

BEFORE THE INDIAN CLAIMS COMMISSION

THE POTTAWATOMIE TRIBE OF
INDIANS AND THE PRAIRIE
BAND OF THE POTTAWATOMIE
TRIBE OF INDIANS,

Plaintiffs,

v.

THE UNITED STATES OF AMERICA,

Defendant.

Docket No. 15-A

Decided: June 5, 1952.

Appearances:

O. R. McGuire, with whom was
Robert Stone,
Attorneys for the Plaintiffs.

Sim T. Carman and Leon J. Moran,
with whom was Mr. Assistant
Attorney General Wm. Amory Underhill,
Attorneys for the Defendant.

FINDINGS OF FACT

1. The plaintiff, the Prairie Band of the Pottawatomie Tribe or Nation of Indians, is an organized band of Indians, recognized as such by the United States and, therefore, is authorized to bring this action under Section 2 of the Indians Claims Commission Act.

2. It appears that for a number of years prior to 1846 the various bands of Pottawatomie Indians had been separated from each other and were living in different parts of the United States, during which period the United States entered into certain separate treaties with the different bands. As a result of the treaty of June 5 and 17, 1846 (9 Stat. 553) these separate bands of Pottawatomie Indians were reunited and again became a tribal entity, which it was agreed was to be thereafter

known as The Pottawatomie Nation. The treaty of 1846 also provided for the removal of the Pottawatomie Nation or Tribe of Indians, thus united, to a reservation of some 30 miles square near Topeka, Kansas.

Thereafter, by the terms of the treaty with the Pottawatomie Nation or Tribe, entered into on November 15, 1861 (12 Stat. 1191), the Pottawatomie Tribe was divided into two groups. One group consisted of those members who desired to and were permitted to become citizens under certain conditions, and secure allotments of land in severalty in the reservation as well as their pro rata share of personal property, including annuities, belonging to the tribe, whereupon they ceased to be members of the tribe. This group thereafter became known as the Citizens Band. The second group comprised the remaining members of the tribe who elected to continue the tribal relationship, hold their lands in common, and continue to receive the balance of the annuity payments due the Pottawatomie Tribe. This latter group became known generally as the Prairie Band of the Pottawatomie Tribe of Indians.

3. The Prairie Band group of the Pottawatomie Tribe of Indians, on and prior to March 1, 1909, was receiving as its proportionate share of the perpetual annuities which the United States had agreed to pay the Pottawatomie Tribe under various treaties, the following amounts:

Treaty of August 3, 1795, Art. 4, (7 Stat. 49)	\$ 257.80
Treaty of Sept. 30, 1809, Art. 3, (7 Stat. 114)	178.90
Treaty of October 2, 1818, Art. 3, (7 Stat. 185)	894.50
Treaty of Sept. 20, 1828, Art. 2, (7 Stat. 317)	715.60
Treaty of July 29, 1829, Art. 2, (7 Stat. 320)	5,724.77
Treaty of Sept. 20, 1828, Art. 2, (7 Stat. 317)	107.34
Treaty of Sept. 20, 1828, Art. 2, (7 Stat. 317)	1,008.99
Treaty of July 29, 1829, Art. 2, (7 Stat. 320)	<u>50.00</u>
	\$9,037.90

The sum, totaling \$9,037.90, represented the balance of the perpetual annuities payable to the Pottawatomie Tribe which remained after the Citizens Band group of the tribe had become citizens and were paid the commuted value of their proportionate share of said annuities, all as provided by the terms of the 1861 treaty, supra.

4. The act of Congress of April 30, 1908 (35 Stat. 70, 73) contained a provision for the negotiation of agreements with Indian tribes for the purpose of commuting perpetual annuities due them under treaty stipulations, as follows:

"That the Commissioner of Indian Affairs is hereby authorized to send a special Indian agent, or other representative of his office to visit any Indian tribe for the purpose of negotiating and entering into a written agreement with such tribe for the commutation of the perpetual annuities due under treaty stipulations, to be subject to the approval of Congress; and the Commissioner of Indian Affairs shall transmit to Congress said agreements with such recommendations as he may deem proper."

