George Tobey Anthony

Message of a Retiring Governor

to the Legislature of Kansas. January 13, 1979

GOVERNOR'S MESSAGE:

To the Legislature:

Our State constitution, in declaring and defining the duties of the Governor, provides that he "shall, at the commencement of every session, communicate, in writing, such information as he may possess in reference to the condition of the State, and recommend such measures as he may deem expedient."

The mandatory character of this provision finds ample justification in the necessity and value of the work required. It provides the means by which the Legislature may have official knowledge of the transactions of the government during its absence; of its condition in all its departments, and of its future necessities, to provide for which they have assembled.

In order that this executive communication may be complete in detail and correct in statement, the Governor has power to call upon all the other officers of State for such information as he may require.

The statutes have supplemented the constitution, in this regard, by making it the duty of all officers, or others having care and custody of State departments or institutions, to make full reports to the Governor, with their recommendations. Thus the material of fact and the basis of recommendation to be embraced in the Governor's communication are made absolutely complete.

Every consideration of business prudence and official propriety would seem to demand this communication from the incumbent of the office during the period to which it relates. No one else could be possessed of such knowledge necessary to its completeness in statement, or the experience as a guide for its recommendation.

Practically, this communication is no more nor less than an executive report of the transactions of an administration, with practical suggestions springing from a personal knowledge of such transactions; and the same business reasons, requiring a report from the Auditor, Treasurer, and other State officers, covering the period intervening between sessions of the Legislature, to be made by the incumbent, hold good in this case.

The reverse of this has been the practice. A custom sanctioned by usage since the State was organized has devolved this duty upon the incoming instead of the outgoing Governor. When your sessions were annual, this practice was less objectionable than now. Then the period covered by the message was but a single year, and on each alternate year it was written by an

incumbent who had personal knowledge of the matter communicated. Now, with biennial sessions, the message necessarily covers the full period, and embraces all the transactions of an entire administration.

Believing it better to establish a good precedent than to follow a bad one, and holding duty to the public paramount to custom and usage, I have concluded to depart from the practice of predecessors, by addressing you. I am impelled to this departure by a belief that there are transactions, both complete and incomplete, connected with my administration, which should be brought to your attention in more fullness of detail and particularity of statement than could be expected or required of the Governor elect; and I trust you will, by law, make it his duty to perform a work I have assumed to do at the peril of unfriendly criticism.

STATE CLAIMS.

Under authority of chapter 176, Laws of 1877, Hon. S. J. Crawford was appointed, confirmed and commissioned, on March 6, 1877, as agent for the State in the prosecution of claims against the United States Government, with whom an agreement was entered into as provided by said act, a copy of which is as follow:

THIS MEMORANDUM, made this 3d day of October, A. D. 1877, by and between the State of Kansas, party of the first part, and Samuel J. Crawford, of Topeka, Kansas, party of the second part, *Witnesseth:*

That whereas, the said second party was on the 5th day of March, 1877, duly appointed and confirmed, and on the 6th day of March, 1877, duly commissioned by the Governor of the State of Kansas, the agent of the said State of Kansas to prosecute the claims of said State against the United States, pursuant to an act of the Legislature of the State of Kansas, entitled "An act to provide for the appointment of an agent to prosecute the claims of the State of Kansas against the United States, and to procure payment of money due said State from the United States on account of public lands disposed of by the United States in the said State of Kansas; also, to present and prosecute the claims of the State of Kansas for school lands due the said State from the United States; also, to prosecute the claims of the State of Kansas against the United States for moneys due the said State on account of expenses incurred in organizing troops for the military tervice[sic] of the United States, and for material and supplies furnished the same, and on account of Indian depredations," approved March 3, 1877, (Laws of 1877, page 232); and whereas, the said second party has duly qualified and entered upon the discharge of his duties as such agent; and whereas, it is provided by said act that the said agent "shall be allowed such compensation for his services as may be agreed upon between the Governor, Auditor and

Attorney General of the State and himself, not to exceed ten per centum upon the amount secured to the State, and that in case any lands are secured by the State for school purposes or otherwise by such agent, then he shall be paid for his services in that behalf in land, at a price to be determined by the Governor, Auditor and Attorney General of the State, but not more than one-tenth of the whole amount secured by such agent:

Now, therefore, it is hereby stipulated by and between the said parties hereto, that the compensation of the said second party, for the services rendered by him in the discharge of the duties of said agency, shall be as follows, to wit:

First: On all claims successfully prosecuted for the State, for moneys expended by the State for military purposes, ten per centum of the amount so recovered.

Second: On all other claims successfully prosecuted for the State, when the amount recovered shall be paid to the State in money, ten per centum of the amount so secured.

Third: Where lands are recovered to the State by said agent, one-tenth of the lands so recovered, said one-tenth to be selected and set apart to the said party of the second part by three disinterested persons, one of whom shall be chosen by the parties of the first part; one by the party of the second part, and one by the two persons thus selected.

In testimony whereof, the State of Kansas, by its Governor, Auditor and Attorney General, party of the first part, and the said party of the second part, have hereunto set their hands, the day and year first above written.

(Signed)S. J. CRAWFORD.

(Signed)GEO. T. ANTHONY, *Governor.*

(Signed)P. I. BONEBRAKE, *Auditor.*

(Signed)WILLARD DAVIS, *Attorney General.*

Every facility and aid in their power has been given the agent, by each and all of the State officers.

The amount of bonds issued and liabilities incurred for war purposes, by the State, on account of the General Government, for which reimbursement is claimed, is shown by the following statement, prepared by the Auditor of State:

	STATEMENT OF BONDS ISSUED BY THE STATE OF KANSAS FOR MILITARY PURPOSES	
July 1, 1864.	An act to provide for the expenses of the militia, incurred in the protection of the State, in the years 1861, 1862, and 1864, and payment of the same, approved February 23, 1864.	$100,000.00
July 1, 1866.	An act supplemental to "An act to provide for the expenses of the militia, incurred in the protection of the State, in the years 1861, 1862, 1863, and 1864, and payment of the same," approved February 23, 1864, approved February 26, 1866.	$40,000.00
July 1, 1868.	An act to provide for the issuance and sale of the bonds of the State, for the purpose of defraying the expenses of the Kansas militia, approved March 3, 1868.	$30,000.00
January 1, 1869.	An act to provide for the issuance and sale of bonds of the State of Kansa, for the purpose of liquidating the indebtedness of the State incurred for military purposes, during the year 1868, in defending the citizens of the State against the ravages of hostile Indianson the frontiers of Kansas, approved February 9, 1869.	$75,000.00
January 1, 1869.	An act to provide for the issuance and sale of bonds, for defraying the expenses in raising the Nineteenth Regiment, Kansas Volunteer Cavalry, approved March 3, 1869.	$12,000.00
January 1, 1869.	An act to provide for the issuance and sale of bonds of protection of the frontier against hostile Indians, approved February 26, 1869.	$89,000.00
March 15, 1875.	An act to provide for the issuance and sale of bonds of the State of Kansas, for the purpose of paying the indebtedness of the State incurred in repelling Indian invasions during the year 1874, and the month of January in the year 1875, approved March 6, 1875.	$36,500.00
	Total amount issued	**$382,500.00**
	The following amount was paid directly from the State treasury, and for which no bonds were issued, to wit:	
	Under the provisions of an act appropriating money to refund to the Governor, Thomas Carney, expenses incurred by him in protecting the State,approved February 26, 1864.	$10,800.00
	In addition to the foregoing exhibit, the State of Kansas has issued its interest-bearing certificates in pursuance of law, for the services of the State militia, material and supplies furnished, property lost in action, etc., in defense of the State, during the year 1864, to the amount of.	$77,426.15
	Making the total amount paid and assumed by the State, and for which the State has not been reimbursed by the United States.	**$470,726.15**

A bill passed the Senate at its last session, and is now pending in the House, for the adjustment and payment of this claim, or so much thereof as may be sustained by proper vouchers. So long a time has elapsed that it may be impossible to recover it all; but most of the claim can be sustained by adequate vouchers. It is a claim so just that our Representatives in Congress cannot fail to secure its recognition, if pressed as I have every reason to believe it will be pressed.

SCHOOL LANDS.

The sixteenth and thirty-sixth sections of public lands lying within Indians reservations had been withheld from the State by decision of the Interior Department, as follows:

DEPARTMENT OF THE INTERIOR,

GENERAL LAND OFFICE, MARCH 4, 1870.

Hon. J. D. Cox, Secretary of the Interior:

SIR: I had the honor to receive the Secretary's letter of the 23d ult., requesting an expression of the views of this office on a question submitted in a communication from the Attorney General of Kansas, which accompanies the Department letter, relative to alleged losses to the school fund of that State by reason of final disposal of Indian reservations and trust lands within her borders.

The act organizing the Territory of Kansas, approved May 30, 1854, reserved sections sixteen and thirty-six in each township of *said Territory* for the use of schools. The act for the admission of Kansas into the Union, approved January 29, 1861, grants sections sixteen and thirty-six in every township, of public lands in said State, with the additional provisions that when either of said sections, "or any part thereof, has been sold or otherwise disposed of, other lands equivalent thereto, and as contiguous as may be, shall be granted to said State for the use of schools."

It will be observed that in the Territorial act, school lands are reserved in each township *of said Territory.*

In the same act is the following provision, relating to Indian reservations within its limits: "But all such territory shall be excepted out of the boundaries and constitute no part of the Territory of Kansas." Again, in the act admitting the State, January 29, 1861, the sixteenth and thirty-sixth sections are granted in every township of *public lands in said State.* In the same act, however, is

the proviso, "that nothing in said Constitution respecting the boundary of said State shall be construed to include any territory which by treaty with such Indian tribe is not, without the consent of such tribe, to be included within the territorial limits of any State or Territory; but all such territory shall be *excepted out of the boundaries and constitute no part of the State of Kansas,* until said tribe shall signify their assent to the President of the United States to be included within said State, or to affect the authority of the Government of the United States to make any regulation respecting such Indians, their lands, property, or other rights, by treaty, law, or otherwise, which it would have been competent to make if this act had never passed."

Under treaty stipulations these Indian lands have from time to time been sold in trust for the Indians, or otherwise disposed of for their benefit, no pecuniary benefit resulting to the General Government from such disposals.

We draw from these facts the conclusion that as these lands, by the expressed terms of the organic act, were no part of the Territory of Kansas, and by the provisions in the act of admission were excepted from and declared to be no part of said State, the grant of the sixteenth and thirty-sixth sections in each township of *public lands in said State* did not include any part of the Indian reservations, and hence there is no *legal* foundation for school indemnity under existing laws.

