BEFORE THE INDIAN CLAIMS COMMISSION

THE SEMINOLE NATION, )
Plaintiff, )

v. ) Docket No. 248
THE UNITED STATES, )
Defendant. )

Decided: December 23, 1964

FINDINGS OF FACT

The Commission makes the following findings of fact:

1. The plaintiff, The Seminole Nation of Indians, is a recognized tribe of American Indians residing within the territorial limits of the United States; the Seminole Nation is recognized as such by the Secretary of the Interior; and it has authority to prosecute this claim under the provisions of the Indian Claims Commission Act (60 Stat. 1049; 25 U.S.C. Sec. 70, et seq.).

2. The plaintiff alleges a claim for the fair market value of an oil and gas lease on lands known as the Mekasuky Mission School Tract containing 320 acres. This cause of action is based upon the premise that the United States was remiss in its duty as Trustee of the Seminole Nation in failing to properly advertise the sale of a bonus lease on the tract, and in failing to readvertise and resell the lease, thereby securing the highest possible price for the lease; that the sale did not meet exacting fiduciary standards, and violated the principles of fair and honorable dealings.
3. The Seminole Nation purchased from the United States some 200,000 acres, pursuant to Article III of the Treaty of March 21, 1866 (14 Stat. 755; 2 Kapp. 910), between the United States, as grantor, and the Seminole Nation. Title to this tract vested in the Seminoles in fee simple.

The Mekasuky Mission School Tract was originally a part of the 200,000 acre tract, and was set aside and reserved from allotment for school purposes under the Seminole Agreement between the United States and Seminole Nation dated December 16, 1897, ratified and approved July 1, 1898 (30 Stat. 567), which provided specifically that

Five hundred thousand dollars ($500,000) of the funds belonging to the Seminoles, now held by the United States, shall be set apart as a permanent school fund for the education of children of the members of said tribe, and shall be held by the United States at five per cent interest, or invested so as to produce such amount of interest, which shall be, after extinguishment of tribal government applied by the Secretary of the Interior to the support of Mekasuky and Emahaka academies and the district schools of the Seminole people; and there shall be selected and excepted from allotment three hundred and twenty acres of land for each of said academies and eighty acres each for eight district schools in the Seminole country.

In accordance with the terms of the Agreement, the following described tract was reserved for use as the Mekasuky Academy Tract:

The South West Quarter (SW¼) and the South Half (S½) of the North West Quarter (NW¼) of Section 5, and the East Half (E½) of the South East Quarter (SE¼) of Section 6, Township 8 North, Range 6 East, containing 320 acres, all in Seminole County, Oklahoma.

4. The Secretary of the Interior was authorized to assume control and direction of all tribal schools belonging to the Five Civilized Tribes, together with the lands upon which they were located (Act of April 26, 1906, (34 Stat. 137). The Mekasuky Academy was operated as
an Indian School by the Secretary of the Interior under the provisions of this Act.

Section 15 of the above Act was amended by the Act of April 30, 1908, (35 Stat. 70, 71) which provided:

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The Secretary of the Interior shall take possession of all buildings on lands belonging to the Five Civilized Tribes, now or heretofore used for governmental, school, or other tribal purposes, together with the furniture herein and the land appertaining thereto, and appraise and sell the same at such time and under such rules and regulations as he may prescribe and deposit the proceeds, less expenses incident to the appraisement and sale, in the Treasury of the United States, to the credit of the tribes respectively owning the said land and improvements, and immediately after any such sale patents for the realty thus sold shall be made and delivered in the same manner as now provided by law for other tribal property: Provided, That when practicable preference right shall be given to the State, counties and municipalities of Oklahoma to purchase said lands and improvements at the appraised value: And provided, That pending such appraisement and sale the Secretary of the Interior may temporarily lease said buildings and lands for the benefit of the tribes respectively to which they belong.

