

BEFORE THE INDIAN CLAIMS COMMISSION

THE MIAMI TRIBE OF OKLAHOMA,)	
also known as THE MIAMI TRIBE,)	
and HARLEY T. PALMER, FRANK C.)	
POOLER and DAVID LEONARD, as)	
representatives of THE MIAMI)	
TRIBE and all of the members)	
thereof,)	
)	
)	
Petitioners,)	Docket No. 67, (Consolidated) and
)	Docket Nos. 124, 314 and 337
v.)	consolidated therewith
)	
THE UNITED STATES OF AMERICA,)	INTERVENORS -
)	Docket Nos. 15-D, 29-B, 89,
Defendant.)	311 and 315

Decided: September 17, 1956

Appearances:

Edward P. Morse, with whom
were Edwin A. Rothschild and
Louis L. Rochmes,
Attorneys for Petitioners
in Docket No. 67.

Francis J. Clary, with whom
was Mr. Assistant Attorney
General Perry W. Morton,
Attorneys for Defendant.

OPINION OF THE COMMISSION

Witt, Chief Commissioner, delivered the opinion of the Commission.

The issues now before the Commission are the value of the 7,036,000 acres of land known as Area 99, according to Royce's Map, as of October 6, 1818, and the liability, if any, of the defendant to the plaintiff tribes.

The petitioners say that the present measure of value is the fair market value as defined by this Commission in its opinion in the Osage

case (3 I.C.C. 236) which is as follows:

"Market price is the highest price estimated in terms of money which land will bring if exposed for sale in the open market with a reasonable time allowed to find a purchaser buying with knowledge of all the uses and purposes to which it is best adapted and for which it is capable of being used."

Petitioners contend that there was, in fact, no "open market" for the land and that the value to be found must be by applying to the situation as determined by the facts, established and generally recognized principles of appraisal, and by assuming that buyers and sellers were free to negotiate without compulsion or political restrictions. (See Pet. Brief, pages 2 and 3).

Petitioners present to the Commission voluminous evidence as to the nature of the lands involved; also evidence of the demand therefor and for similar lands immediately prior to the valuation date and continuing immediately thereafter, together with the development of the contiguous territory. Much evidence was introduced showing sales, both large and small, of lands in the vicinity of the land to be valued during the years immediately prior and immediately after the valuation date. Evidence was also introduced as to the population trends of the time and as to the general economic conditions. The viewpoint of contemporaneous public opinion as to the character of the lands, their desirability and value were put in evidence.

Based on the evidence as above outlined, the opinion of Mr. Berkley W. Duck, an expert appraiser, together with the basis of same and the method by which his appraisal was reached was put in evidence. The exhaustive report of Mr. Duck and his appraisal of the fair market

value of the area involved, as of date of October 6, 1818, to be \$1.8763 per acre, is in evidence and constitutes the principal basis upon which petitioners ask this Commission to find the land to have the market value of \$1.8763 per acre, as of October 6, 1818.

The defendant puts in evidence much historical matter showing the development of the northwest country of which the land involved is a part, together with the history of the settlement of that territory; geological and geographical facts revealing the conditions faced by the first settlers in 1818, together with the economic and financial conditions of the country at that time and for the immediate years thereafter. Defendant also put in evidence voluminous records of the sale of lands in Indiana (in which state the tract involved is located) by the United States Government beginning with the year 1801 through the year 1818, together with records of sale for the same years, of lands located in the various states northwest of the Ohio river. Based on all the evidence thought to have been available and knowledgeable in 1818, the said appraiser, Paul Starrett, evaluated Area 99, as a whole, as of October 6, 1818, at 20¢ per acre or \$1,403,000.

The witness, Starrett, explained that in the absence of sales of large tracts, comparable in size, location, character and time, informed purchasers would have made estimates of what the land might be reasonably expected to sell for in the future and at what period of time it would require to sell, in order to determine the 1818 value of the land; defendant's appraiser fixed the value based on the capital cost that he thought could be sustained. He calculated the interest

and other carrying charges and what the surveying, sale and other expenses might be expected to be. (See Def. Brief, p. 41). Based on such matters as indicated, the witness evaluated the land as of 1818 as stated at 20¢ an acre, or a total of \$1,400,000.

It will thus be seen that appraisers, both for the petitioners and for the defendant, relied upon what they thought the land involved could be reasonably expected to be resold for to actual settlers in small tracts over a period of approximately twenty years. The appraiser of petitioners is shown (Fdg. 32) to have based his value on October 6, 1818, at \$1.8763 per acre, on an expected resale of 90% of the land at \$4.00 per acre and 10% of it at \$2.00 per acre. The appraiser for the defendant based his valuation of the land at 20¢ an acre as of October 6, 1818, upon the assumption of a resale of three-fourths of the total acreage at \$1.10 an acre and one-fourth of same as non-saleable (Fdg. 44).

The purpose of submitting the reports and testimony of real estate appraisers is to aid the Commission in making this determination. The determination itself, however, is to be made by the Commission on the facts established by the evidence. An appraisal by an expert is no more than his opinion. Opinion evidence is received when the person giving the opinion is a qualified expert in his field, however, "opinion evidence is not evidence of fact." The weight to be given to opinion evidence depends upon the qualifications of the witness in the field in which he testifies and whether he takes all relevant facts into account and the correctness of the facts, upon which the opinion evidence is