Returning the communication of the Attorney General, I have the honor to be

Your obedient servant,

(Signed) JAS. S. WILSON, *COMMISSIONER.*

The amount of land involved in this controversy was about 270,000 acres, and of more than a million dollars in value. Not only the large interest at stake in this case, but the ultimate results of the precedent, caused the utmost caution and deliberation by the Department. The case of the State was sustained by an elaborate and exhaustive brief of the law and precedents, prepared by State Agent Crawford, and argued before the Hon. Secretary of the Interior and Commissioner of the General Land Office by Hon. Matt. C. Carpenter and other able attorneys who had been engaged by Mr. Crawford for this purpose.

The result will justify in this connection a reproduction of the text of the decision as communicated to me by the Hon. Commissioner:

DEPARTMENT OF THE INTERIOR,

GENERAL LAND OFFICE,

WASHINGTON, D. C., August 14, 1877.

Hon. Geo. T. Anthony, Governor of Kansas:

SIR: I have had under consideration the claim made by the State of Kansas, through her agent, the Hon. S.J. Crawford, for an allowance of certain lands for school purposes.

The claim, as stated by said agent, is: "That the State of Kansas is entitled to every 16th and 36th section of land in each township in said State; and when either of said sections, or any part thereof, has been sold or otherwise disposed of by the United States, then the State is entitled to other lands equivalent thereto." Or, in other words and in narrower limits, I may state the question to be: Is the State of Kansas entitled to the 16th and 36th sections of land (or equivalent therefor) which were formerly within the Indian reservations in said State?

There were a number of these reservations the Indians' title to which has never in all cases been extinguished, as such, and which constitute a part of the State of Kansas.

The act of Congress of date May 30th, 1854, entitled "An act to organize" the Territory of Kansas, provides as follows:

"SEC. 34. *And be it further enacted,* That when the lands in the said Territory shall be surveyed, under the direction of the Government of the United States, preparatory to bringing the same into market, sections numbered sixteen and thirty-six, in each township in said Territory, shall be and the same are hereby reserved, for the purpose of being applied to schools in said Territory, and in the States and Territories hereafter to be erected out of the same." (State. at Large, p. 289, vol.10.)

The foregoing is also incorporated into the act of Congress of date July 22, 1854, providing, among other things, for the survey of said Territory.

The act of Congress admitting the State of Kansas into the Union, approved January 29th, 1861, provides:

"SEC. 3. *And be it further enacted, . . .* First, That sections numbered sixteen and thirty-six, in every township of public lands in said State, and where either of said sections or any part thereof has been sold, or otherwise been disposed of, other lands equivalent thereto, and as contiguous as may be, shall be granted to said State for the use of schools." (Statutes at Large, vol. 12, p.127.)

Without other provisions of law, it would be clear that the State is entitled to what she asks. But the act of admission referred to contains the following proviso, which is also in substance contained in the organic act. The proviso is as follows:

"Provided, That nothing contained in the said constitution respecting the boundary of said State shall be construed to impair the rights of persons or property now pertaining to the Indians in

said Territory, so long as such rights shall remain unextinguished by treaty between the United States and such Indians, or to include any territory which, by treaty with such Indian tribe, is not, without the consent of said tribe, to be included within the territorial limits or jurisdiction of any State or Territory; but all such territory shall be excepted out of the boundaries, and constitute no part of the State of Kansas, until said tribe shall signify their assent to the President of the United States to be included within said State, or to affect the authority of the Government of the United States to make any regulations respecting such Indians, their laws, property, or other rights, by treaty, law, or otherwise, which it would have been competent to make if this act had never passed." (Stats. At Large, vol. 12, p. 127.)

Upon the 23d day of April, 1870, the Secretary of the Interior asked an expression of the views of this office with reference to the question involved in the construction of these statutes, and the propriety of granting this claim.

In answer, the then Commissioner, Joseph L. Wilson, submitted his views upon the subject, in writing. After quoting from the foregoing acts, as above, except that he leaves off that part of the provision after the word "Kansas," in the 14th line thereof, he says:

"Under treaty stipulations these Indians lands have, from time to time, been sold in trust for the Indians, or otherwise disposed of for their benefit, no pecuniary benefit resulting to the General Government from such disposal."

We draw from these facts the conclusion, that as these lands by the express terms of the organic act were not part of the Territory of Kansas and by the provisions in the act of admission were excepted from and declared to be no part of said State, the grant of 16th and 36th sections in such townships of *public lands in said State* "did not include any part of the Indian reservations, and hence there is no *legal* foundation for school indemnity under existing laws."

These views thus expressed to the Secretary in this advisory manner rather than in the light of a decision upon the rights of the parties, and which, so far as I am able to learn, were in no manner approved or disapproved by the Secretary, do not, as I conceive, constitute such a decision on the part of my predecessor in office, as to bind me to a concurrence in them. I make this statement, because I find it necessary, after a careful consideration of the questions involved, to differ from the conclusions there arrived at. I am forced to adopt the view that the Indian reservations were just as much a part of the State of Kansas, in *contemplation of the acts referred to,* granting school sections, as any other portion. It is true that the State could not take possession at once, or as it did of other lands, for the right of possession was in the Indians temporarily. The right of the State to claim the lands was made dependent upon certain conditions or contingencies, which the acts referred to named. When these things were accomplished, the State's right attached; the Indian reservations were excepted out of the boundaries of the State only so long as the Indian title remained unextinguished, and no longer. This title extinguished, the lands became part of the State, and when part of the State, the State was entitled to the sixteenth and thirty-sixth sections therein. The latter fact just as necessarily resulted as the former.

The State of Kansas was formed within certain boundaries. These were universally recognized. But within these boundaries certain rights had been acquired, which justice demanded should be

protected. These were, a right of possession only in certain Indian tribes, which were to be preserved until the Government could acquire them by the means named in the act of admission. When this was done, the lands were, by the terms of the act, to become a part of the State. No further legislation was necessary to this end. The reservations were only to continue so long.

Not only this, but the act providing for the survey of the lands within the State, provides that, whenever any part was surveyed with a view to bringing them into market, the sixteenth and thirty-sixth sections were to be set apart for school purposes. At the time of the organic act, and not till long after, were the lands surveyed, so that the language providing that "each township in the State," etc., could not have referred to any townships already surveyed, but to all townships that should thereafter be surveyed.

The townships within the Indian reservations were perhaps longest delayed; still finally they were surveyed, with a view to their sale. No time was fixed in which the surveys should take place, neither with reference to these nor any other parts of the State. This view is supported also by the subsequent acts of Congress.

The resolution of date April 10, 1869, providing for the purchase of lands in the Osage reservation, in said State, provided, among other things, "that the sixteenth and thirty-sixth sections shall be reserved for State and school purposes,*in accordance with the provisions of the act of admission of the State."*Not only were the lands here reserved, but "in accordance with the provisions of the act of admission of the State"--saying as plainly as might be that it was the understanding of Congress that the act of admission reserved these lands for that purpose; so, the two other acts of date of July 15, 1870, reserve these sections.

Not only this, but I have for my guidance the almost uniform custom of this department, directing me to the same end and conclusion. For instance: In the case of the State of California, it appearing that in certain locations, owing to natural obstacles, the school lands could not always be selected according to the uniform system adopted, it was provided that the State might select other lands; and the Commissioner of the General Land Office, in his circular of instructions upon the subject, uses the following language: "Fractional townships created by Indian reservations are not to be understood as coming within the meaning of the act, as *when the township is completed,*it [the State] will have its proper school lands." See opinion of Attorney-General Butler, March 31, 1836, 3 Opinions. See also, Secretary's decision, December 20th, 1858, No. 644; 1 Lester, 632; id., No.534, p.492; id., No. 319, p. 285.

The almost uniform action of the Government with reference to like grants to other States is in perfect accord with these views. In the case of *Cooper vs. Roberts,* 18 Howard, 173, the court say: "It has always been a cherished policy with the Government of the United States to appropriate the section numbered sixteen in every township of land for the use of schools." But not only does it appear clear to me that these lands were within the contemplation of the organic act, the act providing for the survey of the lands, and the act of admission, but that these reservations were, in a sense, and in the same contemplation, a part of the Territory and State. The reservation clause can only fairly be construed, in my opinion, to be a suspension of the political and economic functions of the State Government for the time. In this view of the subject I am borne out by so able an authority as Chief Justice Marshall. In the case of *Fletcher vs. Peck,*

6 Cranch, 141, the opinion recites "that in October, 1763, the King of Great Britain issued a proclamation creating four new colonies--Quebec, East Florida, West Florida, and Grenada--and prescribing the boundary of each; and further declaring that all the lands between Alatamaha and St. Marys should be annexed to Georgia. The same proclamation contained a clause *reserving* under the *dominion and protection of the Crown* for the *use* of *the Indians,* all *the lands on the Western waters,* and forbidding a settlement on them, or a purchase of them from the Indians. . . The counsel for the plaintiff rest their argument on a single proposition. They contend that the reservation for the use of the Indians, contained in the proclamation of 1763, excepts the lands on the Western waters from the colonies within whose bounds they would otherwise have been, and that they were acquired by the Revolutionary War. . . The court does not understand the proclamation as it is understood by the counsel for the plaintiff. The reservation for the Indians appears to be a temporary arrangement, suspending for a time the settlement of the country reserved, and the power of the royal Governor within the territory reserved, but is not conceived to amount to an alteration of the boundaries of the Colony."

This case, it will be seen, is exactly in point, and parallel, and must be accepted as a controlling authority. See, to the same import, the opinion of Attorney-General Black, 9 Opinions, 346.

It will be seen, by a reference to the decision of the Secretary of the Interior, of date August 26, 1870, that in interpreting the act of April 10, 1869, he makes a distinction between the lands embraced in the first and second articles of the Osage treaty. He says:

"The United States, however, purchased, under the treaty, the lands embraced in the first article, and thereafter they became public lands; and for such of the sixteenth and thirty-sixth sections of them as may be sold, or otherwise disposed of, the State will be entitled to select equivalents, which must be taken as near as may be to the ceded tracts."

According to the doctrine of this decision, when the United States acquires the Indian title, the State is entitled to the school sections; but the Secretary then held that the lands embraced in the second article of the treaty, which were to be sold in trust for the Indians, were not acquired by the United States. "The United States acquired no beneficial interest in them, and in no sense can they be considered public lands." This conclusion was undoubtedly based upon, and finds its excuse in , the particular wording of the act which contains the words "lands *sold*to the United States." Perhaps it would not be proper for me to question the soundness of the decision, nor is it necessary to do so. The subsequent decision of the Secretary of the Interior, of date February 14, 1871, practically overrules the former decision, and decides that under the twelfth section of the act of July 15, 1870 (16 Statutes at Large, page 362), the State is entitled to the sixteenth and thirty-sixth sections referred to, known as Trust Lands.

I conclude, therefore, without further discussion of the question, that the State of Kansas is entitled to each sixteenth and thirty-sixth section of land, or equivalents therefor, to be selected according to law, embraced within the lands heretofore known as "Indian reservations," in said State, not heretofore obtained by her, or for which she has not in any manner received lands, or other compensation in lieu thereof.