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5. In early 1923 oil was discovered in Seminole County in an area some two miles southeast of Wewoka, later known as the Wewoka Field. It was not until December 1925, however, that a relatively high yield well was discovered. After that, a number of discoveries followed in quick succession, and in 1926 and 1927 the Greater Seminole Area underwent a substantial growth and the sale price of leases increased accordingly.

With the discovery of the Fixico No. 1 well, the prices for royalty and for oil and gas leases within a radius of six to seven miles increased several times over.
6. In late 1923 persons interested in the development of oil possibilities in Seminole County made inquiries as to the possibility of securing a lease of the Mekasuky School tract. The inquiries were referred to the Superintendent of the Five Civilized Tribes for report and reply.

On December 20, 1923, the Superintendent of the Five Civilized Tribes, in reply, made the following statements:

* * *

In reply, I have to say that Section 10 of the Act of April 26, 1906 (34 Stats.-137) reads in part as follows:

"That the Secretary of the Interior is hereby authorized and directed to assume control and direction of the schools in the Choctaw, Chickasaw, Cherokee, Creek and Seminole tribes with the lands and all school property pertaining thereto and to conduct such schools under rules and regulations to be prescribed by him."

Section 15 of said Act of April 26, 1906, reads in part as follows:

"The Secretary of the Interior shall take possession of all buildings now or heretofore used for governmental, school, and other tribal purposes, together with the furniture therein and the land appertaining thereto and appraise and sell the same at such time and under such rules and regulations as he may prescribe."

It would appear from the provisions of law above quoted that the Secretary of the Interior is authorized to take possession of all schools and the land appertaining thereto, appraise and sell same at such time and under such rules and regulations as he may prescribe; but I am unable to find any provision of law that makes specific provisions for the leasing for oil and gas mining purposes, of lands reserved for schools of the Seminole Nation. However, as the law specifically provides that the Secretary of the Interior shall take possession of such school buildings and lands and sell the same at such time as he may see fit, it would seem that if,
in the judgment of the Secretary of the Interior, it would be to the best interest of the Seminole people to lease such reserved lands for a limited period for oil and gas mining purposes, he should be permitted to do so, unless there is a probability of such lands being sold in the near future under the provisions of Section 15 of the act of April 26, 1906, above quoted.

I would therefore recommend, if in the judgment of the Department it would be to the best interest of the Seminole tribe, that the SW¼ and the S½ of the NW¼ of Section 5, and the E½ of the SE¼ of Section 6, all in Township 8 North, Range 6 East, containing 320 acres, situate in Seminole County, same being land reserved for Mekasuky Mission or Indian School, be leased for oil and gas mining purposes, the lease to be executed in triplicate by the Secretary of the Interior, to a responsible lessee, such lessee to execute a bond in an amount not less than $1,500.00 in order to assure compliance with all of the terms of the lease.

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On January 11, 1924, the Commissioner of Indian Affairs wrote to the Superintendent of the Five Civilized Tribes concerning the possibility of leasing the Mekasuky School Tract, stating it was customary to advertise the lease for sale to the person or persons making the best cash bonus offer plus royalties. He further raised the question of whether it might be more advantageous to advertise the sale or leases without competitive bidding with the Oil Inspector setting the bonus price, and whether a temporary lease such as authorized under the Act of April 30, 1908 (35 Stat. 71) would be sufficiently attractive to a prospective lessee to induce him to expend the necessary funds for development.

8. On January 14, 1924, the United States Oil Inspector, in reply to a request from the Superintendent of the Five Civilized Tribes for a report as to "the prospective oil and gas value of the ** Mekasukey Mission Reservation **" stated:
** **

I desire to say that an inspection of the records of this office shows that there is no production of either oil or gas in the township in which the land, belonging to this mission, is located or in adjoining townships, i.e. 9N-5 & 6E and 8N-5E.

The nearest production is located approximately 9 1/2 miles southwest, where two small wells have been completed in the N1/2 of Section 18-7N-5E. These wells encountered the oil sand at depths of 3722 and 2900 feet, respectively, and are credited with a production of from 5 to 10 barrels daily, each. This, of course, is not occurrence of oil in paying quantities.

