

BEFORE THE INDIAN CLAIMS COMMISSION

THE SAC AND FOX TRIBE OF MISSOURI,)	
)	
Petitioner,)	
)	
v.)	Docket No. 195
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

Decided: May 1, 1964

Appearances:

Stanford Clinton, with whom was Louis L. Rochmes, Attorneys for Petitioner.

W. Braxton Miller, with whom was Mr. Assistant Attorney General Ramsey Clark, Attorneys for Defendant.

OPINION OF THE COMMISSION

Scott, Associate Commissioner, rendered the opinion of the Commission.

The background of the claim asserted by petitioner, the Sac and Fox of Missouri, arose by virtue of the agreement in the Treaty of September 16, 1836, by defendant to set aside a tract of land west of the Missouri River for petitioner and the Iowa Tribe in return for the cession of the land held by petitioner and the Iowa Tribe between the then State of Missouri and the Missouri River. The treaty called for an area of 400 sections to be divided between petitioner and the Iowa Tribe. Petitioner received the lower or south 200 sections and the Iowa received the upper or north 200 sections. The Sac and Fox

portion of this area is shown on Royce's Map, Kansas 2, as Area 324. It is located in northeastern Kansas and comprises parts of Townships 1 and 2 South, in Ranges 15, 16, 17 and 18 East, and parts of Township 2 South, in Ranges 19, 20, 21, and 22 East.

Petitioner continued to own by recognized title and to occupy these 200 sections until they were ceded under the Treaty of May 18, 1854, with petitioner reserving 50 sections of land to be located either in the western part of the tract or to the north and northwest of the tract and south of the Great Nemaha River. This made a supposed cession of 96,000 acres, i.e., 128,000 acres less 32,000 acres reserved. However, when the area was surveyed an error had been made and there was less than 400 sections in the original tract. To compensate for this error it was necessary that 17,000 acres be added in order to make the 96,000 acres. The only place where this could be added was on the west side of the Sac and Fox area. The additional acreage is shown as Area "A" on defendant's Exhibit 2. The consideration for this cession was \$48,000 payable in four annual installments. The first payment of \$15,000 was made in October 1854, the second of \$15,000 in October 1855, the third of \$10,000 in October 1856, and the fourth of \$8,000 in October 1857. The treaty provided that it should be effective upon ratification by the Senate. This was done on July 11, 1854, and this is the date of valuation.

In line with the general policy of the government the surveyors who laid off the Sac and Fox area were instructed to note the physical features of the land while they were in the process of surveying. The

results of these surveyors' notes are among the best evidence of the quality and adaptability of the specific areas to be valued. They, along with contemporaneous accounts of observers and Federal officials, furnish an adequate picture of the Sac and Fox tract for the purpose of an evaluation of that land as of July 1854.

The surveyors' notes show this land to have been well adapted to the production of the typical grain crops of the period. Corn, oats and wheat were the staple produce of the family farms and this area was noted by the surveyors to be well adapted for this purpose. In addition the area had grazing lands which complimented the farm activities of the family-sized units of 80, 120 and 160 acres that were typical of the era of hand labor.

In the more technical language of today the eastern half of the cession is composed of Loess Hills while the western portion is composed of the Loess Drift Hills and is second only to the Loess Hills in productivity. The crop yields of today in Doniphan County in which the eastern part of the cession is located are 157% of the State average, making them the highest in the State. The surveyors in 1855 rated the uplands in the Sac and Fox tract as mostly first-rate rolling prairie with portions, not over one-third, composed of second and third-rate soils. They rated the small creek bottoms as rich first-class soil and the Missouri River bottom as mostly second-rate soil.

The modern description of Brown County, which contains the western part of the cession, reads as follows: "The topography varies from that of gently rolling lands to low hills. Most of the slopes are gentle,

sharp slopes occurring only in the immediate vicinity of the larger streams."

Doniphan County, which contains the eastern portion of the subject lands, is presently described as follows: "The topography of the country is extremely variable. The eastern portion consists of extremely rolling to hilly country while the western portion consists of rolling plains and low hills."

