

BEFORE THE INDIAN CLAIMS COMMISSION

PAWNEE INDIAN TRIBE OF OKLAHOMA,)
 consisting of the four confeder-)
 ated bands of Pawnee Indians,)
 namely: Chaui or Grand Pawnee,)
 Kitkehahki or Republican Pawnee,)
 Pitahauerat or Tappage Pawnee,)
 and Skidi, Loup or Wolf Pawnee,)
)
 Claimant,)
)
 v.)
)
 UNITED STATES,)
)
 Defendant.)

Docket No. 10

Decided: June 26, 1959

OPINION AS TO ADMISSIBILITY OF PETITIONER'S
 EXHIBITS 224, 225, AND 226 AND AS TO
PETITIONER'S MOTION TO STRIKE FILED MAY 6, 1959

Holt, Commissioner, delivered the opinion of the Commission.

During the course of the hearings on valuation held in the above-entitled matter in Omaha, Nebraska, on April 22, 1959, petitioner offered in evidence two graphs and "an economic analysis" report prepared by Mr. John R. Houser. The graphs and report were marked petitioner's exhibits 224, 225, and 226, for identification. At the hearing defendant objected to their admission in evidence and the Commission took the question of the admissibility of petitioner's exhibits 224, 225, and 226 under advisement with instructions to the parties to brief the questions involved.

Petitioner's exhibit 226 is a determination by Mr. John R. Houser of the value of the lands in question based on an economic statistical

analysis of certain factual data which had been assembled by two real estate men, E. B. Horton, Jr., and T. C. Hitchings, Jr. and introduced into evidence in this case. Mr. Houser's method of determining the land values involved was necessary, he stated, because the recognized approaches of expert land appraisers to the problem of evaluating land at an early date, where no actual market existed for the land, are, in his opinion, unsatisfactory and result merely in an "educated guess" as to the value.

The Commission has thoroughly examined Mr. Houser's report (Exhibit 226) and the graphs (Exhibits 224 and 225), which are enlargements of the two graphs following page 9 of his report, and finds that his novel, theoretical method of determining land value is unacceptable as a basis upon which this Commission could base its conclusions of value of the lands in question. The defendant's objections to the admissibility of petitioner's Exhibits 224, 225 and 226 are sustained, and the exhibits will not be admitted in evidence.

This Commission is reluctant to exclude evidence of value presented by the parties' experts where, even though the theories upon which their conclusions of land value are unacceptable, there is data which can aid the Commission in reaching its ultimate determination. But in the case of petitioner's exhibits 224, 225, and 226 there is no factual data which can be considered in valuing the Pawnee lands. Such data is elsewhere in evidence in various documents including those prepared by petitioner's witnesses, Messrs. Horton and Hitchings. So the exclusion of exhibits 224, 225 and 226 from evidence will in no way deprive the Commission of

the valuable data assembled by petitioner which bears on the question of the value of the Pawnee lands.

Mr. Houser's report is merely a series of mathematical and statistical computations which have no judicially accepted basis for valuing land. It is, by his own admission, a theoretical approach to the problem by the application of various economic principles. On its face the report of Mr. Houser has failed to take into consideration the recognized factors which bear on market value, as set forth by the courts and this Commission. Otoe and Missouri Tribe of Indians v. The United States of America, 131 C. Cls. 593; Nooksack Tribe of Indians v. The United States of America, 6 Ind. Cl. Com. 578; Osage Nation of Indians v. The United States of America, 3 Ind. Cl. Com. 217.

His strong reliance on U. S. Census figures as to the value of lands places his entire report on weak ground, and the further application of factors based on assumption and speculation render his ultimate conclusions valueless in arriving at a determination of the value of the Pawnee lands. As we stated in The Snake or Piute Indians of the Former Malheur Reservation in Oregon v. United States of America, 7 Ind. Cl. Com. 526, 569, "such mathematical processes cannot provide a judicially acceptable basis for arriving at the fair market value . . . Ascertainment of value in cases of this type cannot be made by such artificial rules. The problem of evaluating land on the frontier of the United States . . . is not subject to solution by application of formulas and equations."

Petitioner's motion to strike the opinion and report of John Muehlbier and William G. Murray is denied. While the Commission recognizes that the reports may be deficient in certain respects and based in part on methods rejected by the courts and this Commission, it appears that both reports contain much valuable data which the Commission may properly consider in this case. The Commission will of course exclude from consideration all objectionable aspects of the reports.

Wm. M. Holt
Associate Commissioner

I concur:

Edgar E. Witt
Chief Commissioner