The nearest drilling operations are located a little over 2 1/2 miles northeast, where H. H. Taylor, et al., are drilling a test well in the southeast corner of the Lena Jones land, commercial, described as the NE1/4 of Section 34-9N-6E. The latest report as to the progress of the drilling of this well was received under date of December 27, 1923, to the effect that the well was shut down at 2368 feet, reason not given.

There has recently been considerable activity in leasing lands for oil and gas mining purposes in the Seminole Nation and the general area immediately adjacent thereto and, by reason of this fact, this land possesses a little greater value than that usually attaching to ordinary wildcat territory. Its present prospective value would be enhanced to an appreciable extent by reason of the completion of either a producing oil or gas well at the location above specified, i.e. Section 34-9N-6E.

In view of the conditions and with the information at hand, the acreage embraced in this mission may be estimated to possess a prospective or speculative oil and gas value of $5.00 per acre, at this time.

9. After receipt of the information set forth in Finding No. 8, supra, the Superintendent of the Five Civilized Tribes informed the Secretary of the Interior by letter (letter of Oil Inspector enclosed) dated January 22, 1924, as follows:

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On account of the activity of leasing in Seminole County, I am positive that the offering for sale of a lease on this land should be by competitive bidding after it has been
advertised for 30 days, and such lease should be for a period of five years for the reason that a lease for a shorter length of time would not be attractive to a prospective lessees who are always willing to pay more for a five-year lease than for one of a shorter period.

For this reason, and the possibilities as set forth in the report of Mr. Bradley which covers the proposition fully, and the prospects that it may result in benefit to the Seminole Nation, I would respectfully recommend that I be authorized to offer at public sale a lease on the above described land for oil and gas mining purposes to the best bidder at a cash bonus of not less than $5.00 per acre, for a period of five years, the successful bidder to execute a bond for not less than $1500.00 in order to insure compliance with all the terms of the said lease. The said lease to contain a clause prohibiting drilling within 500 feet of any building on the land described, and also, a clause that any lease granted would not extend beyond the time that title to the land is in the Seminole Nation.

10. On March 14, 1924, the Commissioner of Indian Affairs wrote to the Superintendent of Indian Affairs authorizing advertisement of sale of the lease of the Mekasuky Mission School as follows:

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In view of the recent activity in leases in Seminole County, it would appear that now is a good time to lease this land, and in accordance with your recommendation authority to offer the SW/4 of Section 5, and the E/2 of SE/4 of Section 6, Township 8 North, Range 6 East, containing 240 acres more or less, is hereby granted.

The lease should be offered at public auction to the highest bidder, after it has been advertised for a period of at least thirty days. The lease should be for a term of five years and as long thereafter as oil or gas is found in paying quantities, with a provision therein that it shall not, however, extend beyond the time that title to the land is in the Seminole Nation.

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The letter further stated:

The public auction notice, which you will prepare should include the provisions of the Acts of Congress under which the lease is authorized to be made, and the advertisement should
be made by printed or typewritten posters, posted in conspicuous public places, and by newspaper advertisement as well, for at least thirty days prior to date of sale. The public auction notices should provide that the advertising costs shall be paid by the successful bidder, and the amount should be collected when the lease is filed.

The lease should be offered for a bonus consideration of not less than $5.00 per acre, 25 per cent of which bonus, together with the first year's advance rental and required leasing and filing fees, should be paid at the time of sale. The balance of the bonus may be paid after notice of approval and before delivery of lease, or all the bonus may be paid at date of sale.

A bond in the sum of not less than $3,000 must be required, and be submitted with the lease for approval. The rate of royalty and manner of payment of royalty on production, and all other terms and conditions of the lease shall be governed so far as they are applicable by the existing regulations for leases for oil and gas in the Five Civilized Tribes. The money derived from the lease shall be deposited to the credit of the Seminole Nation. **

However, the sale of the lease was not made, pending more propitious circumstances and the probable further development of all properties in the vicinity of the tract.

