COMMUNICATION OF THE TER-RITORIAL AUDITOR.

To the Honorable the Speaker and Members of the House of Representatives:

Gentlemen:-In compliance with resolution of the 19th inst., "that the Auditor of Public Accounts be requested to report to this House, whether or not there has been any demand made upon him by M. T. Patrick, United States Marshal for Utab, for funds to defray the expenses of the District Courts for the years 1870 and 1871; if so, when, and whether or not he has paid any expenses of those Courts on Marshal Patrick's order; and if so, what amount.

"And whether or not any suit has been commenced against him to test his right to hold that office; if so, when, and what is the condition of that suit.

"Also whether or not he has had any correspondence with Mr. Z. Snow, Attorney General, relating to these subjects; if so, that he report that correspondence at his earliest convenience, with any other correspondence which may have passed between him and the Executive, or any other of the Federal officers of the Territory on this subject."

I bag leave to submit the following: In the month of July, 1870, (date not remembered,) United States Marshal Patrick called on me and made an informal demand for funds to pay the expenses of the United States Courts. He did not present any written demand, neither any order from any Court. After some conversation on the subject I told him I would take the matter into consideration and advise him of the result. A few days subsequently, in company with Honorable Z. Snow, Attorney-General, I called upon Marshal Patrick at his office. We had a very pleasant conversation on the subject in question, during which I informed the Marshal that the appropriation for expenses of Courts was payable only to the order of J. T. D. McAllister, Territorial Marshal, and was explicitly so stated in the Act of appropriation. Marshal Patrick responded that he could not carry on the business of the Courts without funds, that witnesses, jurors, etc., must be paid, and that he, personally, could not provide means to pay those expenses. I again stated that I would further consider the matter and communicate with him again. The interview was cordial and the deportment of the Marshal polite and gentlemanly.

On returning to my office, and weighing the suject in all its bearings, not wishing to do anything to create unnecessary irritation, or give cause for just | etc. complaint, I concluded to address a communication to Honorable Z. Snow, Territorial Attorney-General, soliciting his opinion as my legal adviser, in egard to the subject in question. A copy of my note to the Attorney-General please find herewith, marked

Hon. Z. Snow,

Attorney-General for Utah Territory:

Dear Sir.-M. T. Patrick, Esq., U. S. Marshal, has applied to me for funds to pay the expenses of the District Court for this territory, such as witness fees, expenses of arresting and boarding prisoners, serving notices on Jurors, &c., &c. As this is the first time in the history of the Territory that a United States Marshal has asked for Territorial funds to disburse in payment of expenses of District Courts on Territorial business or otherwise, grave doubts have arisen in my mind, as to whether, in the face of existing facts, which I will endeavor to enumerate in part, I can be justified in acceding to Marshal Patrick's request under any circumstances, by issuing warrants on the Territorial Treasury as above centemplated. As you are the legal adviser of Territorial officers, I have concluded to lay the matter before you and solicit your legal opinion on the subject, before proceeding any further.

In the first place "an Act in relation to Marshals and Attorneys," approved March 3, 1852, Section 1, reads as follows:-"Be it enacted by the Governor and Legislative Assembly of the Territory of Utab:-That a Marshal shall be elected by a joint vote of both houses of the Legislative Assembly, whose term of office shall be one year, unless sooner removed by the Legislative Assembly, or until his successor is elected and qualified. Said Marshal shall, before entering upon the duties of his office, take an oath of office, and file bonds with securities in the penal sum of, not exceeding twenty thousand dollars, conditioned for the faithful discharge of his duties, which bond with securities is to be approved by the Secretary of the Territory, and filed in his office." And in "an Act prescribing the term of certain officers, and designating where their bonds shall be filed," "to be drawn by J. D. T. McAllister, Territoral Marshal," I cannot see that any dis-

all destroy record entra termination.

Marshal, in vouchers to be approved by the Auditor of Public Accounts."

Being very desirous that no act of mine shall expose me to the merited and just censure of the Legislative Assembly, who are the representatives of the people, I appeal to your Honor, and solicit your legal opinion on the subjects named herein, for my future guidance and protection, and trust that you will favor me at as early a day as possible.

