

## 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

## Appearances:

Wesley E. Disney, with whom  
were Francis M. Goodwin and  
Lawrence H. Gall,  
Attorneys for Petitioner.

Ralph A. Barney, with whom  
was Mr. Assistant Attorney  
General Perry W. Morton

OPINION OF THE COMMISSIONPER CURIAM.

On August 13, 1954, the Commission made an interlocutory award to the Osage Nation of Indians for \$939,210.45, affirmed in its opinion rendered September 27, 1954, subject, however, to any offsets subsequently found deductible under Section 2, 60 Stat. 1049.

By an amendment to answer the defendant presented a total of \$75,354.49 items for offset, some charges indicating direct delivery to the Osage Indians and other charges indicating deliver to the Osage Agency or the Neosho Agency during periods when the Osage Indians were under the jurisdiction of those agencies.

These claimed offsets, separated to conform to the General Accounting Office report (Defendant's Exhibit No. 57), show expenditures for "Osage Indians" while such Indians were under the jurisdiction of either the Osage or Neosho Agency. Such items claimed by the defendant aggregate \$56,687.82, and expenditures for "Osage Agency" aggregate \$18,666.67.

Petitioner asserts that the claimed expenditures all represent benefits passing to individuals rather than to the tribe. Considering the variance among the tribal members as to age, sex, need, non-interest in the item furnished and even absence at time of distribution, it becomes apparent that physical participation by each individual is not necessary in order for there to be a tribal as distinguished from an individual benefit. Where the frequency of the issue indicates the tribal requirements are being cared for as the individual need arises, or where the item is of such quantity that tribal consumption is the only reasonable conclusion, it seems that the expenditure should be relieved from the taint of individualism and become a tribal benefit. The legislative history of the Indian Claims Commission Act (60 Stat. 1049) indicates Congress did not intend to bind this Commission by any hard and fast rules respecting offsets except as to expressly excluded offsets. Congress excluded items which as a group represent benefits enjoyed by the ordinary citizen (free education, health programs, public roads) together with the cost of removal if at the request of the United States, and all agency and administrative expenses. Reasonable doubts are to be resolved in favor of the Indians but the Commission is free to exercise a degree of judgment based upon reasonable inferences to be drawn from

the report of financial transactions occurring long ago and of which only record evidence is now available.

Agricultural Aid, \$1,786.41

From an appropriation to care for the incidental expense of Indian reservations, grants 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, there was spent \$1,786.41 for fencing for Indian farms in 1873. The object of this expenditure falls within the classification of expenses which were assumed by the Osage Tribe under the second article of their treaty of 1865, wherein they assigned a portion of their interest fund to 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." This expenditure was gratuitously made from public funds and is a proper offset.

Agricultural Implements and Equipment (Agency), \$20.00

This item also falls within the provisions of Art. 2 of the 1865 treaty, and would be a proper offset except that it is charged to the Osage Agency and since it represents the cost of one wagon, may well have been an agency expense. It is denied the defendant as an offset credit.

Clothing, \$197.12

This is a charge for  $10\frac{1}{2}$  dozen shirts and was paid from an appropriation for "Presents and Provisions." This would appear to be a tribal purchase and should be allowed.

Expenses, Care and Sale of Timber (Agency) \$62.25

Saw mill repairs of \$62.25 was paid from an appropriation to pay travel and incidental expenses of Indian agents and their offices and "contingencies" of the Indian Bureau.

Petitioner seemingly contends that if an appropriation bill specifies that any portion of the fund is to be used for those expenditures which are denied to the Government as offset credits by Section 2 of the Indian Claims Commission Act, then the entire appropriation becomes unavailable for credit expenditures, even though expended for purposes which are otherwise clearly proper offsets. We believe, however, that the nature of the item and the circumstances surrounding the expenditures must be taken into consideration. That miscellaneous items are grouped together as "incidental," "extraordinary," or "contingent" expenses and then inserted into or included with an appropriation for non-allowable items, does not alter the nature of the individual expenditure. Even the miscellaneous portion of the appropriation may include items both allowable and non-allowable as credit under Section 2, 60 Stat. 1049. The mill operation appears to be a tribal, rather than an agency matter and is accordingly allowed.