11. The Superintendent of the Five Civilized Tribes wrote to the Commissioner of Indian Affairs on May 26, 1925, referring to Interior Department letter of March 14, 1924, which authorized lease of the Mekasuky Mission School land for oil and gas mining purposes. He advised that before advertisement had been made, a consultation with the U. S. Oil Inspector convinced him that probable oil development in the area justified postponing the offering; that the action was justifiable as the prospective oil and gas value of the land had increased to not less than $25.00 per acre, and that under the circumstances it should bring an even higher price; and that it should now be offered as soon
as possible "under the conditions set forth in departmental letter of above date ***".

He also requested authority to again offer oil and gas mining lease on the 320 acres reserved for the Mekasuky Mission School at public auction.

12. Under date of June 3, 1925, the Assistant Commissioner of Indian Affairs wrote to the Superintendent of the Five Civilized Tribes, observing that

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It appears from your letter that this land was not advertised for lease following the receipt by you of Office letter of March 14, 1924, outlining the conditions upon which it might be offered for lease. It is noted that you say that after a conference with United States Oil Inspector O. U. Bradley, at that time it was decided that it would be advantageous to defer offering the tract for lease for the time.

As it now appears advisable to invite bids for a lease covering the lands referred to, you may proceed to advertise the tract for lease upon the terms and conditions as outlined in Office letter to you of March 14, 1924, which was approved by the Assistant Secretary of the Interior on March 18, 1924. (Emphasis supplied)

13. Sale of the oil and gas lease was conducted by the Superintendent of the Five Civilized Tribes at Wewoka, Oklahoma, on July 22, 1925. The requirements as to advertising and posting of notices were complied with according to a letter from Acting Superintendent Hunt to the Commissioner of Indian Affairs, dated August 22, 1925. The Texas Company was the successful bidder, agreeing to pay a bonus of $27,520.00, or $86.00 per acre.
14. On August 22, 1925, the Superintendent of the Five Civilized Tribes reported the sale to the Commissioner of Indian Affairs stating, 

* * *

At this sale a number of prospective purchasers were present, and after a somewhat spirited bidding principally between the representatives of two of the leading oil companies, the highest bid being that of the Texas Company of Tulsa, Oklahoma, which was $86.00 per acre. They were declared the successful bidder for 320 acres at $86.00 per acre, $27,520.00; the amount paid at time of sale being $6,880.00, the same being 25% of the amount of the bid, the balance $20,640.00 of the bonus money to be paid after notice of approval and before delivery of the lease.

There was also paid by the Texas Company $48.00 advance royalty, and $10.00 as filing fees. Checks were transmitted to this office by this company payable to the various newspapers in which the advertisement of the sale had appeared.

The notices of this sale which were posted and distributed to the best advantage and were in accordance with the instructions of the Hon. Chas. H. Burke and approved by Hon. F. M. Goodwin, Assistant Secretary, on March 16, 1924.

* * *

A lease was prepared in this office which confirmed almost entirely with the tentative form furnished by the Department, and photostatic copies were made and on the day of the sale at Wewoka, were distributed to prospective purchasers who at once protested to the employee from this office who conducted the sale, calling his attention to the clause in the issue which stated that the lease should be for a period of five years from the date of the approval by the Secretary of the Interior and as much longer as oil or gas is found in paying quantities, provided that in no event will this lease extend beyond the time the title to the land is in the Seminole Nation. They claimed under Section 15 of the Act of Congress approved April 26, 1906, the Secretary of the Interior could sell the land at any time covered by the lease, and in the event it was sold, the lease thereon would be void and of no effect.

As the conditions mentioned therein were contradictory and would almost be certain to cause trouble to the lessee,
contending also that if production was found sufficient to
guarantee the outlay of a large amount of money, the lease
should be protected by the Department so long as oil and
gas was found in paying quantities.