Very respectfully yours, WM. CLAYTON, Auditor of Public Accounts. Salt Lake City, July 23, 1870.

The Attorney General's reply, dated July 27th, 1870, will be found herewith, marked

ATTORNEY GENERAL'S OFFICE, Salt Lake City, July 271870. Hon. William Clayton, Auditor of Public Accounts.

Sir:-Your communication of the 23d inst., is before me. You say that you have been applied to by Mr. M. T. Patrick, U.S. Marshal, for funds to pay the expenses of the District Court of this Territory, such as witness fees, expenses of arresting and boarding prisoners, serving notices on jurors, etc., etc., and say this is the first time in the history of this Territory that the United States Marshal has asked for Territorial funds to disburse in payment of such expenses. You ask whether or not you can be justified, under existing facts, in complying with Marshal Patrick's request. You call my attention to sundry laws of the Legislature of Utah. To answer your inquiry it will be proper for me to examine the laws of the United States in connection with the Statutes of Utah, to which my attention has been called.

Congress, by An Act approved Sept. 24 1789, entitled "An Act to establish the judicial courts of the United States"-see Statutes at Large, Vol. 1. page 87; after providing for the Supreme, Circuit and District Courts, and dividing the United States into Circuits and Districts, provided in Sec. 27, a Marshal shall be appointed in and for each District, whose duty it shall be to attend the District and Circuit Courts. when sitting therein, and also the Supreme Court in the District in which that Court shall sit and to execute throughout the District all lawful precepts directed to him and issued under the authority of the United States; and before he enters on the duties of his office, he shall become bound for the faithful performance of the same before the Judge of the District Court of the United States, with two good and sufficient sureties, inhabitants and freeholders of such district, to be approved by the District Judge in the sum of twenty thousand dollars and shall take, before said Judge, the following oath.

---, do solemnly swear that will faithfully execute all lawful precepts directed to the Marshal of the District of -, under the authority of the United States, and true returns make, etc.,

By another act of Congress, approved 10th April 1806, Sec. 1-See 2d Statutes at Large, page 372 in giving further rules concerning these bonds, says, "The bonds heretofore given, which may be hereafter given ful performance of the duties of his office. shall be filed and recorded in the office of the Clerk of the District or Circuit Court, sitting within the district for which such Marshal shall have been appointed, and copies thereof, certified by the Clerk, under the seal of said court shall be competent evidence in any court of justice."

By an act of Congress, approved May 8 1792, Sec. 1, Statute at Large, page 277, provisions are made for defraying the expenses of, the United States Courts, and the United States Marshal is made the disbursing officer. It is therein provided, after stating what expenses shall be paid and included in the Marshal's account, in which the expenses of the Territorial Courts, when exercising their jurisdiction in cases not arising under the Constitution and laws of the United States are not included, and therefore excluded, and the same having been examined and certified by the Court or one of the Judges of it, in which the services shall have been rendered, shall be passed in the usual manner, and the amount thereof paid out of the Treasury of the United States.

By the act of Congress approved February 26, 1853, relating to fees of officers-See Statutes at Large, Vol. 10, page 168, Sec. 3, it is made the duty of the Marshal, among other United States officers, to report semiannually, to the Secretary of the Interior, in whose office his accounts are to be exam-

ined. Sec. 10, of the act to establish a Territorial Government for Utah, approved Sept. 9, 1850, after providing for the judicial power of the Territory, (among which are a Supreme Court and District Courts) says, each of the District Courts shall have and exercise the same jurisdiction in all cases arising under the Constitution and laws of the United States, as is vested in the Circuit and District Courts of the United States, and by Sec. 10 of the same Act, found in Utah statutes, page 27, it is enacted, that there shall be a Marshal appointed, who shall execute all processes issuing from said courts, when exercising their jurisdiction as Circuit and District Courts of the

United States laws, which contain all that | priation. have any bearing on the questions submitted to me by you, that I have been able to find. I have no difficulty in holding that, the Marshal of the United States is not required by any of them to file a bond with you, and give any security whatever to the Territory for the faithful disbursement of any funds with which he may be entrusted by you. When a law of the United States has provided the manner of the qualifying of the Marshal and the giving of bonds with the place of recording and preserving them and prescribing his duties as they have done, as these provisions show, it is equal to saying that these are ail, that more shall not be required, and that less will not do. He is amenable to the power that appointed him, and must account to the officers which their laws direct, and none others. I do not intend appointment under the United States, shall hold any office under the government of the Territory, I would not anticipate finding any law of this Territory making the United States Marshal its officer, but I will examine and see.

