

Stuckney 3/11
Revised 3/11
MAR 11 1976

Memorandum

To: Legislative Counsel

Through: Assistant Secretary, Public Land Management

From: Commissioner of Indian Affairs

Subject: S. 3445 and H. R. 15866, identical bills, "to repeal the Act of August 25, 1959, with respect to the final disposition of the affairs of the Choctaw Tribe."

We recommend the enactment of S. 3445 and H. R. 15866 if amended as suggested herein.

If enacted, the subject bills would repeal the Act of August 25, 1959 (73 Stat. 420), providing for the termination of Federal supervision over the affairs of the Choctaw Tribe. In general, that Act provides for:

- Termination of Federal supervision over the affairs of the tribal entity;
- Termination of the eligibility of individual Choctaw members for certain Federal services and benefits provided Indians because of their status as Indians;
- Authority to establish a trustee, corporation, or other legal entity under State law as a successor in interest to the tribal entity;
- Authority for the Secretary of the Interior to sell land and interests in land owned by the Choctaw Tribe for the benefit of the tribe;
- Authority for the Secretary of the Interior to convey to the successor entity certain lands and mineral interests of the Choctaw Tribe; and
- Authority for the Secretary of the Interior to distribute per capita funds held by the United States for the benefit of the Choctaw Tribe.

The provisions of the Act were to have been fully executed within three years from the date of enactment, which would have been August 25, 1962. The Act has been amended three times to extend the effective date. The latest of these amendments was by the Act of August 11, 1969 (82 Stat. 703), which extended the time to August 25, 1970.

In the years prior to 1959, there arose strong sentiment among the Choctaw people for "self-rule". To the Choctaw people, "self-rule" meant the right to govern themselves without what they considered to be the paternalistic, oppressive administration of the Bureau of Indian Affairs. The only method they saw to accomplish this goal was through legislation removing Federal supervision. It was during this time, also, that speedy termination of Federal supervision over the affairs of Indian tribes was in vogue and was the stated policy of the United States. It is evident, in reviewing the history of the terminal act, that the Choctaw Tribe in articulating their desire for "self-rule" meant one thing and the United States, in making a legislative response to that desire, meant quite another.

The Tribe, in seeking a "self-rule" measure, was not requesting termination of Federal recognition as an Indian tribe nor a complete severance of the trust relationship as they understood it. They did not intend that the "self-rule" act would terminate the eligibility of tribal members for Federal services provided to Indians. They sought, and thought they received, congressional authority to exercise greater control over their internal affairs and over their property. They sought, and thought they received, relief from what they considered stifling and paternalistic regulation by the Bureau of Indian Affairs. They sought, and thought they received, greater Indian self-determination and self-help while maintaining their centuries-old tribal identity.

The United States accepted the unschooled request of the Tribe for "self-rule" as a demand for termination of the tribal entity under the concept of House Concurrent Resolution 108 enacted in the 83rd Congress. To the United States this meant a complete dissolution of the tribal entity as a governing body - as a historic nation - as a people. It meant absolute termination of Federal supervision, responsibility, and recognition. It meant a casting of the tribal members into the not-always sympathetic jurisdiction of the States and local governments.

It might, at this time, be interesting to note that what the Choctaws sought and failed to receive in 1959 has become in 1970, the stated policy of the United States as expressed by President Nixon. That is, the greatest amount of Indian self-determination, self-rule, self-help, and involvement within the constraints of the trustee relationship. The Choctaws were simply penalized for anticipating too early this enlightened policy.

The Choctaw Tribe or Nation is one of the Five Civilized Tribes of Oklahoma. Five Civilized Tribes is a term used to denote the Cherokee, Chickasaw, Choctaw, Creek, and Seminole Tribes of Oklahoma collectively. This term appeared unofficially as early as 1876. The United States has formally recognized the affinity between these tribes and has treated them for many purposes as one. Congress has enacted laws of general application to the five tribes with specific provisions for each of the tribes where necessary. The other four tribes of the Five Civilized Tribes have not been terminated. Their activity as a tribal entity has increased in recent years. They are providing more services to their members. They are participating in many Federal programs designed to improve the economic and social status of the disadvantaged as Indian tribes. The members of these tribes are among the most poverty-stricken people in the State of Oklahoma. The status and condition of the Choctaws is no different than that of the other tribes. They should not now be treated differently.

Repeal of the Act of August 25, 1959 would not be a reversal of an accomplished fact. While that Act provides for the termination of the Choctaw Tribe, the Choctaw Tribe as of this date is not a terminated tribe. In fact, most of the non-self-executing provisions of the Act have not been executed because of the extreme administrative and legal difficulties encountered in carrying out these provisions. These difficulties have included legal action necessary to quiet title to lands prior to sale under the Act; finding ready buyers for parcels of land at reasonable prices; satisfactorily separating Choctaw and Chickasaw interest in lands and minerals; organization of a legal entity as a successor to the tribal entity which would meet the requirement of the tribe; and making a per capita payment pursuant to section 12 of the Act when much of the land remains unsold and when costs of distribution would exceed the amount available.

As has been indicated, the current policy statements have been, in general, anti-terminationist and call for the greatest Indian involvement in the administration of Indian affairs by the United States as is consistent with the continuation of the vital trust relationship. President Nixon and his administration fully support this position. In an address to the National Congress of American Indians on October 8, 1959, Vice-President Agnew stated:

"The President's statement, delivered to the last NCAI Convention in Omaha, still stands. This Administration opposes termination. This Administration favors the continuation of the trust relationship and the protection of Indian lands and Indian resources."