After consulting by telephone with the office at
Muskogee, the employee conducting the sale announced
that the clause in the lease worded as follows:

"Provided that in no event will this lease extend
beyond the time that title to the land is in the
Seminole Nation,"

would be eliminated from the lease; at the same time calling
attention of the prospective purchasers present to the fact
that this lease, if sold, would be submitted to the Secretary
of the Interior and must be approved by him before becoming
effective.

The lease was then offered, as stated above, the Texas
Company being the successful bidder. The lease is herewith
enclosed, signed by the lessee and lessor and properly
acknowledged, and I would respectfully recommend the approval
of the same.

* * *

It is probable that the Texas Company, through their
legal Department, intend to question the authority of the
Secretary of the Interior to lease the land in question on
account of the wording of the amendment to the Act of
Congress approved April 26, 1906, said amendment approved
April 30, 1908 (35 Stat. L., 70-71) which provided

"That pending such appraisement and sale, the
Secretary of the Interior may temporarily lease
said buildings and land for the benefit of their
tribe respectively to whom they belong."

Mr. O. U. Bradley, Oil Inspector of this office, considers
the bonus of $86.00 per acre a very satisfactory consideration.
This land is located about 10 to 12 miles from actual production
and while it can not be considered as doubtful, it can not be
considered as a very attractive proposition. About a year ago
Mr. Bradley fixed the bonus at $5.00 per acre, and for the
purpose of this sale, the bonus was fixed by him at $25.00 per
acre, due principally to the fact of the activity in oil oper-
ations throughout a large portion of the Seminole Nation.
15. The General Counsel of the Texas Company advised the Assistant Commissioner of Indian Affairs by letter dated August 4, 1925, that the company's attorney in Oklahoma had raised some questions concerning the validity of the lease; that it was their opinion that the Secretary of the Interior had no authority to make a lease extending beyond sale of the land, or even authority to make any lease. He further stated:

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I felt, however, that after our people had made the bid, as a matter of good faith with your Department, it was proper for us to comply with it and we have done so, with the hope that when it reaches you, you will disapprove it, either because the words underscored have been stricken out or because an oil and gas lease is not authorized. As a practical matter, oil producers naturally would not want a lease for a term less than the period of production, and I think you will agree with me that as a matter of law the statute does not authorize the Secretary to make a lease which might run beyond the date of sale. Would it not, therefore, be well for you to disapprove our lease and then sell the land pursuant to the terms of the statute quoted; or secure congressional authority for making a lease to run so long as oil and gas are found?

I understand, of course, that you cannot take official action until the lease is presented to you for approval, but in the meantime I will appreciate it if you will give me your views on the question raised.

As a result, the Commissioner of Indian Affairs, on September 2, 1925, recommended disapproval of the lease, and ordered a refund of bonus payments together with advance royalty already deposited. On September 9, 1925, the Secretary of the Interior disapproved the lease.

16. Subsequently, the Act of April 17, 1926 (44 Stat. 300) was enacted, dealing with lands reserved for Indian Agency or school purposes, and provided as follows:
The Secretary of the Interior is authorized under such rules and regulations as he may prescribe, to lease at public auction upon not less than thirty days' public notice for mining purposes land on any Indian reservation reserved for Indian agency or school purposes, in accordance with existing law applicable to other lands in such reservation, and the proceeds arising therefrom shall be deposited in the Treasury of the United States to the credit of the Indians for whose benefit the lands are reserved subject to appropriation by Congress for educational work among the Indians or in paying expenses of administration of agencies; Provided, That a royalty of at least one-eighth shall be reserved in all leases.

On May 17, 1926, subsequent to the enactment of the Act set forth in Finding No. 15, supra, the Superintendent of the Five Civilized Tribes was instructed by the Commissioner of Indian Affairs to again consider leasing of the Mekasukey tract for oil and gas purposes.

