

BEFORE THE INDIAN CLAIMS COMMISSION

THE OSAGE NATION OF INDIANS,)	
)	
Petitioner,)	
)	
vs.)	Docket No. 126
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

Decided: July 30, 1959

FINDINGS OF FACT

The Commission makes the following findings of fact:

1. The Osage Nation of Indians, petitioner, is the successor to the Great Osage and Little Osage Tribes of American Indians, and is a tribal organization recognized by the Secretary of the Interior as having authority to represent the Osage Indians. The Commission finds, as it has in a previous action, that the petitioner, an identifiable group of American Indians residing within the territorial limits of the United States, is entitled to maintain this suit filed under the provisions of the Indian Claims Commission Act of August 13, 1946 (60 Stat. 1049). The Osage Nation of Indians v. The United States of America, 1 Ind. Cl. Comm. 43.

2. The Osage Tribe of Indians having sold their lands in Kansas, there was transferred from the proceeds of such sale to the credit of the Cherokee Nation the sum of \$1,099,137.41 in payment for a tract of the Cherokee's land (Act of March 3, 1873, 17 Stat. 530). On June 14, 1833, the Cherokee Nation deeded the tract to the United States in

trust for the use and benefit of the Osage and Kansas Indians (Pet. Ex. 12, p. 391, 392). That tract, consisting of 1,470,559 acres, comprises the present Osage County in the State of Oklahoma.

3. The Osage Indians occupied the acquired lands in common until they were allotted to the members of the tribe pursuant to the Act of June 28, 1906 (34 Stat. 539). That Act provided, among other things, that the surface of all of the land belonging to the Osage Tribe of Indians in Oklahoma Territory, with the exception of an insignificant amount, should be divided among the members of the tribe; that each member should designate 160 acres of his or her allotment as a homestead, the same to be inalienable and non-taxable until otherwise provided by act of Congress; that by a process of selection by the Indians each Indian was to select 480 acres of land, and the balance of the land was to be divided among the Indians by a commission; that the lands of each Indian, other than his homestead, should be inalienable for 25 years and non-taxable for 3 years, except that an adult Indian might, upon petition and proper showing, be granted by the Secretary of the Interior a certificate of competency, in which case his lands, other than his homestead, should become taxable and alienable by him; and that "nothing herein shall authorize the sale of the oil, gas, coal, or other minerals covered by said lands, said minerals being reserved to the use of the tribe for a period of twenty-five years, and the royalty to be paid to said tribe as hereinafter provided: and provided further, That the oil, gas, coal, and other minerals upon said allotted lands shall become the property of the individual owner of said land at the

expiration of said twenty-five years, unless otherwise provided for by Act of Congress." (Sec. 2, Seventh)

Pursuant to the Act, the tract was allotted to the members of the Osage Tribe, which then numbered 2,229, with each person receiving an average of about 657 acres.

4. With respect to the oil, gas, coal and other minerals which were reserved to the use of the tribe the Act further provided:

SEC. 3. That the oil, gas, coal, or other minerals covered by the lands for the selection and division of which provision is herein made are hereby reserved to the Osage tribe for a period of twenty-five years from and after the eighth day of April, nineteen hundred and six; and leases for all oil, gas, and other minerals, covered by selections and division of land herein provided for, may be made by the Osage tribe of Indians through its tribal council, and with the approval of the Secretary of the Interior, and under such rules and regulations as he may prescribe: Provided, That the royalties to be paid to the Osage tribe under any mineral lease so made shall be determined by the President of the United States: And provided further, That no mining of or prospecting for any of said mineral or minerals shall be permitted on the homestead selections herein provided for without the written consent of the Secretary of the Interior: Provided, however, That nothing herein contained shall be construed as affecting any valid existing lease or contract.

