

## BEFORE THE INDIAN CLAIMS COMMISSION

THE OSAGE NATION OF INDIANS;	)	
	)	
Petitioner,	)	
	)	
v.	)	Docket No. 9
	)	
THE UNITED STATES OF AMERICA,	)	
	)	
Defendant.	)	

Decided: March 1, 1955

ADDITIONAL FINDINGS OF FACT - ON OFFSETS

The Commission makes the following additional findings of fact, which are supplemental to findings numbered 1 to 29, each inclusive, and hereinbefore made.

30. Between the years 1867 and 1951, each inclusive, the United States, without treaty or contractual obligation so to do, expended gratuitously from the public funds certain amounts which the defendant has now presented for offset credit against the award hereinbefore entered against it, of which claimed credits \$56,687.82 represents charges against the Osage Nation and \$18,666.67 of which represents charges to the Neosho or Osage Agency for delivery to the Osage Nation while the Osage Nation was under the supervision of said agencies.

31. Article 1, Treaty of September 29, 1865, 14 Stat. 687, ratified June 26, 1866, provided in part:

\* \* \* And, in consideration of the grant and sale to them of the above-described lands, the United States agree to pay the sum of three hundred thousand dollars, which sum shall be

placed to the credit of said tribe of Indians in the Treasury of the United States, and interest thereon at the rate of five per centum per annum shall be paid to said tribes semi-annually, in money, clothing, provisions, or such articles of utility as the Secretary of the Interior may, from time to time, direct. Said lands shall be surveyed and sold, under the direction of the Secretary of the Interior, on the most advantageous terms, for cash, as public lands are surveyed and sold under existing laws, including any act granting lands to the State of Kansas in aid of the construction of a railroad through said lands; but no preemption claim or homestead settlement shall be recognized; and after re-imbursing the United States the cost of said survey and sale, and the said sum of three hundred thousand dollars placed to the credit of said Indians, the remaining proceeds of sales shall be placed in the Treasury of the United States to the credit of the "civilization fund," to be used, under the direction of the Secretary of the Interior, for the education and civilization of Indian tribes residing within the limits of the United States.

32. By Article 2, Treaty of September 29, 1865, 14 Stat. 687, ratified June 26, 1866, the Osage Nation directed that the proceeds derived from the sale of certain tribal lands should be handled as follows:

\* \* \* The proceeds of such sales, as they accrue, after deducting all expenses incident to the proper execution of the trust, shall be placed in the Treasury of the United States to the credit of said tribe of Indians; and the interest thereon, at the rate of five per centum per annum, shall be expended annually for building houses, purchasing agricultural implements and stock animals, and for the employment of a physician and mechanics, and for providing such other necessary aid as will enable said Indians to commence agricultural pursuits under favorable circumstances: Provided, that twenty-five per centum of the net proceeds arising from the sale of said trust lands, until said percentage shall amount to the sum of eighty thousand dollars, shall be placed to the credit of the school fund of said Indians; and the interest thereon, at the rate of five per centum per annum, shall be expended semi-annually for the boarding, clothing, and education of the children of said tribe.

33. The Osage Nation adopted the Osage Act of June 28, 1906, 34 Stat. 539, which provided for the enrollment of the tribal members, and future

disposition of tribal property. Among other things it was directed that part of all money accruing from certain sources (oil, gas, coal, mineral leases, etc.) should be used for the following purposes:

Fourth. There shall be set aside and reserved from the royalties received from oil, gas, coal or other mineral leases, and moneys received from the sale of town lots, and rents from grazing lands not to exceed thirty thousand dollars per annum for agency purposes and an emergency fund for the Osage tribe, which shall be paid out from time to time, upon the requisition of the Osage tribal council, with the approval of the Secretary of the Interior.

June 24, 1938, 52 Stat. 1034-6, the Osage Act was extended until January 1, 1984.

34. Agricultural Aid, \$1,786.41

During 1873 there was expended for fencing farms of the Osage Indians a total of \$1,786.41 from public funds appropriated to care for incidental expenses of Indian reservations, presents of goods, agricultural implements and other useful articles, and to assist the Indians to locate in permanent abodes and sustain themselves by pursuits of civilized life. These expenditures were gratuitous, without treaty or contractual obligation on the part of the defendant, and are within the classification of expenses assumed by the Osage Nation in Article 2, Treaty of 1865 (Finding 31) and therefore chargeable to said Indians.

35. Agricultural Implements and Equipment (Agency), \$20.00

In 1875 one wagon costing \$20.00 was charged to the Osage Agency and paid for from an appropriation for "Civilization of Indians in Central Superintendency". This was an agency expense and not chargeable to said Indians.

36. Clothing, \$197.12

The cost of  $10\frac{1}{2}$  dozen shirts at \$197.12 was charged to the Osage Nation in 1869 and paid from an appropriation for "Presents and Provisions." The quantity involved indicates a tribal disposition was made of this merchandise and is therefore allowed as an offset.