Livestock:

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

A \$1,368.00 item charged to the Agency and paid from a contingency appropriation, represents the cost of thirty-six head of work oxen, made at a time when the Osage Indians were beginning farming operations. This

number of work oxen seems excessive if for demonstrational or educational purposes. The only rational reason for the purchase of such a number would seem to be their availability for tribal use in connection with their farming operations.

In good conscience we believe the tribe enjoyed the benefits and should be charged with the expenditure. Furthermore, the nature of the purchase brings it within the terms of Art. 2 of the 1865 treaty. The feed and care of the animals in sum of \$24.33 should follow the assessment of their cost. We find that both items should be allowed.

The cost of a cow and calf purchased for \$25.00 from an appropriation for the "Civilization of Indians in the Central Superintendency" is denied. See *Quapaw Tribe v. U. S.*, 128 C. Cls. 45.

\$65.00 was paid from a contingency fund for the recovery of livestock in 1870, at which time the Osage Tribe owned its property communally. Such payment would be a tribal benefit and of a type assumed by the tribe in the 1865 treaty, Art. 2. Furthermore, it seems that if the animals were individually owned, while their recovery would then have directly benefited only the individual owners, yet the knowledge that such an inducement existed for the return of strayed or stolen property as the payment of an award, it would afford the tribe a sense of security, intangible it is true, but as beneficial to the membership as a whole as the existence of a tribal physician who might serve less than ten percent of the membership during any one year.

We allow the items of \$1,368.00, \$24.33 and \$65.00, or a total of \$1,417.33 for credit purposes.

Attorney Fees and Expenses

The amount of \$45,060.07 for compensation of the "Special Attorney" for the Osage Nation and \$323.85 for traveling expenses are claimed as offsets to the award.

These two items constitute the major part of the claimed offsets, so we have set forth in our Finding 39 the details of these expenditures. The record does not show why they were paid from Federal appropriations during the period from 1944 to 1951 instead of tribal funds prior to and since that period, however, it is plain that the legal services were performed for the Osage — a fact not questioned by them — and that they were gratuities and of value to the Nation. Nor is the amount thereof questioned by the Osage in this record. The employment of a "tribal attorney" commenced following 1906 and except for the period of 1944-1951 were paid out of tribal funds, as they have been since 1951, so there was no change in the settled plan of the Osage as to the employment of a legal adviser and representative from about 1906 to the present day. It is true that about June 29, 1941, the title of the attorney position was changed from "Tribal Attorney" to "Special Attorney," but that change was of no significance as the duties were the same and payments of compensation were made by the Osage as before except during the time the salary and expenses of the attorney were paid by defendant.

We are therefore of the opinion the amounts paid by defendant are proper offsets and are accordingly allowed.

The item of \$186.59 for transportation of the special attorney's household effects is disallowed for the reason that there is no showing of any obligation of the Osage to pay such transportation. On the face of the charge it would appear such expense was for the personal use and convenience of the attorney.

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

The sole payment of \$85.16 to a curator of the Osage Museum made in 1944 seems the result of a clerical error. Many of the tribal appropriation acts included appropriations for this employee. In any event, the nature of the employee's work appears to remove it from the limitations of Section 2, 60 Stat. 1049, and is allowed as being for tribal use and benefit.

Presents to the Indians, \$20.00

In rejecting this claimed credit we are in accord with the legislative intent reflected in the history of 60 Stat. 1049, and with *Quapaw Tribe v. U. S.*, supra.

Provisions, \$551.49

Between 1867 and 1873, inclusive, \$551.49 was spent for provisions for the Osage Indians. Under Article 1, Treaty of 1865, supra, the interest upon a \$300,000 deposit to the credit of the Osage was directed to be paid annually in money for clothing, provisions, or other articles of utility. Also in 1869 and 1871, \$30,000 was appropriated to buy subsistence and clothing for Osage Indians, the appropriation requiring reimbursement from the proceeds of the Osage land in Kansas (16 Stat. 39). While the payments were made from an appropriation for "Presents and

Provisions" and "Civilization of the Indians within the Central Superintendency," and would ordinarily fall under the Quapaw Tribe v. U. S., 128 C. Cls. 45, decision, the items are within the nature of those assumed by the Osage tribe in their 1865 treaty and those for purchase under the reimbursable fund created by 16 Stat. 39. We allow the offset.

