

HOUSE No. 1286.

Commonwealth of Massachusetts.

EXECUTIVE DEPARTMENT, BOSTON, May 24, 1905.

To the Honorable Senate and House of Representatives:

I return herewith an act entitled "An Act to Authorize the Payment of Money to Certain Veterans of the Civil War."

The bill seeks to authorize the payment by the Commonwealth to every veteran of the civil war who served to the credit of Massachusetts, living at the passage of the act, and who was not a conscript or substitute, the sum of \$125, excepting those who received a bounty. This payment is to be met by the use of a sum not to exceed \$350,000.

Bounties were paid to certain soldiers of the Civil War at the time of their enlistment, some by the State, and some by certain cities and towns. The number of veterans who are now living who would be entitled to a bounty under the provisions of this act it is impossible to ascertain. The cities and towns paid bounties to certain men who enlisted, but the records of such payments are in many instances incomplete and unreliable.

This act would attempt to impose on the State an unascertained liability. An investigation based on such facts as can be obtained, however, indicates very clearly that the amount appropriated \$350,000 would be entirely inadequate to carry out the intent of the act, and that the amount required would be several times the sum provided for.

This bill is similar to chapter 458 of the Acts of the year 1904. On July 20, 1904, the Governor and council

passed an order requesting the opinion of the Justices of the Supreme Judicial Court upon certain questions relative to that act, one of which was its constitutionality. On September 21, 1904, the Justices returned an answer to this request, which may be found in Vol. 186 of Massachusetts Reports, page 601, stating that the expenditure of money proposed in that act was for a use which was not public but private, and that therefore the statute was not in conformity with the constitution of the Commonwealth.

The act herein returned bore so close a resemblance to the previous act of 1904 that it was deemed wise by the Senate to request the opinion of the Attorney-General and in pursuance of that request the Attorney-General advised the Senate on May 15, 1905, that the act which is now before me is open to the objections of the act of 1904 and is unconstitutional.

The provisions of this act are designated as unconstitutional by the legal adviser of the Commonwealth, on an opinion sustained and based on several decisions of our Supreme Court.

The authority of the Governor is measured by the constitution. He is chosen to do what it permits and nothing more, and has taken solemn oath to obey and support it. Should he disregard its provisions, he would usurp his authority, abuse his trust and violate the promise which he made to the people, confirmed by his oath of office. To sign an act which is shown to be in violation of the principles of the constitution is to treat as of no force the most imperative obligations any person can assume.

I therefore return this act, as I deem it unsatisfactory by its provisions, as it imposes an unascertained liability on the Commonwealth, and that the money which the act seeks to appropriate would be insufficient to carry out its intent, but especially in view of what I feel to be my duty on account of my advice that it is unconstitutional.

WILLIAM L. DOUGLAS.