On May 22, 1926, at the request of the Inspector-in-Charge of the Five Civilized Tribes, the U. S. Oil Inspector filed a report stating:

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The nearest drilling operations at the present time are located in Section 17-8N-6E, where a test is being put down by the Magnolia Petroleum Company, said well being located in the southeast corner of the NW\frac{1}{4} of Section 17-8N-6E. Report, under date of May 6th, 1926, was to the effect that a rig was erected at this location and, undoubtedly, the drilling is now in progress at a depth of from 500 to 600 feet. This well is located 1\frac{1}{2} miles due south of the southeast corner of the Mekusukey Mission property.

Two and three-quarters miles southeast, the Indian Territory Illuminating Oil Company is drilling a wildcat test well in the center of the SW\frac{1}{4} of SW\frac{1}{4} of NE\frac{1}{4} of Section 15-8N-6E. A showing of oil was encountered in this well at a depth of 2172-2184 feet. The latest report, under date of May 6th, was to the effect that they are drilling by the tools at 2200 feet.

These operations have some bearing on the prospective value of this tract for oil and gas mining purposes. The land in the vicinity of the Mekusukey Mission is all under lease and conditions are such at this time that this tract may be considered attractive from a leasing standpoint.
In view of the conditions and with the information at present in possession of the office, you are advised that this acreage may be estimated to possess a prospective or speculative oil and gas value of not less than $50.00 per acre. It is understood that this is merely a tentative valuation for advertising purposes and, if there is any competition in the bidding at the sale of the lease covering this tract, it is entirely possible that a sum largely in excess of this figure may easily be realized.

17. On May 24, 1926, the Inspector-in-Charge of the Five Civilized Tribes wrote to the Commissioner of Indian Affairs advising that under Public Law No. 133, 69th Congress, "it is very probable that under this Act, a lease of the land reserved for the Mekusukey Mission School can now be sold to a good advantage." He also recommended that he be authorized to offer the tract for oil and gas mining lease.

In the letter he stated that

* * * Notices of sale will be prepared in this office, and a supply thereof will be mailed to the Field Clerks and Probate Attorneys; and to the Post Offices for posting. A notice will be mailed to all oil and gas operators.

* * * I would also recommend that I be authorized to advertise such sale for 30 days prior to the date of the sale in the Oil & Gas Journal published at Tulsa, Oklahoma, such advertising not to exceed $25.00. * * * (Emphasis supplied)

He stated that he recommended that the terms of sale be 25% of purchase price to be paid at time of sale with advance royalty for one year, payment of leasing and filing fees and balance of bonus money after notice of approval and before delivery of the lease - or payment in full at time of sale.

On June 2, 1926, the Inspector was authorized by the Commissioner of Indian Affairs by telegram to proceed with sale of an oil and gas lease of Mekasukey School Tract on terms set forth in Inspector's letter of May 24, 1926, to the Commissioner of Indian Affairs.
18. The sale was advertised in the Oil and Gas Journal published in Tulsa, Oklahoma, in only the June 17, 24, and July 8, 1926, issues. The evidence at hand fails to show that the sale was advertised by posting of notices, hand bills, etc., nor does the evidence indicate that the oil and gas operators in the area were notified of the sale. The sale was not advertised in accordance with regulations in that the first advertisement was 28 days before sale date and not at least 30 days as required by the Act of April 17, 1926 (44 Stat. 300); that it was not published in local or county seat newspapers but in a weekly trade paper published in Tulsa, Oklahoma, some distance from the location of the land to be sold.

19. The Inspector-in-Charge, Muskogee, Oklahoma, advised the Commissioner of Indian Affairs on July 20, 1926, that the sale of the Mekasuky oil and gas lease was held July 15, 1926. The successful bidder was the Gypsy Oil Company of Tulsa, Oklahoma, whose total bid was $32,320.00, or $101.00 per acre.

In the letter reporting the sale, the Inspector recommended approval of the sale. This letter was received by the Commissioner of Indian Affairs on July 26, 1926, and the sale was approved as recommended by both the Commissioner of Indian Affairs and the Secretary of the Interior on July 29, 1926, prior to the receipt of the lease.