SEC. 4. That all funds belonging to the Osage tribe, and all moneys due, and all moneys that may become due, or may hereafter be found to be due the said Osage tribe of Indians, shall be held in trust by the United States for the period of twenty-five years from and after the first day of January, nineteen hundred and seven, except as herein provided:

First. That all the funds of the Osage tribe of Indians, and all the moneys now due or that may hereafter be found to be due to the said Osage tribe of Indians, and all moneys that may be received from the sale of their lands in Kansas under existing laws, and all moneys found to be due to said Osage tribe of Indians on claims against the United States,

after all proper expenses are paid, shall be segregated as soon after January first, nineteen hundred and seven, as is practicable and placed to the credit of the individual members of the said Osage tribe on a basis of a pro rata division among the members of said tribe, as shown by the authorized roll of membership as herein provided for, or to their heirs as hereinafter provided, said credit to draw interest as now authorized by law; and the interest that may accrue thereon shall be paid quarterly to the members entitled thereto, except in the case of minors, in which case the interest shall be paid quarterly to the parents until said minor arrives at the age of twenty-one years: Provided, That if the Commissioner of Indian Affairs becomes satisfied that the said interest of any minor is being misused or squandered he may withhold the payment of such interest: And provided further, That said interest of minors whose parents are deceased shall be paid to their legal guardians, as above provided.

Second. That the royalty received from oil, gas, coal, and other mineral leases upon the lands for which selection and division are herein provided, and all moneys received from the sale of town lots, together with the buildings thereon, and all moneys received from the sale of the three reservations of one hundred and sixty acres each heretofore reserved for dwelling purposes, and all moneys received from grazing lands, shall be placed in the Treasury of the United States to the credit of the members of the Osage tribe of Indians as other moneys of said tribe are to be deposited under the provisions of this Act, and the same shall be distributed to the individual members of said Osage tribe according to the roll provided for herein, in the manner and at the same time that payments are made of interest on other moneys held in trust for Osages by the United States, except as herein provided.

Third. There shall be set aside from the royalties received from oil and gas not to exceed fifty thousand dollars per annum for ten years from the first day of January, nineteen hundred and seven, for the support of the Osage Boarding School and for other schools on the Osage Indian Reservation conducted or to be established and conducted for the education of Osage children.

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.

SEC. 5. That at the expiration of the period of twenty-five years from and after the first day of January, nineteen hundred and seven, the lands, mineral interests, and moneys, herein provided for and held in trust by the United States shall be the absolute property of the individual members of the Osage tribe, according to the roll herein provided for, or their heirs, as herein provided, and deeds to said lands shall be issued to said members, or to their heirs, as herein provided, and said moneys shall be distributed to said members, or to their heirs, as herein provided and said members shall have full control of said lands, moneys, and mineral interests, except as hereinbefore provided. (34 Stat. 539, 543-545)

5. Thereafter leases for oil and gas purposes were made by the Osage Tribe, through its Tribal Council, with the approval of the Secretary of the Interior. Producing oil and gas wells were drilled on the Osage lands and royalties were paid to the members of the tribe. The headright shares for the fiscal years 1913 through 1920 were:

June 30, 1913	\$	320.14	
" " 1914		799.88	
" " 1915		272.68	
" " 1916		394.93	
" " 1917		2,719.96	
" " 1918		3,672.33	
" " 1919		3,920.00	
" " 1920		8,090.00	(Pet. Ex. 12, p. 165)

Thus in 1920 a typical Osage family, consisting of an allotted husband and wife and three allotted children, received an income from headright shares in excess of \$40,000.00. The Report of the Commissioner of Indian Affairs for the Fiscal Year ended June 30, 1920 stated, "In the northeast corner of Oklahoma is the Osage Indian Reservation, belonging to about 2,100 Indians, who have been called the richest people, per capita, in the world. This section of the great State of Oklahoma is one of the wonderful oil-producing fields in the country, and its wells daily pour great wealth upon these Indians" (Def. Ex. 8, p. 41).

Under the provisions of the 1906 Act, the total income credited to the account of each member was required to be paid to him quarterly. In a field report of the Osage Agency, completed April 30, 1953, entitled, "The Osage People and Their Trust Property," the effect of this substantial income from oil and gas royalties was reported to have led during the 1917 to 1920 period "to extravagance and reckless spending. Many tribesmen became deeply involved in debt despite their substantial incomes; guardianships under the County Court grew into big business; and merchants and professional people took advantage of the Indian's ignorance" (Pet. Ex. 7, pp. 16, 17).