.....
 "There is no question that this special relationship will and must continue. It is its quality that should concern us most."

Secretary of the Interior Hickel, on that same occasion and date said:

" . . . I want to make one thing crystal clear: This Administration is dedicated to improving -- not destroying -- that special relationship that exists between Government, the Indians, and the land."

"We are not a pro-termination Administration."

"I also want you to know that President Nixon agrees with me completely in this line of policy thinking. He put it so well when he said that he will 'help the Indian people reach the goals that they themselves have set and will set.'"

To permit the Choctaw Nation to perish under the 1959 Act would be inconsistent with this policy.

Termination of Federal supervision over the affairs of Indian tribes has not proven to be the solution so desperately sought by the United States in meeting its responsibility to the Indian people. The promise that termination would make first class American citizens of second class members of Indian tribes has resulted more often in a twilight existence as third class citizens. Of terminated tribes who were once comparatively wealthy as a people in land, timber, mineral, and other resources and who were making great progress in bettering the position of their members through tribal programs there now remains destitute, demoralized individuals and rural ghettos without the hope once promised by the now non-existent tribal entity.

And the catastrophic impact on the individual has not been limited to economic deprivation. The psychological impact of the non-identity occasioned by termination of Federal recognition as a tribe may, in some cases, equal if not surpass the economic effect. The americanization of European and other old world immigrants does not have this impact. The new world immigrant can still maintain his identity with the old world nation. But when the tribal land base is gone - when the tribal entity is dissolved - when the recognition by the outside world as a tribal entity is gone, the tribe ceases to exist except as a historical curiosity. We have a chance to prevent this from happening to the Choctaw Nation.

Repeal of the Act of August 25, 1959, and continued recognition of the Choctaw tribal entity would facilitate the administration of programs and services necessary to overcome the economic and social

deprivation of the Choctaw people. The Oklahoma Indian is often inaccurately portrayed as well-educated, acculturated to the non-Indian way of life, socially and economically advanced, and well equipped to manage his own affairs in the outside world. In short, the myth of the "oil-rich Oklahoma Indian" is still given serious credence. In truth, the Oklahoma Indian, including the Choctaw Tribe, suffer all the deprivations and disadvantages of Indians throughout the United States who are under the jurisdiction of the United States. In addition, the Oklahoma Indian tribes have the additional disadvantages of the lack of a viable tribal land base and lack of a cohesive tribal governing body.

It is a truism that health, education, and welfare programs for Indian people are better received and show more positive results if they are administered through or by the Indian people themselves. This is best accomplished by the tribal entity acting through a Federally-recognized governing body. In fact, certain of such programs required Federal recognition for eligibility. All who are familiar with the condition of the Oklahoma Indian admit their condition is comparable to most Indian reservation circumstances.

There are approximately 2,500 Choctaw families in need of better housing. Of these, 1,460 need and can qualify for low rent or mutual help housing and an additional 1,040 families receive slightly more income than the maximum permitted for participation or are ineligible because they do not own a building site. The Choctaw Nation Housing Authority has been established under a special provision of Oklahoma State law which authorizes the establishment of public housing authorities for each Indian tribe, band or Nation in the State. Termination of the Choctaw Nation could mean termination of its Housing Authority. The Authority now has 54 housing units under management or development and plans for the development of 425 additional housing units. These units and any subsequently developed by the Authority -- and bonds and notes sold by the Authority to private investors -- would be placed in a confused state as to ownership and liability should the Nation and its Housing Authority be terminated. Added to this must be consideration of the severe loss and blow to the Choctaw people themselves.

The continued existence of the tribal entity would permit the Choctaw people, acting through the tribe, to take advantage of the growing number of Federal, State, and local programs designed to meet the peculiar problems of the American Indian. The Federal government now has programs for which Indian tribes are eligible in the Departments Housing and Urban Development; Health, Education, and Welfare; Commerce; Transportation; Labor; Agriculture; and Justice besides the accepted Indian programs of the Bureau of Indian Affairs.

Affairs and the Public Health Service. Most if not all of these programs require Federal recognition for eligibility. The same is often true of a small, but growing number of programs for Indian tribes sponsored by local governments and some private bodies. The need of the Choctaw people for these programs and services is admitted. If our truism is accepted, then it follows that the Choctaw Tribe should remain untermiated.

While we favor repeal of the Act of August 25, 1959, repeal might be interpreted to adversely affect rights and interests which may have vested under the provisions of the Act. In order to guard against the possibility that interests of bona fide parties acting pursuant to the Act of August 25, 1959 may be adversely affected, we suggest the following amendment to S. 3445 and H. R. 15866.

Add a new section as follows:

"Sec. 2. Repeal of the Act of August 25, 1959, shall not be construed to abrogate, impair, annul or otherwise affect any right or interest which may have vested under the provisions of said Act nor shall repeal affect any legal action pending on the date of enactment of this Act."

If amended as proposed, we urge enactment of S. 3445 and H. R. 15866.

(Sgd) Louis R. Bruner

Commissioner

cc: Legislative Counsel - Assoc. Solicitor Indian Affairs

Surname

Mailroom

Commissioner's Reading File

FDDucheneaux:1br 3/10/70