The oil and gas lease covering the Mekasuky Mission School Tract, the Gypsy Oil Company of Tulsa, Oklahoma, as lessee, was approved by the Inspector-in-Charge at Muskogee, Oklahoma, on July 28, 1926. On August 4, 1926, the Commissioner of Indian Affairs recommended approval
of the lease, and on August 6, 1926, the Assistant Secretary of the Interior gave final approval.

20. The development of oil fields and competition in acquisition of leases in the Seminole area began in the spring of 1923 with the discovery of the Wewoka field, although gas had previously been found. From 1923 until the fall of 1925 the production was small and of no real commercial importance. In the fall of 1925 the Magnolia Oil Company completed a 4,000 barrel well, and soon thereafter the Seminole City, Searight, Earlsboro, Bowlegs and Little River fields were begun, all located in the west half of the County.

21. The Oklahoma Geological Survey bulletin published in March 1928 stated that there was great activity in lease and royalty buying and trading in 1925, 1926 and 1927 in Seminole County; that royalty was selling for as high as $11,000 per acre and leases as high as $16,000 per acre in areas believed to be proven. The Wewoka field was the first commercial oil producing area in Seminole County, principal development taking place between March 17, 1923 and December 18, 1925, when a 4000 barrel well was completed.

On March 7, 1926, the Indian Territory Illuminating Oil Company's No. 1 Jones well was completed as a 1100 barrel well. On June 6, 1926, the Amerada Petroleum Corporation found a 60 barrel well a quarter of a mile east of the first well. However, the well which caused active drilling in western Seminole County was Independent-Garland's No. 1 Fixico located in the NW¼NW¼SE¼ Sec. 26 and it was completed on July 16, 1926, as a 6,120 barrel well.
After the latter discovery the activity in the field increased rapidly, reaching its peak on the week ending February 28, 1927, with 211 wells producing an average of 253,192 barrels per day.

The Earlsboro field development began with completion of a 200 barrel well on March 1, 1926. On December 3, 1926, the Gypsy Oil Company completed a 8,050 barrel well, which started active development resulting in maximum average daily production of 205,286 barrels from 135 wells during the week ending August 9, 1927.

The Bowlegs field began with its No. 1 Goforth well located in SW ½ SW ½ NE ½ Sec. 15, T8N, R6E, a gas well, and its No. 1 Davis, located in the S.W. corner Sec. 13 and completed as a 5,500 barrel well. Peak production was reached during the week ending August 2, 1927, with 173 wells producing 190,408 barrels per day.

22. The petitioners relied greatly upon the testimony of one W. G. Rogers, an oil and gas producer from Dallas, Texas, who had spent more than forty years in that business, much of it in the area of Seminole County, Oklahoma. At the time his deposition was taken relative to oil and gas operations near the Mekasuky School District, i.e., April 23, 1962, he testified he still was the owner of extensive holdings in Seminole and other counties.

In addition to the deposition of W. G. Rogers taken in Holdenville, Oklahoma, on April 23, 1962, he appeared before the Commission on March 18, 1963, and testified further to his knowledge of the area in which the Mekasuky School District was located, and the events which led to the lease which is at issue. In sum, this testimony was to the effect that
in June, 1926, oil was found in the west side of Seminole County and that the well (Fixico #1) was completed within 16 days; that after completion of the Fixico No. 1, development of oil fields continued to the west-southwest; that he knew of his own knowledge that oil and gas leases surrounding Fixico No. 1 sold for $500 to $1,600 per acre; that the 320 acre Mission tract was worth, in his opinion, a minimum of $150,000 for a five year lease, with a regular one-eighth royalty after March 24, 1926, and that after July 16, or the latter part of June, the lease was worth more, and probably would have brought $750 to $1,000 per acre; that after the discovery wells were brought in, it was impossible to buy any leases because all the lands were leased; that the price of leases in the Seminole field and the Mission tract in 1926 were $350 to $600 per acre on the average, with those on top of the surface structures bringing possibly up to $1,000 per acre.

