper . . . . .	Good.
8	Stools . . . . .	Good.
2	Show-cases . . . . .	Good.
1	Step-ladder . . . . .	Good.
1	Water-cooler . . . . .	Good.
1	Water bucket . . . . .	Good.
2	Tin dippers . . . . .	Good.
2	Wash-pans . . . . .	Good.
1	Fire bucket . . . . .	Good.
3	Shovels . . . . .	Good.
2	Brooms . . . . .	Good.
1	Desk . . . . .	Good.
10	Quires emery cloth . . . . .	Good.
10	Feet of stove-pipe . . . . .	Good.
3	Sections gum hose . . . . .	Good.
2	Oil cans . . . . .	Good.
1	Doubletree . . . . .	Good.
1	Stretcher . . . . .	Good.
1	Force pump . . . . .	Good.
4	Wagon wheels . . . . .	Good.
1	Axle . . . . .	Good.
1	Stone clamp . . . . .	Good.
1	Set tent-pins . . . . .	Good.
1	Monkey wrench . . . . .	Good.
2	Bar wrenches . . . . .	Good.
1	Hand vise . . . . .	Good.
2	Hand pliers . . . . .	Good.
2	Nippers . . . . .	Good.
5	Screw-drivers . . . . .	Good.
1	Thumb vise . . . . .	Good.
1	Hand brace . . . . .	Good.
1	Drill brace . . . . .	Good.
1	Screw-plate . . . . .	Good.
4	Rat-tail files . . . . .	Good.
6	Flat files . . . . .	Good.
15	Saw files . . . . .	Good.

## INVENTORY of State Arsenal—Continued.

No.	ORDNANCE DEPARTMENT.	Condition.
TOOLS AND MATERIALS.		
3	Half-round files . . . . .	Good.
5	Ropes . . . . .	Good.
2	Branding irons . . . . .	Good.
50	Tube wrenches . . . . .	Good.
4	Pincers . . . . .	Good.
1	Pair handcuffs . . . . .	Good.
CLOTHING.		
376	Forage caps . . . . .	Good.
21	Gum ponchos . . . . .	Good.
200	Tassels for hats . . . . .	Good.
100	Eagles for hats . . . . .	Good.
100	Feathers for hats . . . . .	Good.
756	Haversacks . . . . .	Good.
930	Knapsacks . . . . .	Good.
428	Brass buttons . . . . .	Good.
CAMP AND GARRISON EQUIPAGE.		
6	Guidons . . . . .	Good.
6	Drumsticks . . . . .	Good.
1	Bass drum . . . . .	Good.
2	Tenor drums . . . . .	Good.
2	Files . . . . .	Good.
85	Color bands . . . . .	Good.
1	Pair cymbals . . . . .	Good.