

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 (SW $\frac{1}{4}$) and the South Half (S $\frac{1}{2}$) of the North West Quarter (NW $\frac{1}{4}$) of Section 5, and the East Half (E $\frac{1}{2}$) of the South East Quarter (SE $\frac{1}{4}$) 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, (34Stat. 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:

* * *

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.

* * *

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 x x x x x and to conduct such schools under rules and regulations to be prescribed by him. x x x x."

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, x x x x."

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 SW $\frac{1}{4}$ and the S $\frac{1}{2}$ of the NW $\frac{1}{4}$ of Section 5, and the E $\frac{1}{2}$ of the SE $\frac{1}{4}$ of Section 6, all in Township 8 North, Range 6 East, containing 320 acres, situate in Seminole County, same being land reserved for Mekusukey 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.

* * *

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 $9\frac{1}{2}$ miles southwest, where two small wells have been completed in the $N\frac{1}{2}$ 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 $2\frac{1}{2}$ 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 $E\frac{1}{2}$ of $NE\frac{1}{4}$ 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:

* * *

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