5. Pursuant to the provision of the act of April 30, 1908, the Commissioner of Indian Affairs, by letter of October 25, 1908, directed F. C. Campbell as Special Agent to proceed to Oklahoma for the purpose of negotiating agreements with the Choctaw, Pawnee, Pottawatomie, and Sac and Fox of the Mississippi tribes for the commutation of perpetual annuities due them under early treaties. In his letter the Commissioner instructed Campbell that --

*** All agreements should be signed by a majority of the adult Indians of each tribe, without regard to sex, and as an evidence of the genuineness of their signatures the Indians should be required to append the imprint of their right thumbs opposite their written signatures or marks. Each agreement should be signed by yourself in your official capacity as Special Indian Agent, and should bear the certificate of the official interpreter to the effect that the agreement was explained to the Indians in open

council, and that its contents and purport were fully understood by them before signing; also the certificate of at least two disinterested persons that they were present and witnessed the signing of the instrument. Also a certificate by the agent or superintendent should be attached showing the total number of adult Indians belonging to the tribe entering the agreement, and that the persons signing the same constituted a majority of said adult members. Each agreement, when completed in accordance with the above instructions should be forwarded promptly to the Office for its consideration."

On December 10, 1908 the Commissioner of Indian Affairs wrote a letter to Agent Campbell at Pawnee Agency, Oklahoma, and in replying to the request made by Campbell in a prior letter, for further information regarding the perpetual annuities of the Pottawatomie Indians of Kansas, the Commissioner stated as follows:

"* * *. As it appears that the Prairie Band of Pottawatomie Indians in Kansas is the branch of the tribe with which it is desired to negotiate an agreement for the capitalization of their permanent annuities, you are directed to proceed to the Pottawatomie Agency in Kansas as soon as convenient for the purpose of negotiating an agreement with that tribe, and Office instructions of October 25, 1908, are hereby modified accordingly. The permanent annuity of the Pottawatomies of Kansas, if capitalized at 5%, will amount to \$180,758, * * *."

"There is enclosed for your guidance a form of agreement which it is believed will be suitable for your use in connection with these negotiations."

The Commissioner also informed Campbell in his letter that the voting age of members, both male and female, was 18 years; and in the case of married members of the tribe, they were entitled to vote regardless of age.

Thereafter, Agent Campbell, in a letter dated December 13, 1908 to the Commissioner of Indian Affairs, reported in part as follows:

"With reference to 'Land W.H.G. Commutation of Perpetual Annuities, Oct. 25, 1908' under date of December 16, I proceeded to Madeau, Kansas for the purpose of conferring with the Pottawatomie Council and we had a representative attendance. The situation was carefully explained to the Indians and they were given opportunity for asking questions. After a pretty thorough discussion the council adjourned to reconvene upon notice. There was no dissenting expression and it seems as though the agreement to capitalize the perpetual annuities of the Pottawatomies of Kansas will be negotiated. * * *

"If no opposition on the part of the Indians develop a majority vote can be secured among those now living in Kansas. In the event a majority vote of the adult members of the tribe can not be secured here, I would be pleased to have your Office give instructions as to what steps, if any, I shall take to procure additional votes among those living in Michigan."

The Commissioner of Indian Affairs replied on January 29, 1909, in part as follows:

"In connection with your negotiation with the Pottawatomies you will bear in mind that a number of the members of this tribe entitled to share in the perpetual annuities are living in Wisconsin and Michigan. These members should be given an opportunity to express their approval or disapproval of any agreement affecting the annuities of the tribe.

"When you have completed your negotiations with the Kansas branch of the Pottawatomies you should then present the subject to those living in Wisconsin and Michigan for their consideration. * * *."

Agent Campbell followed the Commissioner's instructions and, after finishing his negotiations with the Pottawatomie Indians in Kansas he proceeded to Wisconsin in March of 1909 where he also submitted the proposed commutation agreement to three different groups of members of the Pottawatomie tribe then living in Wisconsin, for consideration and approval.

