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78^d CONGRESS }
2^d Session }

SENATE

} REPORT
No. 1235

AUTHORIZING THE SECRETARY OF THE TREASURY TO EXECUTE A CERTAIN INDEMNITY AGREEMENT

MAY 28 (calendar day, JUNE 1), 1934.—Ordered to be printed

Mr. BAILEY, from the Committee on Finance, submitted the following

REPORT

[To accompany S. 3224]

The Committee on Finance, to whom was referred the bill (S. 3224), authorizing the Secretary of the Treasury to execute a certain indemnity agreement, having considered the same, report it back to the Senate with amendment and recommend that as amended the bill do pass.

The amendment strikes out "1932" in line 11 and inserts "1922" in lieu thereof. This is to correct a typographical error in the bill with reference to the date of the draft.

A full explanation of the bill is contained in the attached report from the Treasury.

TREASURY DEPARTMENT,
Washington, May 14, 1934.

HON. PAT HARRISON,
Chairman Committee on Finance, Washington, D.C.

MY DEAR MR. CHAIRMAN: Reference is made to your letter dated March 31, 1934, transmitting a copy of S. 3224, a bill authorizing the Secretary of the Treasury to execute a certain indemnity agreement in connection with the loss of draft no. 380, dated November 7, 1922, for \$385, drawn on the Hanover National Bank, New York, N. Y., by the Biltmore-Oteen Bank, Biltmore, N. C., to the order of the Treasurer of the United States, which bill is now pending before your committee.

The Treasurer of the United States appears to have had his first knowledge of the issuance of the above-described draft in March 1931 when he received from the liquidating agent of the Biltmore-Oteen Bank a form for a proof of claim, together with a printed notice to creditors to file claim. In response to the Treasurer's inquiry of March 11, 1931, as to the account covered by the claim, J. C. Seabury, liquidating agent, stated that: "The records of the bank show that in November 1922 this bank's draft on the Hanover National Bank of New York City was issued in the amount of \$385 to the order of the United States Treasurer, same being purchased by J. M. Lynch, who was at that time property officer at the United States Veterans' Hospital at Oteen, N. C."

Inquiry made of Mr. Lynch as to the circumstances developed that the draft was purchased in order that he, as materiel officer at Hospital No. 60, Oteen, N. C., might reimburse the Government for a loss; that the draft was delivered to Thomas J. Harkins, assistant United States attorney for the western district of North

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Carolina, who acknowledged its receipt on November 8, 1922; that it was thereafter forwarded, through channels, to the Surgeon General of the Public Health Service and was forwarded by that officer, with his letter of December 7, 1922, to the Treasurer, who, however, failed to receive either the letter or its enclosure.

Accordingly, a proof of claim was forwarded to the liquidating agent by the Treasurer, whose letter of transmittal, dated April 16, 1931, read, in part, as follows:

"Pursuant to your letter quoted above, this office requested information of J. M. Lynch, United States Veterans' Hospital, St. Cloud, Minn., as to the draft on the Hanover National Bank of New York in the amount of \$385, which appears to have been purchased by him November 7, 1922, while property officer at the United States Veterans' Hospital, Oteen, N.C., and which it appears from your letter and form for proof of claim received March 9 is outstanding. The United States Public Health Service has furnished a copy of a letter dated December 7, 1922, addressed to this office, signed H. S. Cumming, Surgeon General, with which was transmitted 'cashier's check no. 380, signed by Thomas C. Harrell, cashier of the Biltmore-Oteen Bank at Oteen, N.C., dated November 7, 1922, in favor of the Treasurer of the United States and in amount of \$385.' No record can be found of the receipt of the letter or draft and application is hereby made for a preferred claim in the full amount, \$385, under title 31, section 191, United States Code."

The claim was returned by the liquidating agent, with his letter dated April 20, 1931, stating that, "it is necessary that this check be attached to the claim at the time it is filed with us." As an exhaustive search of the files and records of the Treasurer's office failed to show that the letter or check was ever received, the matter was taken up with the banking department, corporation commission, liquidating division, Raleigh, N.C., and the Treasurer was informed, by copy of a letter dated April 25, 1931, from C. I. Taylor, liquidating agent, State banking department, to J. C. Seabury, liquidating agent, Biltmore-Oteen Bank, that: "The claim may be allowed upon the execution of a bond by the Government to reimburse the liquidating agent for any losses accruing to him on account of the allowing of the claim without the presentation of the check; in other words, you will follow the same procedure you would follow in a going bank in case of the loss of a cashier's check."

The attention of the liquidating agent, State banking department, was called to the fact that no officer of the Government has authority to bind the United States by the execution of a bond unless specifically authorized to do so by an act of Congress, and further, that as the draft had been outstanding more than 8 years, and was payable to the Treasurer of the United States in his official capacity, it would appear that there was no possibility of a loss arising from the negotiation of the original draft, as a third party would not be an innocent holder for value unless the check bore the genuine endorsement of the Treasurer of the United States.

The Treasurer's claim was again denied and the liquidating agent, banking department, in his letter dated June 19, 1931, stated that: "As I understand it, the check drawn in favor of the Treasurer of the United States for \$385 by the Biltmore-Oteen Bank, Biltmore, N.C., on the Hanover National Bank, New York, never reached the Treasurer of the United States. In that event he should have, and did in all probability, collected the claim of the Government from its debtor. If that be true the purchaser of the check has a claim against the bank and the Government has no claim and never has had a claim, unless the check was accepted by it in the payment of the debt of the debtor to the Government."

The matter was thereupon referred to the Solicitor of the Treasury, on July 1, 1931, and, by him to the Attorney General, in order that the representatives of the closed bank might be induced to acknowledge the Government's claim for a duplicate draft, or to obtain payment from Mr. Lynch.

The Department of Justice recommended that a special act of Congress be passed, providing for the indemnification of the liquidating agent in the event of any loss resulting from the issuance of a duplicate draft to the United States.

In lieu of the requested copies of the file, which is rather voluminous, the foregoing statement of the material facts is furnished, and it is recommended that S. 3224 be enacted in order that payment of the amount due the United States may be procured. It is observed, however, that S. 3224 makes no provision for the appropriation of such sum as may be necessary to pay the losses, if any, under the indemnity agreement authorized therein.

Very truly yours,

H. MORGENTHAU, Jr.,
Secretary of the Treasury.