Very respectfully,

J. A. WILLIAMSON,

Commissioner.

This decision was accompanied by a request that I should select the indemnity lands and certify such selection to the local land offices, in order that they might be withdrawn from market and certified to the State when the work was complete. This involved an unpleasant responsibility. Public lands were being taken up very rapidly, and to delay the selection for your meeting would entail a very great loss to the State in the quality and location of the lands. On the other hand, the selection could only be made by the employment of competent commissioners, and provision for their payment as soon as the work was done.

Under these circumstances the State officers were called together, and their counsel and cooperation solicited. They cheerfully responded, and the conclusion was reached that the interests of the State demanded a prompt location of the land, and that the exigencies of the case fully justified the means requisite to its accomplishment. It was unanimously agreed to select competent men, commission them as agents of the State, and set them at once to the work, according to carefully prepared instructions. To meet the expenses of the work, money was obtained upon the personal obligation of the State officers, all of whom joined in a note to Donnell, Lawson & Co., of New York, who advanced $3,000 at a stipulated interest of seven per cent. per annum.

The following-named gentlemen were appointed commissioners: J. C. McQuary, of Salina; G. C. West, of Topeka; J. E. Stone, of Montgomery; L. B. Snow, of Butler; L. A. Thrasher, of Allen; and O. E. Morse, of Linn.

Their report will abundantly verify that they performed their duties with intelligence and pains-taking [sic] care. I do not believe that more careful or valuable work was ever performed of a like nature.

The following statement of receipts and disbursements on this account, made by the Hon. Treasurer of State, who was made treasurer for this purpose, will show the amount paid each commissioner, and the total amount required to meet the liability, to provide for which an appropriation should be made before maturity of the paper:

STATEMENT OF DISBURSEMENTS.

John Francis, Treasurer, in Account with Board of State Officers

1878		*Dr.*		*Cr.*
Jan 21	To amount received on notes	$1,000.00	By amount paid J.C. McQuary, as per orders (joint)1,6,10,15,17,20,22 and 29	$756.98
Mar. 11	To amount received on notes	$2,000.00	By amount paid G.C. West, as per orders (joint) 1,3,14,24 and 27	$560.05
Apr. 23	To amount received of L.B. snow, for tent sold by the Board	$6.00	By amount paid J.E. Stone, as per orders 4,13,18 and 19	$307.70
			By amount paid L.B. Snow, as per orders 5,12,21 and 23	$504.33
			By amount paid L.A. Thrasher, as per orders 2,11,25 and 28	$468.00
			By amount paid O.E. Morse, as per orders 7,8,9 and 16	$288.40
			By balance on hand	$120.54
		$3,006.00		**$3,006.00**

Note due March 1, 1879	$1,000.00
Interest at 7 per cent. from January 21, 1878, to March 1, 1879	$77.48
Note due March 1, 1879	$2,000.00
Interest at 7 per cent. from March 11, 1878, to March 1, 1879	$135.79
	$3,213.27
Deduct balance on hand	$120.54
Amount of appropriation required	**$3,092.73**

The selections made by the commissioners were certified by me to the local land officers, who were ordered by the Commissioner of the General Land Office to withdraw them from settlement. The complete lists of selection have been made by the State Auditor, but cannot be approved and forwarded to the Commissioner for final certification to the State until a fee, imposed by section 2238, paragraph 7, United States Statutes, is paid by the State, or waived by

the United States. It is my opinion that this fee does not attach to indemnity lands given in lieu of lands belonging to the State before this fee was imposed. No time should be lost in making the necessary appropriation, should the Commissioner decide adversely to the demand which has been made for a certification without this fee.

SCHOOL MONEYS.

The decision affirming the right of the State to the 16th and 36th sections of the lands lying within the Indian reservations, was logically followed by a demand for five per cent. of the net proceeds of the sale of the balance of such reservations. This claim, like the other, was carefully prepared, and ably argued before the same officers, by the same attorneys, and the result communicated to me in the following decision:

DEPARTMENT OF THE INTERIOR,

GENERAL LAND OFFICE,

WASHINGTON, D. C., Dec. 31, 1877.

HON. GEO. T. ANTHONY, *Governor of Kansas:*

Sir: I have considered the claim made by the State of Kansas, for "five per centum of the net proceeds of all sales of public lands lying within said State, including the lands embraced in former Indian reservations therein, which have been sold by Congress since the 29th day of January A. D. 1861."

This claim is founded upon the following clause of the third section of the act of Congress, approved January 29, 1861, entitled "An act for the admission of Kansas into the Union," and which reads as follows:

"Fifth, That five per centum of the net proceeds of sales of all public lands lying within said State, which shall be sold by Congress after the admission of said State into the Union, after deducting all the expenses incident to the same, shall be paid to said state for the purpose of making public roads and internal improvements, or for other purposes, as the Legislature shall direct." (12 State., 127.)

At the time of the passage of this act, there existed in the State of Kansas numerous large Indian reservations, which, by the terms thereof, it was provided should be "excepted out of boundaries

and constitute no part of the State of Kansas, until said tribe [possessing any such reservation] shall signify their assent to the President of the United States to be included within said State." And it was further provided, that nothing contained in the constitution of said State shall be construed "to affect the authority of the Government of the United States to make any regulation respecting such Indians, their lands, property or other rights, by treaty, law, or otherwise, which it would have been competent to make had this act never passed."

It is suggested that as these lands were excepted out of the boundaries of the State at the time of the passage of this act, that, therefore, they were not included within the contemplation of the five-per-cent. clause above quoted; and that being in a state of reservation, they were not "public lands," within the same contemplation. This view was expressly held by the First Comptroller of the Treasury, in the case of the application of the State of Nebraska, for a like allowance under like provisions of law. In that case, the claim made by the State of Nebraska was disallowed by this office, but an appeal was taken to the Secretary of the Interior, and the decision of this office reversed, and the claim allowed. The Comptroller also expressed the view that it was not within the province of the Secretary of the Interior to pass upon the legality of this claim. With this question, of course, I have nothing to do. The only question presented for my consideration is that having reference to these Indian reservations in connection with the five-per-cent. claim made by the State.

It will be noticed that the Nebraska case differs from this in the fact that at the time of the application by the former, the Indian lands were still in a state of reservation, while in this case the Indian title has in all cases been extinguished, and the lands surveyed.

In the matter of the application of the State of Kansas for an allowance of 16th and 36th sections, or equivalent therefor, of these reservations for school purposes, recently decided by this office, I had occasion to examine the questions here raised, and then held that these reservations were, in contemplation of the act referred to, as much a part of the State as any other; and when the Indian title became extinguished, and the lands surveyed with a view to bringing them into market, the State had the same right to its school sections therein as in any other part of the State. From the views then expressed I have seen no good reason for departing. On the contrary, I am confirmed in the views then expressed by the recent decision of the Supreme Court of the United States in the case of *Fanny Bucher, Executrix, &c., vs. David Wetherly et al.,* October Term, 1877. Without repeating the reason then advanced for my conclusions, I may add that in this case the language of the act is explicit that "the net proceeds of sales *of all public lands lying within said State, which shall be sold* by Congress *after* the admission of said State into the Union . . . shall be paid to said State."

It may be admitted that these lands were not, at the time of the passage of this act and until the Indian title was extinguished, in contemplation of the preemption and homestead laws, or of the recent decisions of the Supreme Court, public lands, so that they could be occupied under these laws or even granted by Congress.

But in another sense, broader and more general, they were such, as I think I have shown in my former decision referred to, and as is shown by the use of these words in other acts of Congress relating to like reservations.

For instance, the act of March 3, 1863, (12 Stat., 819, providing for the removal of certain tribes of Indians from Minnesota and Dakota, and the disposal of their lands, provides "that after the survey of said reservations they shall be open to preemption . . . in the same manner as *other public lands* . . . And portions of said reservations, which may not be settled upon, . . . may be sold at public auction as *other public lands* are sold, after which they shall be subject to sale at private entry as *other public lands* of the United States."

So these words are used in a like connection and sense in the act of February 28, 1859, making provision for carrying into effect treaty stipulations with various Indian tribes, etc. In the act of July 22, 1854, providing for the establishment of new land districts, and for other purposes (10 Stat., 310), Congress uses the following language:

"Sec. 13.*And be it further enacted*, That the *public lands* in the Territory of Nebraska, to which the Indian title *shall have been* extinguished, . . . and the *public lands*in the Territory of Kansas, to which the Indian title *shall have been* extinguished, shall constitute a new land district . . . And the President is hereby authorized to cause [the same] to be surveyed . . . as other *public lands* of the United States."

These illustrations are sufficient to show that Congress has used the words "public lands," with reference to these reservations, as well before the extinguishment of the Indian title as afterwards.

But without discussing the question whether these lands were public lands within the contemplation of the act of admission, at the time of the passage thereof, and before the Indian title was extinguished, it is sufficient to know that they have become such, for, as is seen, the five-per-cent. clause contemplates *all public lands within said State which shall be sold after its admission.*

That these are public lands now, or become such upon the extinguishment of the Indian title, in every sense, is not disputed. That they were public lands in a sense, with fee in the Government, and that it was contemplated by the act admitting the State into the Union that the right of possession in the Indian should be extinguished, and that these lands were in fact a part of the State at all times after said act of admission, with merely a suspension of the political and economical functions of the State over the same, and until such time as the Indian title should be extinguished, I think ought not to be doubted. There is much force in the suggestion made by the counsel for the State, that if it be claimed that these lands did not become part of the State and were not public lands, and are not included in the grant, it might, with the same propriety, be claimed that the right of the State to tax the same, when they became part of the State, was not surrendered.

The allowance of five per cent. on the sale of the public lands in the State of Kansas, can hardly be considered in the nature of a grant, and therefore the law giving it should not be subject to those rules of construction applicable to donations.

The allowance of this sum was rather in the nature of a consideration for certain concessions

named in what was in its nature a compact or agreement between the State and the United States. And no presumption can be allowed on the part of the one as against the other of the contracting parties so as to limit the terms of the contract. On the contrary, the terms of agreement should have that fair and liberal construction which shall look only to a full compliance with the original intent of the parties. Conducing to show what this intent was, perhaps it would not be improper to consider the various acts and policy of the Government with reference to like concessions to other States. Without going into this subject in detail, suffice it to say, that in almost if not every instance of the admission of a State into the Union since the admission of the State of Ohio, like or similar grants have been made, and in many of them a much larger sum; and in none of these cases, it is alleged, have Indian reservations, and there were such in many of the States, been excepted out of the terms of the grant or agreement.

The foregoing views, taken in connection with those expressed in my former decision referred to, I deem sufficient to justify me in the allowance of the claim made by the State.

