

BEFORE THE INDIAN CLAIMS COMMISSION

THE PEORIA TRIBE OF INDIANS OF)
 OKLAHOMA AND MABEL STATON PARKER)
 on behalf of the Piankeshaw Nation)
 and)
 THE ABSENTEE DELAWARE TRIBE OF)
 OKLAHOMA AND THE DELAWARE NATION,)
 et al.,)

Plaintiffs,)

v.)

Docket No. 289)

THE UNITED STATES OF AMERICA,)

Defendant.)

Decided: December 11, 1970

Appearances:

Jack Joseph, Attorney of Record
 for the Peoria Tribe of Indians
 of Oklahoma; Louis L. Rochmes,
 Attorney of Record for the
 Absentee Delaware Tribe of
 Oklahoma

A. Willard Carlson, with whom was
 Mr. Assistant Attorney General
 Shiro Kashiwa, Attorneys for
 the Defendant.

OPINION OF THE COMMISSION

Blue, Commissioner, delivered the opinion of the Commission.

The Commission has previously determined^{1/} that the Delaware
 and Piankeshaw Tribes held recognized title to an area of 2,007,000
 acres of land in the southwestern part of Indiana, which area has
 been designated as Area 49 by Charles C. Royce on his Indiana Map

^{1/} 19 Ind. Cl. Comm. 107 (1968)

in the 18th Annual Report of the Bureau of American Ethnology (Part II). The lands will hereinafter be referred to as Royce Area 49. Each of the tribes held an undivided 1/2 interest in the area. By separate treaties the Delaware Tribe ^{1/} and the Piankeshaw Tribe ^{2/} ceded their respective interests to the United States. Both treaties were ratified on January 21, 1805.

This case is now before the Commission for determination of the fair market value of Royce Area 49 as of January 21, 1805, the amount of the consideration provided for the lands, and whether that consideration was unconscionable within the meaning of clause 3, section 2 of the Indian Claims Commission Act (60 Stat. 1049, 1050).

The hearing before the Commission on the question of the fair market value of Royce Area 49 was held on November 18-19, 1969. ^{3/}

The consideration for the cessions was nominal, the Piankeshaw Tribe's amounting to \$2,700.00 and the Delaware Tribe's amounting to \$5,700.00.

There is no evidence of comparable sales upon which to base a determination of market value. In order to determine the value of the lands in the absence of an "actual" market, we must look to various factors which a hypothetical, willing buyer and seller would consider in arriving at a fair price for Royce Area 49. Such factors would include the natural resources

^{1/} The Delaware cession was by Treaty of August 18, 1804 (7 Stat. 81).

^{2/} The Piankeshaw cession was by Treaty of August 27, 1804 (7 Stat. 83).

^{3/} The Report of the Commissioner on his preliminary determination of value was issued on December 2, 1969.

of the land, including its climate, topography, vegetation, and the highest and best use to which the land could be placed. Other considerations include population movement, markets, and transportation. Otoe and Missouri Tribe of Indians v. United States, 131 Ct. Cl. 593, 131 F. Supp. 265 (1955), cert. denied 350 U. S. 848 (1955). We have set forth in our findings those various elements which would have affected the fair market value of Royce Area 49.

We have also considered the reports of the expert witnesses and their conclusions on value. The plaintiffs presented the reports of their expert witnesses, Dr. John S. Long and Dr. Roger K. Chisholm. Dr. Long prepared a study of the soil, climate and geographic condition of Royce Area 49, pointing out the suitability to agriculture of the various types of soils. Dr. Chisholm, in arriving at his estimate of the fair market value of Royce Area 49, considered the general economic conditions prevalent at the time of valuation, studied comments concerning the specific land area to be valued and evaluated the data. Dr. Chisholm concluded that the fair market value of Royce Area 49 as of the date of valuation was between \$4,315,050.00 and \$4,515,750.00, or roughly between \$2.15 and \$2.25 per acre. The Commission believes this appraisal is too high, having been supported by sales of developed land or land sold under special circumstances.

Mr. Richard B. Hall was the defendant's expert witness, and he prepared a lengthy appraisal report surveying the economic conditions throughout the United States, available sales data, and reviewed literature respecting the area to be appraised. Mr. Hall concluded that the

fair market value of Royce Area 49 at the date of valuation was \$1,003,500.00, or roughly \$0.50 per acre. The Commission does not agree with Mr. Hall's conclusion concerning value. Mr. Hall has supported his conclusion with evidence of sales of land in Kentucky and Ohio, which were some distance from the subject land, and were affected by special circumstances pertaining to those particular areas.

Royce Area 49 is situated along the Ohio and Wabash Rivers. The accessibility to the area by means of river and overland trails and its close proximity to marketing centers would have created a large demand. The rivers served a dual purpose. Settlers could travel to the area shipping goods and supplies, and after planting and harvesting crops transport their produce to shipping points along the rivers. The subject tract was close to Vincennes which had been settled by the French at least 100 years before the valuation date. The proximity of an established white community further enhanced the value of Royce Area 49.

The highest and best use of the land was for agricultural purposes. However, minerals, including salt, coal, limestone, copper, clay, silver and iron, were located in the subject area, and they were useful to settlers. Timber was found in abundance in Royce Area 49, and it could be used to build cabins and fence the land. Timber was also used to build rafts to float agricultural products to markets for sale.

