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Attorney General's Office,

1 May 1861

Hon. Wm. H. Edward

Secretary of State,

Sir

The enclosed
opinion was prepared upon the
reference by the President to
the Attorney General of the
papers in the case of Edward
Stubb and Wm. E. Stubb. As
any proceedings that may
be commenced against them
will properly be at your
instance and under your
direction, I herewith send
you, ^{by} direction of the
Attorney General, this

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Opinion and without
troubling the President
there with

Very respectfully
Yours Obedient Servant

Abraham M. Jones

Disbursing Clerk of State Department has no right
to retain a commission for disbursements of the
Indemnity fund - Attorney General's Office
Edw. Stubbs' case - 29th April 1861

Sir

I have examined the papers submitted
to me by you relative to the claim of
the Government against Edward Stubbs and
Wm. A. Stubbs, late disbursing clerks in the
State Department, and I am clearly of
opinion that suits should be brought
against them for the monies retained
as percentages on the indemnity fund.

Edward Stubbs was appointed a Clerk
to discharge ~~the~~ among other ~~things~~ ^{things} the
very duty of keeping and disbursing the
sums paid by foreign governments in
behalf of citizens of the United States, which
were not required by law to be paid into
the Treasury, and the monies upon
which this percentage is charged, were
of this character - For these duties he
received from the year 1853 until August
1855 a salary of fourteen hundred fifty
dollars - By the Act of 3 March 1855 Sec. 4
(Bright. Dig 136) one of the Clerks in the State
Department of Class four (which Clerks by
the Act of 3 March 1853 Sec. 3 ^{Edw. 134} ~~Edw. 134~~ ^{were} ~~were~~
entitled to receive an annual salary
of \$1800) was required to give bonds as
required by the Independent Treasury Act
and make the disbursements for the

Department and superintended the "North
East Executive Building" for which he
was to receive \$200. per annum in
addition to his salary as clerk of class
room. Edward Stubbs filled this clerk
ship and from January 1855 received
accordingly \$200. per annum salary.
This salary therefore was paid him
for performing the ~~very duties~~ ^{duties of disbursing}
~~clerk~~ ^{for which he has made this extra}
~~charge~~ +

By the Convention ^{of the United States} with Great Bri-
tain of 8 Feb. 1853 Art. 4th (10 Stat. at L. 770)
it ~~is~~ ^{was} agreed that all monies awarded by the
Commissioners ~~on account~~ under that
Convention, on account of any claim,
should be paid by the one government to
the other, and by the 6th Article, the sums
awarded were taxed for the payment of the
expenses of the Commission to an amount
not exceeding five per cent. The State De-
partment of State had unquestioned control
of this business and the ~~monies paid by the~~ ^{found due from}
British Government to claimants who
were citizens of the United States, was
properly paid to the Secretary of State whose
duty it was to have the same paid to the
~~disbursed~~ ^{paid} to those entitled to receive them.
Surely no duty could fall more appropriately
within the sphere of a public officer than

~~the charge and disbursement of these~~
 monies more appropriate or legitimate
 duty could attach to the disbursing
 clerk of the State Department than
 the charge and disbursement of these
 monies. It was one of the ~~very~~ services
 for which he gave bond and for which
 he received his salary. It was no more
 an extra service than were the ordinary
 disbursements of the department, and it
 well might the U. S. Treasurer attempt
 to charge commissions on the monies which
 he is by law required to receive, keep and
 disburse, and if the commissions claimed
 by Edward Stubbs be allowed, no man can
 tell where the practice will end. ~~It is~~
~~any principle in which it could find sanction~~
~~is sustained by no principle, which would~~
 not justify every officer of the government
 who has charge of any part of the public funds
 in claiming a like commission.

But even if these services were "extra",
 to the duties of the disbursing clerk of the
 State Department, the pay allowance of this &
 commission is expressly forbidden by the 12th Sec.
 of the Act of 26 Aug. 1842 (5 St. at large 525) which
 provides that no allowance or compensation
 shall be made for any extra services whatever
 which any clerk or other officer may be required
 to perform. Now this commission can be ~~and~~
 allowed in the face of this law I cannot understand

The government ought not to be subjected to this loss, for by the 6th Art. of the Convention, it is agreed to tax the claimants not exceeding five per centum on the sums found due them, ~~to pay the expenses of the~~ Commission, of which this sum is obviously no part, and ~~the claimants being already can be~~ ~~taxed no more~~ provisions show, that neither government meant to bear ~~the~~ ^{the burden} of ascertaining or settling these claims, but simply to furnish a remedy to the claimants. But there is no power to fasten this loss on the claimants, & that if Mr. Stubbs be allowed to retain this Commission, ~~he does it~~ the amount thereof must be made good to the claimants out of the National Treasury.

Converse vs. The United States, 21 How. 463, which has been relied on to sustain this claim, is an authority directly against it, even admitting these services to have been extra, for it is there distinctly laid down that a compensation for extra services where no certain compensation is fixed by law, cannot be allowed by the head of a Department to any officer of the government who has by law a fixed or certain compensation for his services in the office, he holds. But in that case the services for which a commission was claimed, were clearly extra to the duties of the claimant. He was collector of customs at Boston and had been selected by the Treasury Department as agent to purchase supplies for the light house service,

throughout the United States, and make the disbursements, ~~and the compensation for this service was fixed by law~~, and it was held that he was entitled to the compensation fixed by law for the service, so far as it was outside of his district and beyond the limits to which his duties as an Officer extended. In the case of Stedds, the commission claimed is not authorized by law, and is for a ^{service} duty, which so far from being extra, ~~is~~ is directly within the line of duty of the Disbursing Clerk of the State Department.

The commission claimed by Wm. S. Stedds is even more flagrantly wrong than his father's, for it is for services rendered when he was subordinate ~~to his father~~ and in addition to the Disbursing Clerk, and ^{is} in addition to that claimed by his father.

I am of opinion that the Secretary of State should transmit the papers to the Attorney for the District where these parties are to be found, with directions to bring suit for this money.

Very respectfully
Your Obedient Servant
To the President.

Attorney General

Division
No. 5.

Disbursing Clerk of State
Department has no right
to retain a Commission
for disbursements of the
Indemnity Fund.

Edward Stables. Case

To the President.

29th April 1861