There is urged another reason for the allowance of this claim, which, in harmony with the opinion of the Secretary of the Interior, before referred to, and with very great deference to the opinion of the Comptroller, I am inclined to think entitled to much weight. The act of Congress, approved March 3, 1857, providing that the Commissioner of the General Land Office shall state an account between the Government and the several States with reference to like grants, and authorizing him to include in his estimate Indian reservations, taken in connection with the act admitting the State of Kansas into the Union, which provides that she shall be admitted on an equal footing with the original States, and that all the laws of the United States not locally inapplicable shall have the same force and effect in this State as in other States in the Union, I am of the opinion would authorize the statement of the account asked for in this case. The reasons for this view are quite fully set out in the opinion of the Secretary, above referred to, and I need not enter upon them here.

I decide, therefore, that the State of Kansas is entitled to five per centum of the net proceeds of sales of all lands heretofore included within Indian reservations in said State, not sold and conveyed in fee by the United States prior to the 29th day of January, 1861.

Very respectfully,

J. A. WILLIAMSON,

Commissioner.

HON. S. J. CRAWFORD,

HON. M.C. CARPENTER,

GEN. E. W. RICE,

Attorneys for the State.

Through the courtesy of Hon. J. A. Williamson, Commissioner of the Land Office, a special clerical force was employed to ascertain the sum due the State under the above decision. It was found to be $190,800, and demand has been made upon the Hon. Secretary of the Treasury for its payment.

The magnitude of the sum, and the still greater amount contingently involved, made it necessary, not only to submit the case anew, but to obtain a decision corroborative of the one already obtained, and another, affirming the authority of the Treasury Department to pay without an act of appropriation by Congress. Months were consumed in the delay of the decision by the Hon. First Comptroller, which was promised on or before this date, but has not been received.

SALT-SPRING LANDS.

By communication from Hon. Thos. H. Cavanaugh, of January 20, 1878, I was informed of a rumor, current about Salina, that two sections of State land, viz., sections 17 and 6, township 13, range 1, originally certified to the State by the United States, as locations of salt springs Nos. 4 and 5, had been sold, and were now in possession of innocent purchasers. Subsequent investigation brought evidence that the sale had been made by one John W. Berks, of Salina, Kansas; whereupon the following correspondence was had with that gentleman:

EXECUTIVE OFFICE, January 25, 1878.

SIR: It is reported to me on what seems to be competent authority, that you have sold, or purport to own, section 17, township 13, range 3, and section 6, township 13, range 1, west, of lands in Saline county.

These are original salt-spring lands, certified to the State of Kansas, and now owned by it. Will you be kind enough to inform me if you have any title to said lands; or if you have, as agent, or attorney, become possessed of any title in the interest of others; or negotiated the sale, as such agent or attorney for any party, to present owners or claimants? This information will greatly oblige,

Yours truly,

GEO. T. ANTHONY, *Governor*.

To John W. Berks, Salina, Kas.

SALINA, KA., January 28, 1878.

His *Excellency,* GEO. T. ANTHONY, *Governor, &c.:*

SIR: I have yours of the 25th inst., in relation to two sections of land in this county, to wit, section 6, towuship[sic] 13, range 1, west, and section 17, township 13, range 3, west, and in reply have to state, that the land as above described, together with the S.E. 1/4 of section 8, township 13, range 3, west, was purchased of the State Normal School at Emporia, and that I hold certificates for said lands from the said school, said certificates being dated December 20, 1877.

I have the honor of remaining,

Your ob't serv't,

JNO.[sic] W. BERKS.

EXECUTIVE OFFICE, January 31, 1878.

SIR: Thanking you for your prompt response of the 28th inst., to mine of the 25th, I have to say, that a very grave error has been committed by some one in relation to the lands named in my communication to you. They are original salt lands; the title to which is and ever has been, since the original grant, in the State.

In order to make a prompt and intelligent investigation of the facts in relation to this complication, will you be kind enough to send me a copy of your certificate from the Normal School authorities, which you say bears date December 26th, 1877?

Very respectfully,

GEO. T. ANTHONY, *Governor*.

To John W. Berks, Esq., Salina, Kansas.

SALINA, KANSAS, February 22, 1878.

HON. GEO. T. ANTHONY, *Governor:*

SIR: In relation to sections 6, 13, 1, W., and 17, 13, 3, W., on which I hold contracts from the State Normal School, have this to state: That I would like to have the investigation that you suggested on the 31st ult. take place *immediately,* for this reason, among others: I sold section 17 for other property, which is improved. Now, if my claim on 17 is good, the exchange must stand; but if my claim on 17 is not a legal one, I desire to give the party his land again, that he may proceed to make a spring crop. In this crop matter there is no time to spare. I wish to do precisely right, and trust that we will speedily know what that is.

I have the honor of remaining,

your obedient servant,

JNO. [sic] W. BERKS.

This was referred to the honorable Attorney General, to the end that unlawful occupants should be ejected from the land, and the guilty punished for its unlawful sale. Nothing, so far as I am

informed, has yet been done--other and more important transactions of the same parties, involving Normal School lands, having engaged attention.

NORMAL SCHOOL LANDS.

Demand having been made for a patent for a quarter-section of Normal School land, claimed to have been bought and paid for by the party so demanding, and it being found that no report of sale, or proceeds thereof, had been rendered to the Auditor and Treasurer of State, an investigation was at once instituted, which soon developed a painful and disastrous condition of that trust. It was found that notwithstanding it was reported from year to year that these lands could not be sold at the minimum price fixed by law, and that therefore the Legislature must provide means to sustain the Normal School faculty, yet more or less of them had been sold in each year from 1872 to date, and the proceeds thereof embezzled by the agent making the sales.

A meeting of the Board of Regents was called, in relation to which the following correspondence was had:

EMPORIA, KAS. February 27, 1878.

GOVERNOR ANTHONY-

Dear Sir: The ex-agent made to me last night, in his private office, what he declares is a *full and complete showing of all* his doings in land matters connected with Normal and also salt or State lands. These disclosures were made to me in *confidence,* until such a time as the Board meets. You will *please treat this communication confidentially.* With the advice of Mr. Cross, I have called a meeting of the Board for next Saturday, at 1 o'clock P. M.,(March 2.) Mr. Cross and myself are of the opinion that *you* ought to meet with the Board, and have such other person or persons to accompany you as, in *your* judgement, would be advisable. Mr. Cross also writes to you this morning.

Very truly yours,

J. J. WRIGHT.

EXECUTIVE OFFICE, February 28, 1878.

Sir: Referring to yours of yesterday's date, in which you state that Mr. Bancroft has made to you what he claims to be a full and complete statement of his transactions in connection with the Normal School lands, and that you have called a meeting of the full Board of Regents for Saturday, this week, I have to say that I will meet with you at that time if it is possible; but in *no* event must your Board compromise with the delinquent, or compound his crime by any settlement or adjustment that shall shield him from the full force of the law in a criminal prosecution.

The wrong that has been been done, or appears to have been done, is such an one that it is due to the State, it is due to you, it is due to every one who is connected with it, that a most searching and rigid investigation be had, let the consequences fall where they may.

Very respectfully,

GEO. T. ANTHONY, *Governor*.

To Hon. J. J. Wright, Emporia.

Accompanied by Auditor Bonebrake, I attended the meeting of Regents, as requested; and late at night it was determined that an arrest of the agent should be made the following morning. Deeming the case one of very great importance, and knowing that prosecution would meet with vigorous resistance, the following letters were addressed to the Attorney General, and correspondence had with Hon. Almerin Gillett, which resulted in employing him as associate counsel:

EXECUTIVE OFFICE, March 4, 1878.

SIR: It has come to my knowledge that E. P. Bancroft, agent or pretended agent of the Regents

of the Emporia Normal School, for the sale of lands belonging to that institution, has sold lands without the knowledge of the Board, without its authority as alleged by them, and embezzled the funds. In addition to this offense, he has also conspired with others in the sale of lands belonging to the State.

A prosecution, criminal and civil, has been directed to be commenced against him, and I have employed Hon. Almerin Gillett, of Emporia, as associate counsel with you; the Board to be represented by Hon. J. H. Crichton, as an attorney on its part, who also appears as complainant in the prosecution.

I desire that you give this immediate attention, to the end that all wrongs committed by Mr. Bancroft, or other parties connected with him, may be brought to light, and adequate punishment follow such crimes.

Mr. Bancroft was to have been arrested yesterday. You shall be advised as soon as I have information.

Very respectfully yours,

GEO. T. ANTHONY, *Governor*.

Hon. Willard Davis, Attorney General,

State of Kansas.

EXECUTIVE OFFICE, March 4, 1878.

SIR: In the case of a complaint to be made in the name of the State vs. E. P. Bancroft, charging him with embezzlement of Normal School Funds, I desire you to act as associate counsel to the Attorney General; and to this end wish this letter to be received as an evidence of your employment, subject to your acceptance.

You are doubtless aware that whilst the statutes of the State provide for the employment of counsel, at the discretion of the Executive, there is no existing appropriation to meet such liability on the part of the State.

Whether the contingent fund placed at my disposal will be adequate to meet this and other necessary expenditures, I am not at all certain, and your services may become a claim before the

next Legislature.

You will please notify me at your earliest convenience, your acceptance or rejection of this proposition, together with a statement of your fees in the conduct of the case.

Very respectfully,

GEO. T. ANTHONY, *Governor*.

Hon. Almerin Gillett, Emporia, Kansas.

EMPORIA, KANSAS, March 16, 1878.

SIR: Your Excellency's favor of March 3d, inst., was placed in my hands on the 11th inst., and owing to my absence a formal answer was impossible until now . . . I accept the appointment and its accompanying responsibilities, with a sincere desire on my part that the event will prove that the public service has not suffered thereby . . . In event of the contingencies stated in your valued favor, I should think that a fair fee for seeing the case through, (as it will without doubt go to the Supreme Court,) would be five hundred dollars. This being a test case of this kind under the law of 1873, I expect to give it the whole attention that its importance demands.

Hoping these terms may meet your approval, I have the honor to remain your Excellency's very humble and obedient servant,

ALMERIN GILLETT.

To Hon. Geo. T. Anthony, Governor, Topeka, Kas.

TRIAL AND CONVICTION.

Every influence was brought to bear to secure a continuance of the case, at the time set for his trial. Assurances were urged that if given time he could through friends, make good to the State the amount embezzled; whereas, if forced to trial, all hopes of a recovery of the money would be at an end. It is proper for me to say in this connection, that I regarded a conviction as of much greater value to the State as an example and a warning, than a return of the money with a release of the offender, even had there been a reasonable hope of reimbursement, which was not the case, and I so stated to the attorneys of the State, as follows:

EXECUTIVE OFFICE, September 6, 1878.

SIR: Referring to the case of The State of Kansas vs. E. P. Bancroft, charged with embezzlement of State Normal School funds, I respectfully urge upon you the importance of bringing him to trial at the present term of court.