In reply to a question as to whether "on the sixth day of August, 1926, $101.00 per acre would be considered sufficient for the 320 acres," he replied "No. I would consider it an insufficient consideration for an oil and gas lease."

When the question "Well, will you explain why you arrived at that conclusion?" was put to him, he replied "In the first place, this 320 acres is located on a well known surface structure, and leases were almost unobtainable on these surface structures, and there was a great demand for what tracts were left on the various five or six surface structures in Seminole County **."
As to advertising proposed auction sales, he stated that it was not, to his knowledge, the custom of the Bureau of Indian Affairs to circularize sales of lands by posting notices in post offices and to known oil and gas operators in the area, but that it was usually advertised in newspapers; and that the leases came out of the Muskogee, Oklahoma, office.

When asked if he thought there was any difference in the advertising of the Mekasuky tract from other tracts he answered affirmatively, stating that had it been sold through regular channels it would have been sold at the Muskogee area office; that there was a great deal of difference between prices for leases in 1920 and 1926 due to discovery and development in the area; that the Oil and Gas Journal had a limited circulation and was seldom seen in smaller towns such as Wewoka in 1926; that he did not recall seeing any notice of sale posted; and that he did not recall hearing anything about the sale.

He further testified that there was knowledge of exploration and a big strike in the Seminole area about three weeks before the Fixico No. 1 well was completed; that southwest of that well five acres sold for $11,000 per acre; that a quarter of a mile west of the No. 1 Fixico well a tract sold for $27,500 on October 21, 1926, a date subsequent to both the sale of the lease of the Mekasuky School Tract and the completion of the Fixico No. 1 well.

Another witness upon whose testimony the petitioners relied was Louis H. Horn who allegedly had been an oil operator since 1920. He stated that he was familiar with Seminole County and with the Mekasuky
Mission lands; that in July and August of 1926 he was authorized to pay "from $550.00 up" per acre for any suitable leases he could obtain in that section, but there were none available.

When asked "Would you say $101 an acre in July and August of 1926 was inadequate?" he replied "I would say very much so. In fact, I would say it was a steal."

CONCLUSION

Having given due and careful consideration to the evidence presented by both parties, and to the testimony of the witnesses for the plaintiff, none having been called by the defendant, this Commission has concluded:

1. That the Makasuky Mission School tract, held in trust for the benefit of the Seminole Nation, was located as of July 15, 1926, the date of sale of an oil and gas lease thereon, in an area which contained a number of proven oil and gas wells.

2. That the Secretary of the Interior was authorized by statute to lease such lands for mining purposes upon not less than thirty days public notice, and under such rules and regulations as he might prescribe.

3. That the Secretary of the Interior failed to comply with the statutory requirements as to publication of notice of public sale, the first notice having been published 28 days prior to the sale date, rather than not less than thirty days; that he further failed to comply with the rules and regulations he had prescribed for such sales.
4. That the Secretary of the Interior, together with other responsible officials of the Department of the Interior, were cognizant or should have been cognizant, of the increase in value of the tract involved after completion of the No. 1 Fixico well on July 16, 1926, one day after the sale of the Mekasuky Mission School tract.

5. That the Secretary of the Interior failed to fulfill his obligation as trustee for the Seminole Nation with respect to the Mekasuky Mission School tract when he failed to cancel the lease made on July 15, 1926, re-advertise and re-offer at public sale.

6. That a reasonable price for the lease of the land in question as of July 15, 1926, was $300 per acre for a five year lease with the customary one-eighth royalty reserved to the Seminole Nation.

7. That the plaintiff is entitled to recover the difference between the sale price of $32,320.00 and the value determined by this Commission, i.e., $96,000.00, or the sum of $63,680.00.

T. Harold Scott
Associate Commissioner

Concurring:

Arthur V. Watkins
Chief Commissioner

Wm. M. Holt
Associate Commissioner