The climate of the area is well suited to general farming. The temperature ranges from a January average of 30° to a July average of 79°. The average growing season ranges from 175 to 178 days in the western end of the tract to a maximum of 190 days in the easternmost part.

Precipitation averages 34 to 35 inches per year with the growing season getting an average of 25 inches. Natural water did not present a serious problem in the area. It was well watered by streams, springs, and by the Missouri River on the east.

Timber and stone were available for housing, fencing and firewood. There were no valuable minerals in the area. There was one coal vein mentioned in Township 2, Range 18 E.

The transportation facilities in the Sac and Fox area were very good. The Missouri River had been opened to steamboat traffic in 1830 and by 1854 this traffic was quite extensive. St. Joseph, located some six miles below the tract, was a major river port by 1854. Some six miles north and west of the Sac and Fox agency lay the town of Iowa Point which was also a port for steamboats. Thus the area was comparatively

easy of access. These ports were valuable for the purpose of shipping produce of the farms downriver as well as supplying the farmers with necessities.

In 1854 the Hannibal and St. Joseph Railroad was under construction towards St. Joseph and its completion was optimistically forecast in a matter of some 30 months. The completion actually took some 60 months.

In addition to the Missouri River and the proposed railroad connection with St. Joseph there was also the St. Joseph and California Emigrant Road which passed through the southern edge of the Sac and Fox tract. This road carried the settlers west to California, Oregon, and the other settlement areas. In 1854 the traffic over this road was quite extensive according to local newspaper accounts. This same source indicated that the steamboats were bringing from 200 to 500 passengers upriver on each trip.

All of the physical features of the Sac and Fox tract contributed to its desirability for use as family-sized farms of 80 to 160 acres and this is the highest and best use for this land.

The population of northeastern Kansas increased rather rapidly as a result of the Missouri River and its transportation facilities, the high quality of the land, and its location on the transcontinental wagon trail. By 1854 the population of the area which included the Sac and Fox tract was 1167 people. This population had been building westward through Missouri and even by 1830 the population density along the Missouri River was 18 to 45 persons per square mile in that area which later became Kansas City. By 1850 the density of the area north

of St. Joseph along the Missouri was 6 to 8 people per square mile up to what became the north boundary of Kansas and from there it was 2 to 6 people per square mile up to Council Bluffs, Iowa.

Under the Graduation Act of August 1854 several million acres of land in Missouri were reduced in price and ranged from \$1.00 per acre to 12-1/2 cents per acre. There was not too much of this land immediately east of the Missouri River opposite the Sac and Fox tract although there was even less in the area to the south and opposite Leavenworth and Kansas City.

Economic conditions in 1854 were depressed although for those farmers who had wheat to sell the prices were high because of the poor crops. The interest rates were generally from 7 to 12 per cent on first-class commercial paper. Based upon the general money market defendant's appraiser came to the conclusion that a prospective purchaser of the Sac and Fox tract would have to pay an 8 per cent interest rate on borrowed capital or else forego that rate on his own money.

Despite the adverse factors such as Graduation Act land available in Missouri and the generally depressed economic conditions there existed a very strong demand for the opening of the Kansas lands to settlement. The general land sales were undoubtedly increased because of the Graduation Act but since the Kansas lands were not included under this Act it could not have contributed in and of itself to the demand. The adaptability of the Kansas land to the needs of the settlers and the more or less general knowledge of this fact along with the influx of immigrants starting about 1845 and reaching its peak of 428,000 people in 1854 formed the basis

for the pressure on the government to open the Indian lands in Kansas to settlement.

As a result of this pressure there came the Act of March 3, 1853 (10 Stat. 226, 239) whereby the President was authorized to negotiate for the Indian lands in what was then called the States of Missouri and Iowa. In the summer of 1853 Commissioner of Indian Affairs Manypenny visited the area for the purpose of preparing the way for these negotiations. He found the Indians generally unwilling to sell. The Sac and Fox indicated their willingness to sell one-half of their land but in a communication from the agent it was indicated that they would probably be agreeable to selling all of it by the time negotiations were under way. Commissioner Manypenny also reported that the lands in question were the best lands in Indian country although lacking in timber. He also indicated that a large number of emigrants travelled through the territory each year because of the wagon roads to New Mexico, California and Oregon.