Information has reached me that it is the purpose of his attorney to urge a continuance of the case. I can conceive of no good reason for such continuance.

The preliminary examination was held, and all the technical points exhaustively examined into, and passed upon by the court, and the case continued to the present term for trial. There can be no reason in the interest of the State, or demands of justice, for a continuance. The people look to you, and expect from you, a vigilant prosecution, and nothing else will satisfy the ends of justice, or the demands of the people, whom you represent. I am satisfied that a continuance of the case can only be sought as a means of blunting the edge of justice by time, and wearying the prosecution, to the end that a compromise may be had, which will be in effect the compounding of a great crime. Such examples have been too frequent in this class of cases, and there should be an example at least in Kansas, to show the people that a man who would violate a sacred, public trust, and embezzle funds set aside by the General Government for the education of the children of a State, should be treated with the same measure of punishment at least, as is meted out to the man who steals bread to feed a famished family.

This letter is not inspired by any personal feeling against the accused, nor from any desire to deprive him of all just and honorable opportunities for defense; but by an obligation to the State and to its people, to see to it that criminals, whose prosecution rests with us, shall not be allowed to escape through the meshes of the law.

Very respectfully,

GEO. T. ANTHONY,*Governor.*

Hon. Willard Davis, Attorney General,

and Associate Attorneys.

[Telegram]

September 6, 1878.

HON. WILLARD DAVIS, Emporia, Kas.:

Every effort for delay in trial of Bancroft shall be resisted to the uttermost. Have written you.

GEO. T. ANTHONY.

Mr. Bancroft was convicted; and I may now be allowed to refer to the charges made against me, of relentless prosecution in his arrest and trial, that it was not pleasing, but a painful duty, to assume the attitude I did. No one can sympathize more sincerely with the friends of the convicted, or more heartily deplore the misfortune which has befallen himself and his family, than myself.

The condition of these Normal School lands requires your patient attention. Innocent parties are now in possession of many of those sold, who have paid in part or in full for the land to Mr. Bancroft after he ceased to be an agent. In view of the loose manner in which the trust was managed, they should be protected. Others hold contracts which I believe to be fraudulent in their inception, and should not be respected. The attorneys are diligently at work, and will, I hope, be able to give you information in time for action before your adjournment.

STATE NORMAL SCHOOL.

The State Normal School at Emporia suffered a serious impairment of its endowment through the default of Mr. Bancroft, its land agent. Ostensibly this loss is about $8,000, but it is in fact more than double that sum. The lands realized but little more than half their current value at the time of sale. In fact, it is now clearly shown that in some instances a sale was negotiated at eight or ten dollars per acre to a second purchaser, before the sale had been made at five dollars by Mr. Bancroft to the party first purchasing. If the lands sold were to-day in possession of the school, they would sell for a sum $20,000 greater than that realized.

This loss was quickly followed by a still greater disaster, in the burning of the school building. It has been the policy of the State to insure its own property, hence this burning involves a total loss of the value of the building.

The question of reconstruction will be one for you to consider. Whatever might be said of it, were the question an original one, I am convinced that the State cannot afford to have this important educational land-mark obliterated. It marks the devotion and liberality of a people at a time when its cost was a public sacrifice an[sic] hundred fold greater than that of its reconstruction at this time. I hope it may be restored by you in its original dimensions and form. There are other and more potent reasons for this than the wish of the people residing in that portion of the State, or the vested right of Emporia, which city has expended liberal sums in its aid. The State as a whole should be a unit in holding intact all the original State institutions. Let none of them be lost.

MANAGEMENT OF SCHOOL LANDS.

The State holds no trust more sacred, if indeed any of greater magnitude, than these lands. The value of this endowment of common schools, and the necessity for business method in its management and protection, seem to have been lost sight of by legislators and people.

By act of admission the State received, exclusive of school lands within Indian reservations, 2,706,090.98 acres. To this may be added 265,000 acres secured by the State Agent, as heretofore stated, making a grand total of 2,971,090.98 acres. Of this, as shown by the current report of the State Auditor, only 215,217 acres have been sold and patented. How much is sold and under valid contract, I regret to say is beyond human ken. So loose, diffuse and untrustworthy is the present system of sale, that no data worthy of an approximate estimate exists.

The average price per acre realized from sales to date is $4.23. Estimating the contracted and unsold lands at same rate, and we have the sum of $12,567,714.85 as the proceeds of school lands alone as a permanent school fund. No man with faith in Kansas sufficient to justify his election as a representative but will admit that these lands will ultimately realize greatly more than this, if managed with integrity and business prudence. I have no hesitancy in saying, that from these lands and other sources of income to the permanent school fund, it will reach the sum

of $20,000,000.

But to do this, a radical change must be made in the manner of sale and system of accounts now governing. Our present laws provide no system, fix no responsibility, secure no protection. The contract and original papers connected therewith are neither passed upon nor sent to a State officer for record. Appraisements are irresponsible and capricious always, and too frequently made with reference to the wants of a purchaser instead of the interest of the State. The result is looseness in accountability, neglect of duty, and an ultimate waste and loss beyond estimate.

This state of things must continue until your wisdom shall provide a comprehensive system in accord with the imperative demands of business method and accountability. To devise such system, and put it in place of existing laws, I believe to be the most important work you can do for the State.

PARDONS.

Section 3 of chapter 73, Revised Statutes, provides that the Governor "shall communicate to both houses of the Legislature a list of all persons pardoned by him during the preceding year, with a statement of the offenses of which each was convicted, the time of imprisonment, or amount of fine, and the condition, if any, upon which such pardon was granted."

Deeming this requirement both mandatory and wise, it is complied with, for the first time, I believe, in Exhibit B" herewith.

Believing that other facts than these specifically named would be of value, I give you a brief, in each case, of reasons for clemency. I believe that the law should require this statement of reasons, as well as of fact, from every Executive who exercises the pardoning power, until such time as an amended law provides a court of pardons.

The practice of vesting the pardoning power in the Government is based upon the theory of the divine right of rulers, which makes the offense run against the king, and therefore entitles him to exercise the power of clemency.

With us the right to govern is derived from the governed, and the offense of the criminal runs against the people, who alone can exercise the power of pardon. So delicate and doubtful a prerogative should be hedged about by laws, guarding its exercise, and fixing rigid rules of accountability for its use.

FUGITIVES FROM JUSTICE.

In July, 1877, information was received from one Gregory, that Samuel Lappin and C. G. Scrafford were at Callao, in Peru, South America, under assumed names. With this information, I felt it to be an imperative duty to secure, if possible, their return. The Hon. Attorney General prepared the necessary papers, and demand was made, but not before both had fled from Callao.

Subsequently, Mr. Scrafford was arrested, and while *en route* to this country was released from the officer in charge, by the Governor of Panama, on the claim that a citizen could not be held under arrest, whilst *in transitu* between two countries, in an intervening one having no treaty obligations with the others to surrender fugitives. The United States protested against this construction of international obligations, and demanded a rearrest of Mr. Scrafford, and his surrender to the United States authorities; and he would undoubtedly have been so returned, had he not voluntarily surrendered himself to the State authorities here.

The Hon. Secretary of State in a communication says: "The interference of the Governor of Panama in the matter is regarded as having been unnecessary and officious. A note to this effect has been addressed to the Minister of Foreign Affairs of Columbia, in which he has been requested to express to the Governor of Panama the displeasure of the Government of Columbia at his course. The note also expresses an expectation that Scrafford will again be arrested and held for transportation to this country for trial."

The trial of Mr. Scrafford, which has just terminated in conviction, has devolved an immense labor upon the Attorney General, who had to search for evidence and secure the attendance of unwilling witnesses, under the most adverse circumstances. It has also involved considerable cost, which should be promptly provided for, on statement of account, which will be furnished you by the Attorney General. Hon. A. M. F. Randolph, Attorney General at the time the offense was committed, and whose personal knowledge was of great value in securing testimony, cheerfully assisted in the trial as associate attorney, on the invitation of Attorney-General Davis. He should be reimbursed, and paid for his valuable services. Geo. R. Peck was also associated in the trial, by an engagement of my predecessor.

STRIKE OF RAILROAD EMPLOYES.

On the 4th of April last, a strike of engineers and firemen occurred on the Atchison, Topeka & Santa Fe Railroad, which soon assumed proportion requiring the interposition of State authority. An event so unusual, and one involving the use of this extreme power, with its incident cost, will warrant, if, indeed, it does not require, a statement of its cause and attendant circumstances.

To the end that you may have full and complete information, a carefully-collated record has been prepared and herewith published, as "Exhibit A." In reading this exhibit, it will not escape your notice that the attorney, sheriff, mayor and other officers of Lyon county of Emporia city

deny, in a vigorous and threatening protest, the legal and rightful power of the Executive to interfere by military force in the execution of laws, except upon the demand of the local civil officers, after the full power of such municipal authority has been exhausted without avail. They assert, substantially, that the act of a Governor in sending the military, unbidden by them, for such purpose, works a legal wrong and an official insult to the people of county or city where sent; that such sending is the equivalent of an invasion by an enemy, justifying the forcible ejectment of such military intruders.

This raises a question of vital concern to the State--a question you should carefully consider, to the end, that if the constitution and the statutes of the State are in conflict, or either of them ambiguous in terms, on so important a subject, they may be put in harmony and made plain as soon as possible.

The Governor's powers, in connection with the enforcement of the laws, as understood by me, are not only determined but very clearly defined by the constitution. Section 3 of article 8, reads: "The supreme executive power of the State shall be vested in the Governor,*who shall see that the laws are faithfully executed."*

If power thus vested in, and duty enjoined upon the Executive had been left without means to assert the one and perform the other, our constitution would have been a mockery of law and an insult to reason. But this is not the case. Ample means are placed in his hands to redeem all his obligations in this connection, by section 4, article 8, which says: "The Governor shall be commander-in-chief, and shall have power to call out the militia to *execute the laws,* to suppress insurrection, and to repel invasion."

The powers and duties of local municipal officers are fixed and defined by statute. It is their duty to execute the law; and when men, as in this case, confederate and conspire against it, extreme powers are given them by article 8, chapter 31, of the statutes, even to the calling upon every citizen within their jurisdiction to aid them in arresting offenders. But if they fail or refuse to do this duty, there is no power to compel them to do it. The Governor has no more control over them than they have over him. Neither are subject to the order, direction, or advice even, of the other. If there is any act of mine, in this case, subject to criticism, it is that of calling upon local municipal officers to do their duty. Although simply advisory and suggestive, they still would have been justified in resenting it as an unwarrantable interference.

There should be no confusion where all is so plain. It is the duty of local officers to enforce law and preserve order.