The price of public land in the Northwest Territory was established by the United States government pursuant to statute. Between 1800 and 1820 the minimum price was \$2.00 per acre payable in four yearly installments. Cash sales were discounted, and a cash buyer had to pay \$1.64 per acre. After 1820, public pressure secured a

reduction in price to \$1.25 per acre payable in cash. The federal government's minimum price tended to establish the price for which undeveloped land was sold.

In discussing factors which the Commission should consider in valuing Indian land, the Court of Claims stated in The Miami Tribe of Oklahoma v. United States, 146 Ct. Cl. 421, 451-452, 175 F. Supp. 926, 943-944 (1959):

In the instant case, as in most cases involving Indian lands, there was no actual free open market in the precise area ceded to the United States in 1818, because the Indians had been unable, prior to the cession, to sell their land to anyone but the United States, and the United States bought the whole tract in 1818. As a result of the Trade and Intercourse Acts, 1 Stat. 137, 138, and 1 Stat. 329, 330, and under the provisions of the Treaty of Greenville of 1795, 7 Stat. 49, the Indian tribes of the Northwest Territory could only sell their land to the United States or with the approval of the United States. Prior to 1818 the Miami Indians had requested the right to sell their lands directly to settlers, but the United States had refused to grant them such permission (Finding 29).

In the case of the New York Indians v. United States, *supra*, there was no open market for the land in question, nor was there evidence upon which a fair market value could be estimated. Accordingly, the Supreme Court directed that judgment be entered for the net amount actually received by the Government when it sold the lands at the statutory minimum price, plus an amount which the lands disposed of other than by sale would have brought had they been sold as public lands for the Government's statutory minimum price. In the instant [Miami] case the Commission did not even allow a recovery on the basis of the minimum statutory price for public land at the time of the cession, which was \$2.00 an acre, nor on the basis of the reduced minimum statutory price of \$1.25 per acre which was established two years after the cession, although the Commission found that nearly all of the land ceded in 1818 was sold by the Government after its acquisition for at least \$1.25 per acre. In the New York Indians case, the Supreme Court did not permit the Indians to be penalized because the Government had not chosen to sell most of the lands involved in that case, and accordingly, the Indians were

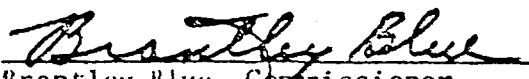
allowed to recover the amount for which the lands could have been but, for political reasons, were not, sold as public lands.

Had the Commission in this case been faced with the New York Indians situation of no evidence of market value, the Commission would have been justified in considering the statutory minimum price in effect in 1818, i.e., \$2.00 per acre, particularly where there was ample evidence that public lands in the vicinity which were neither as desirable nor as accessible were sold for prices equalling and exceeding the previous minimum statutory price of \$2.00 an acre. However, in this case there is evidence, and there are primary findings reflecting such evidence, upon which to base a finding of the fair market value of the lands in question, and it was unnecessary for the Commission to rely solely upon the statutory minimum price for public land.

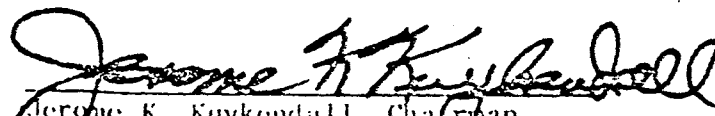
On the basis of all the evidence received in this case, the record as a whole, and the factors listed previously, the Indian Claims Commission concludes that the fair market value of Royce Area 49 as of January 21, 1805, was \$3,010,500.00, or \$1.50 per acre.

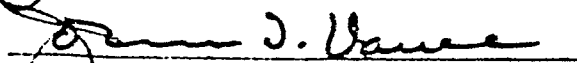
Defendant argues that consistency requires the Commission to value Royce Area 49 in accordance with lower valuations which have been established for other Indiana land. As was stated in The Peoria Tribe of Indians of Oklahoma v. The United States, 22 Ind. Cl. Comm. 186, 194 (1969), consistency does not require this Commission to detail "the distinctive characteristics of the land involved in this case vis-a-vis those in ... any other case." The valuation of each land area is unique, and the Commission is charged with the responsibility of determining the fair market value of each parcel of land as of the date of taking based on the record in the case. It is not material that the valuation may be more or less than the valuation determination in another case involving a different parcel of land.


The Commission concludes that consideration of \$5,700.00 and \$2,700.00 for the cessions of lands having a fair market value of \$3,010,500.00 was unconscionable under clause 3, section 2 of the Indian Claims Commission Act. Each of the plaintiffs is entitled to recover \$1,505,250.00, less the consideration which each respectively received and less any allowable gratuitous offsets.

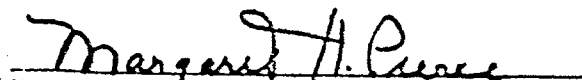

Brantley Blue, Commissioner

Concurring:


Jerome K. Kuykendall, Chairman


John F. Vance, Commissioner


Richard W. Yarborough, Commissioner


Margaret W. Pierce, Commissioner