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MESSAGE OF THE PRESIDENT.

RICHMOND, VA., Feb. 19, 1863.

To the House of Representatives :

I herewith transmit a communication from the Secretary of the Treasury, in reference to the settlement of the claims of deceased soldiers, in response to your resolution of the 12th inst.

JEFFERSON DAVIS.

COMMUNICATION FROM SECRETARY OF TREASURY.

TREASURY DEPARTMENT, C. S. A., }
Richmond, Feb. 19, 1863. }

THE PRESIDENT :

SIR : In response to a resolution of the House of Representatives, adopted February 12th, 1863, asking what, if any, legislation is necessary in order to secure the prompt settlement of the claims of deceased soldiers, I have the honor to enclose herewith a report of the Second Auditor giving the desired information.

Respectfully,

C. G. MEMMINGER,
Secretary of Treasury.



REPORT OF SECOND AUDITOR.

TREASURY DEPARTMENT,
Second Auditor's Office, }
February 18, 1862. }

The Honorable Secretary of the Treasury, Confederate States :

SIR : The letter of the President of the 12th instant, which you have referred to me, is received.

In reply to the resolution of the House of Representatives of the Confederate States therein transmitted, I beg leave to hand you herewith :

The regulations and forms of this office as to the requirements in proof of heirship to the deceased soldier ; also, blank copies of the calls upon the Adjutant and Quartermaster Generals for evidence from the muster rolls in their respective offices, which should furnish facts upon which the claim is audited and paid ; also, General Orders No. 80, of the War Department, issued at my suggestion, which, if complied with, would likewise furnish the proofs required ; also, the forms of record books which I have caused to be prepared, two for each State in the Confederacy, in which are being entered alphabetically : first, the returns of deaths by commanding officers of brigades, regiments, companies and detachments in the field, or in camp, or by surgeons in hospitals, which are required, by Order No. 80, to be rendered direct to this office ; and, secondly, all the claims of this character, in the same order that have been or may be presented, showing their final disposition, etc. These books are rapidly filling up, as the returns and applications come in, and when completed, according to their original design, will furnish a mass of evidence and information which will render the settlement of all the claims prompt, safe and easy, as well to the government as to individual claimants.

For the present, and until the designed arrangements have been completed, they take up at least four-fifths of my entire time, greatly to the prejudice of the other branches of the public business of the office, to which, consequently, it is impossible that I can give that personal attention which the service demands.

At the commencement of my action on this class of claims you will perceive, by the enclosed copy of my printed regulations, (dated December 30th, 1861,) that I adopted the rules of the United States government in like cases, (with which I was familiar,) making the payments : " 1st, to the widow ; 2nd, to the child or children ; 3rd, to

the father; 4th, to the mother; 5th, to the brothers and sisters; and, lastly, to the general heirs;" requiring administration only where the amount due the deceased exceeded one hundred dollars.

But the Congress of the Confederate States; by an act approved February 15, 1862, limited the payment to the heirs in the 4th degree above mentioned, upon affidavit of the claimant to the arrears of pay, etc., due the deceased non-commissioned officer and private, and that of one corroborating witness in proof thereof; and by an act approved October 8, 1862, the payment was extended in like manner to the commissioned officer, on all sums due the deceased in the same relationship.

The act of February 15, 1862, required "the pay and allowance due to be paid by the paymaster or proper officer, charged with the payment of the troops," and this act remains still on the statute book *unrepealed*.

But no paymaster was found willing to assume the additional responsibility of deciding on proofs of heirship, or to pay an account which had not first been audited; for had he have done so, the *account and proof* would eventually come as his voucher to this office, and be subjected to the same process of examination as now performed, and be suspended or rejected if paid in error by the paymaster.

By my letter of the 3rd, to the Quartermaster General, and that of the Quartermaster General, of the 5th of May, 1862, (copies of which are herewith enclosed,) the question was submitted by the then Secretary of War to the Attorney General Confederate States, who gave it as his opinion (copy also enclosed,) that the act February 15, 1862, did not intend to take the claims of deceased soldiers out of my hands, as I had at once supposed, and "that the payment should be made *upon*, and not without audit."