6. (a) In 1920 a bill, S. 4039, was introduced by Senator Robert L. Owen, of Oklahoma, to amend section 3 of the 1906 Act. On March 3, 1920, an identical bill, H.R. 12886, was introduced in the House of Representatives. Both bills provided, among other things, that the minerals covered by the lands of the Osage be reserved to the Osage Tribe for an additional 25 years from the original expiration date, which would have been 1931, and further, that the State of Oklahoma be authorized to levy a gross production tax, not to exceed 3%, upon all oil and gas belonging to oil and gas lessees produced in Osage County and that the Secretary of the Interior be authorized and directed to pay to Osage County 3% of the Osage Tribe's royalties, such money to be used only for the construction and maintenance of roads and bridges in Osage County.

(b) There followed lengthy hearings by both Senate and House Committees on the proposed legislation. The Senate Committee on Indian

Affairs submitted its report No. 704 on January 18, 1921. In that report, which recommended passage of the bill virtually as introduced, the Committee stated that the extension of the mineral reservation period was required in order that the Osage Tribe might have time to realize the values of the oil under the lands, and to assure that each member of the Tribe would receive his equal share. The Indians had expressed their approval of the bill, and its passage had been recommended by the Indian Office and the Secretary of the Interior.

The Senate Committee further reported that, since the original Act of 1906 was passed before Oklahoma became a state, no provisions had been made for the payment of taxes on the oil produced in the territory. Accordingly, the proposed bill included provisions permitting the State to impose gross production tax of not more than 3% on the lessees' production and a payment of 3% of the royalties received by the Osage Tribe to be used by Osage County only for the construction and maintenance of roads and bridges therein.

The provisions of the bill, the Senate Committee concluded, would serve the better interests of the Osages, the oil and gas lessees, the State of Oklahoma and the public generally (Def. Ex. 6, p. 3).

(c) The House Committee on Indian Affairs in its Reports 1278 and 1377 recommended several important amendments to the bill. A recommended section was added to the bill which was designed to curb extravagant spending by limiting payments to Osages who did not have certificates of competency and providing that the surplus income should be invested under the supervision of the Secretary of the Interior for the benefit

of the individual Osage. In explaining the necessity for this section the Committee wrote:

"Section 4: In the hearings it was disclosed that, during the past few years, the Osage Tribe has been receiving what seemed to the committee fabulous sums of money--far beyond their requirements and beyond the desire of some of them--and so your committee has provided in this section a provision for the care and the responsibility of these Indians, and the prospects are that the amount which would be received by them under the present law would greatly increase, and so the committee has thought it wise to prescribe methods for the benefit of these Indians, and yet leaving them, it is believed in the best judgment of the committee, a sufficient amount of money to properly care for their families and educate their children. During the present fiscal year each of these Osages--some 2,100 in number--will receive not less than \$10,000 cash, in quarterly payments.

It was disclosed that there were families, including as many as seven people, each one of whom drew the amount above mentioned, and the parent has the right of the disposal of all this money. Your committee, after careful consideration, has presented a section which will provide for the impounding of a large amount of these funds for the future benefit of these people, particularly the minors. There is a provision in this bill which will automatically make these children citizens, and at the time they will come into possession of the funds which have been impounded for them and credited to their individual accounts.

It has also been provided that any of these Indians who are found competent, without regard to their quantum of Indian blood, shall be declared, and in that event they would come into possession of any funds which had been so impounded.