But whenever and wherever they neglect or refuse to do this, the constitutional obligation of the Governor compels him to step in with the militia--which force the constitution has placed in his hands for the purpose--and execute the law. The necessity for action, and the mode of proceeding, must be determined by the judgement and discretion of the Governor, subject only to the limitations fixed by the constitution.

I assumed the responsibility of meeting concerted lawlessness and organized crime with the means at my command for that purpose. If the facts, as you find them of record, did not justify

the use of such means, it was an error for which no apology is due, for it was an error in the interest of law, and against anarchy.

LIABILITIES INCURRED.

The liability incurred in the use of militia, as sustained by adequate vouchers in the Executive office, was as follows:

Transportation of Capt. Ziegler's company from Independence to Lawrence, via Leavenworth, Lawrence & Galveston Railroad, $870.75; transportation of Capt. Walkinshaw's company from Leavenworth to Topeka, via Kansas Pacific Railroad, $203.50; subsistence of troops at Topeka and Emporia, $341.90; telegraphing, transporting arms, etc., $107.60; payment of soldiers for service, $978.00; total, $2,501.75.

Cost of transportation is due to the companies furnishing it. Cost of subsistence, pay of men, and all expenses except transportation, were met by an advance of moneys by Atchison, Topeka & Santa Fe Railroad Company, on my request and obligation, as subsistence could not be obtained without present payment, and the men were not able to wait legislative action for their compensation.

The appropriations should run to the parties named--$870.75 to the Leavenworth, Lawrence & Galveston Railroad Company; $203.50 to the Kansas Pacific Railroad Company; and $1,427.50 to the Atchison, Topeka & Santa Fe Railroad Company.

STATE ARMORY.

By an act of March 13, 1877, the sum of *two thousand dollars* was appropriated and made subject to my order for the purpose of erecting a State Armory. The plans and specifications were made without cost to the State, through the courtesy of E. T. Carr, Esq., architect. The contract was let to Messrs. Lindell and Allen, of Topeka, for labor and material to complete the building for the sum of the appropriation, $2,000.

Subsequently a sub-contract was made with the same parties for a slate roof, and stone steps, in place of wood, at a cost of $130, which was paid from my contingent fund. The contracts, plans and specifications will be found on file at the Executive office, if further information is required.

INTER-STATE RELATIONS.

Nothing has occurred to mar our relations with sister States, except with the State of Ohio in relation to obligations arising under the inner-State extradition laws. This controversy having been permitted to find its way to the public from the Executive Office of Ohio, and presented through public journals in a distorted form, I deem it of sufficient importance to lay before you the facts.

On December 8, 1877, I required the surrender of one Geo I. Hopkins, on papers carefully prepared by Issac N. King, Esq., County Attorney of Sumner county. This demand was refused by the Governor of Ohio, upon opinion of Attorney General of that State, as shown by letter and opinion following:

STATE OF OHIO, EXECUTIVE DEPARTMENT,

COLUMBUS, January 26, 1878.

To the Governor of Kansas:

YOUR EXCELLENCY: Your requisition upon the Governor of this State for the delivery of George I. Hopkins, was yesterday presented to this Department.

The Governor declined, upon the advice of the Attorney General, to issue upon the requisition. I have the honor to inclose herewith a transcript of the opinion.

I am, your Excellency's obedient servant,

ROBT. F. HURLBUTT,

Private Secretary to Governor of Ohio.

[Opinion of Attorney General.]

STATE OF OHIO, EXECUTIVE DEPARTMENT,

COLUMBUS, January 25, A. D. 1878

To His Excellency R. M. Bishop, Governor:

I have given most careful attention to the sufficiency of the requisition and accompanying papers of the Governor of Kansas upon yourself, for a warrant for the arrest of one George I. Hopkins now a resident of Ohio, to be delivered up to an agent of the State of Kansas, to be transported to said State for trial for the alleged crime of seduction.

The commonwealth of Ohio is and has ever been watchful and jealous of the personal liberty of her citizens. She permits no one to be deprived of his liberty without "due process of law."

The right to demand of the Governor of a State or Territory that a citizen of his State or Territory be delivered up and transported to another State or Territory for trial, is an extraordinary right, and only to be exercised where the federal laws are complied with *in the most strict manner*.

The statute of the United States provides that the right of the Executive of a State or Territory to demand of an Executive of another State or Territory for the return of a fugitive from justice, for trial, depends upon the fact whether the alleged fugitive has been *indicted* for the offense, or is charged by *affidavit* before a magistrate.

In the case in hand, the party sought to be transported to another State is charged neither by indictment nor affidavit, but by information--a mode of presenting a party with an offense, unknown to the laws of the United States.

I must, therefore, say that the warrant should not issue.

Respectfully,

(Signed) ISAIAH PILLARS,

Attorney General.

On January 25, 1878, a second demand for Hopkins was made, this time upon an affidavit before a magistrate, which was in time refused in writing, as follows:

STATE OF OHIO, EXECUTIVE DEPARTMENT,

COLUMBUS, April 6, 1878.

To His Excellency Governor Anthony, Topeka, Kansas.

Dear Sir: The warrant asked for the arrest of Geo. I. Hopkins has been submitted to the Attorney General for his opinion, and he indorses[sic] it, "Not approved, for reasons heretofore assigned, when application was before made for same party for same offense."

I will only add, that it is a case not coming under the criminal statutes of Ohio, and hence declined by the Governor.

Yours, respectfully,

ALBERT ALLEN,

Acting Private Sec'y.

This second refusal was very justly protested against by Isaac N. King, Esq., the County Attorney of Sumner county, who had prepared the papers each time with great care, and in strict accordance with law. He says: . . . "You have issued two requisitions directed to the Governor of the said State of Ohio, in this matter, in accordance with the laws of our State; and the Governor of Ohio has twice refused to issue a warrant for the arrest of the said Hopkins, thus shielding him from the punishment he so justly deserves, on account of his terrible crime. I would now ask that you as Governor take some steps in this matter to secure the return of said fugitive for trial, under the laws he has violated. Please advise me of what steps you will take in this matter."

It having been uniformly held that while this law of Congress created an unconditional obligation upon the several States, whenever a proper case was presented, yet, no means were provided for its enforcement against an Executive who refused compliance therewith. There was nothing left but to decline recognition of a like obligation in return. This I took occasion to do in October last, in words following:

EXECUTIVE DEPARTMENT, TOPEKA, NOV. 8, 1878.

SIR: Referring to your requisition, under date of 23d October, 1878, for one Peter C. Becker, charged with embezzlement in the country of Butler in your State, which was presented by Mr. M. Thomas, your authorized agent to receive him, in connection with my refusal to issue a warrant for the arrest and surrender of the said alleged criminal, I beg to state for your information the reasons for such refusal.

On December 8, 1877, I issued a requisition for one George I. Hopkins, charged with crime in this State, who had taken refuge, and was then a fugitive from justice, and in the State of Ohio.

Under date of January 26, 1878, I was informed by your private secretary that you declined to surrender the culprit, for reasons set forth in an opinion of the Hon. Attorney General of your State, a copy of which said opinion was transmitted for my information.

This opinion of the learned attorney, after reciting the fact of the demand, and expressing the extreme jealousy of the Commonwealth of Ohio for the personal liberty of her citizens, and its purpose to see that no one of them was deprived of such liberty without due process of law, and further declaring that the right of a Governor of a State to demand the surrender of a fugitive by another State was an "extraordinary right, only to be admitted by the surrendering State when the federal laws were complied with in the most strict manner,"concludes, that whereas, my demand was based upon an information instead of an "indictment" or "complaint," before a justice of the peace, there was nothing to justify the demand or to sustain the delivery, an "information being a mode of presenting a party with an offense, unknown to the laws of the Unit; Not wishing to question the opinion of your Attorney General, yet dissenting from his assumption that proceeding by information was "a mode unknown to the laws of the United States and in the practice of the Federal Courts," I returned the papers to the proper authorities for correction, as indicated by his objections.

On March 3, 1878, a second requisition was made, this time based upon an "affidavit before a magistrate," in strict accord with the requirements of the United States statutes, and the suggestions of the learned attorney. This second demand was refused by you, your Secretary giving as a reason therefor that the question had been submitted to the Attorney General for his opinion, and he indorsed it, "Not approved , for reasons heretofore assigned, when application was before made for same offense."

This in the face of the fact that the first refusal was because the demand did *not* rest upon an affidavit before a magistrate, or precisely what this second demand refused *did* rest on.

To this fictitious objection of the Attorney General, you volunteer an additional reason for your refusal, viz.: "That it is a case not coming under the criminal statutes of Ohio, and hence denied by the Governor."

In view of the uniform interpretation of the obligation of States by Legislatures and courts, to the effect that it is enough, if "a requisition is supported by an indictment or complaint, duly accompanied by executive averment that the particular offense is a crime in the State where it was committed," and that for the Governor, upon whom requisition is made, "it is immaterial to consider what is the nature of the offense charged against the prisoner,*for we have only to consider, whether it be a crime according to the law of the State from which the party is alleged to have been a fugitive."*(See 6 Penn. Law Journal, 412 case of John S. Clark; New York, 9 Wend., 212; case of Haywood, Sup. Court of New York, 1 Am. Law Jour., N. S., 271,1848; case of Johnson v. Riley, Sup. Court of Georgia, 13 Ga., 97; case of Fetter, Sup. Court N. J., 3 Zab., 311; and the Sup. Court of Maine 6 Am. Law Jour., 226.)

This can only be construed as a determination on the part of the State of Ohio to refuse a recognition of its obligation to the State of Kansas in this relation. If it be true, as you assert, that the laws of Ohio do not recognize seduction under the revolting conditions presented in this case as a crime, I still deny the right of that State to refuse a rendition of such criminal for punishment in States where a higher morality has denounced a penalty against it as a crime hardly less heinous than that of murder.

The whole correspondence conveys so conclusively a fixed purpose to refuse a recognition of the rights of the Commonwealth of Kansas, as to compel me, from a sense of duty, to decline your demands, made under and by virtue of act of inter-State comity, which the State of Ohio refused to respect.

Deeply regretting the circumstances which have forced this action as the only means of vindicating the honor of the State,

I am sir, very respectfully,

(Signed)GEO. T. ANTHONY,*Governor.*

To His Excellency R. M. Bishop, Governor of Ohio.

STATE OF OHIO, EXECUTIVE OFFICE,

COLUMBUS, NOV. 21, 1878.

To His Excellency Governor Anthony, Topeka, Kansas:

SIR: Yours of 8th inst. received, stating your reasons for declining to honor a requisition made upon you by me for the surrender of one Peter C. Becker, charged with embezzlement. My own absence East has been one of the causes of my delay in answering. In addition to this, the Attorney General was absent upon my return home. I have, however, submitted your letter to him, and herewith inclose you his reply, which speaks for itself. I very much regret the circumstance has occurred, as my desire is to remain on the most amicable relations not only with your State, but all other States. The warrant for Hopkins's arrest will be issued whenever again demanded.