Were these claims paid without audit, I see no check devised to prevent *repayment* without notice, by this office or other paymasters; and it now often happens that more than one application is filed in the office by same claimant or a contending claimant, where both claims are sure to receive their relative consideration, and the practical working of the act, *if paid before audit*, would lead, in my opinion, to *endless complications and fraud*, for payment of officers under the late regulations, were made by any paymaster to whom the officer should present his certificate and account, *on honor*; and the soldier is now paid on the hospital rolls, of which payment no paymaster or post-quartermaster can possibly have entire knowledge.

I see no way by which these claims can be adjusted, except by an office at the seat of government, where the evidence required can be brought within reach by obedience to orders from the proper officers who may have the subject matter under their full control.

If any other mode can be devised than that indicated in this communication, which will more speedily and effectually secure a prompt settlement and payment of these claims, it shall have my most hearty and cordial co-operation. In this connection I may as well remark that the force now employed on this service is twenty-six, (26,) scattered among fourteen States, including Maryland, Missouri and Ken-

tucky, which have lost a great many men in our service, a corps altogether inadequate to the constant daily demands upon them. A temporary force of at least forty industrious men, I think absolutely necessary.

The amount involved, as well as the necessities of the recipients of the right to receive it, alike demand the most earnest and prompt attention.

I can, therefore, only suggest such legislation as would strictly enforce the army regulations and orders so as to bring the facts within my reach, necessary to the more speedy settlement of these most just and necessitous claims.

I have the honor to be, with great respect,

Your obedient servant,

W. H. S. TAYLOR,

Auditor.

REGULATIONS FOR THE PAYMENT OF CLAIMS FOR
ARREARS OF PAY DUE TO DECEASED SOLDIERS.

TREASURY DEPARTMENT,
Second Auditor's Office, }
December 30, 1861. }

1st. When an administrator is legally appointed, the payment must be made to such administrator, upon his filing in this office the proper certificate of the clerk, under seal of the court.

2d. Where the amount due exceeds one hundred dollars, administration will be required, otherwise not.

3d. When there is no administrator, payment will be made: *first*, to the *widow*; *second*, to the *child or children*; (or, if minor, to the *guardian* producing the proper certificate under the seal of the court;) *third*, to the *father*; *fourth*, to the *mother*; *fifth*, to the *brothers and sisters*; and *lastly*, to the *general heirs*.

4th. The claiming heir must produce his or her affidavit, and that of two disinterested persons, stating the relationship, and that there is no other person entitled to claim. For instance, if the claimant be a *mother*, the affidavit must state that there is living neither *wife*, *child*, nor *father* of the deceased. The magistrate administering the oath should certify to the credibility of the witness, and the clerk of the court should certify, under seal, that he is such magistrate.

Claims, prepared in compliance with the foregoing instructions, and transmitted to this office by mail, or otherwise, will receive as prompt attention as the press of business will allow.

W. H. S. TAYLOR,
Auditor.

I concur in and approve the above.

LEWIS CRUGER,
Comptroller.

December 30, 1861.

REGULATIONS AND FORMS.

TREASURY DEPARTMENT, C. S. A.,
Second Auditor's Office, }
Richmond, Va., Nov. 1st, 1862. }

Regulations for the payment of claims for arrears of pay and allowances due to deceased officers and soldiers of the Confederate Army. Per Act No. 402, approved February 15th, 1862, and Act No. 30, approved October 8th, 1862.

The first section of the above named act provides "that the pay and allowances due to any deceased volunteer, non-commissioned officer, musician or private, in the army of the Confederate States, shall be paid to the widow of the deceased, if living, if not, to the children, if any; and in default of widow or children, to the father, if living, and if not, to the mother of such deceased volunteer."

The first section of Act No. 30 provides "that claims due to deceased non-commissioned officers and privates for pay, allowance and bounty may be audited and paid when there is official evidence of the amount due, satisfactory to the second auditor, under such regulations as he has, or may prescribe, with the approval of the Secretary of War."

By section 2 of the same act it is provided that "the claims of deceased commissioned officers shall be paid to their heirs or representatives in the same manner as similar claims of non-commissioned officers and privates are now, or may be directed by law to be paid." Payment will be made accordingly under the following rules:

1. If the child or children be minor, payment will be made to the guardian, upon the production of the proper certificate of guardianship under the seal of the court.