Your committee found that a very large portion of the money which is being paid to these Indians quarterly is being wasted in riotous living, and much of it is being taken away from the Indians by unscrupulous persons. In fact, it seemed to the committee that the manner in which this matter is being at present handled is almost criminal." (Def. Ex. 4, p. 2)

The House Committee also amended the taxation provision of the bill. The Report stated:

"Section 5 deals with taxation. It will be noted that it is provided that the Osage Tribe shall be taxed, beginning with the passage of this act, as are all other citizens of Oklahoma under the tax laws of that State. And it will also be noted that the Secretary of the Interior is authorized and directed to pay to Osage County, Okla., an additional sum, equal to 1 per cent of the amount received by the Osage Tribe of Indians from royalties from the production of oil and gas, which sum shall be used by said county only for the construction and maintenance of roads and bridges therein. It is believed that this provision, if properly applied, will enhance the value of all Osage property, on the principle that good roads and bridges enhance the value of property in every other section of the country; and, since there is plenty of money for the purpose, it certainly will be a great advantage to the Osages themselves as well as to those who must carry on business relations with them." (Def. Ex. 4, pp. 2, 3)

7. The Osage Tribe agreed to the taxation provisions as provided in the original bill, i.e., that 3% of the oil and gas royalties should be paid to Osage County to be used exclusively for the construction and maintenance of roads and bridges therein. In a supplemental statement by the Osage Tribal Council in support of the proposed legislation the House Subcommittee of the Committee on Indian Affairs was advised:

"We now desire to say that the bill introduced by Representative Howard meets with our approval and with the approval of the Osage people generally.

"The bill provides for a 3 per cent gross production tax on the oil and gas produced from Osage lands, which belongs to the oil and gas lessees. It is our understanding that the oil and gas lessees have consented to this provision of the bill and are giving the bill their support. The bill also provides that the Secretary of the Interior shall pay to Osage County, Okla., an amount equal to 3 per cent of the royalties received by the Osage Tribe of Indians from oil and gas, this money to be used by the county in road and bridge construction and maintenance. This is satisfactory to us and to the tribe. You will note there is a distinction between the 3 per cent gross production tax to be paid by the lessees and the 3 per cent of the Osages' money, which is to be paid to Osage County, in this: All of the money to be paid by the Osages goes to the construction and maintenance of roads and

bridges in Osage County, while the money paid by the lessees would, under the law, go to the State, and one-third of the same would be paid back to Osage County, and one-half of that one-third would be used in the county for road and bridge construction and maintenance, and one-half to be used for the benefit of the common schools of the county. We feel that part that the Osages pay ought to be used exclusively in the county, as provided in the bill. At no place in the State do the Indians pay any tax on the royalty received by them from restricted lands, and, if this bill should pass, the Osages would be the only Indians in the State that would be giving up any part of their funds for the benefit of the public generally.

"We also desire to call your attention to the fact that Osage County is a very sparsely settled county, having, perhaps, the smallest population in proportion to its area of any county in the State--especially the rural population.

"Your attention is also called to the fact that perhaps as much or more very heavy truck hauling has been over the very bad, rough roads in Osage County than in any other county. This heavy hauling is absolutely necessary for the development of oil and gas production in the county. Consequently a very much larger proportion of road and bridge funds are necessary in Osage County, in order to enable the development to proceed, than is necessary in any other county in the State, in proportion to the population and taxable wealth of the county. We feel that inasmuch as the operators are willing to give up to 3 per cent of the gross production of their oil and gas, that we ought to be willing to give up 3 per cent of our part of the oil and gas production for the purpose of building and maintaining roads. In view of the facts stated above, which we think can not be contradicted successfully, we feel that we are not asking anything unreasonable or unfair, when we do ask that provision be made that all of the money paid by the tribe be used for the purpose of road and bridge construction and maintenance. It certainly is to the public benefit that it be so used, and it will enable the county and State to secure just that much more Federal aid, than would be secured were this money to be diverted to other channels. In addition to aiding in the oil and gas development of the county, it would be of great benefit to the rural population in the county, which is very scattered, because good roads will add to the land values in the county, and will bring farmers upon lands where no farmers now live" (Def. Ex. 18, p. 408, 409).

8. The subsequent amendment in the taxation section to subject the Osages to the same State tax on their oil royalties as was paid by all other citizens of Oklahoma and the addition of a 1% payment from the royalties for construction and maintenance of roads and bridges in Osage County, was not submitted to the Indians for comment. No formal protest was filed with respect to the proposed amendment although J. George Wright, Osage Agent, stated that:

"The Principal Chief, together with several members of the Osage Council, Mr. Leahy and myself, were in Washington at the time this legislation was adopted by the House Indian Committee, and all objected and protested against such provision informally to different members of the Committee, although I do not understand that there was any formal hearing on the subject." (Pet. Ex. 16, Letter from Assistant Secretary of the Interior to the Attorney General, dated Feb. 17, 1942)

Immediately after the passage of the Act, on April 18, 1921, the Osage Tribe through its Tribal Council adopted a formal protest against the imposition and collection of the 1% payment.