By the Act of Utah, entitled "An Act in TERRITORIAL AUDITOR'S OFFICE, relation to Marshals and Attorneys," approved March 3, 1852-See Utah Laws, page 38, it is provided that a Marshal shall be elected by the joint vote of both houses of eath of office, and file bonds with sureties, is a literal copy: in the penal sum of ——— not exceeding twenty thousand dollars, conditioned for the faithful discharge of his duties, which bond and sureties are to be approved by are held and firmly bound unto the people the Secretary of the Territory and filed in of the Territory of Utah, in the penal sum his office.

to-See Utah Laws, page 227, Sec. 1, requires the Territorial Marshal to file his presents. Sealed with our seals this 7th bonds at your office, and to your accept- day of July, 1870.

ance. lating to the Territorial Marshal-See Utah | Director of the Penitentiary of Utah Terri-Laws, page 38, requires him to execute all | tory by the Governor of said Territory. orders or processes of the Supreme or Dislaws of the Territory, and such other duties as the Executive may direct, or may be required by law, pertaining to the duties of his office. The act referred to by you, relating to the appropriation for court expenses, is evidently in accordance with past usage, and was intended by the Legislative Assembly to be drawn and expended by the Territorial Marshal, he being an officer amenable to the Territorial Government; but even he could not draw the money, except on vouchers approved at your office, I must therefore say by the Territorial Marshal as I said by the United States Marshal, that what the laws require of him he must do, neither more nor less is necessary, and the same applies to yourself. You must draw orders as the law directs, and in favor of the one who is authorized by law to receive them and to none others. This will by the Marshal of any district for the faith. leave the consequences to the Territorial Government, from whom you receive your election, and which passed the law. It will also leave the United States Marshal to refer the matter to the Government of the United States, from whom he received his authority as United States Marshal,

> Z. SNOW. On receipt of the Attorney-General's communication, I addressed a note to Marshal Patrick under date August 1st. 1870, declining to answer his requisitions for funds for reasons stated. A

Yours truly,

copy of said note will be found herewith, marked

TERRITORIAL AUDITOR'S OFFICE. Salt Lake City, August 1st, 1870. M. T. PATRICK, Esq., U.S. Marshal:

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Sir:-Referring to our interview of the 19th ult., in regard to paying expenses of Courts out of Territorial funds in vouchers presented by you as U.S. Marshal, I addressed a communication on the subject to Hon. Z. Snow, Territorial Attorney-General, and solicited his legal opinion as to my duty in the premises. I am in receipt of his reply, from which it appears that the law will not bear me out in paying the expenses of the Courts, only on orders of J. D. T. McAllister, Territorial Marshal, on vouchers to be approved by the Auditor. The language of the Attorney-General. after referring to the various laws of the the time the gentlemen waited upon me United States and the Territory of Utah | with their bonds and the time I solicibearing on the subject, is, "As I said by the United States Marshal, that what the law requires of him he must do. Neither more nor less is necessary; and the same applies to yourself. You must draw orders as the law directs, and in favor of the one who is authorized by law to receive them, and to none others. This will leave the consequences to the Territorial Government, from whom you received your elecs tion, and which passed the law."

With this legal opinion of the Territorial Attorney-General before me, it would be in open violation of law for me to issue

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but that the fund, if drawn at all, must be duties, be subjected to the same regulations, Courts, to any other officer, or in any other drawn by "J. D. T. McAllister, Territorial and same penalties, and be entitled to the way, only on "Orders of J. D. T. McAllisa same fees as the Marshal of the District | ter, Territorial Marshal, on youchers to be Court for the present Territory of Oregon. approved by the Auditor of Public Ac-From the foregoing provision of the counts," as specified in the Act of Appro-

Very respectfully, WM. CLAYTON, Auditor of Public Accounts.

