

BEFORE THE INDIAN CLAIMS COMMISSION

THE OSAGE NATION OF INDIANS,)

Petitioner,)

vs.)

THE UNITED STATES OF AMERICA,)

Defendant.)

Docket No. 126

Decided: July 30, 1959

Appearances:

Delmas E. Martin, with whom were Paul M. Niebell and Warren Watkins, Attorneys for Petitioner.

Frederick C. Ward, Jr., with whom was Mr. Assistant Attorney General, Perry W. Morton, Attorneys for Defendant.

OPINION OF THE COMMISSION

Holt, Commissioner, delivered the opinion of the Commission.

The petitioner in this case, The Osage Nation of Indians, 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 has found in this case, as it has in the previous action of The Osage Nation of Indians v. The United States of America, 1 Ind. Cl. Comm. 43, that petitioner is entitled to maintain this action before the Commission.

Petitioner seeks a recovery of the sum of \$1,092,338.71, which amount represents payments from the Osage Tribe's oil and gas royalty

funds to the County of Osage, Oklahoma, for use in the construction and maintenance of roads and bridges in that county. The petitioner originally alleged that the claim set forth in this action was one in law and equity as well as a claim based upon fair and honorable dealings not recognized by any existing rule of law or equity. However, the Court of Claims had found in Congressional Referral Case No. 17763 that the Osage Tribe had no legal or equitable right to recover the claimed sum (The Osage Tribe of Indians v. The United States, 102 C. Cls. 545) and petitioner stated at the hearing in this matter on November 24, 1958, that the claim is limited to one based on fair and honorable dealings under Section 2, Clause 5 of the Indian Claims Commission Act (Tr. p. 3).

Briefly, the pertinent facts, which are largely agreed to by the parties, are as follows.

The Osage Tribe of Indians sold their lands in Kansas and bought from the Cherokee Nation a tract consisting of some 1,470,559 acres of land which now comprises Osage County in the State of Oklahoma. Payment for the tract, in the amount of \$1,099,137.41, was made to the Cherokees from the proceeds of the sale of the Kansas land and on June 14, 1883, the land was deeded by the Cherokee Nation to the United States to be held in trust for the use and benefit of the Osage and Kansas Indians.

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, hereinafter referred to as the 1906 Act. That Act provided, among other things, that the surface of all the land belonging