9. The original bill S. 4039 passed the Senate on January 26, 1921. It passed the House of Representatives on March 1, 1921, with amendments, including the one mentioned above which included the 1% payment. On the same date the Senate concurred in the House amendment to the bill and passed it. It was approved by the President and became the Act of March 3, 1921 (41 Stat. 2149).^{1/}

10. In accordance with the provisions of the Act the State of Oklahoma collected a gross production tax upon all oil and gas produced

^{1/} The reservation of the mineral rights for the use of the Tribe has been further extended until 1983 (52 Stat. 1034).

in Osage County. From the date of passage of the Act of March 3, 1921, until April 1, 1935, the rate of said tax was 3% and since that date the rate has been 5%.

During the first period when the tax was at a 3% rate, the law provided that one-third of the sum collected should be returned to the county to be used one half for the county school fund and one half for the county road and bridge fund. The April 1, 1935, amendment reduced the county's share to two tenths of the proceeds, to be divided equally between the county highway construction and maintenance fund and the maintenance of schools fund.

11. The Secretary of the Interior paid to Osage County 1% of the Osage Tribe's royalties until that provision of section 5 of the 1921 Act was removed by the joint resolution of April 25, 1940 (54 Stat. 168). During that period the sum of \$1,092,338.71 was paid to Osage County, which sum is the item in controversy in this action. The entire amount was used by Osage County for the building and maintenance of roads and bridges therein, as specified by the Act.

12. During the period from 1906-1921 the oil and gas production of Osage County was not subject to any state taxation because the minerals had been held to be under the protection of the Federal Government and hence not taxable by the State. Indian Territory Illuminating Oil Co. v. State of Oklahoma, 240 U. S. 522; Large Oil Co. v. Howard, 248 U. S. 549.

13. In 1920 the census figures indicate that the Indian population of Osage County was 1,208 out of a total population of 36,536 (Pet. Ex. 15).

However, the Csages owned a much greater proportion of the land in Osage County. In a statement filed at the hearings conducted by the House subcommittee, Mr. T. J. Leahy stated that two-thirds of the Osage County lands were still held by the original Indian allottees (Def. Ex. 18, p. 428). During the course of the Senate Committee hearings, Arthur Bonnewcastle, principal chief of the Osage Tribe, told the Committee that about 400,000 acres of the allotted land had been sold (out of the approximately 1,470,000 originally allotted). Of course this does not mean that all of the approximately 400,000 acres sold passed to non-Indians since other Indians were among the purchasers of the 400,000 acres (Def. Ex. 11, p. 25). In its reply brief petitioner stated that 75% of the land was owned by individuals who were of Osage ancestry (Pet. Reply Brief, p. 31). The Commission finds that the Osages were the principal land owners in Osage County owning, at the time of the enactment of the 1921 Act, about 65 to 75 per cent of the lands. The Osage Tribe also, at that time, owned the mineral rights to all of the land in Osage County.

14. The Commission finds that the expenditure of \$1,092,338.71 over a nineteen year period for building and maintenance of roads and bridges in Osage County was a distinct advantage to the residents and property owners of Osage County and was beneficial to the continuing development of the oil and gas production in Osage County. These benefits inured to the Osage Tribe and the members thereof.

15. The Commission finds that the payment of \$1,092,338.71, representing 1% of the oil and gas royalties of the Osage Tribe, as provided

by section 5 of the Act of March 3, 1921, did not violate the standards of fair and honorable dealings between defendant and the petitioner and, therefore, petitioner is not entitled to recover said sum under the provisions of Section 2, Clause (5) of the Indian Claims Commission Act.

Edgar E. Witt
Chief Commissioner

Wm. M. Holt
Associate Commissioner