37. Expenses, Care and Sale of Timber, Agency, \$62.25

Saw mill repairs of \$62.25 were paid from an appropriation for payment of travel and incidental expenses of Indian agents and "contingencies" of the Indian Bureau. The maintenance and operation of a sawmill being incidental to the construction of houses as well as to other purposes relating to the following of agricultural pursuits under favorable circumstances, the expenditure is one of the nature assumed by the Osage Nation in Article 2, Treaty of 1865 (Finding 31).

38. Livestock

Purchases of (Agency)	\$1,368.00
Feed and care of (Agency)	24.33
Purchases	25.00
Recovery of	65.00

Thirty-six head of work oxen, costing \$1,368.00 were paid for from a contingency appropriation and charged to the Agency. This number is excessive for demonstrational or educational purposes. The Osage Indians in 1873 were embarking upon an agricultural life, and work stock was a necessity. The tribe enjoyed the benefits of this purchase, and the nature of the expenditure falls within those expenses assumed by the Osage Nation in Section 2, Treaty of 1865. Feed and care of the animals should follow the assessment of their cost.

Sixty-five dollars was paid from a contingency fund in 1870 for the recovery of livestock. The Osage Nation at this date owned its property communally. The payment having been made to recover tribal property, the item constitutes a tribal benefit allowable as an offset credit under Section 2 of 60 Stat. 1049.

The cost of a cow and a calf purchased from an appropriation for the "Civilization of Indians in the Central Superintendency" must be denied as an offset since it could have been intended for the use of the agent or employees of the agency or in connection with the education and civilization of the Indians. In the absence of a showing to the contrary, this will be considered an agency expense, and denied to the defendant as a credit offset.

### 39. Attorneys' Fees and Expenses

The defendant has claimed as an offset to the award the aggregate sum of \$45,383.92 for legal services performed and travel expenses of special attorneys for the Osage Indians. These services were performed and expenses paid during the period from 1944 to 1951, inclusive, and were paid by defendant out of general appropriations as follows:

For "Administration of Indian Property" in the amounts and in the fiscal years (pp. 4 and 5, G.A.O. Report, Def. Ex. 57) as follows:

1944, the sum of	\$ 5,328.30
1945, " " "	4,975.96
1946, " " "	3,101.29
1946, for travel expenses of attorney	281.85
1947, " " " " "	10.50

For "Salaries and Expenses, Field Administration, Bureau of Indian Affairs" in the amounts and for the fiscal years (pp. 30-31, G.A.O. Report) as follows:

1947, the sum of	\$ 5,450.88
1947, for travel expenses of attorney	9.00
1948, the sum of	5,171.63
1948, for travel expenses of attorney	22.50
1949, the sum of	6,273.80
1950, the sum of	103.29

For "Salaries and Expenses, Field Administration, Bureau of Indian Affairs" in the amounts and for the fiscal year (p. 29, G.A.O. Report) as follows:

1950, the sum of	\$ 7,994.31
1951, the sum of	519.63

For "General Administrative Expenses, Indian Service," in the amounts and for the fiscal year (p. 9, G.A.O. Report) as follows:

1951, the sum of	\$ 4,416.85
1951, the sum of	1,724.13

Prior to the year 1944 and subsequent to the year 1951 the salary and expenses of the Tribal Attorney for the Osage were paid from Tribal funds and his duties were to attend tribal meetings, advise the tribal council, prepare communications to the Secretary of the Interior and Commissioner of Indian Affairs, represent the tribe in some litigation, prepare and preserve Indian wills and handle the probate proceedings and generally represent the tribe in tribal matters and its dealings with the Government. The attorney also accepted service of papers filed in County and District Court suits involving the tribe and its members.

On June 30, 1941, a position called "Special Attorney" for the Osage Indians was established but the duties of the Special Attorney were the same as those formerly performed by the Tribal Attorney, in fact the change was in the name or title of the position only, but the

compensation of such attorney was paid out of Federal funds between the years 1944 to 1951, as stated above, and all such services were for the use and benefit of the Osage Indians, as were the travelling expenses of such attorney.

40. Transportation of Household Effects of Special Attorney, \$186.59

While the various contractual terms covering their employment are not before us, there is nothing in the acts appropriating tribal funds throughout these years which indicates a practice on the part of the Nation to pay the personal expenses of its attorney. The cost of transporting household effects is a personal as distinguished from a business expense, which personal expense in the absence of definite assumption by another should be borne by the party incurring it. It does not appear that the petitioner benefited as a result of this expenditure or authorized such expenditure and such item is disallowed.

41. Pay of Curator for Osage Museum (Agency), \$85.16

During 1944, \$85.16 was paid the curator of the Osage Museum by the defendant. This Museum was maintained by the Nation and the services of the curator were for the use of the tribe and should be chargeable to it.

42. Presents to the Indians, \$20.00

Under authority of the decision in Quapaw Tribe vs. U. S. 128 C. Cls. 45, the item of \$20.00 paid for presents given to the Osage Indians is denied as an offset credit.