Respectfully yours,

RICHARD M. BISHOP, *Governor*.

STATE OF OHIO, ATTORNEY GENERAL'S OFFICE,

COLUMBUS, November 20, 1878.

To His Excellency R. M. Bishop, Governor of Ohio:

SIR: The communication from his Excellency Geo. T. Anthony, Governor of Kansas, of the date of the 8th inst., handed to me, has been carefully read.

His Excellency, the Governor of Kansas, certainly has cause to complain for not issuing a warrant for the arrest and extradition of George I. Hopkins, an alleged fugitive from the State of Kansas, in pursuance with the requisition of the Governor of Kansas upon the Governor of Ohio, of the date of March 23d, 1878. The blame in the matter attaches to this office.

The mistake occurred as follows: On January 26th, 1878, a requisition issued by the Governor of Kansas upon the Governor of Ohio, for the extradition of said Hopkins, based upon an information, was submitted to me under the rules of your office, for approval.

I disapproved the issuing of a warrant upon said requisition, for the reason stated in my opinion of the date of January 26th, 1878, a copy of which was transmitted to his Excellency Governor Anthony.

When the requisition of the date of March 23, 1878, was presented to me for approval, I was informed that it was but a duplicate of the requisition in the same matter already passed upon; and thereupon, supposing such to be the fact, I indorsed the requisition, "Not approved, for

reasons heretofore assigned, when application was heretofore made for same party for same offense."

Upon examination, it appears that the requisition was based upon an affidavit charging the offense, and the warrant should have issued; and I now recommend that the same issue.

With this explanation and correction, I hope the amicable relations between the coequal States of Kansas and Ohio may be restored.

Your Excellency's obedient servant,

ISAIAH PILLARS,

Attorney General of Ohio.

INDIAN RAID.

In September and October last occurred an Indian raid resulting in loss of life and property at once terrible and disastrous. About Sept. 8th, it was rumored that a band of Northern Cheyenne Indians had left their reservation, near Fort Reno, and were moving toward this State. This report was promptly communicated to Gen. John Pope, commanding this military department, who assured me that there was no danger. He represented that the Indians in question had been driven out by hunger in search of food, that through neglect, or worse, had been withheld from them by the Government. He assured me, also, in most positive terms, of his disposition and ability to protect settlers from harm, should the Indians come into the State.

Little was heard further until Sept. 18th, when the following message was received by me at Leavenworth:

DODGE CITY, Sept. 18, 1878.

Geo. T. Anthony, *Governor:*

Three hundred Indians are driving off stock and killing herders. They are now within six miles

of our city. We are without arms, having equipped numbers who have gone south. Can you send us arms and ammunition? Situation alarming. We are powerless without arms and ammunition.

JAMES KELLY, *Mayor.*

C. W. WILLETT.

H. E. GREYDEN.

D. SHEELY.

This was at once communicated to Gen. Pope by me, and responded to as follows:

[Telegram to Gen. Pope.]

SEPTEMBER 18, 1878.

MAJ. GEN. JOHN POPE, *Fort Leavenworth:*

Following just received from Dodge City: "Three hundred Indians are driving off stock and killing herders. They are now within six miles of our city. Situation alarming. We are powerless and unprotected. Can you send us arms and ammunition?" Are these reports true, and is State intervention necessary to protect life and property? Answer here.

GEO. T. ANTHONY.

[Gen. Pope's reply]

FORT LEAVENWORTH, Kas., Sept. 18, 1878.

GOV. ANTHONY:

Gen. Pope in town. Telegram just received from commanding officer Fort Dodge, who has for a week had his orders about the Indians, makes no mention of their being in the vicinity.

PLATT, A. A. G.

The parties were immediately directed to look to the commanding officer at Fort Dodge for assistance, and Gen. Pope advised accordingly, as follows:

[Dispatch to Mayor Kelly, Dodge City.]

LEAVENWORTH, KAS. Sept. 18. 1878.

TO JAMES KELLY AND OTHERS, *Dodge City, Kas.:*

I have your demand for arms. Have you called on commanding officer at Fort Dodge for protection? He does not report trouble to Gen. Pope. Will send on special train arms in charge of Adjt.-Gen. Noble.

GEO. T. ANTHONY.

[Dispatch to Gen. Pope.]

SEPTEMBER 18, 1878.

GEN. JNO.[sic] POPE, *Fort Leavenworth:*

Have referred parties calling for aid to commanding officer, Fort Dodge, and promising arms if U. S. forces could not protect them. Special to Kansas City press reports murders by Indians near Dodge City.

GEO. T. ANTHONY,

Governor.

Soon after the above, a second and still more urgent demand came from Mayor Kelly, and was followed by a second one upon Gen. Pope, and the inauguration of measures to extend the aid required if the General failed to respond, as the following telegrams will more fully show:

[Dispatch from Dodge City.]

DODGE CITY, KAS., Sept. 18, 1878.

GOV. GEO. T. ANTHONY:

Indians are murdering and burning houses within three miles of town. All the arms we have been sent out: can you send us arms and ammunition immediately?

H. SHINN.

T. S. MCCARTHY.

R. W. EVANS.

JAMES C. CONNER.

C. W. WILLETT.

[Dispatch to Gen. Pope.]

LEAVENWORTH, KAS., Sept. 18, 1878.

GEN. JNO.[sic] POPE,*Fort Leavenworth, Kas.:*

Mayor and citizens say Indians are murdering and burning houses within miles three miles of Dodge City. I must send arms and ammunition if you have not an adequate force there to protect citizens. Answer.

GEO. T. ANTHONY.

[Dispatch to General-Manager Strong.]

SEPTEMBER 18, 1878.

W. B. STRONG,*Gen'l Manager A. T. & S. F. R. R., Topeka:*

Can you send special with arms and ammunition in charge of Adjutant-General Noble, to-

night?

GEO. T. ANTHONY.

[Mr. Strong's reply.]

TOPEKA, KAS., Sept. 18, 1878.

GEO. T. ANTHONY:

Yes, sir. Name the hour you wish to have the train start, and the place you wish to reach.

W. B. STRONG.

Mayor Kelly answered my telegram, referring him to commanding officer at Fort Dodge, in words following:

DODGE CITY, Sept. 18, 1878.

GOV. ANTHONY:

No U. S. troops here, and no arms at post. The country filled with Indians. Send arms immediately--breech-loaders.

JAMES H. KELLY,

Mayor Dodge City.

Upon receipt of this I at once visited Gen. Pope, who again asserted that it was a "scare," and said there were not more than seventy-five warriors in the party, and they absolutely free from hostile intent upon the lives of settlers. His information also was to the effect that no Indians had been within many miles of Dodge City, and the report to me of depredations on that day entirely without foundation. On this authentic information the sending of arms was deferred until the following day. Mayor Kelly was advised of Gen. Pope's views, and was offered arms, if still required, as follows:

[Dispatch to Mayor Kelly.]

SEPTEMBER 19, 1878.

JAMES H. KELLY,*Mayor Dodge City, Kas.:*

Adjutant General will come with arms and ammunition by to-day's train, if you still deem it necessary. Gen. Pope says there are not seventy-five Indians now at large. Answer at Topeka.

GEO. T. ANTHONY.

[Dispatch to Manager Strong.]

SEPTEMBER 19, 1878.

W. B. STRONG,*General Manager, Topeka:*

Adjutant General will go down with arms on passenger train to-day. Please provide for him.

GEO. T. ANTHONY.

Adjutant-General Noble went out with arms and ammunition, as above indicated, and issued them in numbers and manner shown by the following report:

DODGE CITY, KAS., Oct. 20, 1878.

GOV. GEO. T. ANTHONY:

Have issued one hundred stand of arms and seven thousand rounds of ammunition to Mayor of Dodge; forty stand and two thousand ammunition to citizens of Cimarron; also, sixty stand and ammunition to Capt. Friedley, of Medicine Lodge, upon urgent request. All quiet at Dodge now, and citizens feel confident that they can meet any emergency. Rumors that Indians are near Lakin, and United States troops concentrating at other points. Shall return to-night, as nothing further can be accomplished by staying.

P.S. NOBLE, *Adjutant General.*

I was at Iuka, Pratt county, on the 24th of September, and found much excitement; some settlers actually leaving from points not less than twenty miles south and west of that place. To get the truth and allay fears, I sent a trusty messenger to Capt. Johnson at once, with a request that they go to Sun City and report the result of careful investigation. Capt. Johnson reported the next day, as follows:

Sept. 25, 1878.

MR. ANTHONY:

I received a letter from you this morning, handed me by our friend Mr. Nelson. Was pleased to see the interest you take in our Indian scare, which is much smaller than reported. Mr. Nelson and myself went to Sun City, and found out all particulars in regard to the Indian trouble. Mr. Nelson has the names of killed and wounded, except two men. I anticipate no further trouble from Indians.

A. J. JOHNSON.

Mr. Nelson reported three killed and three wounded, and fully sustained the views of General Pope, that the Indians were only in quest of food, ponies and arms, and were not disposed to attack any one until resisted in such taking of property.

THEY GO NORTH.

On October 2d the following telegrams were received by me at Leavenworth:

ELLIS, October 2, 1878.

GOV. ANTHONY:

Reliable information has just been received that eighteen white men were killed this morning by Indians, near Buffalo. Please send immediately one hundred guns and ammunition to Ellis, together with such other assistance as you can afford. We can furnish a number of volunteers.

DAVID RATHBONE.

ELLIS, October 2, 1878.

GEO. T. ANTHONY:

Cheyennes depredating western Kansas: troops have scattered them, and made matters worse. Our men need arms badly; help us.

J. C. HENRY,

Secretary Western Kansas Stock Association.

Response was immediately made that arms would be sent and Adjutant General directed accordingly, by wire:

[Telegram to Mr. Henry.]

LEAVENWORTH, October 2, 1878.

J. C. HENRY AND DAVID RATHBONE,*Ellis, Kas.:*

Will send Adjutant General with arms to-night. Keep me fully advised of the situation.

GEO. T. ANTHONY.

[Telegram to Adjutant General.]

LEAVENWORTH, KAS., Oct. 2, 1878.

P. S. NOBLE,*Adjutant General:*

Be prepared to go west on Kansas Pacific train to-night, with one hundred and fifty arms and ammunition, if ordered.

GEO. T. ANTHONY.

[Telegram to Sup't Oakes.]

LEAVENWORTH, KAS., Oct. 2, 1878.

T. F. OAKES,*Gen'l Supt.* K. P. R. R.,*Kansas City:*

Call for arms to resist Indians at Ellis. Will you authorize passenger train to take them to-night?

GEO. T. ANTHONY.

[Sup't Oakes reply.]

HUGO, COL. Oct 2, 1878.

GEO. T. ANTHONY:

This will authorize you to ship the arms to Ellis by passenger train, free of charges.