There were seven treaties made as a result of the negotiations under the Act of 1853. Three of these treaties provided for sale of lands for the benefit of the Indians. The three trust land treaties were with the Peoria, Delaware, and Iowa Indians. All of these lands were appraised for the purpose of selling them at public auction. The Peoria Trust lands (Royce Areas 326, 327, 328, Kansas 2) were well to the south of the Sac and Fox tract and are not of too much interest in the present case. The Delaware Trust lands (Royce Areas 316, 317, Kansas 2) lay some 20 to 25 miles south of the Sac and Fox tract and bordered the Missouri River on its eastern end. However, the Delaware Outlet as it was known extended a distance of 150 miles westward in a 10-mile wide strip and had a considerable disadvantage

as a result thereof. (See Delaware Tribe v. U. S., 8 Ind. Cl. Comm. 178).

The Iowa Trust lands by virtue of their location just north of and contiguous to the Sac and Fox tract are the closest in size and quality. The lands in this tract were appraised under instructions from the Commissioner of Indian Affairs as were the other tracts. The original appraisals of this land resulted in a value of \$1.50 to \$2.50 per acre for the first-class lands, \$1.25 to \$2.50 for second-class lands, and \$1.25 for third-class lands. On instructions from the Commissioner of Indian Affairs the appraisers added 25 cents per acre to this valuation and the final average appraised price per acre for the Iowa Trust lands was \$1.89 per acre.

The eastern Delaware lands were sold at public auction between November 1856 and February 1857 for an average price of \$2.09 per acre. The Iowa Trust lands were sold during June of 1857 for an average price of \$1.92 per acre.

The Sac and Fox were given the right under the treaty to select 50 sections or 32,000 acres as a permanent home. They had the option of making this selection in different areas including the Iowa Trust lands. They chose the 32,000 acres entirely within the Iowa Trust area and as a result an equal amount of land of comparable quality was sold from the Sac and Fox tract for the benefit of the Iowas. These 32,000 acres were located just south of and contiguous with the dividing line between the Iowas and the Sac and Fox and were appraised at prices ranging from \$1.50 per acre to as much as \$4.00 per acre for a small and especially desirable portion. A tabulation of some 94 per cent of the sales of these lands shows an average price of \$1.87 per acre.

These sales figures do not reflect a true market value because of the circumstances under which the sales were held. Squatters had taken possession of much of the trust lands prior to their being placed on sale. They had formed associations to protect their claims against competitive bidding at the sales. Although these "claims" had no legal status they were bought and sold by speculators and prospective settlers. Pressure was brought to bear by these squatters and speculators and Commissioner Manypenny directed that for "bona fide" settlers who had made "lasting and valuable improvements" the appraised price was to be considered the fair value of the lands and competitive bidding was dispensed with. This ruling had the effect of extending pre-emption rights to those people who had squatted on the land prior to its sale date. The only difference was that the price to be paid was the appraised value rather than the government minimum. On the Iowa Trust lands 290 out of 687 purchasers had assigned their land to other parties before the sale was closed, thus indicating that many of the claims were for speculative purposes or at least were not bona fide claims.

The fact that these lands were sold under conditions that prevented a more nearly true market value from being established makes them questionable as a yardstick of value except for the purpose of placing a floor on the value to be determined by this Commission.

Petitioner presented no expert testimony on the value of these lands. It relied upon documentary evidence including the Iowa Trust sales of 1857. It must be borne in mind that while these sales are adjacent to or actually within the Sac and Fox tract that they are still sales of small tracts

rather than one large tract. In final analysis these Iowa Trust land sales cannot be considered too heavily beyond their use to establish a minimum price because of the two factors mentioned above - adverse conditions of sale which tended to depress prices and the small size of the tracts which tended to raise prices.

