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BY THE SENATE,

FEBRUARY 7, 1870.

Read and ordered to be printed.

By order,

AUGUSTUS GASSAWAY,
Secretary.

REPORT

OF THE

ATTORNEY GENERAL

IN RELATION TO THE

NATIONAL ROAD

FROM

CUMBERLAND, MARYLAND,

TO THE

PENNSYLVANIA LINE.

ANNAPOLIS:
WM. THOMPSON OF R., PRINTER.

1870.

REPORT.

STATE OF MARYLAND,
ATTORNEY GENERAL'S OFFICE,
Baltimore, February 7, 1870.

To the Honorable,
The Senate of Maryland:

GENTLEMEN :—In reply to the request of the Senate that the Attorney General should examine the various Acts of Congress and of Maryland in relation to the National road leading from Cumberland, Maryland, to the Pennsylvania Line, and report to the Senate his opinion whether any, and what obligations are imposed upon the State of Maryland, to keep said road in repair, I have the honor to state the result of such examination.

I find that Pennsylvania, in March, 1831, and Maryland, in January, 1832, passed similar Acts relating to the preservation and repair of that part of "the Cumberland," or "United States Road" within the limits of the said States, respectively. The preamble to the Act of each State, recites that the road was, in many parts, in bad condition for want of repairs; and the preamble to the Pennsylvavia Act, assigns as one of the reasons of the Act, that "doubts have been entertained whether the United States have authority to erect toll-gates on said road, and collect toll." Both recite that a large proportion of the people of the State are interested in the road and its preservation. The provisions of the two Acts are in most particulars similar, and in many identical. The Maryland Act provided that as soon as Congress should assent, the road "shall be taken under the care of the State of Maryland," and that the State should appoint a "superintendent of that part of the United States Road within the limits of the State of Maryland;" authorized the erection of toll-gates and toll-houses; the appointment of toll-gatherers; prescribed rates of toll, and provided that the amount of toll, after deducting expenses of collection, &c., should be applied to the repairs and preservation of the road.

It further provided that if there should be any surplus money arising from tolls after paying repairs and all expenses, it should be paid into the Treasury of Maryland, to be denominated on the Treasury books "The United States Road Fund," which fund should be applied solely to the repair and preservation of the road.

It was further provided that the Act should have no force until Congress should assent to it, and until the road in Maryland should be put in complete repair by an appropriation by Congress to repair the same and to erect toll-gates and toll-houses. The State reserved the right to change, alter or amend the Act so as to regulate the amount of tolls not below or above a sum necessary to pay expenses incident to the preservation and repair of the road, and to compensate agents, &c.

Congress, by the Act of July, 1832, made an appropriation for repairs and improvements on the road east of the Ohio River, and to carry into effect the provisions of the aforesaid Acts of Pennsylvania and Maryland, to which said Acts the assent of the United States was thereby given, "*to remain in force during the pleasure of Congress.*" The Acts were directed to be printed and appended to the laws of that session of Congress.

Further appropriations, by Congress, for repairs, were made in 1834 and 1835, conditioned that the States through which the road passed should accept the surrender of the road within their respective limits, and that the United States "should not thereafter be subject to any expense in relation to the said road." The State of Maryland, by chapter 203, of 1835, "accepted the surrender," &c.

By the first mentioned Acts of Pennsylvania and Maryland, it was stipulated that no tax should be received or collected for the passage of any wagon or carriage laden with the property of the United States, or any military stores belonging to the United States, or to any of the States of the Union. A similar provision was contained in the Ohio Law of 1831, upon the same subject. In several cases the construction of the compact thus entered into between the United States and the said several States in relation to this road was drawn in question, and adjudicated by the Supreme Court of the United States. (Searight *vs.* Stokes *et al.*,—3 Howard, 151; Neil, Moore & Co. *vs.* the State of Ohio—3 Howard, 720; Achison *vs.* Huddleson—12 Howard, 293.)

The result of the decisions was, *first:* That the United States, dy the compact, was exempt from any expense, directly or indirectly, in maintaining the road.

Secondly, That the States accepting the surrender of the road within their respective limits, proposed to take the road "*and keep it in repair from the tolls collected upon it,*" exempting the United States mail coaches and other property of the government from any toll.

Thirdly. That by the terms of the compact the States were to regulate the tolls, from time to time, solely with reference to raising a revenue sufficient to pay expenses and keep the road in repair.

In Searight *vs.* Stokes, the Supreme Court says: "But in interpreting these contracts, the character of the parties, the relation in which they stand to one another, and the objects they evidently had in view, must all be considered." The Cumberland Road had been constructed by the Federal Government, with the assent and authority of the States through which it passed, as "the great line of connection between the Seat of Government and the Western States and Territories affording a convenient and safe channel for the conveyance of the mails, *&c.*" It was at that time a great national thoroughfare, and the tolls authorized were deemed ample to keep it in repair. Of course the contract must be construed in reference to circumstances under which it was made, and not with reference to the changes which nearly forty years have wrought.

I am therefore of opinion that in accepting a surrender of the road within the limits of this State, no obligation was incurred by the State to expend any money in keeping the road in repair, except what could be realised from the tolls collected upon it. The assent of the United States to the Acts of the States, in 1832, was not unconditional and irrevocable, but by its terms, was only "to remain in force during the pleasure of Congress." And in the Act of 1835, Congress stipulated only for the condition that, in accepting the surrender, the *United States* should not be subject to any expense in keeping it in repair ; thus leaving the States to keep it in repair, as best they might, by the collection of tolls.

I have the honor to be, very

Respectfully, your ob't. serv't,

ISAAC D. JONES,

Attorney General of Maryland.