7. The negotiations conducted by Campbell with members of the Pottawatomie Tribe of Indians residing in both Kansas and Wisconsin

for the commutation of perpetual annuities were completed on March 16, 1909. The agreement so negotiated, and so far as is material here, is as follows:

"AGREEMENT FOR COMMUTATION OF PERPETUAL ANNUITIES."

"* * * AND WHEREAS, The Commissioner of Indian Affairs, by letter of instructions dated October 25, 1908, has designated F. C. Campbell a Special Agent for the purpose of negotiating agreements with certain Indian tribes for the commutation of their permanent annuities * * *;

"AND, THEREFORE, The undersigned being a majority of the adult members of the Pottawatomie tribe of Indians in the State of Kansas do hereby agree to accept the sum of One-hundred-eighty-thousand seven-hundred fifty-eight dollars (\$180,758.00) in commutation for the permanent annuity stipulated to be paid to the said Pottawatomie tribe by * * *. [herein there are set forth the various treaties and amounts totaling \$9037.90]

"IT IS FURTHER UNDERSTOOD AND AGREED That we hereby consent to the substitution of the principal sum of One-hundred-eighty-thousand seven-hundred fifty eight (\$180,758.00) Dollars, in lieu of the perpetual annuities now being paid us on the basis of a capitalization of our said annuities at five per centum, which said sum shall be deposited in the Treasury of the United States, to the end that the money shall produce a rate of interest equal to five percent; this money to be withdrawn from the Treasury by the Secretary of the Interior under such rules as he may prescribe or paid over to the Indians direct in his discretion.

"* * *. Upon the deposit in the Treasury of such principal sum we hereby waive all our rights to further payments of annuities under the specific law or laws authorizing such annuity, as aforesaid.

"IT IS FURTHER UNDERSTOOD AND AGREED THAT this agreement shall be of no effect whatever until ratified by the Congress of the United States. * * *."

The agreement, under the heading "Signature of Indians" has affixed thereto the names of 164 Pottawatomie Indians residing in Kansas and 52 living in Wisconsin, or a total of 216, each of whom had either signed the agreement, or, in separate signed statements attached thereto,

had agreed to sign and authorized the Superintendent of the Agency to attach their respective names to the agreement. At that time there was a reported voting population of 362 Pottawatomie Indians enrolled at the Kansas agency.

The record of the negotiations of Agent Campbell with the members of the Pottawatomie Tribe in obtaining their approval of the agreement shows that Campbell first conferred with the Pottawatomie by Council in December of 1908 on the reservation in Kansas, and had what he described as "a representative attendance" when he explained the proposed agreement to those present and "after a pretty thorough discussion the council adjourned to reconvene upon notice." Meanwhile Campbell found that the Indians were scattered over the reservation in Kansas and that many were also residing at different locations in Wisconsin, so he did not assemble them all together in a single meeting. Instead, Campbell held separate meetings with the Indians. A meeting was held on the reservation in Kansas on February 4, 1909, and three subsequent meetings in Wisconsin, on March 8, 1909 at Clifford, on March 12, 1909 at Phlox, and on March 16, 1909 at Arpin. So far as the record shows the agreement was explained to the Indians present at each of the meetings by an interpreter, and the signatures of those Indians who signed the agreement themselves or by mark and thumb print did so in the presence of two disinterested witnesses. There are 52 members whose names were signed to the agreement (presumably by Superintendent Edson Watson) with the memorandum "See letter attached." It is not shown where these particular Indians reside but they are the members who were contacted individually by Campbell or his assistants. Separate signed

statements were obtained from each of them authorizing that their name be attached to the agreement. These signed statements were also attached to the completed agreement, and each is substantially in terms as follows:

"We, the undersigned members of the Prairie Band Pottawatomie Indians, hereby agree to sign the petition for the settlement with the United States, of our treaty claims against the Government, and accept payment in full in one lump sum, the same being established at about \$250.00 per capita. This payment to take the place of the semi-annual annuity payments made heretofore. We hereby authorize the Superintendents at Pottawatomic Agency to attach our names to the said petition."

