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, vs. THE UNITED STATES OF AMERICA, Defendant.	Docket No. 67 (Consolidated) with Dockets Nos. 124, 314 and 337 Intervenors: Dockets Nos. 15-D, 29-B, 89, 311 and 315

Dated: June 30, 1960

OPINION

Watkins, Associate Commissioner dissenting:

With all due respect to the views of my colleagues I cannot agree with the conclusions reached by the majority in this most important case. In deference to their desires to release this day the findings and opinion in this case, plus the fact that I received the final version of them this morning, I am compelled to file only a short statement at this time setting forth in general terms some of my objections to the results reached by the majority. In the event this Commission should fail to permit further opportunity to re-examine the entire record on the question of value, I reserve the right to spell out in more detail my reasons for taking the path I have chosen.

It goes without saying that this is a most significant case. That it has moved laboriously through the judicial processes of this Commission

and the Court of Claims without reaching a satisfactory conclusion, is indeed most tragic. In the course of its travels, the accumulated record both documentary and spoken has grown to enormous proportions. Therefore, if only to strengthen the possibility that this case might reach a decision which is really final we should at all costs review the entire record carefully and prepare our Findings and Opinion accordingly.

First of all I must take exception to the fact that this Commission for all intents and purposes has again set adrift the same leaky findings which the Court of Claims painstakingly reviewed and criticized through some 40 or 50 pages of its opinion July 13, 1959. I cannot see how merely raising the price per acre is the panacea which will make these same findings more palatable today than they were one year ago. I seriously doubt that the Commission has compiled with the Court directive in remanding this case, "for further consideration and further proceedings if necessary, consistent with this opinion."

Indeed, the Court found many things objectionable in the findings and conclusions as well as in the reasons or lack of reasons in support thereof:

> "In view of those findings of fact discussed above which we have found to be supported by substantial evidence, we are of the opinion that the Commission has not given adequate or proper reasons for its conclusions that the land ceded in 1818 was worth 75 cents per acre, as it is required to do by Section 19 of the Indian Claims Commission Act. Furthermore, we hold that those same findings, findings 6 through 31, do not support the Commission's ultimate findings of value. In addition, as noted earlier herein, certain of the Commission's findings following finding 31 are not findings at all, but are

> merely recitations of evidence, other findings have no bearing on the issues for decision, and still others are not supported by substantial evidence and are contradictory to earlier findings which are supported by substantial evidence. Finally the record contains some material evidence which has not been made the subject of any findings." (p. 45) (Emphasis supplied)

Not only is the above statement a strong indictment of the findings in this case but it amounts to what for the want of a better word is a bill of particulars. In face of this, the Commission with the exception of striking two sentences in the original finding 36 and rewriting their ultimate finding 46 to indicate that the value of the subject lands should be $1.15 per acre, has put its stamp of approval on the original findings. To pass over the faulty findings by now regarding them as "to be of little, if any relevancy or material to the issue of value" is an unsual way in which to answer the court's objections.

It is true that the Commission did find it necessary to take additional testimony and other evidence, and with this action I am in full agreement. But this was limited for the most part to the single question of the amount of swamp area involved in the subject land and although the question is discussed in the opinion no additional findings on this new evidence were made either one way or the other.

Turning now to those findings which are supported by "substantial evidence," I need only cite one which has raised serious doubts in my own mind that the Commission's conclusion, namely:

> "That a prospective purchaser could have expected to re-sell over a period of 20 years this unimproved land at from $2.00 to probably $4.00 or $5.00 per acre: that the expenses and donations and hazards to which reference has been made would not justify him in paying more than $1.15 per acre." (Page 15, opnion, 6/30/60)

is indeed a reasonable one.

The Commission's Finding number 23 indicates that, in 1820, of the 7,036,000 acres contained in the subject area, 6,717,815 acres were available for sale and sold to the settlers. These sales represented 83,000 separate transactions. The land law in effect in 1820 was the Act of April 24, 1820 (3 Stat. 566), which set the price for the public or private sale of land at $1.25 cash per acre and the minimum acreage at 80 acres. Apparently there were no restrictions on the amount of land in 80 acre sections that any single cash paying purchaser could acquire under the Act. During the 20 year period from 1820 through 1839 approximately 91.7% of the available land was disposed of. This gives an annual rate of disposition of 4.6% which is pretty good. However, this figure is somewhat misleading when you consider that during the first 10 years, when presumably the choice tracts are available, the annual rate of disposition was 2.27%, not a particularly remarkable rate. In fact almost 50% of the available land was not disposed of until after the 14th year and approximately 42% was sold during the 15th, 16th, 17th and 18 years.

The Commission's Finding 23 then contains this statement which is rather significant:

> "The land law then in effect permitted a minimum purchase of 80 acres, and it appears that few settlers took more than the minimum acreage; the average sale is less than 82 acres." (Emphasis supplied)

If, as the Commission has concluded, the quality, desirability, and accessibility of these lands was far superior to the adjacent lands; that the people in Indiana were well able to pay cash for these lands;

and, that their ability to buy land was unaffected by adverse economic conditions of the country in 1818, then why such a slow rate of disposal in the first ten years these lands were available in 80 acre tracts at $1.25 per acre and why during the entire 20 year period, when the then minimum retail price was still $1.25 per acre were there no apparent large individual purchases?

The answer to these and related questions undoubtedly hinge upon the desirability of land, and the ability of the individual purchaser to pay for it. Either the minimum 80 acres was all the homesteader could possibly afford, or, if he did have plenty of money, that is all the land he wanted at $1.25 per acre. Certainly there is no evidence in the record of any significant quantity being sold at any time for more than $1.25 per acre.

It is true that I may be indulging somewhat in hindsignt, and emphasizing events occurring after the date of evaluation. Nevertheless, in regard to events occurring after the valuation date, the Commission in its opinion has suggested the following application:

> "These facts are to be considered only as confirmation of the correctness of findings on value as made."

With this in mind I cannot see the applicability of the facts found by the Commission in Finding No. 23 as being confirmatory of the correctness of the Commission's findings and conclusion that a prospective purchaser could have expected to re-sell the entire subject area over a 20 year period in unimproved 80 acre tracts beginning in 1818 at from $2.00 to probably $4.00 or $5.00 per acre. This conclusion is particularly disturbing in light of the Commission's previous statement in its former

opinion, to-wit:

> "We think the assumption of re-sale of 90% at $4.00 per acre is unwarranted." (4 Ind. Cl. Com. 405)

It should be obvious that Finding 23 could probably confirm with as much or more logic a lower figure than $1.15 per acre established in the majority opinion as the market value of the entire tract in question in 1818.

For these and other reasons I must respectfully dissent.

/s ARTHUR V. WATKINS
Associate Commissioner