Transportation Items

<u>Supplies for Timber Operations</u>	\$22.60
<u>Supplies for Timber Operations</u>	13.00

During 1880, \$13.00 was charged for delivering two wagons to the Agency and \$20.80 for two wagons and a log chain, and \$1.80 for freight on 12 saws. Defendant's Exhibit 57 reflects that wagons in large numbers were being delivered the tribe as agricultural aid or implements and equipment. That these four wagons were singled out of several hundred indicates their use was not the same as the others, and since the number indicates these may have been individual benefits, we deny the items as offset credits.

Supplies for Oil Operations (Agency) \$94.03

These expenses were incurred between 1919 and 1924, inclusive, after the Osage Indians assumed agency expenses and were engaged in oil operations, the 1906 act providing for distribution of the profits among tribal members. The item is allowed.

<u>Supplies and equip. for mills and shops, \$96.92, agency \$421.32</u>	\$ 518.16
<u>Agricultural imp. and equip., \$4,332.39, Agency \$3,237.32</u>	7,569.71
<u>Agricultural aid, \$15.10, Agency \$73.24</u>	88.34
<u>Feed for livestock, agency</u>	472.47
<u>Fuel, \$165.74, agency \$320.93</u>	486.67
<u>Hardware, glass, oil paint, \$388.39, Agency \$104.16</u>	492.55
<u>Household equip. &amp; supplies, \$515.47, Agency \$432.74</u>	949.21
<u>Miscellaneous building material, \$188.27, Agency \$127.09</u>	315.36
<u>Clothing, \$1,427.46, Agency \$1,004.14</u>	2,431.60



Transportation of various items as listed above was paid from appropriations "for the necessary expense of transportation of such goods, provisions, and other articles for the various tribes of Indians provided for by this act" until in 1889 there was added "including pay and expenses of transportation agents" and in 1892 when "and rent of warehouses" was included, each addition appearing yearly after its inception.

Without exception none of these charges relate to merchandise for which allowance credits are asked, and without exception similar items or charges for their transportation were denied in *Quapaw Tribe v. U. S.*, 128 C. Cls. 45, due to their payment having been made from appropriations including provisions for administrative or educational purposes or because the items transported were found to be connected therewith. Practically every charge here was made between 1877 and 1899, inclusive. In 1877 (19 Stat. 281) \$100,000 of the Osage tribal funds were appropriated for subsistence and provisions; in 1878, \$10,000 of the funds were appropriated for construction of houses (20 Stat. 75), these appropriations being in addition to the annual expenditures of interest funds authorized for educational and general purposes in the 1865 treaty.

The items transported as reflected in Defendant's Exhibit 57 indicate by their nature and quantity that they could have been only for tribal consumption and use. They are of that nature assumed by the tribe in the 1865 treaty. Oral testimony is that they do not include expenditures of the nature prohibited by Sec. 2, 60 Stat. 1049. Whether they represent transportation of gratuitous items or of purchases

made with tribal funds, there is no responsibility upon defendant to pay transportation costs. The items are allowed.

Miscellaneous supplies, (agency) \$1,970.34

Transportation costs of \$1,970.34 for miscellaneous supplies delivered to the agency were for the benefit and use of the tribe and were paid from the same appropriations as the items dealt with in the paragraph next above, and the same situation exists with reference to them, and are allowed.

Provisions, \$1,318.95, Agency \$8,836.15: \$10,155.10

For the reasons set out in the second paragraph above, and on authority of *Quapaw Tribe v. U. S.*, 128 C. Cls. 45, we allow this item.

Summary

In Finding 50 we have summarized the items which have been disallowed and those allowed, so it is unnecessary to repeat them here, except to say that we have disallowed items in the aggregate sum of \$251.59, and allowed as offsets the items aggregating \$75,102.90, and that a final order shall be entered herein for the sum of \$864,107.55, for petitioner.

EDGAR E. WITT  
Chief Commissioner

LOUIS J. O'MARR  
Associate Commissioner

WM. M. HOLT  
Associate Commissioner