8. The agreement as thus consummated was transmitted by Campbell to the Commissioner of Indian Affairs in a letter dated March 17, 1909 with an explanation of the manner in which the signatures had been secured. The Commissioner of Indians Affairs approved the agreement as made, and by letter of January 21, 1910 transmitted the agreement, along with similar agreements with other Indian tribes, to the Secretary of the Interior. Also included was a draft of a bill for approval of the agreements and the making of the necessary appropriations for carrying them into effect. The Secretary of the Interior approved the agreement and by letter of February 8, 1910, transmitted it along with the other agreements and the proposed draft of the bill for their approval to the President of the United States, who, in turn, transmitted the agreements and the draft of the bill to Congress for ratification.

In due course, the agreement was ratified and confirmed by Congress as a part of the Act of April 4, 1910, (36 Stat. 269, 289). Section 29 of this Act reads in pertinent part as follows:

"Sec. 29. The several agreements concluded with certain Indian tribes hereinafter mentioned, as evidenced by the original papers on file in the office of Indian Affairs and the copies thereof transmitted to Congress by the President and contained in Senate Document numbered three hundred and fifty-eight, Sixty-first Congress, second session, for the commutation of their perpetual annuities under treaty stipulations, made in pursuance of a provision of the Act of April thirtieth, nineteen hundred and eight, authorizing the Commissioner of Indian Affairs, subject to the approval of Congress, to negotiate with any Indian tribe for the commutation of perpetual annuities due under treaty stipulations are hereby ratified and confirmed, towit:

* * * the agreement with the Pottawatomie tribe of Kansas and Wisconsin dated March sixteenth, nineteen hundred and nine;

"And the Secretary of the Treasury is hereby authorized and directed to place upon the books of the Treasury to the credit of the said tribes, respectively, the sums hereinafter specified, said sums being a capitalization of the perpetual annuities of said tribes on the basis of five per centum, and the same having been accepted by said tribes in the agreements heretofore mentioned in lieu of and as a commutation of said perpetual annuities, towit:

* * * the Pottawatomie tribe of Kansas and Wisconsin, one hundred and eighty thousand seven hundred and fifty eight dollars;

"And the Secretary of the Interior is authorized to withdraw said funds from the Treasury for payment to said Indians, or expenditure for their benefit, at such times and in such manner as he may deem proper and under such regulations as he may prescribe.

"The sums placed to the credit of the respective tribes less disbursements therefrom as provided herein shall draw interest at the rate of five per centum per annum; and the interest accruing on said principal sums may, in the discretion of the Secretary of the Interior, be paid in cash to the Indians entitled thereto annually or semi-annually, or expended for their benefit in such manner and under such regulations as he may prescribe.

9. Pursuant to the provision contained in the Act of April 4, 1910, there was set up on the books of the Treasury of the United States on July 1, 1910 a fund of \$180,758.00 designated as the "Pottawatomie of Kansas and Wisconsin Fund, Act of April 4, 1910." This sum represented the value at that time of the \$9037.90 in perpetual annuities capitalized at 5%.

The defendant further established an interest fund designated on the books of the Treasury as the "Interest on Pottawatomies of Kansas and Wisconsin Fund (Act of April 4, 1910)" — into which fund the defendant, from year to year, placed the interest accruing at the rate of 5% per annum on the amount of the principal fund above described while it remained in the Treasury. The aggregate amount paid into this interest fund was \$35,304.18. As it accrued this interest fund was disbursed by the defendant to the Pottawatomie Indians in per capita payments, as follows:

During the fiscal year of 1912, the aggregate sum of \$9037.90
 During the fiscal year of 1913, the aggregate sum of \$9026.15
 During the fiscal year of 1914, the aggregate sum of \$9021.03
 During the fiscal year of 1915, the aggregate sum of \$7594.80
 During the fiscal year of 1917, the sum of..... \$ 260.96

A balance of \$363.34 remained in the interest fund on January 1, 1950.