T. F. OAKES.

I went at once to Fort Leavenworth and had an interview with Gen. Pope. He gave me particulars of the movement of Indians, and of troops in pursuit. Did not believe the report of massacre, and authorized me to say to all parties on line of Kansas Pacific Railroad that the Indians had all left the State with military in close pursuit--"Not a hostile Indian within a hundred miles." This interview was immediately reported, and additional information sought.

[Telegram to Mr. Henry.]

LEAVENWORTH, Oct. 2, 1878.

J. C. HENRY AND DAVID RATHBONE,*Ellis, Kansas:*

Had interview with General Pope, who says: No hostile Indians in Kansas; no Cheyennes within a hundred miles of Buffalo to-day. Have you confirmation of dispatches sent me? Answer.

GEO. T. ANTHONY.

[Telegram to Station Agent.]

LEAVENWORTH, Oct. 2, 1878.

STATION AGENT,*Buffalo Station Kansas:*

Reported eighteen citizens killed by Indians to-day near you. Give me essential facts by wire at once.

GEO. T. ANTHONY, *Governor*.

[Station Agent's reply]

BUFFALO, KAS., Oct. 2, 1878.

GEO. T. ANTHONY, Governor:

J. C. HENRY has given you all the particulars.

C. T. LYON, *Agent.*

Telegrams were immediately received fully confirming reports of outrages made earlier in the

day, and claiming that Indians were still in the vicinity:

[Telegram from Mr. Keeny.]

WAKEENY, KAS. October 3, 1878.

GEO. T. ANTHONY:

Three Indians seen this morning eleven miles north from here by Clark, whose word is as good as General Pope's.

J. F. KEENY.

[Telegram from Mr. Henry.]

BUFFALO, KAS., October 2, 1878.

GEO. T. ANTHONY: *Governor:*

Seventeen men known to be killed, on Sappa; one wounded, on Solomon, night before last; settlers in southern Nebraska in great danger. Surgeons from here with citizens' guard to go north will meet Adjutant.

J. C. HENRY.

Arms and ammunition were sent with the Adjutant General, who issued them, and took security therefore, at such points as they were demanded; a full report of which follows:

TOPEKA, KANSAS, Oct. 15, 1878.

TO HIS EXCELLENCY GEO. T. ANTHONY, *Governor, and Commander-in-Chief:*

According to orders received from you, I proceeded to distribute arms along the line of the Kansas Pacific Railway, taking such security therefor as I could get, in consideration of the exigencies of the case and demand of the parties. The following are the places and names of parties to whom arms were issued under the above orders:

- J. F. Keeny, Wakeeny, Kas., 50 Sharp's carbines and 1,300 rounds of ammunition.
- O. B. Richards, at Carlyle, Kas., 10 carbines and 300 rounds of ammunition.
- G. W. Kimball and others, Ellis, Kas., 50 carbines and 1,000 rounds of ammunition.
- J. R. Hamilton, 20 carbines and 700 rounds of ammunition.
- Kansas Pacific Railway Company, at Buffalo, 30 Sharp's carbines and 1,000 rounds of ammunition.
- J. M. Gravelly, 2 Sharp's carbines.
- J. C. Henry, Ellis, Kas., 50 Sharp's carbines, with 4,000 rounds of ammunition.
- J. H. Edwards, 20 Sharp's carbines and 2,000 rounds of ammunition.
- J. H. Marr and others, and J. L. Worley and others, of Norton and Decatur counties, 100 carbines, with 2,000 rounds of ammunition.

I arrived at Ellis, made the proper distribution, and then telegraphed for special train to take me along the line at the different points. Left Ellis, accompanied by Hon. J. H. Edwards, at 7 o'clock; reached the last station, Carlyle, at 12 midnight, and returned as far as Wakeeny, where I found great excitement in regard to a rumor that Indians had stampeded the ranch of Mr. Henry. The rumor proved false, and quiet reigned to a certain degree. In fact, the whole country is alarmed, and the demand for arms is tenfold that which can be supplied by the State.

I wish to say right here, that in the matter of bonds, I was compelled to violate the provisions of the statutes as to the issue of such arms, and took the responsibility of letting citizens have them where in my opinion there was danger of attack.

I trust my action in the matter will be justified; and I know it would have been condemned had I lived up to the strict letter of instructions and the law, and refused such aid. I shall take the opportunity, in making my report, to call the attention of the Legislature to this matter, suggesting that discretionary power be given the Adjutant General in such cases, thereby relieving him of the responsibility imposed by the present law.

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

P. S. NOBLE, *Adjutant General.*

The history of this sad affair is conclusive of neglect and inefficiency somewhere. Confiding in the superior knowledge of Gen. Pope, and his positive and repeated assurances of protection, I did not act beyond urging and demanding what the State had a right to expect from the General Government--absolute protection. That Gen. Pope was sincere in his assurances of safety, there can be no doubt. That he was sadly in error, cannot be denied.

There can be but one means of sure protection from a recurrence of this disaster: the Indians must be put under military surveillance, with an adequate force to hold them upon their reservations. To protect the western border against bands of Indians, allowed, as these were, to roam, would require a standing army larger than the whole military force of the United States.

I have made urgent demand upon the General Government for the surrender of the chiefs, and such members of this depredating band of Indians as may be identified, to the civil courts of the State, for trial. Also, that an adequate force be stationed on the southern border between us and the Indian reservations, to fully protect the State. Compliance with both these demands has been assured. That you may fully understand the *status* of the demand for surrender, I add the correspondence in relation thereto:

TOPEKA, KANSAS, Nov. 11, 1878.

SIR: On Sept. 9th past, a band of Northern Cheyenne Indians escaped from their reservation, at Fort Reno, I. T., and took up their march northward. In their passage across this State, which covered a period of nearly thirty days, they not only evaded capture by the U. S. military forces, but they committed crimes against life and property, savage and revolting in their character, and disastrous in pecuniary loss.

More than forty men were murdered, and many women ravished and worse than murdered. An Indian invasion, so unexpected and so revolting in its fiendish details, has awakened a feeling of profound anxiety, and a rightful demand for the adoption of extreme measures to prevent a recurrence. If this band can be permitted to flee its reservation and traverse two States, plundering and murdering at will, before even a portion of their number are captured, and not meet with exemplary punishment, then the reservation system should be abandoned as a failure, and the frontier citizen surrendered to a condition of perpetual peril.

To end such undertakings on the part of the Indians, and protect the future from their consequences, an example of adequate punishment should be made in their case.

To return this band to their reservation, with its chiefs and leaders, would be a wrong to this State, against which I protest in the name and on behalf of its entire population. I cannot believe such a thing will be seriously contemplated.

On mature reflection, and with thoughtful reference to the demands of law and justice, as well as the ends of public safety, I feel it an imperative duty to call upon you for a surrender to the proper officers of the civil courts of the State of Kansas, for trial and punishment under its laws, the principal chiefs, "Dull Knife," "Old Crow," "Hog," "Little Wolf," and others, whose identity can be established as participants in the crimes of murder, and woman-ravishing.

I believe there is a precedent for this demand, in the surrender to the civil courts of Texas of "Satanta," and one other chief, in the year 1872. But if there is no precedent, public necessity and simple justice would, I believe, be ample justification for this demand.

The laws of Kansas work a practical abolition of capital punishment, but the fact of surrender to the civil authorities for trial, with a conviction followed by sentence of death, or imprisonment for life, would have a salutary effect, and, as I believe, work protection and comparative security.

Very respectfully,

GEO. T. ANTHONY, *Governor of Kansas.*

To the Hon. Secretary of War, Washington, D. C.

HEADQUARTERS DEPARTMENT OF THE MISSOURI,

FORT LEAVENWORTH, KAS., Dec. 31, 1878.

Hon. Geo. T. Anthony, Governor of Kansas, Topeka, Kansas:

GOVERNOR: I have the honor to inform you that I have received orders from the War Department to turn over to the civil authorities of Kansas, such of the Cheyenne prisoners *en route* to this place, from the north, as can be identified as the criminals who committed murder or other crimes during the raid of the Indians through Kansas in September last. As it is desirable not to keep these Indians here longer than necessary, I have to request that such persons as may be needed for the identification of the criminals be sent to meet the Indians on their arrival here. I cannot yet tell exactly when they will reach here, but I will notify you by telegraph as long as possible in advance--perhaps a week.

A considerable force of infantry will be sent within a few days to Camp Supply, and to a point on the Canadian, half-way between that post and Fort Reno, to cover the southern line of Kansas as far as is practicable for the present.

Of course you know as I do, that infantry is not a very effective force to head off or pursue parties of mounted Indians. You know also that until parties of Indians from the Indian Territory break away we have no right to act against them except on application of the Indian agent, or until they have passed out of the limits of their reservation; and that we have no power to inquire into their condition or wants, or to remedy either, nor can we use any precautionary measures of repression, whatever may be the indications of their purpose to break away, unless first asked to do so by the agent. Thus tied up, there is nothing left to the military except to wait until the Indians are gone or until the agent asks the military to act, which for obvious reasons he is very reluctant to do until it is too late for effective measures to prevent trouble.

For these reasons, a considerable cavalry force is needed, not only near these Indians, but on the western frontier of Kansas, to take the field whenever parties of Indians leave their reservations.

The condition of affairs in the Indian Territory makes such a force absolutely necessary on this frontier, but I regret to say that necessities equally pressing in other parts of the country, and even more pressing in some places, demand the service of cavalry elsewhere; and although both Gen. Sheridan and myself understand and have long understood and tried to provide for the necessities of the situation, as has also the General of the Army, there is actually not the cavalry force to send for the present. I hope, however, before many weeks, to get six companies of cavalry, which I will so place as to secure the frontier settlers as far as activity and zeal can do so with such a force.

I wrote this letter to you, that you may understood the position in which the military forces of this department are placed in relation to the Cheyennes and Arapahoes, Kiowas and Comanches, and other wild Indians in the Indian Territory.

I repeat that we are powerless to act against these Indians, whatever we may know or believe of their purposes, until they leave the limits of their reservations, or until the Indian agent asks military interposition.

It would not be difficult for the military forces, if they had the authority to encamp at these agencies, to feed the Indians so that they would have no excuse to leave; and to enforce their stay at the agencies by constant repressive force, if necessary. Unfortunately we have no such power; and our only function is to *pursue*, which, as you need not be told, is almost unavailing over these wide plains, after the Indians have once started. It is due to the military forces that I should write these facts to you, as there appears to be a disposition to censure the troops for transactions which they have no power to control, either by precautionary or repressive measures.

Very respectfully, your obedient servant,

JNO.[sic] POPE,

Brevet Major General U. S. A., Commanding.

GEO. T. ANTHONY, *Governor*.

EXECUTIVE DEPARTMENT, TOPEKA, Jan. 13, 1879.