2. The claimant must produce his or her affidavit, and that of one disinterested witness, stating the relationship. For instance, if the claimant be a mother, the affidavit must state that there is living neither wife, child or father of the deceased; if the father, that there is neither wife or child; and if the child, that there is no widowed wife.

The magistrate or other proper officer must testify to the credibility of the witness, and the clerk of the court must certify, under the seal of the same, that he is such magistrate.

The foregoing instructions must be strictly complied with. Powers of attorney or assignment, which will seldom be necessary, may be executed before a magistrate or in the presence of two respectable wit-

nesses. Claims, prepared as herein directed, and transmitted to the second auditor by mail or otherwise, will receive as prompt attention as the business of his office will allow, and *always in the order of their presentation*. The amounts found due will be remitted by the auditor to the parties entitled as they may direct.

W. H. S. TAYLOR,
Second Auditor.

WAR DEPARTMENT, C. S. A., }
November 5th, 1862. }

I approve the foregoing rules and regulations.

G. W. RANDOLPH,
Secretary of War.

The attention of claimants is called to the following forms in preparing their affidavits, an observance of which will save time, trouble and expense :

STATE OF _____ } On this _____ day of _____
County, to-wit: } 186 , personally appeared before me the
subscriber, a justice of the peace in and for the county aforesaid,
who, after being sworn according to law, deposes and
says, that _____ is the _____ of _____ deceased, who
was a _____ of Captain _____ company, _____ regiment of
_____ volunteers, commanded by Colonel _____, in the service
of the Confederate States in the present war with the United States ;
that the said _____ entered the service at _____ in _____ county
and State _____ on or about the _____ day of _____ 186 ,
and died at _____ on or about the _____ day of _____ 186 ,
leaving _____ That _____ makes this deposition for the pur-
pose of obtaining from the Government of the Confederate States
whatever may have been due the said _____ at the time of his
death for pay, bounty or other allowances for his services, as
aforesaid.

Sworn to and subscribed before me, } (Signed)

J. P. }

And on the same day and year aforesaid, also appeared before me a justice of the peace, as aforesaid _____ who is well known to me, and whom I hereby certify to be a person of veracity and credibility, who, having been by me duly sworn, says, on oath, that is well acquainted with _____ the claimant, and also well knew, for _____ years, _____ the deceased soldier herein mentioned,

and that the statement made under oath by said the
 claimant, as to relationship to the said deceased soldier, is
 true and correct in every particular, to the best of knowl-
 edge and belief, and that the said is wholly disinte-
 rested.

Sworn to and subscribed before me, } (Signed)
 J. P. }

STATE OF }
 County, to-wit :

I hereby certify that gentleman, before whom the fore-
 going affidavits of and appear to have been made,
 and whose genuine signature is subscribed thereto, was at the time of
 making and signing the same, a justice of the peace in and for the
 county and State aforesaid, duly commissioned and sworn, and to all
 whose official acts as such, full faith and credit is and ought to be
 given, as well in Courts of Justice as thereout.

[SEAL.] In testimony whereof, I have hereunto set my
 hand, and affixed the seal of
 County Court, this day of
 Anno Domini, eighteen hundred and sixty-
 , Clerk,
 of County Court

If, within their knowledge, claimants should state *where* the officer
 or soldier *was born* and *when* and *from what cause he died*, distinguishing
 those who were *killed in battle*, or *died of wounds received in battle*, from
 those *who died of disease*.

Where there is an administrator, a certificate of the fact by the
 proper officer of the court granting the same, under his seal of office,
 will be all that is necessary.

The law, and these regulations applying as well to conscripts as to
 volunteers, with respect to the former claimants and witnesses, will be
 required to swear to the conscription and the regiment and commander,
 to which the conscript belonged. They will name the captains and com-
 panies when they can do so, as this information will greatly facilitate
 the settlements.

Claimants should always endorse on their papers, their *address*,
 naming *postoffice*, *county* and *State*.

The aforesaid forms, etc., have also been approved by the Secre-
 tary of War.

W. H. S. TAYLOR,
Second Auditor, Confederate States.

LETTERS of the Second Auditor and Quartermaster General, submitted by the Secretary of War to the Attorney General, and his opinion relative to "Act approved February 15, 1862."