10. In a letter dated February 20, 1914, the Assistant Commissioner of Indian Affairs recommended to the Secretary of the Interior that the "Pottawatomies of Kansas and Wisconsin Fund, Act, Act of April 4, 1910" of \$180,758.00, referred to in the preceding finding, be divided per capita among the Pottawatomie Indians entitled thereto. The reasons given for his recommendation are stated in this letter, as follows:

"Attention is invited to the letter of November 25, 1913, from the Superintendent of the Potawatomi School, Kansas, regarding the desire of some of the Indians to obtain pro rata shares of this money and Office response thereto of February 3, 1914, and to the superintendent's letter of February 7, in which he recommends that the capitalized annuities of the tribe be paid to the Potawatomi Indians of Kansas and Wisconsin per capita. The superintendent recommends that the shares of all adult competents be paid to them direct; that the shares of minors be placed in bank to their credit to be used as individual Indian funds, and that the shares of about fifty noncompetents be also placed in bank as individual Indian money, and used under his supervision for their support.

"As reasons why he believes the money should be paid at this time, the superintendent says that the past year has been one of the most complete crop failures in that part of Kansas for many years; the corn crop, which is the general crop in that locality, being a total failure and that the Indians will be greatly handicapped in their farming operations this spring. He adds that if the fund is paid to them at this time it would be a means of encouraging a great many members of the tribe, and will allow them to farm on their own account the coming summer, and that otherwise he fears many of them will not only be unable to farm their lands but will lose some of their stock and farm equipment for the reason that the shortage in crops has compelled them to contract debts for living expenses.

"In view of the report of the superintendent that the Indians are in especial need of the money at this time, and that it will greatly benefit them in their farming operations, it is respectfully recommended that he be authorized and directed to prepare a roll of all persons living on the date of the approval of this letter, and entitled as Potawatomi Indians to share in the fund and to divide the money per capita among those so entitled. It is further recommended that he be authorized to pay direct to all adults, whom he may consider competent to manage this amount of money, their per capita shares; that the shares of noncompetents be put in bank as individual Indian money to be used for the support of the Indians, and that the shares of all minors be placed in bank and treated as individual Indian money.

"Formal authority for the superintendent to expend \$180,758 in making a per capita payment to the Indians entitled thereto is enclosed."

The recommendation of the Assistant Commissioner of Indian Affairs was approved by the Assistant Secretary of the Interior, and on March 4, 1914, the Assistant Secretary of the Interior issued authority to the Superintendent of the Pottawatomie School in Kansas to expend the \$180,758.00 fund "for the purpose of making a per capita payment to the Indians entitled thereto, under the jurisdiction of the Superintendent of the Pottawatomie Indian School, Kansas, in accordance with the provisions of the Act of April 4, 1910, (36 Stat. L., 289), * *."

Thereafter, during May and June of 1914, the Superintendent disbursed the fund of \$180,758.00 to 764 enrolled members of the Prairie Band of

Pottawatomie Indians in per capita shares of \$236.59 and \$236.60 in the following manner: Per capita payments totaling \$74,763.71 were paid to 316 members in Kansas; per capita shares totaling \$75,947.08 were deposited by the Superintendent in individual bank accounts of 321 minors or noncompetent members in Kansas; per capita shares totaling \$30,047.21 were transferred to other superintendents and paid to, or deposited in bank accounts of, 127 members of the Prairie Band of Pottawatomie Indians residing under the jurisdictions of those superintendents, principally in the State of Wisconsin. The record shows there was a balance remaining in the "Pottawatomies of Kansas and Wisconsin Fund, Act of April 4, 1910," on January 1, 1950 in the sum of \$210.03, which sum represented the refund of an erroneous payment made to an Indian in Wisconsin, and was returned to the Treasury to the credit of said fund on March 25, 1926, by the Superintendent in Wisconsin.

EDGAR E. WITT
Chief Commissioner

LOUIS J. O'MARR
Associate Commissioner

WM. M. HOLT
Associate Commissioner