After this I did not hear anything more, officially, on the subject. I was informed, however, that an attempt would be made to take the books and property pertaining to the Auditor's Office by force. I made provisions to meet such a contingency, should it occur, but as no such attempt was made I conclude that the report had no foundation in fact. It was probably stated by parties who were anxious to see a difficulty inaugurated.

To fulfil your request in the order of date, as the circumstances occurred, I must now refer to an attempt of cerby this, to be understood that he may not tain gentlemen to qualify as Directors and can not be made civilly liable for official of the Utah Penitentiary, on, as they delinquency. With the provisions of the alleged, an appointment and commis-8th Section of the Organic Act, which says | sion issued by the Governor. The facts that no person holding any commission or in regard to this matter will be best explained in a note I addressed to the Attorney-General, under date September 5th, 1870, a copy of which will be found herewith, marked

Salt Lake City, Sept. 5, 1870. Hon. Z. Snow, Attorney-General:

Sir.-On the 6th of August ult., two genthe Legislative Assembly, whose term of tlemen, unknown to me, called at my office shall be etc., etc. He shall, before office and presented, what purported to be entering on the duties of his office, take an | three official bonds, of which the following

"Know all men by these present: That we, Samuel Kahn as principal, and R. H. Robertson and M. T. Patrick as sureties, of one thousand dollars, and for the pay-The Act of Jan. 19th, 1866, by you referred | ment of which sum, we bind ourselves and our legal representatives firmly by these

Whereas, the said Samuel Kahn was, on Sec. 3 of the Act before referred to, re- the 28th day of June, 1870, commissioned a

Now the condition of this obligation is trict Court, in all cases arising under the such, that if the said Samuel Kahn shall faithfully perform the duties of the said office of Director, then this obligation shall cease, and be null and void, but if otherwise, to be and remain in full force and virtue.

(Signed) SANUEL KAHN, [Seal.] (Signed) R. H. ROBERTSON, [Seal.] (Signed) M. T. PATRICK. [Seal.]

The other two bonds of Joseph M. Orr and Samuel Howe, were in the same language precisely, and were also both signed by R. H. Robertson as security. Ben Bachman was the other surety on the two bonds.

The reason why I could not approve and file these bonds, were,

1st-No residence of either principal or surety was stated in either of the three bonds.

2nd-It has been the practice since the organization of the Territory, so far as I have any knowledge, to require the bondsmen to be the lawful owners of either land claims or improvements, or both: at least such has been my invariable practice as Auditor. Transient persons, having only a temporary residence in the Territory being considered irresponsible as bonds men, for the reason that they consider themselves entitled to leave the Territory whenever they choose. Of this class: so far as I have been able to learn, are the bondsmen, R. H. Robertson and M. T Patrick. I cannot learn that either of them own either land claims or improvements in

the Territory of Utah. 3d-There was no oath of office attached to the bonds, either subscribed or sworn to, or to any one of them, which omission, had there been no other, would have been fatal to the bonds.

4th-The law requires that official bonds shall have a one dollar United States revenue stamp affixed and cancelled, and without which the bonds were certainly illegal. Neither one of these bonds presented to me had a one dollar revenue stamp attached.

For these reasons, I could not, and did not, approve and file said bonds in this office.

> Respectfully, WM, CLAYTON, Auditor.

To this note I did not receive any reply from Honorable Z. Snow, probably because a month had elapsed between ted the opinion of the Territorial Attorney-General in reference to the matter. The gentlemen did not amend their bonds nor call on me again.

On the 8th of August, 1870, I addressed to them the following:

Messrs. Samuel Kahn, Samuel Howe

and Joseph M. Orr: Gentlemen:-Believing you would call on me during the day, I have post-

poned addressing you until evening. The official bonds left by you on Sat-Cretion is left the Auditor in the premises, United States, he shall perform the same Auditor's Warrants to pay expenses of urday are defective and illegal in severa stated deposits of the shall result.

and interest with any forther, and