TREASURY DEPARTMENT, C. S., }
Second Auditor's Office, May 3d, 1862. }

Col. A. C. MYERS,

Quartermaster General, C. S. A. :

SIR: Daily and perpetual applications, in person and by mail, for settlements of arrears of pay, etc., due to deceased soldiers, have caused me to examine and consider with more than ordinary care the act No. 402, entitled "An Act concerning the pay and allowances due to deceased soldiers," approved February 15, 1862. I have come to a different conclusion from that first entertained by myself in common by most persons whose attention was called to the subject, and am now of opinion, that by a fair, and not violent construction of the act, the settlement of these claims may remain in this office, and their *payment*, upon certificates of the Auditor and Comptroller, be made "by the paymaster, or proper officer charged with the payment of the troops" as heretofore.

The only difference is, shall these claims be paid, by the proper officer of the pay department, *upon* or *without* a *previous audit*. The law is strictly confined to the *payment and by whom*, and is altogether silent as to the *evidence* showing who are to be the proper parties to receive, leaving that, of course, to be determined, as in all other cases of public accounts, by the proper accounting officers of the treasury.

The audits prior to the passage of the late law were in every case made "upon the pay roll made out and certified by the captains, or commanding officer of the company to which the deceased was attached," in which pay roll was stated "the name of the deceased volunteer, the company and regiment to which he was attached, and the date of his enlistment and death."

The only difficulty which is, I think immaterial, is, that the present law requires that the pay roll as above described shall be "delivered to the person or persons entitled to such pay and allowances, etc., but I think this is substantially answered by the filing of the general pay roll, which contains the case of an individual volunteer, besides that of many others in the proper office of the War Department, accessible to and answering for all parties interested.

Should you concur or differ with me in these views, I should be glad to hear from you upon the subject at an early day.

Probably the construction of the Secretary of War or Attorney General would be desirable.

I am, very respectfully,
Your obedient servant,
W. H. S. TAYLOR, *Auditor.*

CONFEDERATE STATES OF AMERICA, }
Quartermaster General's Office, }
Richmond, Va., May 5th, 1862. }

HON. G. W. RANDOLPH,
Secretary of War :

SIR: I respectfully submit, for the consideration of the Secretary of War, the enclosed letter, received from the Second Auditor, relative to the payment of claims made by the representatives of deceased soldiers. The act of Congress to which the Auditor alludes has been found difficult of administration by officers of this Department, so much so, that it was repealed by Congress; but the repealing act failed for want of the signature of the President. If the views suggested by the Auditor, can be adopted, I feel confident that that course will secure a better adjustment of these claims, and will facilitate their speedy payment.

I am, respectfully,
Your obedient servant,
A. C. MYERS,
Quartermaster General.

DEPARTMENT OF JUSTICE, }
Richmond, Va., May 9th, 1862. }

TO HON. GEORGE W. RANDOLPH,
Secretary of War, C. S. A. :

SIR: I have received the letters of Mr. Taylor, Second Auditor of the Treasury, together with that of Colonel Myers, Quartermaster General, asking for a construction of the act of Congress, No. 402, approved 15th February, 1862, "concerning the pay and allowances of deceased soldiers." These letters you have referred to me for my opinion.

Before answering the specific questions propounded to me, I deem it my duty to the officers who seek a construction of the act of the 15th of February, 1862, and to the government, to express my opinion of the law itself.

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Second Auditor's Office, May 3d, 1862. }

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The only difference is, shall these claims be paid, by the proper officer of the pay department, *upon* or *without* a *previous audit*. The law is strictly confined to the *payment and by whom*, and is altogether silent as to the *evidence* showing who are to be the proper parties to receive, leaving that, of course, to be determined, as in all other cases of public accounts, by the proper accounting officers of the treasury.

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The only difficulty which is, I think immaterial, is, that the present law requires that the pay roll as above described shall be "delivered to the person or persons entitled to such pay and allowances, etc., but I think this is substantially answered by the filing of the general pay roll, which contains the case of an individual volunteer, besides that of many others in the proper office of the War Department, accessible to and answering for all parties interested.

Should you concur or differ with me in these views, I should be glad to hear from you upon the subject at an early day.

Probably the construction of the Secretary of War or Attorney General would be desirable.