43. Provisions, \$551.49

Between 1867 and 1873, each inclusive, the defendant spent \$551.49 from the public funds to purchase provisions for the Osage Indians.

During 1869 (16 Stat. 39) \$30,000 was appropriated to buy clothing and subsistence for them. A like appropriation was made in 1871 (16 Stat. 557). Each appropriation act specified that the sums expended should be reimbursed to the defendant out of the proceeds of the Osage land in Kansas. The item is one which was assumed by the Osage Nation in Articles 1 and 2 of the 1865 treaty. Provisions furnished without a treaty or contractual liability so to do constitute a gratuity allowable as an offset under Section 2, 60 Stat. 1049. We find the expenditure a proper item for offset by the defendant herein, and it is so allowed.

Transportation Items

44. <u>Supplies for Timber Operations,</u>	\$22.60	
<u>Supplies for Timber Operations Agency,</u>	\$13.00	
		\$35.60

During 1880 two wagons were delivered to the Osage Agency at a transportation cost of \$13.00, and two wagons and a log chain were transported for \$20.80. These articles were needed and useful in connection with the construction of houses and development of civilized industry and agricultural pursuits. The General Accounting Office report discloses that a program was being followed to furnish the tribal members with wagons. Since only the transportation expense was paid from public funds, the articles were necessarily purchased with tribal money as authorized by the 1865 treaty. The defendant bears no responsibility for payment of transportation costs of tribal property in the absence of an agreement to that effect. Such an agreement has not been found and we allow the charges as credit offsets.



the 1865 treaty.

Practically every charge above listed was made between 1877 and 1899, inclusive. Without exception none of the transportation charges relate to the merchandise for which offset credit is sought. The itemization appearing in the report of the General Accounting Office indicates that the merchandise transported could only have been for tribal use and consumption due to its nature and quantity. Oral testimony is that it was not within the classes which are prohibited to the defendant for offset credit by Section 2, 60 Stat. 1049, and it was of that nature which the Osage tribe agreed in the treaty of 1865 that it would furnish. The charges will be allowed the defendant for offsets.

47. Miscellaneous supplies (agency), \$1,970.34

\$1,970.34 was paid for transporting miscellaneous supplies to the Osage agency. The items transported were for the benefit and use of the tribe; payment was from the same appropriation acts referred to in the paragraph immediately above. The same situation exists with reference to these disbursements as existed with reference to those in the paragraph next above, and the total expenditure here incurred will be allowed the defendant for the reasons set out in the preceding paragraph.

48. Provisions, \$1,318.95, agency \$8,836.15 - \$10,155.10

Payments totaling \$1,318.95 and \$8,836.15 were made for transporting provisions to the Osage Indians and to their agencies, respectively. The facts surrounding these expenditures and the nature of the items transported are the same as those found to exist in the second paragraph above (Finding 46). Where there is no agreement to the contrary, and the items

transported are of a nature that their cost has been assumed or paid by the Indians, the cost of transportation is chargeable to the Indians and its payment with public funds becomes a gratuity which the defendant is entitled to offset. We allow these items in their total sum of \$10,155.10.

49. The course of transactions between the petitioner and the defendant during the period here involved has not been such that the defendant is prohibited from setting up against the award previously entered against it any credits or offsets which it may have that are not precluded by Section 2, 60 Stat. 1049.

50. In summarization, the following claimed offset credits are denied to the defendant under the findings of this Commission:

Agricultural implements and equipment	\$ 20.00
Livestock, purchase of	25.00
Transportation of household effects of Special Attorney	186.59
Presents to the Indians	<u>20.00</u>
	\$251.59

51. The defendant is entitled to offset against the award hereinbefore entered against it, the following items of credit:

Agricultural aid: fencing Indian farms	\$ 1,786.41
Clothing	197.12
Expenses, care and sale of timber	62.25
Livestock:	
Purchase of	1,368.00
Feed and care of	24.33
Recovery of	65.00
Pay of Attorney Advisor for Osage Indians	4,416.85
Pay of Special Attorney for Osage Indians	40,643.22
Travel Expenses of Special Attorney	323.85
Pay of Curator for Osage Museum	85.16
Provisions	551.49
Transportation of:	
Supplies for timber operations	35.60
Supplies for oil operations	94.03
Supplies and equipment for mills and shops	518.16
Agricultural implements and equipment	7,569.71
Agricultural aid	88.34
Feed for livestock	472.47
Fuel	486.67
Hardware, glass, oil and paints	492.55
Household equipment and supplies	949.21
Miscellaneous building material	315.36
Clothing	2,431.60
Miscellaneous supplies	1,970.34
Provisions	<u>10,155.10</u>
 Total	 \$75,102.90

Edgar E. Witt  
Chief Commissioner

Louis J. O'Marr  
Associate Commissioner

Wm. M. Holt  
Associate Commissioner