Defendant's expert witness, Dr. Murray, analyzed the factors mentioned heretofore and concluded that the Sac and Fox land had a value of \$136,000 for the 96,000 acres, or at approximately \$1.42 per acre.

The petitioner in its proposed findings based upon the sales of the Iowa Trust lands and the other documentary evidence arrived at a value of \$720,000 for the 96,000 acres, or approximately \$7.50 per acre.

The Commission has found a value of \$240,000, or at the rate of \$2.50 per acre, which we feel is supported by the factors set forth in the findings of fact made herewith, and which are set forth in less detail in the earlier part of this opinion.

Certain offers, sales, and opinions of value urged by petitioner as sustaining their figure of \$720,000 (this figure is \$719,000 in petitioner's proposed findings but it is assumed that \$720,000 is the figure meant) for the 96,000 acres have not been considered as relevant because they represent unrealistic comparisons for the purpose of establishing values. In nearly every instance where sales, offers, or opinions of value have been included by petitioner they have represented either comparatively small, well located tracts or the opinions have been those of people who had a special interest and consequently could not be considered unbiased. In other instances the opinions have been presented without regard to

self-interest or qualifications of those whose opinions are relied upon to establish a value of \$7.50 per acre. For these reasons the Commission has not deemed it necessary to make findings of fact on such evidence.

Admittedly this was good land for which there was a demand. At the same time the land was not uniformly well-timbered and well-watered. There is no reason to believe that all of the Sac and Fox land would fare better than comparable Missouri land which lay away from the Missouri River and the Leavenworth-Kansas City area. There were several millions of acres of Missouri land which had been on the market over ten years and came under the provisions of the Graduation Act of 1854.

While timber and stone were available on the Sac and Fox land for building purposes it would not be possible for each farm to lay so that it had its own supply of timber or stone and water. For this reason there would be areas which would not sell immediately and would have to be held by the purchaser of the entire tract until the demand arose. This would mean additional cost to the purchaser of the whole tract. On the other hand a prospective purchaser should have been able to project a fairly large population growth in this area within the next few years. The demand existed and should have been common knowledge to the well-informed purchaser. This factor would have influenced such a purchaser because he would have realized that the length of time for disposing of the property would be comparatively short, thereby reducing his ultimate cost and returning a faster profit. The necessity for donating town sites and land for other public purposes as an inducement to settlers would have been a cost to be considered. All of the factors for consideration in

establishing the value of lands under the conditions as they existed during this comparatively remote period have been set forth many times and their repetition here would serve no great purpose.

Where, as is the case here, the contiguous lands have already been evaluated by this Commission and the evidence in this case is so nearly the same as to make it almost identical, then any evaluation of the present lands based upon that evidence which falls too far above or below the values of the contiguous or nearby lands, must be suspect. In the immediate case there exist certain facts which should increase the value of the Sac and Fox tract over the contiguous tracts. We think one of these is the relatively small size of the Sac and Fox tract as compared with other tracts in the immediate and also in the general area. One of the factors considered in establishing values to which we alluded above but did not set forth is tract size. Other things being equal the smaller tract normally is more easily disposed of as a unit than is the larger one. Another and important consideration is the admitted fact that the soil in the Sac and Fox tract is the most fertile in northeastern Kansas besides having a comparatively large river front of 22-1/2 miles which was well timbered. For these reasons we feel that the value placed upon this Sac and Fox tract is consistent with the previous holdings of this Commission on land values in general.

The treaty consideration of \$48,000 for the Sac and Fox tract which the Commission has found to have a value of \$240,000 is so grossly inadequate as to be unconscionable, and petitioner shall be entitled to recover the difference between the said \$48,000 and the fair market value

as determined, less such offsets and credits as the defendant may be able to show at a further hearing.

An order will be entered granting petitioner a judgment in the amount of \$192,000, less the said offsets and credits, if any, and this case shall proceed to the hearing on such offsets or credits.

T. Harold Scott
Associate Commissioner

We concur:

Arthur V. Watkins
Chief Commissioner

Wm. M. Holt
Associate Commissioner