I am, very respectfully,

Your obedient servant,

W. H. S. TAYLOR, *Auditor.*

CONFEDERATE STATES OF AMERICA, }
Quartermaster General's Office, }
 Richmond, Va., May 5th, 1862. }

Hon. G. W. RANDOLPH,

Secretary of War :

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I am, respectfully,

Your obedient servant,

A. C. MYERS,
Quartermaster General.

DEPARTMENT OF JUSTICE, }
 Richmond, Va., May 9th, 1862. }

To Hon. GEORGE W. RANDOLPH,

Secretary of War, C. S. A. :

SIR: I have received the letters of Mr. Taylor, Second Auditor of the Treasury, together with that of Colonel Myers, Quartermaster General, asking for a construction of the act of Congress, No. 402, approved 15th February, 1862, "concerning the pay and allowances of deceased soldiers." These letters you have referred to me for my opinion.

Before answering the specific questions propounded to me, I deem it my duty to the officers who seek a construction of the act of the 15th of February, 1862, and to the government, to express my opinion of the law itself.

I have examined, with some care, the laws of Congress in existence before the 15th of February, 1862, on the subject of the effects and arrearages of pay belonging to deceased soldiers; and I have examined, with like care, the act of the 15th of February, to which special attention is called in the letter of the Second Auditor.

The laws of the United States, in force on the 1st of November, 1860, not inconsistent with the Constitution of the Confederate States, were adopted by our Congress at its first session, (see acts page 36); and the rules and regulations of war of the United States, with some unimportant amendments, were adopted likewise by our Congress on the 6th of March, 1861. (See acts p. 78). By these laws, and rules and regulations of war thus adopted by us, the effects and pay and allowances of deceased soldiers were required to be preserved by designated officers, and delivered or paid to the "*personal representatives*," of the deceased soldiers. This was the law at the time most of our soldiers entered into the service of the Confederate States. This law may be considered as a part of their contract with the Government.

By the laws of the respective States, from which the soldiers came, and in which their domicils were, the proper persons entitled to receive, administer and distribute estates of deceased persons were designated. The law of the 15th of February, 1862, so far as it operates, *retrospectively*; that is, so far as it provides for the payment to widows or others not the *personal representatives* of the deceased soldiers who had enlisted before its passage, is, in my judgment, unconstitutional. So far as it operates or attempts to operate, on past contracts, it affects vested rights. As to all sums due to soldiers deceased at the time of its passage, it certainly does operate on vested rights. It undertakes to make a disposition of the effects of a dead man's estate, which estate, as to its administration and distribution is governed by the laws of the domicile of the soldier. To the several States composing the Confederacy, and not to Congress, properly belong the right to pass laws for the administration and distribution of the estates of deceased persons.

The laws in existence *before* the passage of that of the 15th of February, 1862, must govern in the payment of arrearages due to soldiers who enlisted and died before its passage. The law of the 15th February, 1862, may be considered as valid as to all soldiers who entered the service since its passage. I will not undertake to say that the government cannot provide, in its contract with the soldier, that his pay for services should be paid to his widow or children, excluding his personal representative. But after the contract has been made by the enlistment of the soldier, and rights have become vested under it and the soldier is dead, leaving thus no person to consent to a change of the contract, the Government has no longer any power over it, except to provide for its payment to the personal representatives of the dead man.

I should say that the payment of the sums due to deceased soldiers could be legally made at the seat of Government, to their legal representatives, or to the agent or attorney of such legal representatives.

Wherever the law of February 15th, 1862, governs, I see nothing

which would prevent such payment. That portion of it which requires the captain to deliver the pay roll to the person entitled to such pay or allowance, or to his or her authorized agent, or attorney or guardian, is not to be considered as a condition precedent to the payment.

The neglect of the captain to discharge his duty in this respect cannot deprive the party entitled of the pay due the deceased soldier. This part of the law is merely *directory*. If the pay roll is certified by the captain or commanding officer of the company to which the deceased was attached, the fact of its being deposited in the proper office of the War Department, instead of being delivered to the person entitled to such pay or allowances cannot defeat, and ought not to postpone the payment. The payment should be made *upon* and not without audit.

I have the honor to be,

Very respectfully,

Your obedient servant,

T. H. WATTS,

Attorney General, C. S. A.

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